



## NOTICE OF SPECIAL COUNCIL MEETING

In accordance with § 38-431.01 of the Arizona Revised Statutes of the State of Arizona, notice is hereby given to the Members of City Council and to the general public that the Mayor and Council of the City of San Luis, Arizona, will hold a Special City Council meeting at 6:00 p.m., Monday, March 3, 2025. The meeting will take place at the City Council Chambers, located at 1090 E. Union Street, San Luis, Arizona, 85349. The public is invited to attend the open meeting.

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the City of San Luis does not discriminate on the basis of disability in the admission of or access to, or treatment or employment in its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in City programs, activities, or services contact: ADA/Section 504 Coordinator, City of San Luis Human Resources Department, 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights, may either file written consent with the City Clerk to such recording or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

THIS NOTICE IS GIVEN BY:

/s/ Sonia Cornelio, City Clerk

## AVISO DE JUNTA ESPECIAL

De acuerdo con los Estatutos del Estado de Arizona A.R.S. § 38-431.01, se le informa a los miembros del Cabildo y al público en general que el Alcalde y el Cabildo, tendrán una Junta Especial a las 6:00 p.m., el día Lunes 3 de Marzo del 2025. La junta se llevará a cabo en la Sala del Cabildo, ubicada en el 1090 E. Union Street, San Luis, Arizona, 85349. El público está invitado a la junta.

De acuerdo con el Acta de Americanos con Discapacidades y la Sección 504 del Acta de Rehabilitación del 1973, la Ciudad de San Luis, Arizona no discrimina por causa de discapacidad la admisión y acceso a sus programas, actividades, servicios o en el trato en cuanto a empleo. Para más información referente a derechos y provisiones del Acta de Americanos con Discapacidades o Sección 504, o para solicitar adaptaciones que sean razonables para la participación en programas, actividades o servicios de la Ciudad, contactar al: Coordinador del Acta de Americanos con Discapacidades/Sección 504, Departamento de Recursos Humanos de la Ciudad de San Luis, Arizona, ubicado en el 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Por medio de este aviso y de acuerdo con los Estatutos del Estado de Arizona A.R.S § 1-602.A.9, sujeto a ciertas excepciones reglamentarias, los padres de familia tienen el derecho de dar el consentimiento ante el Estado o cualquiera de sus subdivisiones políticas para hacer una grabación de audio o video de su hijo menor de edad. Las juntas del Cabildo se graban en audio y/o video y como resultado, el hecho de que haya menores presentes puede ser sujeto a que sean grabados. Para que los padres de familia puedan ejercer sus derechos pueden dar el consentimiento por escrito con la Secretaria de la Ciudad a tal grabación, o tomar acción personal para asegurarse que su hijo menor no esté presente cuando la grabación se lleve a cabo. Si un menor de edad está presente en el momento de la grabación, la Ciudad asumirá que los padres de familia están cediendo los derechos sobre una posible grabación de acuerdo con los Estatutos del Estado de Arizona A.R.S. § 1-602.A.9.

ESTE AVISO ES DADO POR:

/f/ Sonia Cornelio, Actuaría de la Ciudad



**AGENDA**  
**Special Meeting**  
**San Luis City Council**  
**Council Chambers**  
**1090 E. Union Street**  
**San Luis, AZ 85349**  
**March 3, 2025**  
**6:00 p.m.**

PLEASE TAKE NOTICE THAT MEMBERS OF THE CITY COUNCIL WILL ATTEND EITHER IN PERSON, TELEPHONE, OR VIDEO CONFERENCE COMMUNICATION. THE MAYOR OR ACTING MAYOR FOR THIS MEETING MAY CHANGE THE ORDER OF THE ITEMS; IF AUTHORIZED BY LAW AND BY A MAJORITY VOTE OF A QUORUM OF CITY COUNCIL MEMBERS PRESENT, AN EXECUTIVE SESSION WILL BE HELD IMMEDIATELY FOLLOWING THE VOTE IN ACCORDANCE WITH A.R.S. § 38-431.03(A) AND THE MEETING WILL BE TEMPORARILY RECESSED WHILE THE CITY COUNCIL RETIRES TO EXECUTIVE SESSION WHICH WILL NOT BE OPEN TO THE PUBLIC.

TENGA EN CUENTA QUE LOS MIEMBROS DEL CABILDO DE LA CIUDAD ASISTIRÁN EN PERSONA, TELÉFONO O COMUNICACIÓN POR VIDEO CONFERENCIA. LA ALCALDESA O ALCALDE INTERINO DE ESTA REUNIÓN PUEDE CAMBIAR EL ORDEN DE LOS TEMAS; SI ESTÁ AUTORIZADO POR LA LEY Y POR MAYORÍA DE VOTOS DE UN QUÓRUM DE MIEMBROS DEL CABILDO PRESENTES, SE LLEVARÁ A CABO UNA SESIÓN EJECUTIVA INMEDIATAMENTE DESPUÉS DE LA VOTACIÓN DE ACUERDO CON LOS ESTATUTOS DEL ESTADO DE ARIZONA A.R.S. § 38-431.03 (A) Y LA REUNIÓN SERÁ TEMPORALMENTE RECESADA MIENTRAS EL CABILDO DE LA CIUDAD SE RETIRE A UNA SESIÓN EJECUTIVA QUE NO ESTARÁ ABIERTA AL PÚBLICO.

**1. CALL TO ORDER/ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. DISCUSSION AND POSSIBLE ACTION ITEMS:**

**3. A.** Discussion and possible action on any and all matters regarding the City of San Luis accepting and ratifying the proposed Change Order No. 3 from Viking Industrial Painting pertaining to the well site No. 6 water storage tank rehabilitation. **(Jorge Perez, Assistant Director of Public Works)**

**3. B.** Discussion and possible action on any and all matters regarding Resolution No. 2358. A resolution of the Mayor and City Council of the City of San Luis, Arizona, eliminating the City Council Members' compensation, health benefits, reimbursement for city-business travel expenses, and cell phone stipend; establishing effective dates; repealing any conflicting provisions; and providing for severability. **(Kay Marion Macuil, City Attorney)**

**3. C.** Discussion and possible action on any and all matters regarding Resolution No. 2357. A Resolution of the Mayor and City Council of the City of San Luis, Arizona, canceling and vacating the May 20, 2025, Special Election, which called for the Special Election, in and for the City of San Luis, Arizona, for a primary (ad valorem) property tax; repealing conflicting provisions including Resolution 2351; and providing for severability. **(Kay Marion Macuil, City Attorney)**

**4. ADJOURNMENT**



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. A.

**Meeting Date:** 03/03/2025

**Department Head:** Eulogio Vera, Director of Public Works, Public Works Department

**Submitted By:** Jorge Perez, Assistant Director of Public Works, Public Works Department

**Action Requested:** Motion

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#### ITEM:

Discussion and possible action on any and all matters regarding the City of San Luis accepting and ratifying the proposed Change Order No. 3 from Viking Industrial Painting pertaining to the well site No. 6 water storage tank rehabilitation. **(Jorge Perez, Assistant Director of Public Works)**

#### SUMMARY:

The City of San Luis contracted with Viking Industrial Painting in October 2023 to perform the water storage tank rehabilitation of two, 1,000,000-gallon steel storage tanks. These tanks are located at Well Site No. 4 (1311 N. 4th Avenue) and at Well Site No. 6 (490 10th Avenue). Viking completed the rehabilitation of Well Site No. 5 by April 2024, but by then, the project had to be placed on hold due to high water demands during the summer. The water department must maintain operational water production and storage sites to keep up with demand; thus, the project was scheduled to resume during the winter of 2024, with substantial completion by the end of March 2025. While the contractor started to work on the storage tank, it was noted that further damage to the roof had occurred in the interim. Such structural components are in extremely poor conditions with obvious levels of corrosion, which compromise the integrity of such components. At such a time, the contractor had to step back and provide a different approach for the repair of the tank, which now has a different level of complexity and will require a whole new roof removal approach, which may entail additional equipment and manpower.

Viking Industrial Painting reached out to other subcontracting fabrication companies and received positive responses of interest in taking on this challenging repair project while teaming up with them. At the same time, Public Works did the same with other tank contractors and received a proposal for the same work. Such work includes the removal of the existing roof plate, the installation of the new wind girder, and the top 12 inches of the shell wall. Viking Industrial Painting change order proposal came under the other proposal that the City of San Luis obtained. It also makes more sense to keep the work under the same general contractor for ease of workflow, coordination, and constructability and to streamline the project, as it is important that the work gets completed before the end of June 2025. Viking Industrial Painting change order proposal also includes a 90-day time extension, which aligns with the end of the fiscal year.

Given the nature of the project, the time when the proposal was received, and the urgency to meet the project completion time, staff asked City Administration for approval of the change order ahead of time for the council presentation on March 12, 2025. Therefore, staff is seeking council ratification of Viking's change order No. 3 in the amount of \$157,155.44 and to approve a transfer of budget and capacity from project No. 2025050 "West Wastewater Treatment Plant Expansion" to project No. 2025041 "Water Storage Tank #6 Rehabilitation Project" for said amount.

#### RECOMMENDATION / SUGGESTED MOTION:

**I MOVE TO APPROVE AND RATIFY CHANGE ORDER NO. 3 FROM VIKING INDUSTRIAL PAINTING IN THE AMOUNT OF \$157,155.44 AND APPROVE THE TRANSFER OF BUDGET CAPACITY AS PRESENTED IN THE FISCAL IMPACT OF THIS ITEM.**

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**Fiscal Impact**

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** Yes  
**CITY/STATE/FEDERAL FUNDS:** City  
**TOTAL:** \$157,155.44  
**BUDGETED AMOUNT:** \$800,000.00  
**AVAILABLE AMOUNT TO TRANSFER:** \$4,150,449.16  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** See fiscal impact statement  
**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

Public Works is seeking council ratification of Viking's change order No. 3 in the amount of \$157,155.44, and to approve a transfer of budget capacity for the same amount as follows:

- From project No. 2025050 "West Wastewater Treatment Plant Expansion" - Account No. 310-311-90015
- To project No. 2025041 "Water Storage Tank #6 Rehabilitation Project" - Account No. 300-302-90015

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**Attachments**

VIP Change Order No. 3

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# City of San Luis

## Department of Public Works

• Administration • Streets • Water • Wastewater • Solid Waste • Fleet Services • Facilities •

### CHANGE ORDER

Project Name: <u>Water Storage Tanks 5 &amp; 6 Rehabilitation Project</u>	
Change Order No. : <u>3</u>	To ( Contractor):
Initiation Date: <u>2/25/2025</u>	<u>Viking Industrial Painting</u>
Engineer's Project No. <u>N/A</u>	<u>10905 Harrison Street</u>
Contract For: <u>Water Storage Tank Rehab</u>	<u>La Vista, NE 68128</u>
Contract Date: <u>October 25, 2023</u>	<u>jim@viptanks.com</u>

Not valid until signed by both the Owner and Engineer.  
Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Date

The following change is made to the Contract:

The current state of the Tank at Well Site 6 internal structural steel components are in extremely poor condition. The structural steel had obvious levels of corrosion which compromised the integrity of all components resulting in a total failure as they now rest on the floor.

Viking Industrial Painting has reached out to other subcontracting fabrication companies and received positive responses of interest in taking on this repair project while teaming with them. The work include the removal of the existing roof plate, the installation of the new wind girder, top 12" of the shell wall.

