

Minutes City Council Issue Review Session January 10, 2008

Minutes of the Tempe City Council Issue Review Session held on Thursday, January 10, 2008, 6:00 p.m., in the City Council Chambers, Tempe City Hall, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman

Vice Mayor Hut Hutson

Councilmember P. Ben Arredondo

Councilmember Barbara J. Carter

Councilmember Shana Ellis

Councilmember Mark W. Mitchell

Councilmember Onnie Shekerjian

Mayor Hallman called the meeting to order at 6:20 p.m.

Call to the Audience

Bill Butler, Tempe, re: Item #2 owns an apartment building on West 5th Street. For sixteen years he has fought Cox Communications to keep their wires off his building. Someone hung a black wire on the white wall, across the new roof, and down another wall, and no one is using it. Cox wouldn't take it down until he sent a copy of the warranty deed to prove he had authority over the property. Cox hangs wires wherever they want to hang them, their workers don't know what they are doing, and they don't care. There are no standards in the City and no one has any authority over their practices. He has asked to start a process for an ordinance that would at least underground cable on new construction or renewed construction where wires are being changed. He urged Council to establish standards for the aesthetics of the City.

Cox Communications Franchise Update

INFORMATIONAL BACKGROUND

Cox Communications has asked to give an update to the Mayor and Council regarding their activities in the East Valley.

DISCUSSION – Presenter: IT Manager Gene Obis; Cox Government Relations Manager Michael Stull

Gene Obis introduced Michael Stull, Cox Communications Government Relations Manager.

Michael Stull provided an update of Cox activities.

- Cox has made over \$16.2M in charitable contributions in the Valley in 2006, including free cable service to 34 schools and 29 fire stations, police stations and municipal buildings, and has awarded more than \$300K in grants.
- City of Tempe facts:
 - 68,686 total homes; 42,218 total customers; 61% household penetration
 - 514 total plant miles
 - residential customers are offered video, voice and data; commercial customers are offered business internet, optical internet, data networking, voice services (PRI), point-to-point circuits, and telework
- Coming in 2008
 - expanded HDTV offerings to up to 85 channels
 - telephone expansion
 - hope to make all service mobile
 - On Demand (OD) launched metro-wide (which could be used for Council meetings)
 - Interactive TV combines numerous products, including caller ID on TV, check email, surf the Web
- Expandable Optical Network (EON) will allow Cox to reclaim and expand bandwidth.
- EON customer notifications made through a variety of methods
- Green Initiative
 - telework – 250 customer care agents currently telework in Phoenix and Tucson
 - vehicles – transitioning to high energy efficient vehicles
 - solar power – retrofitting facilities with energy efficient equipment and lighting, and incorporating solar energy technologies to power telecommunications network
- Digital Transition – Congress mandated that by February 17, 2009, television broadcast stations must return analog spectrum to the government and broadcast in digital format. Cox will continue to offer an analog signal option for customers who have not upgraded to Cox digital cable.

Councilmember Shekerjian stated that complaints are received regarding lack of service. She asked Mr. Stull how the City should respond to those complaints.

Mr. Stull responded that if the customer has a standard issue they should call the Cox Customer Service Department. If there are still problems, he asked that the calls be referred to him. He agreed to talk to Mr. Butler about his concerns.

Councilmember Carter stated that she had referred a call to him in the past and the problem was not resolved. She will have this person call Mr. Stull again.

Mr. Stull agreed to re-address the issue. It will be handled by his team. The Executive Resolution Team handles complaints that come through the General Manager's office. If the complaint comes from the governmental side, it comes through a different team. If he knows ahead of time that it is coming through the other team, he will be sure it is addressed by the public affairs side.

Councilmember Arredondo suggested that a good way to know what the residents of Tempe think would be to

develop a grant to the City of Tempe and let the City develop a questionnaire. Cox would then hear exactly what the Council is hearing.

Mr. Stull responded that Cox does independent polling through external companies.

Councilmember Arredondo clarified that he was asking for an independent poll through the City Manager's Office.

Councilmember Shekerjian added that polls are a matter of how the questions are worded. Council gets a lot of calls from residents regarding a lack of customer service and they have no standards by which to hold Cox accountable.

