



City of Stuart

AGENDA

**SPECIAL COMMISSION MEETING OF THE STUART CITY COMMISSION
CITY ATTORNEY INTERVIEWS
SEPTEMBER 7, 2023
AT 9:00 AM
COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994**

CITY COMMISSION

**Mayor Troy McDonald
Vice Mayor Becky Bruner
Commissioner Eula R. Clarke
Commissioner Christopher Collins
Commissioner Campbell Rich**

ADMINISTRATIVE

**City Manager, Michael J. Mortell
Interim City Attorney, Paul J. Nicoletti
City Clerk, Mary R. Kindel**

Agenda items are available on our website at <http://www.cityofstuart.us>
Phone: (772) 288-5306. Fax: (772) 288-5305. E-mail: mkindel@ci.stuart.fl.us

In compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation to attend this meeting should contact the City's ADA coordinator at 772-288-5306 at least 48 hours in advance of the meeting, excluding Saturday and Sunday.

If a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, he will need a record of the proceeding, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

(RC) next to an item denotes there is a City Code requirement for a Roll Call vote.

(QJ) next to an item denotes that it is a quasi-judicial matter or public hearing.

ROLL CALL

PLEDGE OF ALLEGIANCE

PRESENTATIONS

1. CITY ATTORNEY SCREENING COMMITTEE REPORT

COMMENTS BY CITY COMMISSIONERS

COMMENTS BY CITY MANAGER

APPROVAL OF AGENDA

COMMISSION ACTION

2. RECESS MEETING TO ALLOW FOR INDIVIDUAL INTERVIEWS WITH CANDIDATES

DISCUSSION AND DELIBERATION

3. DISCUSSION AND DELIBERATION REGARDING CITY ATTORNEY CANDIDATES, AND POSSIBLE MOTION TO MAKE AN OFFER OF EMPLOYMENT

ADJOURNMENT

WHAT IS CIVILITY? Civility is caring about one's identity, needs and beliefs without degrading someone else's in the process. Civility is more than merely being polite. Civility requires staying "present" even with those persons with whom we have deep-rooted and perhaps strong disagreements. It is about constantly being open to hear, learn, teach and change. It seeks common ground as a beginning point for dialogue. It is patience, grace, and strength of character. Civility is practiced in our City Hall.

PUBLIC COMMENT: If a member of the public wishes to comment upon ANY subject matter, including quasi-judicial matters, please submit a Request to Speak form. These forms are available in the back of the Commission Chambers, and should be given to the City Clerk prior to introduction of the item number you would like to address.

CONSENT CALENDAR: Those matters included under the Consent Calendar are self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by one motion. If discussion on an item is desired by any City Commissioner that item may be removed by a City Commissioner from the Consent Calendar and considered separately. If an item is quasi-judicial it may be removed by a Commissioner or any member of the public from the Consent Calendar and considered separately.

QUASI-JUDICIAL HEARINGS: Some of the matters on the Agenda may be "quasi-judicial" in nature. City Commissioners will disclose all ex-parte communications, and may be subject to voir dire by any interested party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment without being sworn. Unsworn testimony will be given appropriate weight and credibility by the City Commission.

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/7/2023

Prepared by: Paul Nicoletti

Title of Item:

CITY ATTORNEY SCREENING COMMITTEE REPORT

Summary Explanation/Background Information on Agenda Request:

The City Attorney Screening Committee met on August 24, 2023, and after much discussion of the 12 applicants, decided to present four (4) applicants as interview candidates to the City Commission. There are materials included with the Agenda Item to show the decisionmaking process and methodology used. In addition, there is an interview grid for the use of the City Commission at today's meeting.

Funding Source:

N/A

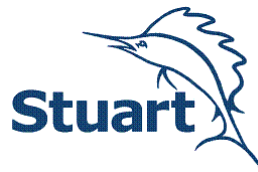
Recommended Action:

Interview each candidate, and then reconvene for Discussion and Deliberation.

