



Minutes City Council Issue Review Session January 4, 2007

Minutes of the Tempe City Council Issue Review Session held on Thursday, January 4, 2007, 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 Onnie Shekerjian

COUNCIL ABSENT:

Councilmember Mark W. Mitchell

Mayor Hallman called the meeting to order at 6:08 p.m.

Call to the Audience

Zig Popko, Tempe, re: Item #2, summarized that this issue started as an attempt to regulate noisy scooters and "pocket bikes." The proposal has grown into one that will severely restrict the use of electric scooters unless they look like traditional bicycles. Based on the way this is presently drafted, he can't get his electric scooter across the river in any legal way to teach at ASU. Council needs to remember that electric scooters come in all shapes and sizes, but the one thing they do have in common is that they all generally meet the definition in the code of federal regulations. Council should rely on that definition in enacting a progressive ordinance that encourages the use of these items in lieu of cars and not one that just favors those that happen to look like bicycles which are generally more expensive.

Joe Pospicil, Tempe, re: Item #6. He is concerned that this will be financed through the rental transaction tax. He wondered how many rentals are actually licensed. There are conflicts in the records. He distributed a disc with research he has completed from the County records for Council's information.

Motorized Play Vehicle Ordinance Revision

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenters: Sgt. Tim Bulson; Asst. Police Chief Ray Hardy

Police Sgt. Tim Bulson summarized that this topic was worked on by the Transportation and Affordable Housing

Council Committee and four items have been addressed:

- Define an electric bicycle.
- Clarify that any means of transportation that does not meet state or local laws is not permitted on the roadway.
- Establish hours of operations for motorized play vehicles.
- Create a vendor notification law.

This was referred to IRS by the Council Committee for additional input and oversight by Council at this point.

Councilmember Ellis asked Sgt. Bulson to address Mr. Popko's concerns.

Sgt. Bulson responded that they basically followed the federal code. Under Section 19.1 Definitions, (b) (6) D, it reads "has no deck or foot board on which a person can place their feet upon." Staff is trying to prevent something that looks like a scooter operating under the guise of a bicycle. He showed examples of electric and gas powered bicycles, some of which are advertised as bicycles, however, they look like scooters and mopeds.

Mayor Hallman clarified that their concern is that if it gets too close to moped, then it should comply with Arizona law as a vehicle.

Sgt. Bulson responded that was true or that they should fit under the motorized play vehicle ordinance. Some of these cannot be registered. Some fit under our current motorized play vehicle ordinance, however, as in Mr. Popko's case, the restriction is that it cannot cross Scottsdale Road because it has four lanes of traffic and the speed is greater than 25 mph. From a police standpoint, it gets confusing for enforcement.

There was discussion about the different types of vehicles, bicycles vs. scooters, footboards and pedals.

Mayor Hallman summarized that this issue first arose because of the gas-powered "pocket bikes." We started down this road not to craft a perfect fit for every vehicle, but to eliminate the use of those vehicles on our streets because they are inherently dangerous and because they were causing lots of noise in neighborhoods. He appreciates staff's desire to have the perfect ordinance, but there's just as defensible a line here that says that if it has pedals, and can operate with pedals, that should be good enough. Concerning the examples of bicycles presented, they could all be operated on the sidewalk, but that's not what the ordinance says. It says if it is an electric-powered bicycle, it can't be operated on the sidewalk, so which is it?

Sgt. Bulson responded that if the motor is not engaged, it is a bicycle and it can operate on the sidewalk.

Mayor Hallman stated that the ordinance doesn't say that. It doesn't say if it's not engaged, it says if it is one of these examples, it can't be on the sidewalk. He didn't want officers put in the position of trying to decide whether the motor was on or off when it was on the sidewalk. This draws that line. If they have pedals, they can't be on the sidewalk. If you're on the sidewalk with any of these, you violate the law. He didn't think that's a distinction that makes a difference here, because we've already said they can't be on the sidewalk.

Councilmember Shekerjian asked, under the current ordinance, whether it is legal for Mr. Popko to drive his

vehicle across the bridge?

Sgt. Bulson responded that it is not, the reason being that the current ordinance restricts the operation of a motorized play vehicle to zones of speeds of 25 mph or less, and less than four lanes. It could operate in his residential neighborhood.

Councilmember Shekerjian clarified that there is no change. If this ordinance changes, it doesn't really change his situation.

