

Sierra Vista City Council  
Meeting Minutes  
December 22, 2022

Mayor Mueller called the December 22, 2022, City Council Regular Meeting to order at 5:00 p.m., City Hall Council Chambers, 1011 N. Coronado Drive, Sierra Vista, Arizona.

Roll Call:

Mayor Rick Mueller – present  
Council Member William Benning – present  
Council Member Gregory Johnson - present  
Council Member Angelica Landry – present  
Council Member Marta Messmer – present  
Council Member Mark Rodriguez – present  
Council Member Carolyn Umphrey – present

Others Present:

Chuck Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager  
Jon Kosmider, Deputy Police Chief  
Nathan Williams, City Attorney  
Jill Adams, City Clerk

Invocation – Council Member Benning led the invocation.

Pledge of Allegiance – Council Member Umphrey led the Pledge of Allegiance.

Item 1 Acceptance of the Agenda

Council Member Landry moved that the agenda for the Regular City Council Meeting of December 22, 2022, be approved. Council Member Benning seconded the motion. The motion unanimously carried, 7/0. Mayor Mueller, Council Members Benning, Johnson, Landry, Messmer, Rodriguez, and Umphrey voted in favor.

New Business

Item 2 Discussion and Possible Action on Resolution 2022-083, Appointment of Kenneth J. Curfman as the Sierra Vista City Magistrate and Approval of the Judicial Services Contract with Kenneth J. Curfman, Justice of the Peace, Precinct V – Tabled Item

Council Member Rodriguez moved that Resolution 2022-083, appointment of Kenneth J. Curfman as the Sierra Vista City Magistrate and approval of the Judicial Services Contract with Kenneth J. Curfman, Justice of the Peace, Precinct V, be removed from the table. Council Member Johnson seconded the motion. The motion unanimously carried, 7/0. Mayor Mueller, Council Members Benning, Johnson, Landry, Messmer, Rodriguez, and Umphrey voted in favor.

Council Member Messmer moved that Resolution 2022-083, appointment of Kenneth J. Curfman as the Sierra Vista City Magistrate and approval of the Judicial Services Contract with Kenneth J. Curfman, Justice of the Peace, Precinct V, be approved. Council Member Umphrey seconded the motion.

Mr. Potucek stated that this resolution calls for the City's biannual agreement with the Justice of the Peace, Kenneth Curfman, to serve as the City's Magistrate. The genesis for this stems from the contract with Cochise County for magistrate court services that the Council entered two years ago. That contract stipulates that the justice of the peace would be appointed by the Council to serve as magistrate, the main part of the agreement that the City has with the County. There is a formula in place that based on the workload number of cases cited into the court determines what the City will budget and pay for the following year. In this case the City does not have that, the City will be paying the last agreement with Judge Curfman the sum of \$52,500 per year, which roughly equates to the amount of judicial productive, the credits that he earned doing the City's cases. However, there is no formula like what the City has with the contract for the justice services to serve as magistrate. The City is in a situation where the magistrate must name his price for doing the services with the City and there really is very little negotiation that goes on with that. The contract calls for \$62,500 for the next two years with an automatic extension of two years if the parties agree to move forward for an additional two years. The City must do a two-year contract according to City Ordinance, and there may be some language out either with the State Courts or Statutes that say the same thing; but staff is checking on that as well. In City Ordinance it states two years and without this agreement it could be deemed that the City would then be out of compliance with the County's contract since the current contract with Judge Curfman expires on December 31, 2022, which then would give the City four months to stand up its own court. This would then be a change in policy direction for the Council to take, if the Council determined that they did not want to proceed with the agreement and wanted to proceed with standing up its own court because that is the only other option.

Mr. Potucek stated that it will take time for the City to stand up its own court; therefore, in the interest of full disclosure, staff has run the numbers for what it would cost for the City to run its own court. These numbers, although not complete and still in draft form, indicate that the City would need an additional \$2.7 million dollars to get the court stood up with a range of annual cost over the next four years. After that from \$1.3 to a little over \$1.5 million and there would still be a need to further refine that. If this is the direction of the Council, this will need to be budgeted for and this would continue if the City did not have a Consolidated Court Agreement. Lastly, he strongly recommended that the Council approve Judge Cufman's contract as presented.

