

MINUTES
TOWN OF QUARTZSITE
SPECIAL MEETING OF THE COMMON COUNCIL
WEDNESDAY, FEBRUARY 19, 2014, 9:00 AM

CALL TO ORDER: 9:00 AM

INVOCATION: None

PLEDGE OF ALLEGIANCE: Led by Council Member Jewitt.

ROLL CALL:

Present: Mayor Foster, Vice Mayor Jewitt, Council Member Kelley, Council Member Crooks, Council Member Orgeron, Council Member Scott, Council Member Timberlake.

ABSENT: No one

STAFF PRESENT: Laura Bruno, Town Manager; Susan Goodwin, Town Attorney; Tina Abriani, Town Clerk; and Amy Daniel, Deputy Town Clerk/P & Z Secretary, was in attendance before the executive session took place, but not after.

APPROVAL/AMENDMENT OF AGENDA:

Vice Mayor Jewitt moved to accept the agenda as presented and **Council Member Kelley seconded** the motion. **Motion Passed.**

ADMINISTRATIVE ITEMS:

1. EXECUTIVE SESSION

- **An executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with Special Counsel and the Town Attorney in order to consider its position and instruct Special Counsel and the Town Attorney regarding the Town's position regarding pending litigation and settlement discussions conducted in the matters of Michael Allen Roth v. Town of Quartzsite, et al., filed in the U.S. District Court for the District of Arizona, number 2:12-cv-01268-SLG; Michael Allen Roth v. Town of Quartzsite, et al., filed in the United States District Court for the District of Arizona, cause number 2:12-cv-02698-SLG; and Michael Allen Roth v. Town of Quartzsite, et al., filed in the United States District Court for the District of Arizona, cause number 2:13-cv-00908-SRB.**
- **Executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney regarding the Town's position regarding a**

contract with Skylor Miller as Town Manager that is the subject of negotiations.

- **Executive session pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the Town Attorney regarding liability and immunity issues related to council involvement in personnel decisions.**

ADJOURNMENT TO EXECUTIVE SESSION: 9:02 AM

Vice Mayor Jewitt moved to adjourn to executive session and **Council Member Kelley seconded** the motion. The vote was unanimous. **Motion Passed.**

RETURN TO OPEN SESSION: 10:11 AM

ROLL CALL:

Present: Mayor Foster, Vice Mayor Jewitt, Council Member Kelley, Council Member Crooks, Council Member Orgeron, Council Member Scott, Council Member Timberlake.

- 2. RECEIPT, RELEASE AND INDEMNITY - Discussion and action to approve a Receipt, Release and Indemnity Agreement related to the matters of Michael Allen Roth v. Town of Quartzsite, et al., filed in the U.S. District Court for the District of Arizona, number 2:12-cv-01268-SLG; Michael Allen Roth v. Town of Quartzsite, et al., filed in the United States District Court for the District of Arizona, cause number 2:12-cv-02698-SLG; and Michael Allen Roth v. Town of Quartzsite, et al., filed in the United States District Court for the District of Arizona, cause number 2:13-cv-00908-SRB in the total amount of \$30,000.**

Council Member Orgeron moved to approve a Receipt, Release and Indemnity Agreement with Michael Roth in the amount of \$30,000. **Council Member Kelley seconded** the motion.

Council Member Scott advised that the matter had already been decided and Council has given its O.K.

Council Member Timberlake advised the matter was decided by the Risk Pool, not by the Council.

The Mayor and Council Member Scott explained this is the fiscally responsible thing to do as it is much cheaper than going to court with the legal fees.

Council Member Timberlake explained that the majority of the \$30,000 is coming from the Risk Pool and the Town's portion is \$7,500.

The vote was unanimous. **Motion Passed.**

ADJOURNMENT OF THE SPECIAL SESSION: 10:12 AM

Vice Mayor Jewitt moved to adjourn the Special Session and reconvene as a Work Session. **Council Member Kelley seconded** the motion. The vote was unanimous. **Motion Passed.**

WORK SESSION: 10:12 AM

3. Review and discussion of Town Code discrepancies, focusing on Chapter 3, Administration.

Council Member Scott said a new manager is coming in and there are discrepancies in the Town Code. Council Member Scott read aloud Section 3-1-1, regarding powers and the offices of Town Manager, Town Clerk, Police Chief, Town Engineer, Town Attorney and Town Magistrate who shall be appointed by the Council and who shall serve, with the exception of the Magistrate, at the pleasure of the Council.

Council Member Scott stated the Town Code has discrepancies under Town Manager, Powers and Duties and under the Police Chief section. She said the Council should come to some kind of conclusion, as to how the Council and the new Town Manager function.

Vice Mayor Jewitt said some issues were cleared up; but, when they were written, it did not include the clause that says they override previous policies. So, we have conflicting policies.

Council Member Scott said her opinion is that 3-1-1 should be the governing code. Council Member Scott said she believes there should be checks and balances of power.

Vice Mayor Jewitt stated his personal feelings. In terms of both job responsibility on the dais and looking at the liability for any Council actions, he thinks the portion of the Town Code that Council Member Scott was just discussing, puts too much on the shoulders of the Council.

Vice Mayor Jewitt said he would like to see the Town Manager choose the Police Chief, based on that person's experience, fit with the community and likeability; then, put that name forward to the Council for final approval. As far as the other department heads, he thinks the Town Manager is perfectly capable of handling those.

Council Member Orgeron said he likes the process of selecting a Police Chief this time around. He believes the process needs to be a conjunction of the Town Manager and the Town Council. He said the Town Manager is part of the team and is in place to work for the Council and the Council is there to support the Town Manager. He stated that the personnel officer and the human resources department need to do all the work.

He explained the Town Manager can bring back information and have it be in keeping with what the Council wants.

Vice Mayor Jewitt said the only person that works for the Council is the Town Manager; the others work for that Manager.

Council Member Timberlake stated she would like to see the Police Department taken out of Town Hall. She is happy with the process of having a committee with a couple of Council Members sitting on the committee to bring names to the Council, so that the Council may make the final decision.

Council Member Scott said there is another way. She said the interviews could be done by the Town Manager and the recommendation could be brought to the Council, so that the Council is in the loop and has the final say.

Vice Mayor Jewitt mentioned the liability involved with hiring and firing personnel.

Attorney Goodwin stated that the Council has absolute immunity for their legislative actions, such as passing ordinances, creating positions and eliminating positions. When the Council moves out of the legislative arena, there is always the continuum of potential liability. When the Council is in charge of hiring and firing, then it takes on more liability.

Attorney Goodwin stated if the Council is the appointing authority, then it takes on all of those liabilities that come with negligent hiring, firing and training.

Attorney Goodwin added that those risks can be managed. The Council could educate itself with personnel law and seek advice from attorneys. She explained, just in terms of liability, you take on more liability when you take on hiring and firing.

Attorney Goodwin explained the Council is still the appointing authority, but there is less liability when the Town Manager, a professional, recommends a candidate. She thinks a good process would be one where the Town Manager does the interviews and appoints, subject to consent of the Town Council.

Council Member Scott stated that she doesn't see the problem with having the Town Manager do the interviews and then taking the matter before Council, with the resumes. She explained the Council Members get asked, by the public, about the people that are appointed and hired.

Vice Mayor Jewitt said he thinks the Town policy should list the specific positions, not just 'department heads'.

Jennifer Jones pointed out that the La Paz County Board of Supervisors personally, by vote, approves every hiring, every firing, every raise and every promotion of every

single County employee. She said they do this on the recommendation of the department head. She spoke about liability. She suggested the Council do more research on case law.

Council Member Timberlake asked about the authority to say no to a recommendation. She said the Council will more than likely concur with the recommendation; but, the Council will have the ultimate control.

Richard Thompson, a citizen of Quartzsite, spent thirty years in a bureaucracy very much like the Town of Quartzsite. He stated it is his experience that micromanagement by the Council of the Town is a failure to the tax payers.

Joseph Bruno, property owner, said La Paz County is not a good example to follow. Secondly, promoting from within takes place because no one will come here for the salaries offered.

The Mayor stated the Council should direct Town staff to review the Town Code, find contradictions and highlight them in red. He said this may allow the issue to be reviewed more intelligently.

The Mayor suggested starting with just Chapter 3. He asked that a plan be brought forth to Council that uses italics where there is a problem and red noting the proposed change. He asked that the Town Attorney and the Town Manager create a plan 'A' and a plan 'B' for the Council's review for each conflict's resolution.

Jeff Gilbert, resident, voter, former Chief of Police for eight years, spoke about the Town Code and Town policy. He stated that the employee handbook also has conflicting information. He said the problem is that the Town Manager and the Personnel Manager are the same. He stated that the Town Manager has too much authority. The Chief of Police and the police serve the public; not the Council or the Town Manager. He went on to say that the Chief of Police has to be given the authority to execute the job.

The Mayor said the Council should add, to the direction to staff, the Policy and Procedure manual, as pertains to Chapter 3. Any discrepancies should be addressed the same way as the Town Code.

Council Member Orgeron suggested that the Policy and Procedure manual be addressed after the Town Code.

Town Manager Bruno stated she thinks that she and staff can handle this, and sees it as a jumping off point to correct the entire Town Code in pieces.

The Mayor stated the Council has directed Town staff to prepare a report for them with a plan 'A' and a plan 'B' for resolution of the conflicts. He suggested scheduling a work session.

Vice Mayor Jewitt moved to adjourn the meeting and **Council Member Kelley seconded** the motion. The vote was unanimous. **Motion Passed.**

ADJOURNMENT: 10:55 AM

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Meeting of February 19, 2014, of the Town Council of Quartzsite, Arizona, held on February 19, 2014.

I further certify that the meeting was duly called and held and that a quorum was present.

DATED this 11th day of March 2014

Tina M. Abriani, Town Clerk

On behalf of the Common Council

Approved:

Ed Foster, Mayor