Sgt. Bulson responded that it does not. If the footboard part was taken out, he could drive it across the bridge because it would be defined as a bicycle. If MVD will not register the vehicle, and some can go 35 mph, that is a concern.

Mayor Hallman added that the ordinance already states that it must be a device that is not capable of going more than 20 mph.

Vice Mayor Hutson added that pedal vs. no pedal, footboard vs. no footboard, four lanes of traffic vs. two lanes, 20 mph vs. 35 mph, electric motor vs. gas motor. Once a regulation or law is set, the manufacturers try to tweak it a little and change the scope of what is considered a bicycle. Once you start looking at what is out there on the market, it gets so confusing, you don't know what is a bicycle anymore.

Mayor Hallman responded that is where he says if it doesn't have pedals, it can't be a bicycle. If it's not capable of human power, then you're out. There are manufacturers who are putting pedals on things even though no one is going to use them to comply with the federal law which distinguishes between pedals and no pedals. Now we're saying that's not good enough. If it has a footboard, we know you are riding it like a scooter and the problem is these manufacturers are making inexpensive scooters that aren't really scooters so they can't be registered under state law and people are now using things that may or may not be dangerous. With all of that confusion, he would still be inclined to make it a lot easier: Pedals or No Pedals. No pedals and it can't be a bicycle.

Councilmember Shekerjian added that she was concerned that we encourage alternative modes of transportation.

Sgt. Bulson stated that from the police perspective, people utilize these vehicles to get to the downtown area. They also utilize them when they come downtown to drink. Now we are potentially in a situation where there are intoxicated people on these devices, but are they DUI's or not? We don't have DUI's on bicycles.

Mayor: So that is tied to the same statutes that regulate these vehicles.

Councilmember Carter added that Council started dealing with this three years ago and it wasn't just the pocket bikes but also the kids on the mopeds.

Sgt. Bulson stated that he has checked with other agencies and currently this issue is not being addressed.

Phoenix has a complete ban, so from their perspective, some of these would just fall into the ban. They follow the current ARS statute which just talks about pedals. It will be loosely interpreted by the officers and, again, their interpretation would be that it would be a play vehicle.

There was discussion on the Phoenix ordinance and what is classified as a play vehicle.

Mayor Hallman asked what Phoenix is using to base the designation of a play vehicle vs. bicycle.

Sgt. Bulson responded that he would have to research that.

Councilmember Arredondo felt this should go back to the committee. We were originally talking about the pocket bikes and the noise. We don't need government involved in everything. It's up to the officers to distinguish and give warnings, etc.

Mayor Hallman added that Council is here to set policy. This discussion has pointed out that there's a little more work to do here, because we have some other considerations to deal with. We want to encourage alternate modes of transportation, but we want to be safe. What about DUI? If it's motorized, what do we need to do to be able to apply DUI? If we need a new statute, then he would be asking our government relations director to add to our list of legislation that if it's motorized, you can be cited for DUI. It should go back to the committee to further work on these issues. He would ask for research on how Phoenix made the decision that one was a bicycle and the other is not and see if we can learn something from that. He would like to see the CFRs on this as well.

Vice Mayor Hutson noted that it was his suggestion to bring this to Council because it is so bad. The officers are trying to enforce the law but there is no law depending upon whether you have pedals or no pedals. We came back to Council for more guidance.

Mayor Hallman summarized that this has already been done with the pocket bikes (play vehicles) and that's why we did the ordinance in the first place and banned them. Now we are trying to look at what's not covered. What we are stuck with is a category where it's not clear—they have footboards but they also have pedals.

Councilmember Shekerjian suggested that the committee also look at what other university towns have done.

Councilmember Ellis stated that it appears we are not in total compliance with the code, but this is a safety issue and we keep throwing it back to the committee. Her fear is that someone is going to get hurt because we aren't making a decision. The committee has discussed this at the last three meetings and we finally brought it here because we couldn't figure it out at a committee level and felt we needed Council input. Now we are complicating it even more by adding more aspects.

Mayor Hallman responded that the only issue we aren't certain of is footboard or no footboard. If we removed item "D" for the moment, we could still go forward. Then we could still look at whether there should be a distinction between footboard and no footboard.

Councilmember Arredondo asked whether the committee got advice from the City Attorney.

City Attorney Andrew Ching responded that Rosemary Rosales was involved.