The original Contract Sum .....	\$1,263,575.00
Net Change by Previously Authorized Change Orders .....	\$136,904.00
The Contract Sum Prior to this Change Order Was .....	\$1,400,479.00

This Change Order will Modify the Contract Sum as Follows:

1. Additional Mobilization – \$22,300.00
2. Demo existing roof and add perimeter wind girder beam – 216,219.45
3. Project Engineering / Project Management – \$16,476.48
4. Credit for original change order proposal (Change Order No. 2) – \$-97,840.49

Original Contingency Amount .....	\$22,575.00
Net Change by this Change Order No. 1 to be Deducted from Contingency Amount .....	\$16,025.00
(Cost of Logo \$17,125 minus credit/deduction for removal of concrete coating \$1,100.00)	
Contingency Amount Left After This Change Order .....	\$6,550.00
Net Change by this Change Order .....	\$157,155.44
The new Contract Sum including this Change Order will be .....	\$1,557,634.40



# City of San Luis

## Department of Public Works

• Administration • Streets • Water • Wastewater • Solid Waste • Fleet Services • Facilities •

The Contract Time will be changed by ..... (90) Days

The Date of Substantial Completion as of the date of this Change Order therefore is June 30, 2025.

Project Name: Water Storage Tanks 5 & 6 Rehabilitation Project

**Contractor:**

Viking Industrial Painting

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Engineer:**

CORE Engineering Group, PLLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Owner:**

City of San Luis

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_



February 25, 2025

Jorge Perez  
Assistant Director  
1090 E. Union Street  
PO Box 3750  
San Luis, AZ 85349

via email: [jperez@sanluisaz.com](mailto:jperez@sanluisaz.com)

Re: Repair and Repainting of 2-1MG Ground Storage Tanks Public Works Yard Tanks #5 and #6  
Change Order Request #2 for Well Site #6 Tank – Roof Replacement

Mr. Perez,

As we are all aware, the current state of the Tank 6 internal structural steel components are in extremely poor condition. The structural steel had obvious levels of corrosion which compromised the integrity of all components resulting in a total failure as they now rest on the tank floor. Viking Industrial Painting has been in close contact with the subcontracting fabrication company that was contracted to perform the repair work as previously mentioned in the change order documents. Due to these current conditions, that vendor, from both a safety and liability perspective, they are no longer willing nor able to perform the proposed work on the tank.

Viking Industrial Painting has reached out to other subcontracting fabrication companies and have received positive responses of interest in taking on this challenging repair project while teaming with us. **Neither Viking Industrial Painting nor our subcontractor will assume any liability for the potential damage to either the tank shell or the tank floor during the demolition and construction phase of the work.** The work will include the removal of the existing roof plate, the installation of the new wind girder, top 12” of the shell wall. This additional cost proposal is to cover the liability and safety issues that come with this type of repair due to too many unknown factors.

- Additional Mobilization.....\$22,300 + tax rate
- Demo existing roof and add perimeter wind girder beam.....\$216,219.45 + tax rate
- Project Engineering / Project Management.....\$16,476.48 + tax rate
- Credit for original change order proposal.....\$-97,840.49 + tax rate

Total: \$ 157,155.44 + tax rate

Additional Days Requested-90 total

Please feel free to contact me with any questions or comments you may have.  
Thank you.

Jim Caldwell  
Project Manager  
NACE III Certified Inspector #16187  
Viking Industrial Painting  
10905 Harrison Street  
La Vista, NE 68128  
Cell# 505 444 0688  
[jim@viptanks.com](mailto:jim@viptanks.com)



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. B.

**Meeting Date:** 03/03/2025

**Department Head:** Kay Macuil, City Attorney, Attorney's Office

**Submitted By:** Kay Macuil, City Attorney, Attorney's Office

**Action Requested:** Motion  
Resolution

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#### ITEM:

Discussion and possible action on any and all matters regarding Resolution No. 2358. A resolution of the Mayor and City Council of the City of San Luis, Arizona, eliminating the City Council Members' compensation, health benefits, reimbursement for city-business travel expenses, and cell phone stipend; establishing effective dates; repealing any conflicting provisions; and providing for severability. **(Kay Marion Macuil, City Attorney)**

#### SUMMARY:

Council Member Luis Cabrera proposed this item to eliminate the City Council Members' compensation and health, dental, and vision care benefits paid by the city. It also removes reimbursement for city-business travel expenses and the stipend for those who use a personal cell phone for city business.

As of the writing of this Agenda Item, staff are researching the effect of this change on the city's mandated contribution to the Arizona State Retirement System. Therefore, the savings chart might be provided after the agenda is posted.

Under Arizona Constitution Article 4, Part 2, Section 17, the changes to compensation and health care benefits will not take place until those elected to City Council in the 2026 election take their oaths of office. (The Constitutional section is attached). This constitutional provision, as applied to City Councils, is intended to ensure that all City Council Members "doing, in substance, the same work, should at all times receive the same salaries." (See the penultimate paragraph in Arizona Attorney General Opinion No. I 90-135 dated October 22, 1990, attached). Council Members may participate in the health plans and supplemental plans at their own expense.

The Arizona Supreme Court interpreted "compensation" under the Arizona Constitution not to include travel reimbursement. ( Earhart v. Frohmler, 178 P.2d 436, 438, 65 Ariz. 221, 225 (1947) and Randolph v. Groscoast, 989 P.2d 751, 753 195 Ariz. 423, 425 (1999)). Therefore, the removal of the travel reimbursement along with the elimination of the cell phone stipend will take effect after the normal thirty (30) days after passage.

#### RECOMMENDATION / SUGGESTED MOTION:

**I MOVE TO APPROVE AND ADOPT RESOLUTION NO. 2358.**

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#### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** Yes

**CITY/STATE/FEDERAL FUNDS:** City  
**TOTAL:** Reduction in Expenses  
**BUDGETED AMOUNT:** N/A  
**AVAILABLE AMOUNT TO TRANSFER:** N/A  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

If passed there will be a reduction in costs to the city starting when those elected to City Council in 2026 take their oaths of office, which should not be any later than January 2027. Reimbursement and Stipend costs will be eliminated this year 30 days after passage of Resolution No. 2358.

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**Attachments**

Resolution No. 2358  
Arizona Constitution Provision  
Ariz AG Opinion  
First Travel Reimbursment Case  
Second Travel Reimbursement Case  
CC - Salary, Benefits, Travel Budget FY26

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# Resolution

No. 2358

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, ELIMINATING THE CITY COUNCIL MEMBERS' COMPENSATION, HEALTH BENEFITS, REIMBURSEMENT FOR CITY-BUSINESS TRAVEL EXPENSES, AND CELL PHONE STIPEND; ESTABLISHING EFFECTIVE DATES; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY.**

**WHEREAS**, by resolution or ordinance, A.R.S. § 9-232.01 allows city councils to prescribe compensation (also known as salaries) for the mayor and council members for the performance of official duties; and

**WHEREAS**, the San Luis City Code § 2.05.240 states: "The compensation of elective officers of the city shall be fixed from time to time by resolution of the Council;" and

**WHEREAS**, the last time the City Council passed a resolution on its compensation was June 24, 2014, through Resolution No.1062; and

**WHEREAS**, the City Council passed Resolution No. 750 adopting the City of San Luis Personnel Policies dated July 1, 2008, which included Council Members in the health care plans; and

**WHEREAS**, under Arizona Constitution Article 4, Part 2, Section 17, as interpreted by the case of Davis v. Hale, 96 Ariz 219, 225, 393 P.2d 912, 916 (1964), the compensation of a Council Member cannot be increased or diminished before the next election so that Council Members doing in substance, the same work, should at all times receive the same salaries; and

**WHEREAS**, under Arizona Constitution Article 4, Part 2, Section 17, as interpreted by the cases of Earhart v. Frohmler, 65 Ariz. 221, 225, 178 P.2d 436, 438 (1947) and Randolph v. Groscost, 195 Ariz. 423, 425, 989 P.2d 751, 753 (1999), reimbursement for travel for government business is not compensation so is not subject to the delay for the election to become effective; and

**WHEREAS**, the City of San Luis is phasing out its program of stipends for employees and Council Members who use their personal cell phones for city business and providing city cell phones to those who have a city-business need for cell phones; and

**WHEREAS**, the following changes are made on the principles of fiscal responsibility and public service, reinforcing the commitment to putting the needs of our constituents first.

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of San Luis, Arizona:

**Section 1:** For this Resolution, the terms “City Council” or “City Council Members” include the Mayor, Vice Mayor, and City Council Members.

**Section 2:** The City of San Luis Personnel Policies Section on definitions at **HR-4-01(17)**. is amended and restated to read:

“City Council” means the group of elected officials as council members including the elected Mayor.

**Section 3:** The City of San Luis Personnel Policies Section **HR-1-13(D)**. is amended and restated to read:

- (1) As listed in HR-4-13(A), the City Council Members may participate in the City of San Luis' qualifying health care medical, dental, and vision insurance plans if the City Council Members pay the premiums and at no cost to the city.
- (2) As listed in HR-4-13(B), the City Council Members may participate in supplemental insurance plans or other qualifying insurance plans if the City Council Members pay the premiums and at no cost to the city.

**Section 4:** The City of San Luis Personnel Policies Section **HR-4-14(A)** is amended and restated to read:

A. Eligibility.

1. City Council Members are treated in subsection (3). All city employees, except those employees listed in subsection (2), and their eligible dependents may participate in the health benefit plan, if they comply with the contractual requirements of the selected health benefit plan. An eligible employee may enroll in a health benefit plan at any time within the first 30 days of employment or during an open enrollment period specified by the Plan. An eligible employee may submit an application for enrollment within 31 days of a family status event.
2. The following categories of employees are not eligible to participate in the health benefit plan:
  - a. An employee who works fewer than 31 hours per week;

- b. An employee in a temporary, emergency, or seasonal position.
3. City Council Members and their eligible dependents may participate in qualifying health care plan for Medical Insurance, if they comply with the contractual requirements of the selected health benefit plan. A Council Member may enroll in a health benefit plan at any time within the first 30 days of their oath of office or during an open enrollment period specified by the Plan. A Council Member may submit an application for enrollment within 31 days of a family status event. City Council Members may choose to participate in the qualifying health care, dental, and vision insurance plans if the premiums are paid by the City Council Members and at no cost to the city.

**Section 5:** The monthly compensation (also known as salary) for the Mayor, Vice Mayor, and Council Members is eliminated. Resolution No. 1062 and any prior resolutions regarding City Council salary or compensation are repealed. No other form of compensation shall replace the monthly compensation or salary.

**Section 6:** The City of San Luis Personnel Policies is amended to add:

HR-3-07(B) The City of San Luis does not reimburse, advance or pay contemporaneously for City-Business Travel expenses incurred by the City Council.

HR-3-07(B) supersedes any language to the contrary in the City of San Luis Personnel Policies and the City of San Luis Travel Policy, Origination Date July 9, 2003.

**Section 7:** The City of San Luis will provide City-Owned cell phones for the City Council Members' use and shall halt any monthly stipends for any City Council Members using their personal cell phones for personal use.

**Section 8:** Sections 2, 3, 4, and 5 of this Resolution shall become effect for all City Council Members once the Mayor and City Council Members elected in the 2026 election have taken their oaths of office.

**Section 9:** The remaining sections of the Resolution shall become effective thirty (30) days after passage as provided by San Luis City Code § 2.05.520.

**Section 10:** If a conflict arises between the provisions of this Resolution and any other ordinance, resolution, order, regulation, or policy of the City of San Luis, the conflicting provisions are amended, superseded, and replaced, and this Resolution shall govern.

**Section 11:** If any section, subsection, paragraph, sentence clause, phrase, or portion of this Resolution is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction or controlling legislation, such decision or law shall not affect the

validity of the remaining portion of this Resolution.

**Section 12:** The City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

**PASSED, ADOPTED, and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this \_\_\_\_ day of March 2025.

**City of San Luis, Arizona**

\_\_\_\_\_  
Nieves Riedel, Mayor

**Attest:**

**Approved As to Form**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney

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§ 17. Extra compensation prohibited; increase or decrease..., AZ CONST Art. 4 Pt....