ATTACHMENTS:

1. Memo re City Attorney Screening Report
2. CA Memo re CA Selection Process
3. City Attorney Timeline (Revised)
4. City Attorney Salary Data Abbreviated Jul2023
5. CITY ATTORNEY EMPLOYMENT CONTRACT (SAMPLE) 2023
6. CityAttorney 2023 (proposed)

CITY OF STUART
OFFICE OF THE CITY ATTORNEY



MEMORANDUM

TO: MAYOR & CITY COMMISSIONERS

SUBJECT: **REPORT OF THE CITY ATTORNEY SCREENING COMMITTEE**

CC: MICHAEL J. MORTELL, CITY MANAGER
ROZ JOHNSON STRONG, HUMAN RESOURCES DIRECTOR
RYANNE CAVO, FRP, PARALEGAL

DATE: 8/28/2023 3:50 PM

THIS IS A PUBLIC RECORD

This morning the Screening Committee met to discuss the 12 applicants for the City Attorney position. It was a robust session with input from each participant: Scott Konopka, Esquire, Roz Johnson, Mayor Troy McDonald, RYANNE CAVO, and me. I ask the City Commission to acknowledge the volunteer work of Scott Konopka, for performing this review. It is the second time Scott has helped us do this... once back in 2013.

Ryanne and I had prepared a spreadsheet (**a copy of which is attached**) to review at the meeting. It contains some analysis regarding the criteria need to be successful in the position and adds some of the background review that RYANNE and I were able to conduct. After reviewing the spreadsheet, the committee members discussed each of the applicants and reviewed the perceived strengths and weaknesses of each candidate, including education, overall experience, Florida experience, municipal experience, types of legal work performed, progressive work patterns, public complaints, Bar related issues, comments by references, and any other relevant matters.

MEMORANDUM

SUBJECT: REPORT OF THE CITY ATTORNEY SCREENING COMMITTEE

After discussing each applicant in detail, we went back and each member stated their position on the individual applicant. At the conclusion, we asked each member to state which applicant they would recommend for interview by the City Commission. Four (4) applicants received unanimous approval. So, the committee recommends the City Commission interview (in alphabetical order):

Lee J. Baggett
Rhonda Hasan
Zoe Panarites
Thomas Sawyer

Respectfully submitted,

PAUL J. NICOLETTI
Interim City Attorney

**CITY OF STUART
OFFICE OF THE CITY ATTORNEY**



MEMORANDUM

TO: MAYOR & CITY COMMISSIONERS

SUBJECT: **SELECTION PROCESS FOR A NEW CITY ATTORNEY**

CC: MICHAEL J. MORTELL, CITY MANAGER

DATE: 8/28/2023 3:44 PM

THIS IS A PUBLIC RECORD

Dear Commissioners:

Some of you have asked that I articulate the reasons for the 4 applicants selected by the CA Screening Committee as a recommendation for interview. There were several qualifiers that we used when looking at each candidate.

First, Ryanne Cavo and I had done a fairly extensive public records background search on each candidate, and whenever we discovered something of note, it was shared with the Screening Committee. Some of the applicants had reputational issues, based upon newspaper articles and upon “on the record” comments; some of the applicants received less than glowing recommendations from colleagues and supervisors; some applicants had prior suspensions from The Florida Bar, or other state Bars. Some applicants had lawsuits filed against them for financial issues including foreclosure and credit card debt; and some applicants expressed or worked for organizations which expressed strong political viewpoints. In all cases, the Committee focused on who would be the best “fit” for the community. That of course, skewed heavily toward someone who is close to and knows the Stuart area. So, if we were in doubt about a candidate, we favored “local” over out of state or out of area applicants.

Attached, I am sharing some of the public records material we uncovered. Some of it raises questions and issues even for the candidates recommended for interview and hopefully it will lead the Commissioners to ask direct questions about the issues raised. After you consider the

MEMORANDUM

SUBJECT: SELECTION PROCESS FOR A NEW CITY ATTORNEY

additional information and make decisions regarding who you would like to interview, our Human Resources Department will reach out to obtain permission to do a more thorough background investigation on each candidate. You will have that information available before you are asked to vote for a new City Attorney. In deciding who you wish to interview, we hope you will agree that the 4 candidates named by the Screening Committee provide a basis for you to compare and perhaps select a new City Attorney.

In addition, you are scheduled to interview the finalists on a date between September 5th and 8th. After discussing this with the City Manager, we have had good success with opening the proceedings in a Special City Commission Meeting, and then recessing that meeting to allow each Commissioner to separately interview each candidate for up to a half hour (“speed-dating”); then the candidate is rotated to another Commissioner until the interviews are completed by the Commission. This is followed by reconvening the Special City Commission Meeting allowing the City Commissioners to discuss their findings and vote to consider and select a candidate. A vote can be held then or can be deferred to the next Regular City Commission Meeting on September 9th at which time you would select a candidate.