Mayor Hallman clarified that the only thing that's controversial is the scope in terms of whether it is capturing too many vehicles as play vehicles. The ones that are controversial are only being picked up by this one provision. The pocket bikes are banned, because they are play vehicles, the bicycles are no. The only issue is this category of bicycles and the police want a cleaner line between whether it is a bicycle or not. We are not changing anything that has been enacted, except to come up with a first cut at a definition. Looking at all of what has been presented, he is not comfortable with saying that if it has a footboard it can't be a bicycle. We could do everything else, but take that out now. Play vehicles are more restricted than motorized vehicles, which have a different set of codes, and bicycles, which have another set of codes. We are left with this middle group. We are adding some verbiage in terms of play vehicles because we have had continuous use of play vehicles within neighborhoods that is disturbing the peace and so we are adding a time limit that they can't be ridden after 8 p.m. The play vehicles are not used for transportation.

Councilmember Arredondo added that this is a safety issue. Pass it with an emergency clause.

Mayor Hallman asked if we could move forward with everything except the footboard issue?

Vice Mayor Hutson stated that he would not take out that restriction, go with it as presented.

Councilmember Ellis asked whether it could be passed this one way and then revisit it in a month and change it?

Sgt. Bulson added that staff wants to say a bike is a bike, if it doesn't look like a bike, it isn't a bike. He is agreeable to go forward with the recommendations and evaluating Item #1, definition of an electric bicycle, through the committee.

Mayor Hallman clarified that staff's preference is to pass what we can and come back on the other issues.

Councilmember Ellis stated she would then be comfortable taking out item "D" since more evaluation needs to occur, with the possibility of adding it in later if data shows it is appropriate.

Councilmember Arredondo asked about the DUI issue.

Mr. Ching responded that there are some jurisdictions in the State that have local ordinances that address intoxicated drivers of vehicles other than motorized vehicles, but he would have to research that.

CONSENSUS

- Staff was directed to put the ordinance revision on the next formal Council agenda for first public hearing with the deletion of item D listed under Section 19-1. Definitions (b) (6).
- Refer to the Transportation and Affordable Housing Committee to research and redefine

motorized bicycles, then bring back to a future IRS.

- Refer to the Transportation and Affordable Housing Committee to address the DUI process for bicycles and motorized play vehicles and bring back to a future IRS.

Follow-up Responsibility: Tim Bulson

2007 State Legislative Program

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenters: Government Relations Director Amber Wakeman; Community Relations Manager Shelley Hearn

Mayor Hallman summarized that these are our general statements of the issues we are concerned about and seek to support or oppose. He asked if there were any items of concern to Council.

Councilmember Ellis asked about the Fire Protection in County Islands and Annexation item on page 4 of the handout. It ends by saying that staff requests permission to work with the League of Cities and Towns and other municipalities to develop legislation to address this issue. It doesn't state whether it would be supported or not supported. She asked for an explanation.

Amber Wakeman responded that currently the AZ League of Cities and Towns is drafting legislation proactively because they are aware that there a representative will introduce a bill for fire protection in county islands. Until that legislation is finalized, staff can not bring that back to Council for direction.

Mayor Hallman clarified that these are general policy positions, but not a position on a specific legislation. Before staff takes action, Council will see the list of legislation that is proposed. These are only generalized statements, and this does not give authority of permission to advocate or oppose any specific legislation until Council has seen it.

There was general discussion on fire protection in county islands.

CONSENSUS

Approved as presented.

Follow-up Responsibility: Amber Wakeman

CARE7 Update

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenter: Community Services Manager Tom Canasi

Tom Canasi summarized the CARE7 program which involves comprehensive on-scene crisis response to Tempe citizens in partnership with the police and fire departments. It frees up the public safety units to get back

into service and the services provided include crisis response, food, transportation to hospitals, safe havens and a range of victim advocacy services. Fire Station 6 serves as the CARE7 headquarters. CARE7 has a response time from callout to on-scene of about 10 minutes. Nearly 6,000 hours of services were provided to CARE7 by volunteers. They responded to over 1,000 calls last year, serving nearly 3,000 families and children. Since its inception, CARE7 has served 15,000 Tempe residents. He introduced Fire Chief Cliff Jones, Police Chief Tom Ryff, Social Services Manager Judy Tapscott and Kristen Scharlau, Program Coordinator.

Councilmember Arredondo added that this is an outstanding program which has attracted national attention.

NO CONSENSUS – DISCUSSION ONLY

Planning & Public Involvement Policies & Procedures Manual

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenters: Assistant City Manager Jeff Kulaga; Neighborhood Services Director Shauna Warner

Mayor Hallman summarized that this is a draft manual completed by the Neighborhood Advisory Commission and the goal would be refer it to a committee for final processing.