Arizona Revised Statutes Annotated

Constitution of the State of Arizona (Refs & Annos)

Article IV. Legislative Department

Part 2. The Legislature (Refs & Annos)

A.R.S. Const. Art. 4 Pt. 2 § 17

§ 17. Extra compensation prohibited; increase or decrease of compensation during term of office

[Currentness](#)

Section 17. The legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract entered into, nor shall the compensation of any public officer, other than a justice of the peace, be increased or diminished during his term of office; provided, however, that when any legislative increase or decrease in compensation of the members of any court or the clerk thereof, or of any board or commission composed of two or more officers or persons whose respective terms of office are not coterminous, has heretofore or shall hereafter become effective as to any member or clerk of such court, or any member of such board or commission, it shall be effective from such date as to each thereof.

**Credits**

Amendment approved by election Nov. 4, 1930, eff. Dec. 1, 1930; election Sept. 29, 1953, eff. Oct. 31, 1953.

A. R. S. Const Art. 4 Pt. 2 § 17, AZ CONST Art. 4 Pt. 2 § 17

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), and includes Election Results from the November 5, 2024 General Election.

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End of Document

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## **Editor's and Revisor's Notes (1)**

### **HISTORICAL NOTES**

The governor, on December 1, 1930, proclaimed that the amendment of this section, as proposed by Laws 1929, Ch. 71, § 1, filed March 16, 1929, had been approved by a majority of the electors in the November 4, 1930 general election and had become law.

The governor, on October 31, 1953, proclaimed that the amendment of this section, as proposed by Laws 1953, S.C.R. No. 4, § 1, filed March 28, 1953, had been approved by a majority of the electors in the September 29, 1953 special election and had become law.

**Validity**

There are no Validity results for this citation.

**Bill Drafts**

There are no Bill Drafts for this citation.

**Legislative History Materials**

There are no Legislative History Materials for this citation.

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The Honorable Bob Denny, 1990 Ariz. Op. Atty. Gen. 150 (1990)

1990 Ariz. Op. Atty. Gen. 150 (Ariz.A.G.), Ariz. Op. Atty. Gen. No. I90-094, 1990 WL 484106

Office of the Attorney General

State of Arizona

I90-094 (R90-135)

October 22, 1990

\*1 The Honorable Bob Denny  
Arizona State Senator  
State Capitol—Senate Wing  
Phoenix, Arizona 85007

Dear Senator Denny:

You asked whether [article 4, part 2, section 17 of the Arizona Constitution](#) permits a sitting member of a city council to receive a salary increase approved prior to the beginning of a new term.

[Article 4, part 2, section 17](#) in relevant part provides:

nor shall the compensation of any public officer, other than a justice of the peace, be increased or diminished during his term of office; ...

Accordingly, on its face, [Article 4, part 2, section 17](#) permits a sitting city council member to receive a salary increase at the beginning of a new term.

Also, we conclude that city council members who are in the middle of their terms may receive an increase of salary if the following provisions of [article 4, part 2, section 17](#) apply:

provided, however, that when any legislative increase or decrease in compensation of the members of any court or the clerk thereof, or of any board or commission composed of two or more officers or persons whose respective terms of office are not coterminous, has heretofore or shall hereafter become effective as to any member or clerk of such court, or any member of such board or commission, it shall be effective from such date as to each thereof.

The Arizona Supreme Court has said that this constitutional provision added in 1930 was adopted “for the express purpose of insuring that all members of a court, board, or commission composed of more than one person, who were doing in substance, the same work, should at all times receive the same salaries.” [County of Maricopa v. Rodgers](#), 52 Ariz. 19, 25, 78 P.2d 989, 991–992 (1938). The provisions of [article 4, part 2, section 17](#) have been applied to the acts of a city council. See [Davis v. Hale](#), 96 Ariz. 219, 225, 393 P.2d 912, 916 (1964).

Therefore, we conclude that a city council member may receive a salary increase in the middle of the council member's term, provided the increase meets the conditions of [article 4, part 2, section 17 of the Arizona Constitution](#), or at the beginning of a new term.

Very truly yours,

BOB CORBIN

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**The Honorable Bob Denny, 1990 Ariz. Op. Atty. Gen. 150 (1990)**

Attorney General

1990 Ariz. Op. Atty. Gen. 150 (Ariz.A.G.), Ariz. Op. Atty. Gen. No. I90-094, 1990 WL 484106

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KeyCite Yellow Flag - Negative Treatment

Distinguished by [Citizens Clean Elections Com'n v. Myers](#), Ariz., June 16, 2000

65 Ariz. 221  
Supreme Court of Arizona.

EARHART et al.

v.

FROHMILLER, State Auditor, et al.

No. 4979.

|  
March 14, 1947.

### Synopsis

Original proceeding in mandamus by R. R. Earhart, as member of the 18th State Legislature, State of Arizona, from Santa Cruz County, State of Arizona, and E. P. Schaffer, attache of the 18th State Legislature, against Ana Frohmler, State Auditor, and Mitt Simms, State Treasurer, to compel the State Auditor to allow and the State Treasurer to pay claims for subsistence and lodging expenses. On motion to quash alternative writ of mandamus and dismiss the proceeding.

Writ denied; alternative writ of mandamus quashed.

West Headnotes (10)

#### <sup>[1]</sup> **Constitutional Law** 🔑 State constitutions

92Constitutional Law  
92VConstruction and Operation of Constitutional Provisions  
92V(D)Construction as Grant or Limitation of Powers; Retained Rights  
92k639State constitutions  
(Formerly 92k26)

The provisions of the State Constitution are not grants of power, but are limitations thereof.

4 Cases that cite this headnote

#### <sup>[2]</sup> **States** 🔑 Powers Reserved to States **Statutes** 🔑 Powers and duties of legislature in general

360States  
360IStatus, Powers, and Functions  
360I(B)Federalism; Relationship Between Federal and State Governments  
360k338Exercise of Powers by States or the United States  
360k341Powers Reserved to States  
360k341(1)In general  
(Formerly 360k4.4(1), 360k4.4, 360k4)  
361Statutes  
361IIn General  
361k1009Powers and duties of legislature in general  
(Formerly 361k4, 92k26)

Except for those things necessarily inhibited by the Federal or state Constitution, the state legislature may pass any act, because the whole power not prohibited by the state and federal constitutions is retained in the people and their elected representatives in the state. [A.R.S.Const. art. 2, § 33.](#)

6 Cases that cite this headnote

#### <sup>[3]</sup> **Constitutional Law** 🔑 Nature and scope in general

92Constitutional Law  
92XXSeparation of Powers  
92XX(B)Legislative Powers and Functions  
92XX(B)1In General  
92k2340Nature and scope in general  
(Formerly 92k26)

The Arizona Legislature is vested with the whole of the legislative power of the state, and may deal with any subject within the scope of civil government unless it is restrained by the provisions of the Constitution.

10 Cases that cite this headnote

#### <sup>[4]</sup> **Constitutional Law** 🔑 Presumptions and Construction as to Constitutionality

92Constitutional Law  
92VIEnforcement of Constitutional Provisions  
92VI(C)Determination of Constitutional Questions  
92VI(C)3Presumptions and Construction as to  
Constitutionality  
92k990In general  
(Formerly 92k48(1), 92k48)

The Legislature is presumed to be acting within the Constitution until it is made to appear in what particular it is violating constitutional limitations.

<sup>15]</sup> **Constitutional Law** 🔑 Nature and scope in general

92Constitutional Law  
92XXSeparation of Powers  
92XX(B)Legislative Powers and Functions  
92XX(B)1In General  
92k2340Nature and scope in general  
(Formerly 92k14)

The rule of construction that *expressio unius est exclusio alterius* is applied with greatest caution to provisions of Constitutions relating to the legislative branch of the government, as it cannot be made to restrict the plenary power of the Legislature.

7 Cases that cite this headnote

<sup>16]</sup> **Constitutional Law** 🔑 Presumptions and Construction as to Constitutionality  
**Constitutional Law** 🔑 Clearly, positively, or unmistakably unconstitutional

92Constitutional Law  
92VIEnforcement of Constitutional Provisions  
92VI(C)Determination of Constitutional Questions  
92VI(C)3Presumptions and Construction as to  
Constitutionality  
92k990In general  
(Formerly 92k48(1), 92k48)  
92Constitutional Law  
92VIEnforcement of Constitutional Provisions  
92VI(C)Determination of Constitutional Questions  
92VI(C)3Presumptions and Construction as to  
Constitutionality

92k996Clearly, positively, or unmistakably unconstitutional  
(Formerly 92k48(1), 92k48)

In determining whether a legislative act is clearly prohibited by the Constitution and so invalid, all presumptions and intendments are in favor of the validity and constitutionality of the act and the act will be given a construction consistent with validity if at all possible.

2 Cases that cite this headnote

<sup>17]</sup> **Public Employment** 🔑 Officers  
**Public Employment** 🔑 Travel expenses, mileage, and per diem  
**States** 🔑 Increase or reduction

316PPublic Employment  
316PVIIEmployment Practices  
316PVII(F)Compensation in General  
316Pk360Increase or Reduction  
316Pk362Officers  
(Formerly 283k100(1) Officers and Public Employees)  
316PPublic Employment  
316PVIIEmployment Practices  
316PVII(F)Compensation in General  
316Pk364Reimbursement of Expenses; Indemnification  
316Pk366Travel expenses, mileage, and per diem  
360States  
360VEmployees, Officers, and Agents  
360V(F)Compensation in General  
360k1117Increase or reduction  
(Formerly 360k63)

Statute authorizing subsistence and lodging expenses to be paid members of the state Legislature not to exceed \$10 daily is not an unconstitutional increase in their “compensation” but merely provides for reimbursement for actual cash outlays necessarily incurred for subsistence while away from home and in performance of duty. 📄 A.R.S. § 41–1103; 📄 A.R.S.Const. art. 4, pt. 2, §§ 1(2), 17.

6 Cases that cite this headnote

<sup>18]</sup> **Evidence** → State laws in general

157Evidence  
157XIXJudicial Notice  
157XIX(B)Particular Matters  
157XIX(B)3Laws  
157k2873State laws in general  
(Formerly 157k29)

The Supreme Court takes judicial notice of the laws of the state of Arizona.

<sup>19]</sup> **Mandamus** → Nature of acts to be commanded


250Mandamus  
250INature and Grounds in General  
250k12Nature of acts to be commanded

Mandamus will only lie to compel the performance of an act which the law specifically imposes as a duty. A.R.S. § 12–2021.

[2 Cases that cite this headnote](#)

<sup>10]</sup> **Mandamus** → Audit and allowance of accounts and claims

250Mandamus  
250IISubjects and Purposes of Relief  
250II(B)Acts and Proceedings of Public Officers and Boards and Municipalities  
250k101Audit and allowance of accounts and claims

Mandamus would not lie to compel state auditor to allow claim of a member of the state Legislature and an attache of the Legislature for subsistence and lodging expenses authorized by statute, where no funds had been appropriated by the Legislature for that specific purpose. Code 1939, § 12–2021; Laws 1947, c. 16, § 1,  A.R.S. § 41–1103.

[4 Cases that cite this headnote](#)

**Attorneys and Law Firms**

\*223 \*\*436 John L. Sullivan, Atty. Gen., John W. Rood and Perry M. Ling, Asst. Atty. Gen., for petitioners.

Charles L. Strouss, of Phoenix, for respondents.

**Opinion**

PER CURIAM.