Mayor Hallman stated that it is never in a business' interest to provide bad service, so it has its own economic self-interest to deliver the best service possible, except in an environment where there tends to be monopoly opportunities. This is that kind of market. Over the last several years, the City has been doing things to improve opportunities for competition, and Qwest is now moving forward to provide a network within Tempe that provides a competition level on video and data. At the same time, Cox is moving forward to provide competition on phone service. This last year, the City has entered into a revision to the license agreement which provides significant additional benefits to Tempe and its residents. The additional resources coming to the City that provide service to our residents, because of Cox' funds, are important. We would rather not, on an annual basis, end up in a situation where residents feel an obligation to convey to the company. He is receiving fewer calls. He asked when Cox acquired essentially the monopoly rights to all of the service in Tempe.

Mr. Stull responded that it was in the 1990's.

Mayor Hallman added that he appreciated the fact that Tempe became the primary location at which Cox did work to upgrade the system. When cable systems were first being provided, Tempe was an older city so it was fairly easy to go through the City and tack wires onto existing power poles and not have to incur a huge capital cost associated with undergrounding. He didn't think it makes sense to underground cable lines in a neighborhood where there are issues with large power lines. Those issues are being worked through. As that continues, we should start with those people who have called asking that the aesthetic elements of their neighborhood be improved. He hoped Mr. Stull would be good to his word and that Council can refer people to him and problems will be solved.

Mr. Stull added that Cox is open to participating in joint efforts to underground.

Mayor Hallman added that when the City is opening trenches to drop power lines, Cox has already been there to add conduits for cable. In the neighborhoods where that won't be possible for a long period of time, we need to put more pressure to make sure those things are dealt with as well.

Councilmember Carter stated that Mr. Butler is not alone in his concerns. There was a neighborhood at war because Cox laid a cable over one neighbor's driveway to install cable to the house on the other side. She realizes that the equipment belongs to Cox, but what right does someone like Mr. Butler have to remove cable

equipment that belongs to Cox?

City Attorney Andrew Ching responded that without knowing the utility easements in place, it is hard to give an opinion.

Mr. Stull responded that the license gives them a specific amount of time to get drops buried. In trying to reach a specific time window to install service and until they can schedule a boring, they will typically do a temporary drop. In some cases they have to depend upon neighborly civility.

****UPDATE ONLY – NO CONSENSUS****

Mobile Home Park Redevelopment Policy

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenters: Deputy Community Development Manager Neil Calfee; Tempe Community Council Assistant Director Jayson Matthews

Neil Calfee summarized that this item is brought forward from the Transportation, Housing and Environment Committee to discuss the issue of what, if any, response the City should take in dealing with mobile home parks that are re-zoned and redeveloped. Staff is seeking direction to move forward with the program as an interim step in augmenting State law to make sure that those who seek to redevelop mobile home parks provide at least a 90-day notice and allow the City to provide additional protection and compensation for those homeowners displaced from mobile home parks.

Jayson Matthews added that this Council has demonstrated the importance of this issue, especially at this time of redevelopment especially along the light rail corridor and other areas of the City.

Councilmember Arredondo clarified that this item was shared by the Public Safety and Neighborhood Quality of Life Committee and the Transportation, Housing and Environment Committee. The Public Safety and Neighborhood Quality of Life Committee did not discuss the issue, however, and would ask that it not be referred to them. He suggested that the policy come back to Council when staff is ready.

Mayor Hallman clarified that staff is asking for direction to spend staff resource time to put together some proposed policies to bring to Council at a future meeting.

Councilmember Ellis asked for the proposed timeframe.

Mr. Calfee responded that staff would like to have it done in the April or May timeframe.

Mr. Mathews added that staff would like to also involve other aspects of the community, especially non-profits and other community members. They want to make sure it is a comprehensive policy that is fair not only for the displaced residents, but also for the developers.

Councilmember Ellis asked for an explanation of the current mobile home park zoning and how this policy change would affect them.

Mr. Calfee responded that there are two distinct types of mobile home parks. First, there are six communities with 6,000 trailers that are planted in the ground, permanently affixed. They are generally older, with 1960's to 1970's trailers. They are clustered in groups of two, either in the northeastern part of the community, along Southern west of the freeway, and on Baseline around Mills Mall. They are zoned as mobile home parks. If someone came to redevelop those parks, rezoning would be required. The most recent examples have been along Apache Boulevard where parks were zoned commercial whether there was residential or commercial uses on the property.