We are also recommending that you use the format used at the last Commission Meeting for the selection of standing board members, that is, each Commissioner will name his or her preferred candidate, and if there is a majority, that person’s name would be considered as a Motion to offer employment to that person. If no majority is obtained, you would keep balloting until a candidate is named. You would then also direct the City Attorney to negotiate a Contract for approval on the September 25th Regular City Commission Meeting. Once this “offer of employment” is made, additional information is obtained by the HR Department regarding any needed “reasonable accommodations,” and then once employed, all the necessary information is obtained.

As with any personnel interview process, you are precluded from asking questions which inquire about or tend to disclose race, color, national origin, creed (religious affiliation), sex (gender, sexual orientation, pregnancy), age (over 40), disability, and genetic information (family medical history).

Naturally, if you have any questions about all of this, please feel free to contact me over the weekend (772) 260-3276, and certainly prior to Monday’s City Commission Meeting.

Respectfully submitted,

PAUL J. NICOLETTI
Interim City Attorney

City Attorney Recruitment Timeline – 2023

1. July 24 Commission direction provided - DONE
2. July 25 – August 15 Advertise vacancy - DONE
3. August 16 Prepare Summary of Candidates (12 applications received) DONE
4. August 18 Summary of Candidates and credentials sent or delivered to
Committee Members (*Paul N, Roz J, Scott Konopka, & Mayor
Troy McDonald, with Ryanne Cavo reviewing and commenting*)
- 5.
6. August 24 – 25 Committee Members meet to identify 3-5 applicants for
City Commission to potentially interview
 - i. Results compiled for Commissioners to consider at the
August 28th Regular Meeting
7. August 28 Commission discusses Applicants and identifies finalists for
interview and method and schedule for interviews
8. September 5 – 8 Commission interviews finalists
9. September 11 Commission votes to select a City Attorney
10. September 25 Commission approved contract with new City Attorney

Organization	County	Title	Minimum	Maximum	Actual Salary	Other Cash Remuneration	TOTAL REMUNERATION
St. Lucie County	St. Lucie	County Attorney	\$181,979.20	\$291,220.80	\$243,214.40	Auto Allowance \$3600/yr	\$246,814.40
Martin County	Martin	County Attorney	\$150,000.00	\$300,000.00	\$218,651.30	Auto Allowance \$6,000/yr; Cellphone Stipend \$1,169.22/yr; Deferred Comp \$39,000/yr	\$264,820.52
City of Port St. Lucie	St. Lucie	City Attorney			\$222,790.10	Unknown	
Indian River County	Indian River	County Attorney			\$194,082.00	Auto Allowance \$5,808/yr, plus city phone	\$199,890.00
Village of Wellington	Palm Beach	Village Attorney			\$220,272.00	Unknown	
City of Palm Bay	Brevard	City Attorney			\$225,305.00	Unknown	
City of Fort Pierce	St. Lucie	City Attorney			\$173,000.00	Unknown	
City of Titusville	Brevard	City Attorney			\$198,224.00	Unknown	
			AVERAGE BASE PAY=		\$211,942.35		
City of Stuart	Martin	City Attorney			\$187,249.70	Special Pay \$10,000/yr; \$1,326/yr cellphone phone stipend; 8% Deferred Comp \$14,979.97	\$213,555.67

CITY OF STUART, FLORIDA

(SAMPLE) CITY ATTORNEY EMPLOYMENT CONTRACT

IN CONSIDERATION of the mutual agreements and promises herein, the CITY OF STUART, Florida, a municipal corporation ("City"), employs _____, Stuart, FL 34994 ("Attorney") as City Attorney on an "at will" basis for an indefinite period, beginning on _____, 2023, and terminating as provided herein. As City Attorney, Attorney shall use his best efforts to represent the City, and he shall be responsible directly to the City Commission as provided in Sections 3.06 of the City Charter, and he shall work with the City Manager and City staff, as required by the City Commission, and in accordance with applicable laws and ordinances.

1. Beginning on October 1, 2023, Attorney's annual salary rate shall be \$_____.00, payable in increments as provided to other City employees. This salary shall be adjusted for inflation from time to time with periodic cost-of-living (COLA) adjustments, the same as provided to other City employees. Performance-related salary increases may be granted in the sole discretion of the City Commission for services provided to the City, and for achievements realized.

2. In addition to any other pension or retirement benefits provided by the City, on or just after each January 1st, during the period of employment, the City shall pay into a qualified deferred income retirement account selected by Attorney, an amount equal to _____ percent (____%) of Attorney's total annual salary. Said funds shall be accessible to Attorney under the same federal rules and guidelines as for any other qualified retirement account.