Ms. Murphy stated that this is extremely important to here and noted that she attended the Council Meetings on December 8, 2022, and December 20, 2022 and at that time she only heard figures and no negotiations. Although, she is not privy to the negotiations, as a citizen who must live within a budget, she is not a happy camper with this decision, and she knows that Council is over a barrel. She noted that Mr. Curfman does not have a law degree and asked why Mr. Curfman asked to raise his salary up from \$28,052. She also wonders why there is no formula and why Council let this fester.

Mr. Wallace asked about the authority that made the decision because it was stated earlier that the City does not have any other decision, which seems to be the mantra of the last two years. He also asked about the rule as far as constitutional backing for a city magistrate. Mr. Potucek explained that State Statutes requires that municipalities have a judiciary or a magistrate court situation and provides for three methods of doing so. One is for the City to run its own court, which he mentioned will carry considerable costs. The second would be to join with an adjoining city, in this case an adjoining city for Sierra Vista is Huachuca City that probably does not have the capacity to carry Sierra Vista's caseload in their court. The other option is a consolidated

court agreement with the County and the Justice of the Peace Court. He further stated that Sierra Vista has always had a city magistrate and has had an agreement for thirty plus years, and before that the City had its own court and magistrate. However, it was determined by the council at that time that they would enter into an agreement with Cochise County and then after that, the council would name the justice of the peace as the city magistrate as part of that agreement. The change is the cost for the magistrate.

Council Member Benning thanked citizens for watching and those present who commented. He concurred with Ms. Murphy's statement in that Council did let this fester and got comfortable with the agreement. There are Council Members on the dais that voted against this agreement last time; but they also got comfortable with it and did not push during the last two years. However, in his eyes/opinion, there comes a time where one must say what right is right as it is like on the playground when a bully keeps bullying and there is a time when one must put up their fist and say that they have had enough. He voted no last time and this time; he might vote against it again. Lastly, he stated that he would like to see something done since this agreement went up \$10,000 in two years, to \$62,000 plus just because, which show the integrity and ethics of the person who is asking for this contract. In closing, he stated that he ran for office because he wanted to give back to his community and not to make money, pad his wallet, nor help his income when he retires. Those who do should be ashamed of themselves from the Capitol in Washington, DC down to Sierra Vista Justice of the Peace Five.

Council Member Rodriguez thanked staff for their work on getting the facts and numbers to make sure that Council had the right numbers to review, thanked Mr. Potucek for attempting to negotiate the process, and stressed that he is 100 percent for paying people what they are worth; but they struggle with that in the City. The City is trying to keep its qualified employees for the long term because other cities are offering things that Sierra Vista cannot. However, he is not 100 percent for paying fees that are not based off a formula, a sliding scale, or even a skill set. In this case, multiple formulas were applied, and that number came up to about mid-50s, which Council agreed to last time because it was the lesser of two evils at the time. He stated that he believes that Council would have been fine with extending the agreement for two more years; but they did not expect a \$10,000 increase. The numbers did not go up, they went down this past year and perhaps it is an anomaly, or it was because there are less officers on the street.

Mr. Rodriguez stated that Webster's Dictionary defines the word "agree" as the state of agreeing, harmony of opinion, statement action, or character concurrence, conformity; but this is not what is before Council. Webster's Dictionary also defines a contract as a binding agreement between two or more persons or parties; but it is not right when someone comes in with an arbitrary figure and says this is what he will do, this is what he wants for the job that he was elected for, knowing what that entailed, and stating that the City can take it or leave it, and if the City does not take it, then the City must spend billions in standing up its own court. He further stated that the City has been against recognizing unions for certain reasons, things like meet and confer because it would allow for negotiations of certain things pertaining to first responders' duties; but here is the City allowing for no negotiations regarding the contract with Judge Curfman. This does not set a good precedence because the City is basically forced to simply take the better of two options because it would cost the local taxpayers in the short term and over to start up a municipal court, which would be costly and only generate about \$133,000 in revenue that the City does not get anyway because that all goes back to the County. Lastly, he stated that some things are moral, ethical, and legal; but this is probably one of those three, where it is apparently legal but the other two not so much. The fact that Council should be glad that the City is being done this as a favor, what the City is being told, does not make this right.