Mayor Hallman clarified that those parks were not originally mobile home parks, but rather travel trailer parks along old U.S. 60.

Mr. Calfee added that there are still travel trailer parks in the community and staff doesn't see that as an issue because those residents are transitory. Along Apache Boulevard there are about 500 trailers in several parks that are commercially zoned. Along a light rail corridor, we would be looking typically at mixed-use projects with higher density residential and some commercial and, thus, rezoning would be required and would be covered by this policy. There is a smaller park that is already zoned R-4 Multi-Family and that would likely not be covered under this policy because it would likely use the existing property rights. That is a distinction based on Prop 207. These policies would trigger upon rezoning because the property is seeking discretionary zoning approval from the City, in which the City could incorporate additional requirements. We are unable to do that for tenants with existing property rights.

Mayor Hallman asked staff to draft a memo describing that in detail so Council can identify all the mobile home parks, those that staff thinks would qualify, those that don't qualify, what that zoning category is, where they are located, number of trailers in each, and the extent to which it may have already been rezoned.

Councilmember Shekerjian suggested a pooling of information resources so that when residents are going to be displaced as a result of development, we, as a City, can come together and provide a package of information that gives all the options and services available.

Mr. Matthews added that staff would like to build that into this new policy so that these residents can be treated fairly and make sure they have the proper information.

Councilmember Shekerjian added that this is something the City can do that doesn't cost anything. Resources are already available and the transfer of knowledge would be very helpful.

Councilmember Mitchell stated that he has seen many trailers along Apache Boulevard that are uninhabitable, sitting on a vacant lot. How long does the City allow them to sit there?

Mr. Calfee responded that staff is aware of those trailers and has been working with them to get the trailers out

of the vacant lots and moved. Ultimately, the City can take steps to remove them, if need be, but we do whatever we can to work with the owners.

Mr. Matthews added that is why it is so important to work with the non-profits and the other social service agencies so the available option to the displaced resident is not to move their trailer to a vacant lot.

Councilmember Carter asked about the aspects of the age of a mobile home.

Mr. Calfee responded that when a trailer is pre-1975, most parks will not accept it without an extensive remodel. These trailers are not covered under the Building Code. They are listed as personal property or as vehicles, so it is difficult to retrofit them to get them up to current codes. Some parks may have minimum standards for their trailers, and they want to see a certain age or condition based on their own interests. That creates a burden on many individuals who have the older trailers. Staff wants to look at how the individuals could avail themselves of the Mobile Home Relocation Fund through the State and potentially any other stop-gap the City may require a developer to provide.

Mr. Matthews added that the relocation is built into the State Revised Statutes and the relocation assistance is essentially to relocate a trailer from point A to point B. The fund currently allows about \$5,000 for a single-wide unit and \$10,000 for a double-wide unit. If the trailer cannot be moved, the amount of that relocation assistance gets cut down to one-quarter of that amount. Someone may have lived in that mobile home for twenty years, and now only \$1,250 is available to move the family to another living environment.

Mayor Hallman added that it argues a legislative change and that should be included in our legislative agenda to get that code adjusted so that if the mobile home cannot be moved, the relocation assistance can be used to purchase one that qualifies or for other solutions. As part of this process, we need to make sure that we don't overstate the problem as well. For example, some would say that the cost of retrofitting trailers that don't qualify might have changes costing less than \$2K. It would be useful to figure out what the truth is. We hear it is impossible to do, and then we hear it is possible. He asked staff to work with people in the industry who can inform us better, and would ask that staff put that information together as well.

Councilmember Ellis stated that one of the reasons this issue is before Council tonight is because Beth Fiorenza at the Tempe Community Action Agency brought a similar situation to Council's attention. Sometimes it isn't a zoning change that prompts people being removed from their property, so we could look into ways to work with owners of the mobile home parks so that it doesn't come to that situation. Also, this Council has been great with rezoning issues that have come forward, and has even specified longer timeframes for notice. Hopefully, we can continue to keep an eye on that and when rezoning comes to Council, we can look at each individual case, work with the residents, and determine appropriate timeframes.