Petitioners seek a writ of mandamus compelling the State Auditor to allow and \*\*437 the State Treasurer to pay claims for subsistence and lodging expenses in accordance with the provisions of Chap. 16 (H.B. 103). This bill was enacted by the Eighteenth Legislature on February 28, 1947, over the vote of the Governor, with an emergency clause attached. That part of the bill necessary to this opinion reads as follows: ‘Section 1. *Reimbursement of members of legislature.* Any member or employee and officer of the legislature, *while absent from his usual place of residence* in the service of the state during a session of the legislature, *shall be reimbursed for his actual and necessary expenditures for subsistence and lodging, not to exceed the sum of ten dollars per day.* All claims for reimbursement as provided in this Act shall be filed as other claims against the state, and shall be accompanied by receipts or vouchers evidencing such expenditures \* \* \*.’ (Emphasis supplied.)




Due to the nature of the questions here raised this Court assumed original jurisdiction and issued an Alternative Writ of Mandamus which the respondents moved to quash, asking that the action be dismissed. Because of its public importance, the Court advanced this matter on its calendar.

Respondents' objections are directed solely to the constitutionality of allowing subsistence and lodging expenses to members of the Legislature and their employees who are absent from their usual place of residence while serving the State during legislative sessions.

Undoubtedly the Act provides for ‘personal expenses’ as distinguished from ‘legislative expenses’, and this under the theory, no doubt, that the State of Arizona is unduly enriched by not reimbursing the Legislators for their personal expenses during their period of service when other public officers are so reimbursed.

We must necessarily determine in this case whether the Legislature can exercise that same degree of freedom in the matter of providing necessary expenses inuring to the benefit of its own members as it exercises in providing for payment

of the expenses incurred by executive, judicial, and administrative officials and employees of the state.

There are many decisions of other states holding invalid acts which provide, in one **\*224** form or another, for personal expenses of members of the legislature.  [Peck v. State, 63 Idaho 375, 120 P.2d 820](#); [State ex rel. Boyd v. Tracy, 128 Ohio St. 242, 190 N.E. 463](#); [Peay v. Nolan, 157 Tenn. 222, 7 S.W.2d 815, 60 A.L.R. 408](#);  [Gallarno v. Long, 214 Iowa 805, 243 N.W. 719](#); [Dixon v. Shaw, 122 Okl. 211, 253 P. 500, 50 A.L.R. 1232](#); [Fergus v. Russel, 270 Ill. 626, 110 N.E. 887](#); [Godfrey v. Hunter, 176 S.C. 442, 180 S.E. 468](#); [Advisory Opinion to Governor, 156 Fla. 48, 22 So.2d 398](#); [Terrel v. King, 118 Tex. 237, 14 S.W.2d 786](#); [Ashton v. Ferguson, 164 Ark. 254, 261 S.W. 624](#);  [Jones v. Hess, 132 Or. 175, 285 P. 205](#); [State ex rel. v. Turner, 117 Kan. 755, 233 P. 510](#). Some of these cases can be distinguished, being based upon different constitutional language; others, it must be conceded, are directly in conflict with the reasoning contained herein. Divided opinions have characterized the reported cases on this question demonstrating that few courts have been free from doubt as to the correct interpretation to place upon such acts.


Some of the courts which held such acts invalid have done so because the state constitutions in question provided no *express authorization* for such legislation.

<sup>[1]</sup> <sup>[2]</sup> We believe the rule of construction which requires the finding of express authorization is inappropriate when applied to the Constitution of the State of Arizona, and by the great weight of authority throughout the United States, it is not applicable to the construction of state constitutions generally. [Art. 2, Sec. 33 of the Arizona Constitution](#) states that ‘The enumeration in this constitution of certain rights shall not be construed to deny others retained by the people’. Unlike the Federal Constitution, state constitutions are not grants of power, but instead are limitations thereof. The generally accepted doctrine is that except for those things necessarily inhibited by the Federal or state constitution, the state legislature may **\*\*438** pass any act, because the whole power not prohibited by the state and Federal constitutions is retained in the people and their elected representatives in the state. 12 C.J. Sec. 167, pp. 745–874; 16 C.J.S., [Constitutional Law, § 70](#); [State ex rel. Todd v. Yelle, 7 Wash.2d 443, 110 P.2d 162](#); [Collins v. Riley, 24 Cal.2d 912, 152 P.2d 169](#).

<sup>[3]</sup> <sup>[4]</sup> The Constitution of Arizona is not, as is the Constitution of the United States, to be considered a grant of power or enabling act to the Legislature, but rather is a limitation upon the power of that body, and that ‘The Legislature is vested with the whole of the legislative power of the state, and may deal with any subject within the scope of civil government unless it is restrained by the provisions of the Constitution, and the presumption that the Legislature is acting within the Constitution holds good until it is made to appear in what particular it is violating constitutional limitations.’ **\*225** [Macmillan Co. v. Clarke, 184 Cal. 491, 194 P. 1030, 1032, 17 A.L.R. 288](#). ‘We do not look to the (state) Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited.’ [Fitts v. Superior Court of Los Angeles County, 6 Cal.2d 230, 57 P.2d 510, 512](#).

<sup>[5]</sup> Neither is the rule of construction that *expressio unius est exclusio alterius* persuasive in this case. This rule is applied with greatest caution to ‘provisions of constitutions relating to the legislative branch of the government, as it cannot be made to restrict the plenary power of the legislature \* \* \*.’ 16 C.J.S., [Constitutional Law, § 21, p. 62](#). See, also, [Atkinson, Kier Bros., Spicer Co. v. Industrial Commission of Arizona, 35 Ariz. 48, 274 P. 634](#); [Home Acc. Ins. Co. v. Industrial Commission of Arizona, 34 Ariz. 201, 269 P. 501](#).

<sup>[6]</sup> Our standard for judgment here is clear. We must find that the Act is clearly prohibited by either the Federal Constitution or the Constitution of Arizona in order to hold it invalid. And in looking to see whether it is clearly prohibited we are cognizant of the rule that all presumptions and intendments are in favor of the validity and constitutionality of legislative acts and such acts ‘will be given a construction consistent with validity if at all possible.’ [Collins v. Riley, supra \[48 N.M. 433, 152 P.2d 170\]](#); [Coggins v. Ely, 23 Ariz. 155, 202 P. 391](#); [Loveland v. State, 53 Ariz. 131, 86 P.2d 942](#); [Charleston Fed. Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 65 S.Ct. 624, 89 L.Ed. 857](#).

<sup>[7]</sup> The principle point relied upon by the respondents is that granting to the legislators an allowance for subsistence and lodging constitutes an improper increase in their compensation under the terms of the  [Arizona Constitution, Art. 4, pt. 2, Sec. 1\(2\)](#) thereof as amended by the initiative act of 1932, insofar as material reads as follows: ‘From and after the adoption of this amendment members of the legislature

shall receive \$8.00 per day \* \* \* provided however, that they shall receive such compensation for a period not to exceed 60 days in any one regular session and for a period of not to exceed 20 days in any one special session. They shall also receive mileage one way by the shortest practical route at the rate of 20¢ per mile \* \* \* the compensation of \* \* \* attaches or employees except the chief clerk or secretary of each branch shall not exceed \$5.00 per day.'

Respondents claim this Act also violates [Art. 4, pt. 2, Sec. 17 of our Constitution](#) which in prohibiting extra compensation states: 'The legislature shall never grant any extra compensation to any public officer \* \* \* servant \* \* \* after the services shall have been rendered \* \* \* nor shall the compensation of any public officer be increased or diminished during his term of office \* \* \*.'

These constitutional provisions are so interrelated that the claimed violations of each shall be considered together.

**\*226** We do not believe these contentions of constitutional violation can be upheld. When the State repays the legislators and their employees for personal expenses, this does not constitute additional compensation but is merely a reimbursement for actual cash outlays necessarily incurred for subsistence while away from home and in the performance of duty.

**\*\*439** In [Olmsted & Gillelen v. Hesla, 24 Ariz. 546, 211 P. 589, 591](#), our Court stated: 'In the Constitution compensation is employed to designate salary. [Section 17, art. 4](#).' Similarly the California Supreme Court has held that the word 'compensation' ordinarily means pay for services rendered, and is sometimes held to be synonymous with 'salary'. [Kirkwood v. Soto, 87 Cal. 394, 25 P. 488](#); [Reynolds v. Reynolds, 14 Cal.App.2d 481, 58 P.2d 660](#); [Martin v. Santa Barbara County, 105 Cal. 208, 38 P. 687](#). See also [State ex rel. Payne v. Reeves, 44 S.D. 568, 184 N.W. 993](#). When a public officer of the state or county is required to travel in order to perform his duty, provision has been made by the legislature to reimburse him for 'out of pocket' cash legitimately expended for subsistence and lodging, sec. 12-713, A.C.A. Similar provisions have been made for certain specific officers; e.g. sec. 12-702 provides for the expenses of

judges; sec. 12-710 for sheriffs, and sec. 12-712 for justices of the peace.

The more recent cases under constitutional provisions almost identical with ours have upheld legislation granting subsistence expenses to members of the legislature upon the ground that such reimbursement did not constitute an increase in compensation. [Collins v. Riley, supra](#); [State ex rel. Todd v. Yelle, supra](#). 'When an officer is required to travel in order to perform his duty, the payment of his actual necessary living expenses while away from home is a proper item of state expense and, unless expressly forbidden by the Constitution, it is a proper exercise of legislative authority to provide for the officer's reimbursement. The mere fact that such an officer is given a stated amount as compensation for his services cannot transform into additional compensation the allowance of his actual necessary living expenses while traveling on state business; the allowance, actually and legally, remains nothing more than a reimbursement for expenditures made necessary by reason of his office.' [Collins v. Riley, supra](#).

We are not unmindful of the fact that this Act can be the subject of abuse. On the other hand the Act itself provides many safeguards; e. g., it applies only to members of the legislature and employees who are away from their usual place of residence when attending legislative sessions, and only to the time that the legislature actually is in session; it provides only for actual and necessary expenses for subsistence and lodging to the extent that these are supported by receipts and vouchers; and finally, there is a maximum per **\*227** diem expense beyond which they may not go, which maximum is neither out of line with the expense money allowed other employees of the State, or with the current purchasing power of the dollar.

Federal and State governmental bodies almost without exception have the means with which to misuse their authority. But the safeguard and protection in our democracy is more than equal to any such risk. Men in positions of governmental authority and responsibility are there as representatives of the people. They are placed in these positions by the people, and can be recalled by them. It is to the people that they must, at all times, answer.

'There is nothing more easy than to imagine a thousand tyrannical things which the Legislature may do, if its members forget all their duties, disregard \* \* \* the obligations they owe to their constituents, and recklessly determine to trample upon

right and justice.’ *Sharpless v. Mayor, etc., of City of Philadelphia*, 21 Pa. 147, 59 Am.Dec. 759.

Finally, even if the law were one without safeguards and the threat of abuse seemed imminent, this Court has neither the power nor the authority to decide upon the desirability of the measure. We are confined solely to the question of its constitutionality.

‘The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason, and expediency with the law-making power. \* \* \* The courts are not the guardians of the rights of the people of the state, *except as those rights are secured by some constitutional provisions which comes within the judicial cognizance*. The protection against unwise or oppressive legislation within constitutional bounds is by an appeal \*\*440 to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil, but courts cannot assume their rights.’ (Emphasis supplied.) Cooley on Constitutional Limitations, 6th Ed., 1890, c. 7, Secs. 4, 5, p. 201.

Certainly under the standard of proof here required we cannot find this Act as passed by the Eighteenth Legislature is ‘clearly invalid’.

Before closing the opinion it seems desirable to clear away certain prevalent misunderstandings and misapprehensions regarding the general subject matter. A widespread but mistaken impression exists that the people by a direct vote at the last general election decisively rejected the subject matter of the Act now under review. The fact is that at the election held on November 5, 1946, the people rejected a proposed constitutional amendment which would have increased the *compensation* of the legislators from \$8.00 to \$15 per day. The Act here in question has only to do with *personal expenses*.