Councilmember Arredondo suggested it would be a better fit now for the Finance, Economy & Veterans Affairs Committee.

CONSENSUS

Referred to the Finance, Economy & Veterans Affairs Council Committee.

Follow-up Responsibility: Jeff Kulaga

Neighborhood Enhancement Review

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenters: Community Development Manager Chris Salomone; Deputy Community Development Manager Neil Calfee

Chris Salomone summarized that this is a status update on a Council-initiated program where staff added ten part-time code enforcement officers to the program. Staff will also outline what Code Enforcement does.

Neil Calfee narrated a PowerPoint presentation on the Neighborhood Enhancement Program.

- Full-time and part-time employees
- Statistics
- Nuisance and Property Enhancement Code

- Rental Housing Code – interior of rental units
- Zoning Ordinance
- Noise Ordinance
- Issues NOT Neighborhood Enhancement
- Process

Mayor Hallman added that the City is moving more proactively to enforce the code against those who are violating the neighborhood standards. He suggested also having a presentation in the near future by the Commercial Code Compliance.

Mr. Salomone summarized the next steps:

- Hire Neighborhood Enhancement Administrator.
- Evaluate Temporary Inspector Program.
- Evaluate Enforcement Process.
- Address Difficult or Special Cases via Enhanced Enforcement plus Partnerships
- Work with Prosecutors and Courts to ensure timeliness and consistency when citations are needed.

Mayor Hallman summarized the Council and staff have worked on this issue since 1996. This is the most pressing community problem. In talking about the areas not handled by Code Enforcement, many departments come into play. There is a pamphlet that lists all the telephone numbers, and maybe this topic should be included in an upcoming water bill. He suggested the possibility of a single phone number that acts as a clearinghouse for all the calls and the call would then directed to the correct location. With partnerships, the prior code enforcement administrator accessed a charitable group for assistance with very dire cases. Could we consider having Tempe Cares use its efforts to identify these kinds of projects?

Mr. Salomone responded that several abatements have been done recently with the assistance of volunteer church groups and some code enforcement staff on a volunteer basis.

Councilmember Shekerjian suggested having a flyer go out annually to provide the list of numbers. She asked when a courtesy notice is left, whether a list of programs and numbers is left at the same time.

Mr. Salomone responded that there is, and added that courtesy notices are usually personally delivered.

Councilmember Shekerjian asked how often an evaluation is done on the neighborhood enhancement program.

Mr. Salomone responded that evaluations are done as part of the budget process.

Councilmember Ellis asked whether the unfounded complaints are counted.

Mr. Calfee responded that they are not counted, but that it is not an issue.

Councilmember Arredondo asked if there is any way to cut the violation process to a shorter period. There is a fine line where we can help people, but maybe some of those people aren't scared because the fines are low or

they know that it takes a long time.

Mayor Hallman added that some of the complaints received over the years concern the fact that sometimes the citation gets thrown out of court for one reason or another. It might make sense to ask the City Attorney and Presiding Judge to come to the Council to talk about what we need to do to seek full enforcement through the system.

CONSENSUS

- Staff to return with a Commercial Code Update at a March IRS.
- Update on Code Violation Cases and Procedures by Court and City Attorney
- Create one phone number for all complaints.
- Create a volunteer organization to help with cleanup of properties.
- Publicize complaint numbers annually in the water bill.

Follow-up Responsibility: Chris Salomone

Ordinance Review Update

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenter: City Attorney Andrew Ching

Andrew Ching showed a process to begin ordinance review.

Mayor Hallman added that Council gave previous direction to examine the adult-oriented businesses statutes and provide legal research on whether the percentage of adult-oriented material could be changed. Council had talked about reducing that percentage and that issue should be brought back to Council.

CONSENSUS

Staff was directed to return to the January 18th IRS with an update on Adult Oriented Business Ordinance.

Follow-up Responsibility: Andrew Ching

Formal Council Agenda Items

No agenda items were discussed.

Future Agenda Items

- Presentation by Commercial Code Enforcement in the next 60 days.
- City Attorney and City Presiding Judge present how the rest of the process works once a civil or criminal citation is issued and how to clarify the code to ensure successful prosecution of violators.

Mayor's Announcements/Manager's Announcements

None.

Meeting adjourned at 7:35 p.m.

Connie Krosschell
Acting City Clerk