CONSENSUS

Staff was directed to:

- Work toward a more comprehensive policy proposal.
- Prepare a memo to Council identifying all mobile home parks, number of trailers, current zoning categories, and true cost of retrofitting to allow relocation of older trailers.

- Develop information packets of available options for residents.
- Work with individual rezoning as incidents come forward.
- Bring an ordinance change forward to Council requiring owners to provide a minimum 90-day notice to mobile home park residents if a park is rezoned.
- Include in City legislative agenda a code adjustment whereby in the event that a mobile home cannot be moved, relocation assistance can be used to purchase one that qualifies or for other solutions

Follow-up Responsibility: Neil Calfee, Jayson Matthews

Severance Policy

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenter: City Manager Charlie Meyer

Charlie Meyer clarified that at no time did he look at any past agreements that the City entered into with staff, nor does he intend to do so. There have been some severance agreements, however, that have been discussed publicly and going forward he wanted to make sure that he was clear with Council on their expectations and his expectations so there were no disconnects in the future. He would like clear understanding as well with the employees who are affected.

Mr. Meyer continued that employees are classified into two large groups: classified and unclassified service. Most of the City employees are in the classified category and, as such, are entitled to certain protections under State law, one of which is a hearing before the Merit Board. The smaller group is the unclassified service which includes elected officials of the City, the direct appointees of the City Council, and some volunteers and temps. The real target group is composed of the "at will" employees. The "at will" employees are generally department managers, deputy department managers, and a few other titles, generally high level management positions. There are approximately 60 employees in that category. These individuals are "at will" because of the discretionary nature of their work and the fact that they are hired for leadership ability. Because they are judged on their leadership ability, it is a more subjective judgment. Therefore, it is necessary to have more flexibility.

Mayor Hallman clarified that the top level management are in positions thought of as "at will", meaning they could be terminated at any time for no reason, so long as it is not an illegal reason, and that as a result, they are in a position that is less secure. They are hired in those positions because they have demonstrated ability to exercise judgment well. But the jobs are discretionary; it is a more subjective determination of whether they lead a department well or not.

Mr. Meyer continued that with classified employees, if there were problems, it would be up to the supervisor to prove to the Merit Board that there was inadequate performance and that the action that was being taken was appropriate to the level of inappropriate action taken by the employee. The "at will" employees do not have access to that appeal process. Essentially, their appeal process is through the City Manager. As a result, the City Council set a policy in place in City Code. Generally the City Charter gives a broad sweep

of authority to the City Manager to hire and fire employees of the City. The City Code then further narrowed that and puts parameters around it. What the City Code Section 2-19 provides in general terms is that the City manager can enter into severance agreements with up to six months' salary. One recommendation he has discussed with the City Attorney is to have City Council consider at a future meeting to put an additional limitation that essentially says that if the City Manager uses that discretion to enter into a severance agreement, that there would also be a requirement that a waiver of claim be filed. Any employee of the City always has a right to bring a claim against the City for inappropriate acts of the City. He wants to make clear that an employee can't do both. If a severance agreement is entered into, it is because of a discretionary nature position, the "at will" position, and there needs to be some transition for that person to find another job. It takes time for a higher level management position to be rotated through and it could take several months to land another job. The intent is to soften that blow a little. If, on the other hand, the employee feels they have been wronged, they can bring a claim. This would in no way limit their ability to bring claims. He just doesn't want both to occur and he doesn't want the lines to be blurred between the two.

Mr. Meyer continued that his other recommendation is that Council appointees all be conformed to that same level of policy. Frankly, his contract for service with the City is the only one that is out of conformity and is set at nine months. He suggested that it be amended to six months.

Mayor Hallman clarified that Mr. Meyer's contract currently states he would get a nine-month severance package and Mr. Meyer is recommending that his contract be brought into line with the recommendation.

Mr. Meyer asked for direction to bring a recommendation back to Council in a relatively short time to take formal action to change the City Code, as well as his employment agreement.

Mr. Meyer stated that his expectations would be as follows:

- His job is to create success for the City's "at will" employees and not to create situations ending up with a severance agreement.
- His job is to support, to coach, to create those success situations and he doesn't want to imply that he wants to get into a lot of situations where there are forced separations.
- When that does have to happen, however, he would try to coach someone through that and ultimately if a severance agreement is necessary, then that would be considered.
- He would suggest, as a standard, that severance pay not exceed six months. It would be the same for everyone. It would include the waiver of claim. Employees would be free to file a claim against the City in lieu of entering into a severance agreement. It is not to be looked at as some sort of bridge to retirement; it is not intended as a bridge to a situation where someone is seeking outside employment; it is not intended to compensate people who have done something wrong. Wrongdoing is a different issue and he would not look to that as a solution to wrongdoing.
- He hopes it would be a used only in rare occasion.

Mr. Meyer added that Council has four direct appointees and he has communicated with each appointee. Each concurs that it would be appropriate to have the same expectations, and a policy that applies to all. That would produce uniformity throughout the City.

Councilmember Shekerjian agreed and is pleased that he offers to have his contract be uniform.

Councilmember Carter expressed a concern with the individuals who work for Council. Councilmembers hire them, they don't go through the ordinary selection process, they are "at will", and she feels they are constantly on the firing line, although they do a miraculous job and are accountable to everyone. As councilmembers go, they go, unless others come in who want to keep them. She looks at them in a different light and wonders if Mr. Meyer feels they are appropriately designated as "at will" employees.

Mr. Meyer responded that one of the aspects of "at will" employees is the confidentiality aspect. That's the other piece. Confidentiality means that in the case of elected officials, you have to have confidence that the people who work for you directly will carry out what you need to have done. That is a difficult situation. Yet he didn't think it an impossible situation. If there is a concern on the part of councilmembers that we do need to address some issues with one of these employees, then we could work together. Those employees in our system are under the general appointment authority of the City Manager, as opposed to, for example, the City Attorney's Office and City's Clerk's Office where they are Council's direct appointees. Technically, the employees referred to by Councilmember Carter are appointees under the City Manager and Council and the City Manager would have to work jointly to work out a situation. In the end, this is still a policy that makes sense for that group because of the confidential nature of their work. They should have access to this kind of severance policy, which would not be typical of their peers who are in classified service and have access to the Merit Board.

Councilmember Carter clarified that she wasn't suggesting that they not be eligible for the severance package, but they are accountable mainly to Council.

Mayor Hallman stated that during his tenure, there has only been one instance in which there was much change and that was a situation in which employees in the Mayor's office under his predecessor chose to pursue other careers without any discussion about it. Staff made those elections independently. These are hard jobs, but when he was on Council, the Council aides just continued and they hadn't been changed or affected, so he didn't know that that is a problem.

Councilmember Carter responded that she didn't think it is necessarily a problem, but she wondered what the new City Manager thought about the system and whether there is anything that needs to be done to shore it up.

Mr. Meyer responded that it varies a lot from city to city. There are many different models throughout the country and it is a unique situation in every city. He has worked with the format where the staff that works directly for the council is still appointed by the city manager and accountable to the city manager because there is a full time oversight that can go on through the city manager's office. Yet, it has to be worked jointly with the councilmembers because if the councilmember is not comfortable working with the person assigned to them, then we have to be able to make adjustments.

Councilmember Arredondo stated that it was his understanding that the City Manager would have the

availability to move people. If the employee is a good employee, comes from a classified status, moved to an unclassified status, and then leaves that, they can get back into the system. By the same token, employees need to know that he does have that availability.

Mayor Hallman summarized that consensus is that the City Manager has the support to move forward and craft the appropriate changes to the City Code and the employment manual to make everything consistent. He felt there was a little misunderstanding in the community about what was going on and he clarified that Mr. Meyer is looking to be proactive and be forward-looking, not looking in the rearview mirror and talking about anything that has gone on in the past. There has been confusion because some of the things people are calling severance are really the settlement of potential claims. They are settlement agreements. Bringing all of this together under a clear policy is helpful. It was unfortunate that some were left with the impression that we were providing gifts to people just as they are leaving the door. One has to understand what the market is for the talent that the Council seeks to run the highest levels of the City. There is a reason that severance packages or agreements are reached from the beginning. The City Manager joined the City and part of the terms of his contract was a severance clause, the same as for our City Attorney, City Clerk and Presiding Judge. To get people of the quality we want, we have to attract those who recognize that if and when they are done here, whether they quit voluntarily or for some reason we decide otherwise, they have to find another job. These are not easy jobs to get and when you get one, you know there is an end-date sometime and when that job ends, it may be many months before you find another one that fits. That's true of the department heads and the people in the deputy positions. All of our department heads are required to live within the City, as well. They typically have to sell their homes and go to another community. That is why the severance package concepts exist. It's the same in the private sector. He hoped the community understands that. We have those arrangements precisely because we are looking for the absolute best. Tempe has done a great job in acquiring very talented people who do magnificent work.

Councilmember Arredondo added that it can be a positive thing to bring someone in from the outside, such as Mr. Meyer, because it brings a different point of view. He suggested that later in the year Council can do a retreat and address the broad policy.

Mayor Hallman added that Council's tradition has brought the council retreats down to the smaller number and this year, maybe we ought to go out on a broader base now with a new City Manager and some new department heads and have a broader discussion to craft some new ideas.

Mr. Meyer stated that he would welcome that opportunity. He will work with Council to plan it.

CONSENSUS

Staff was directed to:

- Plan a possible Council Retreat later in the year to discuss broad policy.
- Prepare ordinance amending City Code to limit severance pay to six (6) months; if severance is accepted the employee is required to sign a waiver of claim.
- Amend City Manager's contract to conform to new City Code severance policy.

Follow-up Responsibility: Charlie Meyer

Formal Council Agenda Items

No agenda items were discussed.

Future Agenda Items

- Councilmember Shekerjian stated that recently the Tempe Union High School District has been facing a situation at Corona del Sol High School where toxic substances in the walls and floors have been discovered. They have requested that the School Facilities Board provide them with funding to remediate, but they have not yet been successful in those discussions. She suggested having a discussion to explore sending a letter of support from Council to the School Facilities Board indicating that Council supports their request for funds.

Councilmember Carter stated that the next hearing is January 24th or 25th, and our next Council meeting is January 24th so there wouldn't be adequate time.
Vice Mayor Hutson suggested that individual letters be sent.

Councilmember Arredondo also asked the City's State lobbyist team to make sure that they state they have a school health concern.

Mayor Hallman directed that this item be agendized for the next IRS meeting, and Councilmembers can do what they can do individually in the meantime.

- Mayor Hallman stated that an ethics subcommittee was put together with Councilmembers Shekerjian and Ellis and Vice Mayor Hutson as members. He will talk to the City Manager and determine how to move forward. For the next IRS meeting, he directed staff to agendize how to move forward with the ethics subcommittee.

Mayor's Announcements/Manager's Announcements

- Mayor Hallman noted that a long time community member, Peggy Kirch, retired from Suncor Development. She has performed services for the community in a number of ways. First, she committed herself in a lot of work for the community including the Tempe Sports Authority, and the quiet work she has done for Suncor has helped us in ways most people don't realize. In our last recession, the City was able to save a good number of jobs and provide substantial services because of the work she had done a decade before in creating the Tempe Autoplex. It was her brainchild and she carried it across the line and created that amenity without the City competing against others and giving away tax dollars. More recently in the current downturn, the City, unlike the surrounding communities, still is slightly ahead of last year's sales tax. We still have to tighten our belts, but for the second time, her prior planning and great work gave us a new vision of the kinds of things we could do around the City. She was the mastermind behind the concept of Suncor's Hayden Ferry Lakeside, the office buildings and residential community at the Lake and Mill Avenue. That project helped others recognize that Tempe was a place where that kind of product could be built, and that we have a true

urban environment here that is unique and that is being sustained. Those construction activities going on in our community have preserved us. Our City Manager noted that the surrounding communities are seeing their stick-built housing production stopped in their tracks. As a result, those communities are facing a loss of huge amounts of sales tax and permit fees. The activity continues in Tempe, however. This City is, even today, still ahead of permits over last year in terms of valuation. That is unheard of in this valley. In part, that is because Peggy Kirch helped people understand that we had a unique opportunity. He thanked Peggy for her great leadership in that role.

Meeting adjourned at 7:30 p.m.

Jan Hort
City Clerk