There are a few things Council could have done with an extra \$10,000, but corners were cut when it came to the new fire station that was built because there was a budget; but they are good with that because they know that they had to sacrifice for the overall budget, and they live with this every day. There are also members of the community in wheelchairs that would love to play basketball on a court that has certain features, the senior community would love to have an extra pool table to have pool tournaments, a local library could use \$10,000 towards the repair of their leaky roof as well as other City offices that the employees put up with every day, yard abatements, cleanups or neglected residents, easily clean up the State's land on Wilcox where the students use that area for cross-country events, crosswalks on Carmelita or across the street on Golf Links where there is a lot of traffic, and maybe put up a blinking sign. There is a lot that the City could fix with \$10,000.

Council Member Johnson announced that he would be voting no on this proposition because the last time Council reviewed this was in July 2021 and he voted against that agreement along with Council Members Benning and Rodriguez. The final vote was four to three for the original agreement to gift the Justice of the Peace an additional \$52,000 over and above his generous \$105,000 salary. This year the City will be paying \$262,050 and giving up fines and fees of \$137,737 for a total cost to run the Justice of the Peace Five, \$418,000, which is the City's "fair" share of supporting the actual operating costs based on the case load of the justice court. The re-elected Justice of the Peace Five was fully aware of the workload and salary that he would be receiving when he was running for office several years ago and unfortunately this time, he ran unopposed. Now, he wants to increase his already generous salary, which was increased by the State Legislature up to \$115,290 for his services, another \$62,645 for a grand total of \$177,935 - not a bad payday and he is not even a licensed lawyer. He wants to increase his salary in the amount of \$10,145 solely on the backs of hardworking Sierra Vista taxpayers. He further stated that Council Member Rodriguez noted projects that the City could do with that extra money. Additionally, this increase would again pay Mr. Curfman more for his services than the busy superior court judge who is licensed and trained as a lawyer. Lastly, if the Council fails to pass this proposition, the City is threatened with the fact that Sierra Vista cases would not be handled by this court nor by the County's prosecutor and the City would be forced to establish its own court system, which he personally does not think would be a bad idea. Any case filed within the Justice of the Peace Five jurisdiction must be heard and handled by the Justice of the Peace and prosecuted by the County Attorney's Office. This agreement is a one-sided deal on behalf of the County and the Justice of the Peace against the City of Sierra Vista. In closing, he stated that he is offended once again as a City Council Member in that the City is being held hostage to this agreement by an elected official and consolidated agreement under which the City has no control; like the old proverb says, "when you feed a stray dog, he will just keep coming back for more." Therefore, he will be voting no.

Council Member Landry stated that last year when Council went through this, it was a very difficult ordeal to go through. This is not an ideal situation, and it is not a fair situation either. There has been a lot of discussion amongst Council and lot of information was provided from the staff that had all the numbers that was very helpful. Even though it is not an ideal situation, she cannot vote no because at the end of the day, the people of Sierra Vista need to have a service provided to them and this service cannot be provided without a plan in place and putting a lot of money on the line. It is important to think of the present, future, five years from now, ten years from now, and what is that going to look like. There is a ripple effect that different decisions will have if cases are not heard, if people start getting a slap on the wrist, maybe an increase in crime; but all this is not known, and Council does not want to play with that. There were discussions about what the City could do with \$10,000, a lot of things that are needed, a lot of different departments could use these funds, people of service could use these as well;

but on the other hand, the City would be stuck with very little time to put up its own court with no plan, a building, employees, etc., that would initially require overhead, adherence to the requirements for a court, and initially end up being very expensive. She added that she believes that it is very important to look at other options with a plan. Currently it is not wise to risk that for the cost that it would be compared to, the \$10,000. In addition, she could not look at the people that are serviced and tell them that all this money is going to have to come from somewhere else and that their quality of life is going to suffer, the roads, etc. Lastly, she stated that she is unable to vote no at this time and voiced her appreciation to the members of the public, Ms. Murphy, and Mr. Wallace for their comments. This situation shows the importance of people getting involved because the person that is currently in this position ran unopposed during the elections. It is important to have people have a choice on peopling run for office, for the right reasons because it is a position of service. The people of Sierra Vista watching know the character, the morals, and ethics of this individual and hopefully this will encourage someone to run for office and to serve and do what is best for the people of Sierra Vista.

Council Member Umphrey voiced her appreciation at the comments made by Council Member Landry, Ms. Murphy, and Mr. Wallace. She added that it is not about the money. It is about the way it was done. She added that the amount that Judge Curfman agreed to is on par with the other municipalities in Cochise County like Wilcox and Benson. They have justice of the peace contracts with the County, and they are also paying their magistrates between \$30,000 and \$35,000, and they have half the caseload. In closing, she concurs with all the points made by Council.

Council Member Messmer stated that she believes that the County and Mr. Curfman do not see the citizens of Sierra Vista as Cochise County residents because if they did, Mr. Curfman would not have put the City in this position. Citizens of Sierra Vista voted for Mr. Curfman, and he is the City's Justice of the Peace Five representative and not doing justice to the citizens. Also, Mr. Curfman knew what he was getting into the second time because he ran again for office. Lastly, she stated that a yes vote would allow the City to address a municipal court in a timely manner; but currently, she cannot say how she plans to vote until the question is asked.

Council Member Benning stated that he spoke to the State Legislators during the recent meeting held with them on Wednesday, December 21, 2022, about the misuse of the Justice System in the State of Arizona and the side deals with cities because they are holding cities in the State of Arizona hostage with the manipulation of the court systems, the same manipulation with the IRS or others. He encouraged a resolution in Arizona to set up the cities that are in the same position to eliminate these side deals on agreements that are forced. The citizens of Sierra Vista pay County taxes to have the Sheriff Department, a jail system, and now they want additional taxes to have those same services – double jeopardy.

Council Member Rodriguez thanked the members of the public for their feedback.

Mayor Mueller concurred with Council Member Landry and noted that the City trying to provide court services on its own within four months, with no funds appropriated, is probably not the best action. He further noted that if the Council votes no on this, this will put the public in jeopardy, which he does not think is what any Council Member wants. The only real solution, the practical solution, and workable solution is for Council to vote yes on this issue, get the contract signed by the Justice of the Peace and then move forward. There are two to four years to take the investments, take the money out of the budget to do it properly; but that portion of this decision needs to be made by the Council next year. Lastly, he encouraged all Council

Members to take that into consideration as well as what was stated during the meeting and the logic used by everybody else. This is not an easy issue.

Council Member Umphrey stated that over the last year, she was made aware of a couple of attempts made in looking at different avenues that did not pan out to avoid this situation. She stated that staff was not just sitting around as they tried a couple of options and she wanted to give them credit and thank them. This is a very tough and difficult situation, but Mr. Potucek, Ms. Yarbrough and Mr. Williams have made it a little easier and more accurate with facts and they have acted as impartial members.

Council Member Rodriguez asked Mr. Potucek to explain why the City of Sierra Vista cannot have its cases heard by Huachuca City's magistrate. Mr. Potucek stated that Huachuca City does not have the infrastructure. Huachuca City does not have the caseload that Sierra Vista has, nor do they have the staffing to hear the cases. There are several County staff already involved in that, but they must make enough revenue to overcome things that they know that the City does not have currently, i.e., jail costs and the Sheriff for running the jail; however, that could go away if a jail district is voted in 2024.

Council Member Benning stated that he wants the public to know that if Council agrees on this and votes yes, this is only an offer and not a done deal. Mr. Curfman must accept the offer. If he does not accept the offer, the City will be back to square one.

The motion carried, 4/3. Mayor Mueller, Council Members Landry, Messmer, and Umphrey voted in favor. Council Members Benning, Johnson and Rodriguez voted nay.

Adjournment

Mayor Mueller adjourned the December 22, 2022, meeting of the Sierra Vista City Council at 5:38 p.m.

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Clea McCaa II, Mayor

Minutes prepared by:

Attest:

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Maria G. Marsh, Deputy City Clerk

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Jill Adams, City Clerk