\*228 There is no issue of fact raised by the pleadings before us. Only questions of law need here be determined. The two claims aggregating \$16.14, rejected by the Auditor, cover expenses subsequent to the passage of the Act. It is neither claimed nor under the wording of this Act is it legally possible for the Act to apply to any personal expenses other than those incurred and properly submitted since the date of its passage.

<sup>181</sup> The petitioners allege that ‘ample funds were available in funds *appropriated for the State Legislature* of the State of

Arizona, from which payment of petitioners' claims could be made.’ While respondents' motion to dismiss might admit this allegation, nevertheless we take judicial notice of our laws. Chapter 1 (House Bill No. 11) of the Laws of the Regular Session Eighteenth Legislature (commonly known as the ‘feed bill’) covers only regular ‘legislative expense’ but contains no specific appropriation for paying the ‘personal expenses’ of its members, nor has any special appropriation, in so far as we have been informed, been enacted for this purpose.

<sup>191</sup> <sup>1101</sup> Mandamus will only lie to compel the performance of an act which the law specifically imposes as a duty (Sec. 28–201, A.C.A. 1939). No funds having been appropriated for this specific purpose the Auditor owed no duty to allow the claims. For this reason only the writ is denied. The Alternative Writ of Mandamus is quashed.

STANFORD, C. J., and LaPRADE and UDALL, JJ., concur.

#### All Citations

65 Ariz. 221, 178 P.2d 436

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178 P.2d 436  
Earhart v. Frohmler, 65 Ariz. 221 (1947)

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**Negative Treatment**

**Negative Citing References (1)**

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by	 1. <a href="#">Citizens Clean Elections Com'n v. Myers</a> ”  1 P.3d 706 , Ariz. GOVERNMENT - Elections. Statute expanding duties of Commission on Appellate Court Appointments was unconstitutional.	June 16, 2000	Case		<a href="#">2</a> <a href="#">3</a> <a href="#">5</a> P.2d

195 Ariz. 423  
Supreme Court of Arizona, En Banc.

George F. RANDOLPH and Peter Kay, Petitioners.

v.

Hon. Jeff GROSCOST, Speaker of the Arizona House  
of Representatives, Hon. Brenda Burns, President of  
the Arizona Senate, and the State of Arizona,  
Respondents.

No. CV-99-0054-SA

|  
Dec. 17, 1999.

### Synopsis

Petitioners brought special action petition for writ of mandamus regarding legislative leaders' refusal to set legislators' per diem payments, pursuant to procedures established in Proposition 302, at same rates as those for non-elective state employees. The Supreme Court, [McGregor, J.](#), held that: (1) Commission on Salaries for Elective State Officers exceeded its constitutional authority by recommending to voters changes to per diem payments to legislators, but (2) the valid portion of Proposition 302, in which voters adopted the increase in legislators' salaries recommended by the Commission, could be severed from the unconstitutional portion regarding per diem payments.

Jurisdiction accepted; relief denied.

West Headnotes (8)

- <sup>[1]</sup> [Courts](#) Issuance of Prerogative or Remedial Writs  
[Courts](#) Injunction  
[Courts](#) Jurisdiction in General; Subjects and Purposes of Relief

[106Courts](#)  
[106VICourts of Appellate Jurisdiction](#)  
[106VI\(A\)Grounds of Jurisdiction in General](#)  
[106k207Issuance of Prerogative or Remedial Writs](#)

[106k207.1In general](#)  
[106Courts](#)  
[106VICourts of Appellate Jurisdiction](#)  
[106VI\(A\)Grounds of Jurisdiction in General](#)  
[106k207Issuance of Prerogative or Remedial Writs](#)  
[106k207.3Injunction](#)  
[106Courts](#)  
[106VICourts of Appellate Jurisdiction](#)  
[106VI\(A\)Grounds of Jurisdiction in General](#)  
[106k207Issuance of Prerogative or Remedial Writs](#)  
[106k207.4Mandamus](#)  
[106k207.4\(1\)Jurisdiction in General; Subjects and Purposes of Relief](#)  
[106k207.4\(1.1\)In general](#)

Supreme Court's decision to accept its original jurisdiction over mandamus, injunction, and other extraordinary writs to state officers, to exercise that jurisdiction through the special action procedure, and to grant relief is highly discretionary. [A.R.S. Const. Art. 5, § 12.](#)

[8 Cases that cite this headnote](#)

- <sup>[2]</sup> [Courts](#) Public officers, boards, and municipalities, acts and proceedings of

[106Courts](#)  
[106VICourts of Appellate Jurisdiction](#)  
[106VI\(A\)Grounds of Jurisdiction in General](#)  
[106k207Issuance of Prerogative or Remedial Writs](#)  
[106k207.4Mandamus](#)  
[106k207.4\(1\)Jurisdiction in General; Subjects and Purposes of Relief](#)  
[106k207.4\(3\)Public officers, boards, and municipalities, acts and proceedings of](#)

It was appropriate for Supreme Court to accept special action petition for writ of mandamus regarding legislative leaders' refusal to set legislators' per diem payments, pursuant to procedures established in Proposition 302, at same rates as those for non-elective state employees; dispute involved matter of substantial public importance, it raised only questions of law, and it required interpretation of state Constitution. [A.R.S. Const. Art. 5, § 12](#); [Art. 6, § 5, subd. 1](#); [A.R.S. §§ 38-624, 41-1104.](#)

8 Cases that cite this headnote

- <sup>[3]</sup> **Public Employment** → Travel expenses, mileage, and per diem  
**States** → Compensation

316P Public Employment  
316PVII Employment Practices  
316PVII(F) Compensation in General  
316Pk364 Reimbursement of Expenses; Indemnification  
316Pk366 Travel expenses, mileage, and per diem  
360 States  
360I Status, Powers, and Functions  
360I(D) Legislature  
360k408 Rights, Privileges, Duties, and Liabilities of Members  
360k410 Compensation  
(Formerly 360k61(2))

Flat-rate per diem payments to state legislators were not “salaries” or “rates of pay,” within meaning of constitutional provision authorizing Commission on Salaries for Elective State Officers to recommend to voters changes in legislative salaries, where the payments were reasonably related to actual expenses incurred by legislators. 📄 A.R.S. Const. Art. 5, § 12; A.R.S. § 41–1104.

1 Case that cites this headnote

- <sup>[4]</sup> **Statutes** → Effect of Partial Invalidity; Severability

361 Statutes  
361VIII Validity  
361k1532 Effect of Partial Invalidity; Severability  
361k1533 In general  
(Formerly 361k64(1))

Court will not declare an entire statute unconstitutional if the constitutional portions of the statute can be separated from that which is unconstitutional.

1 Case that cites this headnote

- <sup>[5]</sup> **Statutes** → Effect of Partial Invalidity; Severability

361 Statutes  
361VIII Validity  
361k1532 Effect of Partial Invalidity; Severability  
361k1533 In general  
(Formerly 361k64(1))

To determine whether to sever invalid from valid portion of an act, court first considers whether that portion of the act remaining after severance of invalid portion is independent of invalid part and enforceable standing alone, and if it is, court will enforce it if valid and invalid portions are not so intimately connected as to raise presumption the legislature would not have enacted one without the other, and invalid portion was not the inducement of the act.

6 Cases that cite this headnote

- <sup>[6]</sup> **Statutes** → Effect of Partial Invalidity; Severability

361 Statutes  
361VIII Validity  
361k1532 Effect of Partial Invalidity; Severability  
361k1533 In general  
(Formerly 361k64(1))

When court determines whether to sever invalid from valid portion of an act, court can look to the statute's legislative history to determine whether the legislature would have adopted the valid portion of a statute absent the invalid portion.

4 Cases that cite this headnote

- <sup>[7]</sup> **Statutes** → Submission to popular vote; initiative and referendum


361 Statutes  
361VIII Validity  
361k1532 Effect of Partial Invalidity; Severability  
361k1538 Submission to popular vote; initiative and referendum  
(Formerly 361k64(1))

In deciding whether to sever invalid portion of measure adopted by popular vote and uphold the remaining, valid portion, court first considers whether the valid portion, considered separately, can operate independently and is enforceable and workable, and if it is, court will uphold it unless doing so would produce a result so irrational or absurd as to compel the conclusion that an informed electorate would not have adopted one portion without the other.

8 Cases that cite this headnote

- <sup>181</sup> **Statutes** — Labor, employment, and public officials  
**Statutes** — Submission to popular vote; initiative and referendum

361 Statutes  
361 VIII Validity  
361k1532 Effect of Partial Invalidity; Severability  
361k1535 Particular Statutes  
361k1535(15) Labor, employment, and public officials (Formerly 361k64(2))  
361 Statutes  
361 VIII Validity  
361k1532 Effect of Partial Invalidity; Severability  
361k1538 Submission to popular vote; initiative and referendum (Formerly 361k64(2))

Valid portion of Proposition 302, in which voters adopted the increase in legislators' salaries recommended by Commission on Salaries for Elective State Officers, could be severed from portion of Proposition 302 in which the Commission exceeded its constitutional authority by recommending changes to per diem payment rates to legislators, where Proposition 302 on its face and the accompanying publicity pamphlet treated salary and per diem payments as separate subjects.  A.R.S. Const. Art. 5, § 12; A.R.S. § 41–1104.

1 Case that cites this headnote

## Attorneys and Law Firms

\*\*752 \*424 [Barry J. Dale](#), Phoenix, Attorney for Petitioners.

[Janet A. Napolitano](#), The Attorney General By Scott Bales, Solicitor General and Tim Delaney, Chief Deputy Attorney General and [Mary Mangotich Grier](#), Assistant Attorney General Attorneys, Phoenix, for Respondents.


## OPINION.

McGREGOR, Justice.

### I.

¶ 1 In November 1998, the Commission on Salaries for Elective State Officers (the Commission) recommended, and Arizona's electorate approved, Proposition 302, which raised legislative salaries to \$24,000 per year and purported to change the method for setting legislators' per diem reimbursements. This case presents two related issues: (1) did the Commission exceed its authority when it recommended changes in the legislative per diem payments; and (2) if so, can we sever the per diem provision from the salary provision, or must we declare Proposition 302 invalid as a whole? We hold that the Commission does not possess authority to recommend changes in legislative per diem payments, and that the per diem provision is, therefore, invalid. We further hold that the invalid per diem provision can be severed from the remainder of the proposition, leaving the salary increase intact.

### A.

¶ 2 In 1970, Arizona voters amended the constitution to create the Commission on Salaries for Elective State Officers. *See*  [Ariz. const. art. V, § 12](#) (West Supp.1999). As part of its duties, the Commission bears sole responsibility and authority to recommend changes in legislative salaries. The constitution directs that the Secretary of State, after certifying the Commission's recommendation, “shall submit to the qualified electors at the next regular general election the question, ‘Shall the recommendations of the commission on salaries for

elective State officers \*\*753 \*425 concerning Legislative salaries be accepted?  Yes  No.’” *Id.* The recommended salary increase becomes effective only if approved by the voters, and “legislative salaries may be altered only by the procedures established in this section” of the constitution. *Id.*

¶ 3 From 1971 until 1995, the Commission limited its recommendations to changes in legislative salaries.<sup>1</sup> During that time period, the legislature established per diem reimbursements for its members by statute. *See ariz.Rev.Stat. Ann. (A.R.S.) § 41–1104 (West 1999).*

<sup>1</sup> See 1971 Comm'n on Salaries for Elected State Officials Rep.; 1973 Comm'n on Salaries for Elective State Officers Rep.; 1977 Comm'n on Salaries for Elective State Officers Rep.; 1980 Comm'n on Salaries for Elective State Officers Rep.; 1981 Comm'n on Salaries for Elective State Officers Rep.; 1985 Comm'n on Salaries for Elective State Officers Rep.; 1987 Comm'n on Salaries for Elective State Officers Rep.; 1989 Comm'n on Salaries for Elective State Officers Rep.; 1991 Comm'n on Salaries for Elective State Officers Rep.; 1993 Rep. of the Comm'n on Salaries for State Elective Officers; 1995 Rep. of the Comm'n on Salaries for State Elective Officers .

¶ 4 In 1997, however, the Commission included with its recommendation that legislative salaries be increased a recommendation that legislators' per diem payments be the same as those provided for non-elective Arizona state employees, as defined in [A.R.S. § 38–624](#) (West Supp.1999).<sup>2</sup> Under the terms of [section 41–1104](#), the legislature had authorized subsistence payments during the first 120 days of a regular session of \$35 per day for Maricopa County legislators and \$60 per day for non-Maricopa County legislators. After 120 days, the payments drop to \$10 and \$20, respectively. *See* [A.R.S. § 41–1104](#). The per diem rate for non-elected state employees, in contrast, would make non-Maricopa County legislators eligible for a daily food allowance of \$28 and up to \$106 for lodging, and would make Maricopa County legislators ineligible for most reimbursements. *See* [A.R.S. § 38–624](#).

2 1997 Rep. to the Comm'n on Salaries for Elective State Officers.

¶ 5 In January 1999, respondents requested a formal opinion from the Arizona Attorney General as to whether the legislators should be paid per diem using the rate for non-elected state employees, as specified in Proposition 302, or the special rate for legislators contained in [A.R.S. § 41–1104](#). The Attorney General concluded that the \$24,000 per year salary provision in Proposition 302 was valid but that the per diem reimbursement provision was not because the latter recommendation exceeded the Commission's authority. *See* Op. Att'y Gen. 199–001 (1999). Based on the Attorney General's opinion, the legislators have been receiving a \$24,000 per year salary pursuant to Proposition 302 and per diem payments pursuant to [A.R.S. § 41–1104](#).

## B.

<sup>[1]</sup> <sup>[2]</sup> ¶ 6 Petitioners challenged the legislature's action by filing this special action petition for writ of mandamus, arguing that the legislature is authorizing the illegal expenditure of state funds and that the legislature is obligated to enforce the per diem provision of Proposition 302. *Id.* We have original jurisdiction over mandamus, injunction, and other extraordinary writs to state officers and exercise that jurisdiction through the special action procedure. Our decision to hear those matters, to accept jurisdiction, and to grant relief is highly discretionary. *See* [ariz. Const. art. VI, § 5.1](#). We accepted jurisdiction in this special action proceeding because the dispute involves a matter of substantial public importance, raises only issues of law, and requires the interpretation of a provision of the Arizona Constitution. *See* [Rios v. Symington, 172 Ariz. 3, 5, 833 P.2d 20, 22 \(1992\)](#).

## II.

### A.

<sup>[3]</sup> ¶ 7 As we have noted, the Commission has plenary authority to recommend changes in legislative salaries to the electorate, but its authority extends only to salaries and rates of pay. *See* [ariz. Const. art. V, § 12](#). For petitioners to

succeed, they must establish that a per diem payment is a salary or rate of pay within the meaning of [article V, section 12](#). Because we hold that the **\*\*754 \*426** current legislative per diem is not a salary or rate of pay within the meaning of the constitution, we reject petitioners' first argument.

¶ 8 This Court has previously considered the relationship between per diem payments and salary. In [Earhart v. Frohmiller](#), 65 Ariz. 221, 178 P.2d 436 (1947), we decided whether “granting to the legislators an allowance for subsistence and lodging constitutes an improper increase in their compensation.” [Id.](#) at 225, 178 P.2d at 438. Noting that we had stated, in [Olmsted & Gillelen v. Hesla](#), 24 Ariz. 546, 553, 211 P. 589, 591 (1922), that “[i]n the Constitution compensation is employed to designate salary,” we rejected the petitioners' argument that legislators could not recover the per diem payments. We concluded that “[w]hen the State repays the legislators and their employees for personal expenses, this does not constitute additional compensation but is merely a reimbursement for actual cash outlays necessarily incurred for subsistence while away from home and in the performance of duty.” [Earhart](#) at 226, 178 P.2d at 438; see also [Geyso v. City of Cudahy](#), 34 Wis.2d 476, 149 N.W.2d 611, 614–15 (1967) (holding that “[t]he words salary and expense are separate and distinct terms which connote entirely different concepts. Salary is a fixed periodical compensation paid for services rendered whereas an expense is a charge incurred in performing those services.”).

### B.

¶ 9 Although petitioners seek to distinguish [Earhart](#), we do not find their arguments persuasive. Petitioners first argue [Earhart](#) does not apply because it was decided before Arizona adopted [article V, section 12](#). The principles on which we based our decision in [Earhart](#), however, remain valid. The question there, as here, was whether the constitution, in referring to salaries or rates of pay, refers also to per diem payments. If per diem payments are not salary or compensation, as we decided in [Earhart](#), then the Commission's authority does not extend to recommending changes in per diem payments.

¶ 10 Petitioners also attempt to distinguish [Earhart](#) by noting that the statute therein “provide[d] only for actual and necessary expenses for subsistence and lodging to the extent that these are supported by receipts and vouchers.” [Earhart](#), 65 Ariz. at 226, 178 P.2d at 439. Their argument seems to be that a set, or “flat,” per diem rate, like that established by [A.R.S. § 41–1104](#), constitutes a rate of pay or salary and, therefore, acts as a hidden form of compensation. Other jurisdictions have directly rejected that argument. In [Eberle v. Nielson](#), 78 Idaho 572, 306 P.2d 1083, 1088 (1957), for instance, the court held that a statute permitting legislators to recover set per diem payments for time spent on committee work did not violate the constitutional provision that established legislative salaries and per diem payments for time spent during the legislative session. Furthermore, in [Collins v. Riley](#), 24 Cal.2d 912, 152 P.2d 169, 172 (1944), the California Supreme Court held that a flat per diem rate does not constitute additional compensation.


¶ 11 We agree that a set per diem rate, so long as it is reasonably related to actual expenses incurred, does not constitute a salary. Petitioners do not claim that the per diem schedules set by the legislature in [section 41–1104](#) fall outside reasonable limits. Moreover, as we noted in [Earhart](#), if the legislature abuses its authority in setting per diem reimbursements, the voters are not without recourse. They retain authority to replace those representatives whom they perceive are misusing their power in setting reimbursement rates. They also have power, through the initiative process, to enact acceptable reimbursement rates. See [ariz. Const. art. IV, part 1, § 1\(2\)](#).

¶ 12 Because the Commission's authority is limited to recommending changes in legislative salaries or rates of pay, and because the per diem at issue does not constitute a salary, the Commission lacked authority to recommend changes in the legislative per diem rate. That portion of Proposition 302 referring to per diem payments is therefore invalid, and we next consider whether the invalid portion can be severed from the valid portion increasing legislative salaries.

### III.



A.

<sup>141</sup> ¶ 13 Petitioners argue that if the Commission exceeded its authority, we **\*\*755 \*427** should declare the entire proposition void. We will not, however, declare an entire statute “unconstitutional if the constitutional portions of the statute can be separated from that which is unconstitutional.”

 *State v. Prentiss*, 163 Ariz. 81, 86, 786 P.2d 932, 937 (1989). “This court on numerous occasions has held that if part of an act is unconstitutional and by eliminating the unconstitutional portion the balance of the act is workable, only that part which is objectionable will be eliminated and the balance left intact.” *State v. Coursey*, 71 Ariz. 227, 236, 225 P.2d 713, 719 (1950).

<sup>151</sup> ¶ 14 To determine whether to sever the invalid from the valid portion of an act, we have long applied a test under which we consider several factors. We first consider whether that portion of an act remaining after we sever the invalid portion is independent of the invalid part and enforceable standing alone. See *McCune v. City of Phoenix*, 83 Ariz. 98, 106, 317 P.2d 537, 542 (1957). If the remaining portion can stand alone, we will enforce it

“if the valid and invalid portions are not so intimately connected as to raise the presumption the legislature would not have enacted one without the other, and the invalid portion was not the inducement of the act.”

 *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 344, 982 P.2d 815, 819 (1999) (quoting  *State Compensation Fund v. Symington*, 174 Ariz. 188, 195, 848 P.2d 273, 280 (1993)).

<sup>161</sup> <sup>171</sup> ¶ 15 Applying the latter part of the severability test in a disciplined manner to enactments adopted by the voters, however, proves to be a nearly impossible task. When we consider whether the legislature would have adopted the valid portion of a statute absent the invalid portion, we can look to the statute’s legislative history. See *Hull v. Albrecht*, 192 Ariz. 34, 39–40, 960 P.2d 634, 639–40 (1998). When the voters approve a measure, however, we have no legislative history to guide us in discerning voter intent. Indeed, each voter’s intent may be distinct from that of other voters. For that reason, in deciding whether to sever the invalid portion of a measure adopted by popular vote and uphold the remaining, valid portion, we will apply the following test. We will first

consider whether the valid portion, considered separately, can operate independently and is enforceable and workable. If it is, we will uphold it unless doing so would produce a result so irrational or absurd as to compel the conclusion that an informed electorate would not have adopted one portion without the other. We now apply that test to Proposition 302.

B.

¶ 16 In keeping with required constitutional language, Proposition 302 posed the following question to voters: “‘Shall the recommendations of the commission on salaries for elective state officers concerning legislative salaries be accepted?  Yes  No.’” The recommendation, also printed on the ballot, stated: “Each state legislator shall be paid \$24,000 per annum, and as further compensation, per diem reimbursement commensurate with and as provided by law for non-elective Arizona state employees.”

<sup>181</sup> ¶ 17 On its face, Proposition 302 addresses two separate subjects, salary *and further compensation* in the form of per diem payments, and gives no indication that the two types of payment are dependent on one another. Statements in the publicity pamphlet distributed by the Secretary of State also treat the two provisions as independent.<sup>3</sup> The Commission’s statement supporting its recommendation separates the two proposals, explaining in its first paragraph that the Commission “unanimously voted to increase the annual compensation of state legislators from \$15,000 to \$24,000.” In the second paragraph, the Commission explains that it “*also unanimously recommended* the voters approve the same per diem reimbursement for legislators as received by the non elective Arizona state public employees.” (Emphasis added.) The pamphlet set out three statements in support **\*\*756 \*428** of Proposition 302,<sup>4</sup> and all refer only to the need for raising legislative salaries from what one statement described as “the starvation wage of \$15,000.” None of the statements refers to the per diem provision.

<sup>3</sup> See Betsy Bayless, Secretary of State, 1998 Ballot Propositions for the General Election of November 3, 1998 at 159–62 (1998).

<sup>4</sup> The Secretary of State received no arguments opposing Proposition 302.

¶ 18 The recommendation that each legislator be paid \$24,000 per year, considered separately, therefore can operate independently of the per diem provision and is workable and enforceable standing alone. Moreover, enforcing the salary provision of Proposition 302 does not lead to an absurd or irrational result. To the contrary, enforcing the salary provision permits us to give effect to that portion of Proposition 302 that comports with the Commission's traditional approach.

¶ 19 Therefore, we sever the per diem provision and uphold the salary provision.

#### IV.

¶ 20 Petitioners have requested attorney's fees pursuant to [A.R.S. § 12-2030](#) (West Supp.1999), which provides for the award of fees in a mandamus action against the state or any political subdivision thereof. Because petitioners are not the prevailing parties, and without considering whether the statute applies, we decline their request.

#### V.

¶ 21 For the foregoing reasons, we deny petitioners relief.

CONCURRING: THOMAS A. ZLAKET, Chief Justice,  
CHARLES E. JONES, Vice-Chief Justice, STANLEY G.  
FELDMAN, Justice and FREDERICK J. MARTONE,  
Justice.

#### All Citations

195 Ariz. 423, 989 P.2d 751, 316 Ariz. Adv. Rep. 40

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989 P.2d 751, 316 Ariz. Adv. Rep. 40  
Randolph v. Groscoast, 195 Ariz. 423 (1999)

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# Expense Budget Worksheet Report

Budget Year 2026

Account	Account Description	2026 Proposed Continuation Budget
Fund <b>100 - General Fund</b>		
Department <b>110 - City Council</b>		
<i>Salaries &amp; Related Expenses</i>		
50000	Salaries	91,800.00
50110	Vision	1,020.00
50115	Medfica	1,340.00
50120	Fica	5,700.00
50125	Medical Insurance	70,140.00
50130	State Retirement	63,960.00
50135	State Unemployment	550.00
50140	Life Insurance	800.00
50145	Worker's Compensation	1,590.00
50155	Dental	3,060.00
<i>Salaries &amp; Related Expenses Totals</i>		<b>\$239,960.00</b>
<i>Special Services</i>		
80025	Travel and Per Diem	55,000.00
80027	Conferences / Registration Fees	20,000.00
<i>Special Services Totals</i>		<b>\$75,000.00</b>
Department <b>110 - City Council Totals</b>		<b>\$314,960.00</b>
Fund <b>100 - General Fund Totals</b>		<b>\$314,960.00</b>
Net Grand Totals		<b>\$314,960.00</b>



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. C.

**Meeting Date:** 03/03/2025

**Department Head:** Kay Macuil, City Attorney, Attorney's Office

**Submitted By:** Kay Macuil, City Attorney, Attorney's Office

**Action Requested:** Motion  
Resolution

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#### ITEM:

Discussion and possible action on any and all matters regarding Resolution No. 2357. A Resolution of the Mayor and City Council of the City of San Luis, Arizona, canceling and vacating the May 20, 2025, Special Election, which called for the Special Election, in and for the City of San Luis, Arizona, for a primary (ad valorem) property tax; repealing conflicting provisions including Resolution 2351; and providing for severability. **(Kay Marion Macuil, City Attorney)**

#### SUMMARY:

On January 22<sup>nd</sup>, 2025, the City Council passed Resolution No. 2351, calling for a Special Election on May 20<sup>th</sup>, 2025, for the voters to determine whether the city should implement a primary (ad valorem) property tax.

The proposal before the City Council is Resolution No. 2357, which cancels the May 20<sup>th</sup> election, repeals Resolution No. 2351, and stops the process of holding the election.

In order to meet the statutory election deadlines, the printer must have directions this week about whether to halt or continue printing the ballot and informational pamphlet.

- Council Members' votes in favor of Resolution No. 2357 would be a vote to cancel the election.
- Council Members' votes against Resolution No. 2357 would be a vote to continue the process to the election to be held on May 20<sup>th</sup>.

#### RECOMMENDATION / SUGGESTED MOTION:

**I MOVE TO APPROVE AND ADOPT RESOLUTION NO. 2357.**

---

#### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** N/A

**CITY/STATE/FEDERAL FUNDS:** N/A

**TOTAL:** N/A

**BUDGETED AMOUNT:** N/A

**AVAILABLE AMOUNT TO TRANSFER:** N/A

**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

There is no fiscal impact associated with this item. However, canceling the election will save printing costs and the Yuma County Election and Recorder Services charges. Based on the expenses incurred last May for the Property Tax Election, the savings are approximately \$70,000.

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### **Attachments**

Resolution No. 2357

Resolution No. 2351

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# Resolution

No. 2357

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, CANCELING AND VACATING THE MAY 20, 2025, SPECIAL ELECTION, WHICH CALLED FOR THE SPECIAL ELECTION, IN AND FOR THE CITY OF SAN LUIS, ARIZONA, FOR A PRIMARY (AD VALOREM) PROPERTY TAX; REPEALING CONFLICTING PROVISIONS INCLUDING RESOLUTION 2351; AND PROVIDING FOR SEVERABILITY.**

**BE IT RESOLVED** by the Mayor and City Council of the City of San Luis, Arizona:

**Section 1:** Resolution No. 2351 is repealed.

**Section 2:** The May 20, 2025, Special Election in and for the City of San Luis, Arizona, for a Primary (ad valorem) property tax is cancelled and vacated.

**Section 3:** If a conflict arises between the provisions of this resolution and any other ordinance, resolution, order, regulation, or policy of the City of San Luis, the conflicting provisions are amended, superseded, and replaced, and this Resolution shall govern.

**Section 4:** If any section, subsection, paragraph, sentence clause, phrase, or portion of this Resolution is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction or controlling legislation, such decision or law shall not affect the validity of the remaining portion of this Resolution.

**Section 5:** The City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution to stop the process of holding the May 20, 2025, Special Election.

*[Intentionally left blank. Signature page follows]*

**PASSED, ADOPTED, and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this \_\_\_\_ day of March 2025.

**City of San Luis, Arizona**

\_\_\_\_\_  
Nieves Riedel, Mayor

**Attest:**

**Approved As to Form**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney



# Resolution

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

No. 2351

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA ORDERING AND CALLING A SPECIAL ELECTION TO BE HELD ON MAY 20, 2025, IN AND FOR THE CITY OF SAN LUIS, ARIZONA, TO SUBMIT TO THE QUALIFIED ELECTORS OF SAN LUIS THE PROPOSED AMOUNT TO BE RAISED BY PRIMARY (AD VALOREM) PROPERTY TAXES.**

**WHEREAS**, the Mayor and Council of the City of San Luis, Arizona (the "City"), determine that the City should levy primary (ad valorem) property taxes in the next and each succeeding tax year for the purposes permitted by applicable law; and

**WHEREAS**, pursuant to Section 42-17056, Arizona Revised Statutes, the Mayor and Council of the City must submit the proposed amount to be raised by primary (ad valorem) property taxes for approval of the voters; and

**WHEREAS**, for purposes of the foregoing, the Mayor and Council of the City order an election (the "Election");

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of San Luis, Arizona:

**Section 1.** That the election, in and for the city, be and the same is hereby ordered and called to be held on May 20, 2025, at which there shall be submitted to the qualified electors of the city the proposed amount to be raised by primary (ad valorem) property taxes set forth in the official ballot.

**Section 2.** That the official ballot for the Election (the "Official Ballot") shall be in substantially the form attached hereto as Exhibit "A."

**Section 3.** (A) That notice of the election shall be given by mailing an informational pamphlet (the "Informational Pamphlet") and a sample of the Official Ballot in substantially the form attached hereto as Exhibit "B," as revised as hereinafter described, to every household within the city not less than thirty-five (35) days before the date of the election.

(B) That the Informational Pamphlet shall be prepared by the Clerk of the City, and the Clerk of the City is hereby authorized and directed to cause the Informational

Pamphlet to be provided as and under the circumstances described herein in the form she deems acceptable.

(C) That the Clerk of the City is hereby authorized to request arguments for and against the subject matter of the election by providing the notice in the form and by the means provided in the form attached hereto and marked Exhibit "C" (hereinafter referred to as the "Request for Arguments"). **The deadline to submit such arguments shall be February 19, 2025.**

**Section 4.** That absentee/early voting with respect to the election shall be permitted in accordance with the provisions of Title 16, Chapter 4, Article 8, Arizona Revised Statutes.

**Section 5.** That the Clerk of the City is hereby authorized and directed to have printed and delivered to the election officials at the polling places, to be by them furnished to the qualified electors of the city offering to vote at the election, the Official Ballot.

**Section 6.** That in order to comply with the Voting Rights Act of 1965, as amended, the following materials pertaining to the election shall be translated into Spanish and mailed or distributed in each instance where mailing or distributing of such materials is required, to-wit: Request for Arguments, Informational Pamphlet, Official Ballot, "Absentee/Early Voting Materials" and "Instructions At The Polling Places."

**Section 7.** That the consolidation of any election precincts deemed necessary for purposes of the election is hereby approved.

**Section 8.** (A) That the election shall be held, conducted and canvassed in conformity with the provisions of the regular election laws of the State of Arizona, except as otherwise provided by law, and only such persons shall be permitted to vote at the election who are qualified electors of the city.

(B) That the election may be conducted (i) using either electromechanical or electronic vote recording and ballot counting equipment or paper ballots at polling places, or (ii) as a mailed ballot election as provided in Section 16-409, Arizona Revised Statutes, as shall be determined to be in the best interests of the city by the Elections Department of Yuma County, Arizona (the "County") and the Clerk of the City. The Clerk of the City is authorized and directed to enter into a contract with the County Recorder of the County to obtain precinct registers for the election and to enter into an agreement with the Elections Department of the County to conduct the election for the city.

(C) That all expenditures as may be necessary to order, notice, hold and administer the election are hereby authorized, which expenditure shall be paid from current operating funds of the city.

(D) That the Clerk of the City is hereby authorized to take all necessary actions to facilitate the election including all such actions as are necessary to assist the Elections Department of the County in conducting the Election and performing its duties.

**Section 9.** (A) That the official returns from the election shall be made to the Mayor and Council of the city within twenty (20) days from the date of the election and the election shall be canvassed and the results thereof certified by the Mayor and Council of the city at a meeting to be held within twenty (20) days after the date of the election, as provided by law.

(B) That the Mayor and Council of the city shall file and record in the office of the County Recorder of the County a certificate disclosing with respect to the election the purpose of the election, the total number of votes cast and the total number of votes for and against creating the indebtedness and stating whether or not the indebtedness is ordered in each case.

**Section 10:** The city officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

**Section 11:** If a conflict arises between the provisions of this Resolution and any other ordinance, resolution, regulation, or policy of the City of San Luis, the conflicting provisions are amended, superseded, and replaced; and this Resolution shall govern.

**Section 12:** If any section, subsection, paragraph, sentence clause, phrase, or portion of this Resolution is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Resolution.

**PASSED, ADOPTED, and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this \_\_\_\_ day of January 2025.

\_\_\_\_\_  
Nieves Riedel, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney

CERTIFICATION

I hereby certify that the foregoing Resolution No. .... was duly passed and adopted by the Mayor and Council of the City of San Luis, Arizona, at a regular meeting held on \_\_\_\_\_, 20\_\_\_\_, that the vote thereon was \_\_\_\_ Ayes, \_\_\_\_ Nays, and that the Mayor and \_\_\_\_ Council Members were present thereat.

.....  
Clerk, City of San Luis, Arizona

EXHIBIT "A"

OFFICIAL BALLOT

PRIMARY (AD VALOREM) PROPERTY TAX IMPLEMENTATION

Shall the City of San Luis, Arizona (the "City"), be authorized to raise not to exceed \$ \_\_\_\_\_,000 by primary (ad valorem) property taxes? IF SUCH AMOUNT IS APPROVED BY THE VOTERS, IT SHALL BE THE BASE FOR DETERMINING LEVY LIMITATIONS FOR THE CITY FOR SUBSEQUENT FISCAL YEARS.

FOR THE TAX       AGAINST THE TAX

EXHIBIT "B"

CITY OF SAN LUIS, ARIZONA

INFORMATIONAL PAMPHLET  
AND SAMPLE BALLOT

May 20, 2025  
SPECIAL ELECTION



**TO THE VOTERS OF THE CITY OF SAN LUIS, ARIZONA:**

The Mayor and Council of the City of San Luis, Arizona, pursuant to Resolution No. 2351 adopted on January 22, 2025, have ordered that a special election be held in and for the City of San Luis, Arizona (the "City"), on May 20, 2025 (the "Special Election"). The qualified electors of the City will be asked to vote on the amount to be raised by a primary (ad valorem) property tax.

A person is entitled to vote in the Special Election who has resided in a precinct in the boundaries of the City for 29 days preceding the Special Election, who is qualified to register to vote as provided in Section 16-101, Arizona Revised Statutes, as amended, and whose registration has been received by the Elections Department of Yuma County, Arizona prior to midnight of the 29th day preceding the date of the Special Election. The last day to register for the Special Election is April 21, 2025.

The purpose of this Informational Pamphlet is to provide you with information on the question which will appear on the ballot for the Special Election. A sample ballot and a list of the polling places for the Special Election are included in this Informational Pamphlet.

Preparation of this Informational Pamphlet is required by State law and in compliance with the Federal Voting Rights Act, has been printed in English and Spanish. In order to be prepared to fully exercise your right to vote at the Special Election, you are urged to thoroughly read all the material. This Informational Pamphlet may be taken into the voting booth on the day of the Special Election.

Polling places for the Special Election will be open from 6 a.m. to 7 p.m. on May 20, 2025. Each voter must vote at the polling place in which the voter is registered. Each voter may vote at any vote center listed on Page [to be determined].

/s/ Sonia Cornelio

.....  
City Clerk, City of San Luis, Arizona

## **INTRODUCTORY STATEMENT**

The City has prepared this sample ballot and informational pamphlet to provide to the qualified electors of the City information concerning the Special Election.

The proposition being submitted for your consideration is the establishment of a primary (ad valorem) property tax for the City. Currently the City does not have a property tax. Revenues received from State "revenue sharing" funds are very limited due to the City's low population. Additionally, the City has rather low revenues generated by city sales tax due to the low number of businesses operating within city limits. It is estimated that, should this proposition pass, it will generate approximately \$2,500,000 dollars in revenues the first year it is implemented.

The Mayor and City Council intend that these limited moneys will be used for maintenance/upgrades to:

- parks,
- open space, and
- public road infrastructure.

The Mayor and City Council intend that City monies that otherwise would have been used for such purposes will be used, in part, to pay for capital improvement projects such as Cesar Chavez Boulevard, 10th Avenue, 6th Avenue, East San Luis Park, Downtown Park and other amenities in open spaces.

## **PRIMARY PROPERTY TAX INFORMATION**

If the Special Election is successful, the City will levy a property tax comprised of a primary tax used for general operations and maintenance expenses (the "Tax"). The Mayor and Council of the City intend to have a financial policy that seeks to limit the primary property tax rate to approximately \$2.14 per \$100 of net assessed limited property valuation.

### **AMOUNT TO BE AUTHORIZED:**

The amount to be raised by the Tax in fiscal year 2025-2026 requested by the Special Election is not to exceed \$2,500,000. IF SUCH AMOUNT IS APPROVED BY THE VOTERS, IT SHALL BE THE BASE FOR DETERMINING LEVY LIMITATIONS FOR THE CITY FOR SUBSEQUENT FISCAL YEARS.

### **EFFECT OF TAX:**

If the Special Election is successful, the City would levy the Tax on all taxable property in the City. (The City does not currently levy a primary (ad valorem) property tax.) It is estimated that the rate of the Tax would be \$2.14 per \$100 of net assessed limited property valuation.

**ESTIMATED TAXPAYER COST:**

As noted above, the Tax would require a levy of primary (ad valorem) taxes on all taxable property within the City which would initially impact the taxpayers in the 2025-2026 fiscal year in the form of a \$2.14 per \$100 of net assessed limited property valuation tax rate increase.

Information regarding the estimated tax impact of the Tax on a residential property owner, commercial property owner and an agricultural/vacant property owner is set forth in the following table

			FY 25-26 Tax Rate:	\$2.14
			FY 25-26 Max Levy:	\$2,500,000
(Average value properties estimated from FY 2023-24 State and County Abstract of the Assessment Roll.)	Limited Property Value	Assessed Valuation	Estimated Annual Tax Impact	Estimated Monthly Tax Impact
<b>Owner Residential Property: 10% assessment ratio</b>				
estimated average property				
owner (b):	\$106,603	\$10,660	\$229	\$19.05
	\$100,000	\$10,000	\$214	\$17.87
	\$150,000	\$15,000	\$322	\$26.80
	\$250,000	\$25,000	\$536	\$44.67
<b>Commercial Property (locally assessed): 16.5% assessment ratio (c)</b>				
estimated average property				
owner:	\$525,008	\$86,626	\$1,857	\$154.78
	\$250,000	\$42,500	\$911	\$75.94
	\$1,000,000	\$165,000	\$3,538	\$294.82
<b>Agricultural/Vacant Property: 15% assessment ratio</b>				
estimated average property				
owner:	\$27,499	\$4,125	\$88	\$7.37
	\$50,000	\$7,500	\$161	\$13.40
	\$100,000	\$15,000	\$322	\$26.80

- (a) Assumes the Net Limited Assessed Value for the City of San Luis grows by 5.0% for tax year 2025.
- (b) This is the estimated average value of an owner occupied residential property in the City that is used for tax purposes. The value used for tax purposes is the limited property value and is calculated by the County Assessor. This is not the market value of the property. As a result of current real estate market conditions, the value of the property

used for tax purposes may be significantly lower than the market value of the property. Property owners may review this information on the County Assessor website.

- (c) The assessment ratio for this property classification will decrease to 16.5% for tax year 2025, 16% for tax year 2026, 15.5% for tax year 2027 and 15% for each tax year thereafter.

The tax impact on an owner-occupied residence valued by the county assessor at \$250,000 is estimated to be \$536. The tax impact on commercial property valued by the county assessor at \$1,000,000 is estimated to be \$3,538. The tax impact on agricultural or other vacant property valued by the county assessor at \$100,000 is estimated to be \$322.

### **TAX LIMITATIONS:**

No primary (ad valorem) property taxes may be collected in any tax year in excess of one percent of the full cash valuation of the subject residential property. (Such limitation does not apply to any secondary (ad valorem) property tax levy for indebtedness.) Primary (ad valorem) property taxes levied on all types of property by counties, cities, towns and community college districts are limited to a maximum increase of two percent over the prior year's levy plus any amount directly attributable to new construction and acquisition. The two percent limit does not apply to school districts.

### **POLLING LOCATIONS**

Yuma County Library  
San Luis Branch  
1075 North 6<sup>th</sup> Avenue  
San Luis, Arizona 85349

San Luis Medical Mall  
151 Oak Avenue  
San Luis, Arizona 85349

### **HOURS DURING THE DAY WHEN THE POLLS WILL BE OPEN**

The polling place shall be open at 6:00 a.m. and close at 7:00 p.m. on the date of the Special Election.

### **OTHER IMPORTANT VOTER INFORMATION**

A person is entitled to vote in the Special Election who has resided in a precinct in the boundaries of the City for 29 days preceding the Special Election, who is qualified to register to vote as provided in Section 16-101, Arizona Revised Statutes, as amended. The last day to register for the Special Election is April 21, 2025.

1. Please check the address label on this voter informational pamphlet for your polling place information.
2. Polling places will be open from 6:00 a.m. to 7:00 p.m.
3. Any qualified elector who is either physically or visually impaired or who is unable to read or understand the contents of the ballot, may be accompanied into the voting booth by a person of such elector's choice for the purpose of assisting such elector in casting a ballot.

4. Sample ballots may be brought to the voting place and may be taken into the voting booth on the day of the Special Election.
5. Any qualified elector, who at 7:00 p.m., is in the line of waiting voters, will be allowed to prepare and cast a ballot.

#### **EARLY/ABSENTEE VOTING INFORMATION**

Any qualified elector may vote an early/absentee ballot for the Special Election. Absentee/early voting with respect to the Special Election shall be permitted in accordance with the provisions of Title 16, Chapter 4, Article 8, Arizona Revised Statutes, as amended. Absentee/early voting information with respect to the Special Election may be obtained by contacting:

Yuma County Voter and Election Services  
102 South Main Street  
Yuma, Arizona 85364  
Telephone: (928) 373-1014  
8:00 a.m. to 5:00 p.m., Monday through Friday

#### **TO VOTE AN EARLY/ABSENTEE BALLOT IN PERSON**

Appear in person at:

Yuma County Voter and Election Services  
102 South Main Street  
Yuma, Arizona 85364  
Telephone: (928) 373-1014  
8:00 a.m. to 5:00 p.m., Monday through Friday

#### **TO OBTAIN AN EARLY/ABSENTEE BALLOT BY MAIL**

Submit a written, signed request or call:

Yuma County Voter and Election Services  
102 South Main Street  
Yuma, Arizona 85364  
Telephone: (928) 373-1014  
8:00 a.m. to 5:00 p.m., Monday through Friday

- a. If confined because of physical disability or illness, indicate address of confinement and if assistance is needed.
- b. If you will be out of the City, indicate where to mail the early/absentee ballot.

Written or verbal requests for an early/absentee ballot must be received by Yuma County Voter and Election Services before 5:00 p.m. on May 9, 2025, in order for Election Services to mail the ballot.

The returned early/absentee ballot must be received in the Yuma County Recorder's Office not later than 7:00 p.m. on election day, May 20, 2025, in order for the ballot to be counted.

**TO OBTAIN FURTHER INFORMATION, CONTACT**

***For Election Process, Voting Information and Voter Registration, and Early/Absentee Ballot Information:***

Yuma County Voter and Election Services  
102 South Main Street  
Yuma, Arizona 85364  
Telephone: (928) 373-1014  
8:00 a.m. to 5:00 p.m., Monday through Friday

If you do not know if you are qualified to vote, you should contact Yuma County Voter and Election Services at the telephone number shown above.

**FORM OF OFFICIAL BALLOT**

**OFFICIAL BALLOT**

**[Insert ballot form here]**



**ARGUMENTS FOR/AGAINST**

**[Insert arguments for/against here]**

City of San Luis, Arizona  
1090 East Union Street  
San Luis, Arizona

Non-Profit Org. U.S.  
Postage Paid  
....., Arizona  
Permit No. ....

**OFFICIAL VOTING MATERIAL**

Only one Voter Informational Pamphlet has been mailed to each household within the City in which qualified electors reside. Please make it available to all qualified electors in the household.

**YOUR POLLING PLACE IS  
INDICATED ON LABEL**

## EXHIBIT "C"

REQUEST FOR ARGUMENTS FOR AND AGAINST THE AUTHORIZATION OF A PRIMARY (AD VALOREM) PROPERTY TAX IN AND FOR THE CITY TO BE CONSIDERED BY THE VOTERS OF THE CITY OF SAN LUIS, ARIZONA, AT AN ELECTION TO BE HELD ON MAY 20, 2025.

Pursuant to Resolution No. 2351 adopted by the Mayor and Council of the City of San Luis, Arizona, (the "City"), on January 22, 2025, (the "Resolution"), a Special Election in and for the city was ordered and called to be held on May 20, 2025 (the "Election"). Notice of the Election will be given by mailing an informational pamphlet. Such pamphlet is to include arguments for and against the authorization of a primary (ad valorem) property tax in and for the city to be considered at the Election. (The text of the question to be considered at the Election is included in the Resolution which is available at the City Clerk's Office of the city at 1090 E. Union Street, San Luis, Arizona 85349) Any person interested in providing any such argument is hereby requested to provide the same to the Clerk of the city at the address indicated above before 5:00 p.m., Arizona time on February 19, 2025. Arguments will be limited to three hundred (300) words. If you have any questions about the foregoing, please contact the Clerk of the city at (928) 341 – 8520.

*/s/ Sonia Cornelio*

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City Clerk, City of San Luis, Arizona

This request (along with Spanish translation thereof) should be posted at all places at which notices of meetings of the Mayor and Council of the city are posted and published once in the Yuma Sun.