3. The City Commission may terminate Attorney's employment with or without cause at any time. Should Attorney be terminated by the City for any reason other than "with cause", his employment shall terminate when directed by the City Commission, and for a period of twenty (20) weeks thereafter, as provided in F.S. 215.425(4)(a), his current salary shall be paid to Attorney (severance pay). As used herein, "with cause" shall mean any cause for which a City Commissioner may be recalled by the electorate pursuant to Sec. 100.361, Florida Statutes. In addition, Attorney may voluntarily terminate (resign or retire) his employment with the City at any time, upon at least 60 days written notice, but he shall not be entitled to any severance pay as provided above. The funds in the retirement account shall be immediately available to Attorney upon the effective date of employment termination.

5. Each fiscal year the City shall provide Attorney with _____ days of Paid Time Off (PTO), using the accrual method afforded to other fulltime city employees. Upon his employment date of October 1, 2023, Attorney shall be vested with _____ days (_____ hours) of PTO.

6. In each calendar year, Attorney may obtain annual physical examinations (medical & dental). The City shall pay all co-pays, non-covered expenses, and any medications or medical appliances for Attorney or his dependents, not to exceed two thousand

City of Stuart, Florida
(SAMPLE) City Attorney Employment Contract

(\$2,000.00) dollars per year. At the discretion of Attorney, and in lieu hereof, the City agrees to contribute such funds into an employee medical benefit fund or program.

7. The City shall be responsible for the direct payment of Attorney's dues and certification fees to The Florida Bar, the Martin County Bar Association, and the Florida Municipal Attorneys Association, and any other professional organization approved in the City's annual budget.

8. Except as provided herein, the City shall provide Attorney with at least the same employment benefits as are provided to other City Department Directors, as may change from time to time. Such employment benefits shall include, but shall not be limited to health insurance, leaves, travel expenses, and the like, all as provided in the City's Personnel Policies.

1. 9. During the period of employment, Attorney may accept minor non-conflicting assignments to write, teach, lecture or consult, or accept minor, non-conflicting legal representations, so long as they do not interfere with his fulltime employment with the City.

10. This Contract is for personal services, and it may not be subcontracted, assigned or transferred by Attorney, except that Attorney, at the City's expense, may provide for temporary substitute counsel for the City, at customary hourly rates, in the rare event of a conflict of interest, or conflict of time or day. Such appointment of substitute counsel shall be subject to cancellation by the City Commission at any time.

11. Attorney agrees to utilize his personally owned vehicle (POV) in the performance of City Attorney duties within the local area. City agrees to reimburse Attorney at the standard IRS mileage rate for any official use of his POV outside the local area. The local area is defined as anywhere within a fifty (50) mile radius of the City Hall. In the event of a declared emergency, or in lieu of the IRS rate for mileage as described above, Attorney may utilize a City owned vehicle in the performance of his duties.

12. This Contract shall become effective on the date it is accepted and executed by the parties.

IN WITNESS WHEREOF, the City by its duly authorized representative, and the Attorney, have executed this contract on the _____ day of _____, 2023.

ATTORNEY

City of Stuart, Florida
(SAMPLE) City Attorney Employment Contract

ATTEST:

CITY OF STUART, FLORIDA

MARY KINDEL, CITY CLERK

TROY McDONALD, MAYOR

**CITY OF STUART
JOB DESCRIPTION**

Title: CITY ATTORNEY
Department: City Attorney
Job Code: 2010
Exempt Status: Exempt

CHARACTERISTICS OF THE CLASS

Under general direction of the City Commission, incumbent serves as legal advisor and counsel for the City of Stuart, working with the Mayor, City Commission, City Manager, department directors and employees in their official capacity. Directs and provides legal counsel and advice to the various Boards and ~~Committees~~ sions as established by the City and attendance at their meetings when requested. Performs duties with broad latitude in decision-making and is self-directed. Work is reviewed through conferences, reports, observations and with periodic evaluations based upon achievement of specific goals and an executive and professional level of performance.

EXAMPLES OF ESSENTIAL FUNCTION

1. Provides legal counsel for prosecution of ~~eminent domain~~ proceedings and other civil suits, administrative actions, and proceedings authorized by the City Commission; attends meetings of City Commission ~~and certain other City boards~~.
2. Provides legal defense counsel in suits and actions brought against the City, except in cases where special legal counsel is engaged.
3. Renders written legal opinions on matters relating to municipal government.
4. Reviews various matters for compliance with applicable laws and ordinances.
5. Prepares, reviews, and approves as to form and sufficiency, City ordinances, resolutions, deeds, and contracts.
6. Drafts, and reviews ~~and/or~~ supervises the preparation and passage through the State Legislature of legislative bills affecting the City.

7. Provides legal assistance and participates in employee relations matters and union negotiations.
8. Directs the preparation of department budget; assigns and supervises support staff.
9. Performs such other related duties and functions as may be assigned by the City Commission ~~or~~ to assist the City Manager.

NOTE: The examples of essential functions as listed in this classification specification are not necessarily descriptive of any one position in the class. The omission of an essential function of work does not preclude management from assigning duties not listed herein if such functions are a logical assignment to the position.

REQUIREMENTS

A. Training and Experience:

A ~~Juris Doctor~~Bachelor's degree from an accredited college of law, and membership in "good standing" with The Florida Bar, and a minimum of five (5) years progressively responsible experience in municipal law is required. Board Certified by The Florida Bar in City County and Local Government Law, or the ability to become certified within 2 years of appointment, unless excused by the City Commission. Experience in one or more of the following is important to the proper functioning of the Office: civil or criminal trials or administrative hearings, code enforcement, environmental and land use, public contracts, public purchasing, public finance, real estate, and employment law. Possession of a valid Florida Drivers License as required for the position.

B. Knowledge, Abilities and Skills:

Knowledge and understanding of judicial procedures at all judicial levels.

Knowledge and understanding of City ordinances, codes, regulations, policies, practices and accepted interpretation of same.

Knowledge of sState and federal sStatutory and Constitutional law.

Knowledge and understanding of modern office practices and procedures and standard office legal equipment.

Knowledge and understanding of the organization, functions and legal challenges of City government.

Ability to research and to compile information of a technical and complex manner.

Ability to analyze, appraise and organize the facts, evidence and precedents concerned in cases.

Ability to present complex findings effectively in oral or written reports.

Ability to represent the interest of City departments in drafting legislation or contracts.

Ability to present and argue cases in court.

Ability to analyze cases for their value as legal precedents and to determine which cases the City should appeal.

Ability to establish and maintain effective work relationships with other employees, City officials, contractors, professionals, and the general public.

Skill in the use of computers and various software programs.

Skill in supervision of staff and public and employee relations.

Skill in effectively dealing with court officials and attorneys.

C. Physical Requirements:

Task involves regular physical effort in standing, sitting, walking, bending, stooping, reaching, pulling, pushing, stretching, and frequent moderate lifting and carrying objects of moderate weight (30+ pounds); and/or the operation of vehicle, and with standard dexterity in the

use of fingers, hands, limbs, or body in the operation of office equipment in which skills and eye-hand coordination are important ingredients of safe and/or productive operations. Task may involve extended periods of time at a keyboard.

D. Environmental Requirements:

Task is regularly performed without exposure to adverse environmental conditions.

Within two years of appointment, reside within 25 miles of Stuart City Hall, unless otherwise excused by the City Commission.

F. Sensory Requirements:

Task requires color perception and discrimination.
Task requires sound perception and discrimination.
Task requires texture perception and discrimination.
Task requires visual perception and discrimination.
Task requires oral communications ability.

Approved: _____ Date: _____
Human Resources Director

Approved: _____ Date: _____
City Manager

Received by: _____ Date: _____
Employee

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/7/2023

Prepared by: Paul Nicoletti

Title of Item:

RECESS MEETING TO ALLOW FOR INDIVIDUAL INTERVIEWS WITH CANDIDATES

Summary Explanation/Background Information on Agenda Request:

This is a procedural motion to recess while individual interviews occur.

Funding Source:

N/A

Recommended Action:

Motion to recess meeting to allow for individual interviews and reconvene at _____ o'clock.

ATTACHMENTS:

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/7/2023

Prepared by: Paul Nicoletti

Title of Item:

DISCUSSION AND DELIBERATION REGARDING CITY ATTORNEY CANDIDATES, AND POSSIBLE MOTION TO MAKE AN OFFER OF EMPLOYMENT

Summary Explanation/Background Information on Agenda Request:

After reconvening the public meeting, this is Discussion and Deliberation regarding the Candidate interviews, and possible decision-making regarding one or more of the candidates. A decision to make an offer of employment can be made (along with the required Motion) or can be deferred until the September 11, 2023 Meeting.

Funding Source:

N/A

Recommended Action:

Discussion and Deliberation, also allows for a Motion, if desired by a majority of the Commissioners.

ATTACHMENTS: