



Minutes City Council Issue Review Session December 6, 2007

Minutes of the Tempe City Council Issue Review Session held on Thursday, December 6, 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 Mark W. Mitchell

Councilmember Onnie Shekerjian

Mayor Hallman called the meeting to order at 6:10 p.m.

Call to the Audience

No one came forward to speak.

WAZ Tempe Wireless Internet Service

INFORMATIONAL BACKGROUND

Per the request of Mayor and Council, Tad Neeley, Principal at Gemini Partners, appeared with staff at the IRS on December 6, 2007, to give an update on the WiFi Network operated by Kite Networks in Tempe.

DISCUSSION – Presenters: Deputy IT Manager Dave Heck; Tad Neeley, Telscape Communications

Dave Heck summarized that Council had requested an update on the WAZ Tempe Wireless Internet service and he introduced Tad Neeley, a Principal at Gemini Partners and Chief Strategy Officer for Telscape Communications.

Tad Neeley congratulated Tempe for being forward-thinking on taking this leap to embrace metro WiFi. He is an investor interested in the KITE network. KITE Network is not here because they really have not been able to run this network. His group has been interested in this network for quite some time and have been trying to negotiate with all parties, not only to avoid any liabilities that they shouldn't be taking on, but to own, operate and improve the network to meet the City obligations.

He is part of two private equity groups, Golden Gate Capital and Gemini Partners, who are long-term investors. They bought a company called Telscape, a residential competitive local exchange, which means they provide telephone services to a certain demographic. They are focused primarily on the Hispanic customer base in southern California, with about 130,000 subscribers. They provide wireless services over the Sprint network, and are interested in the synergies in this area as well. They are not a public company, and are building a company that can be beneficial both to them and to the City of Tempe. Negotiations are still continuing and the next step will be to work with Mr. Heck to provide much better service and a network that is a better asset to the City and its residents.

Mayor Hallman added that the Tempe model is one that no one else has been able to duplicate. Sometimes a good deal, however, may put the partner in a position where they are unable to continue to provide service. We need to find someone who would be willing to step up and help re-capitalize this network and work out some of the bugs and market it so that our residents have the opportunity for the competitive advantage of having an additional competitor for the Cox or Qwest system.

Councilmember Shekerjian suggested that they have some sort of assessment process that will be put into place to better understand the landscape in terms of the current problems and challenges.

Mr. Neeley responded that one of the issues they currently face is keeping the network running. He does not want the network turned off. First, they will stabilize the service and over the next two or three months, they will do an operations assessment which will bring in customers and add to the service.

Councilmember Shekerjian added that it is important for residents to understand that the City does not run the network, but rather facilitates it. She hoped Mr. Neeley would assess the needs of the community so that history doesn't repeat itself.

Councilmember Ellis asked for some background on the KITE contract.

Mr. Heck responded that it is a 5-year contract with four 5-year renewal periods beyond that. If there are issues, the City has the right to end it at the completion of the 5-year term.

Councilmember Ellis clarified that Mr. Neeley's company would then acquire KITE, so it's not as if a new RFP process would be started. He would be working with KITE.

Mr. Neeley responded that he is very open to discussion conditions that might need to be added.

Vice Mayor Hutson agreed that this is a wonderful system and we are fortunate to have it, but what influences his life is the number of phone calls he gets with complaints.

Councilmember Arredondo suggested asking for an update in six months, and if it has not improved, he will be the first one to say no. He hoped Mr. Neeley is a miracle worker.

Mayor Hallman added that we have the right system and the right hardware, but now we need the operator, the soft side, to make it work. This is a Council who will be very glad to have Mr. Neeley step in and will look forward to working with him. We understand it has to be a profitable business because they can't provide customer service if we've extracted every last dollar out of the operation. With that in mind, he welcomed Mr. Neeley and what we need to work on in partnership to make this system work.

CONSENSUS

Staff was directed to agendize an update for the July 2008 IRS.

Follow-up Responsibility: Dave Heck

State Legislative Update

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenter: Government Relations Director Amber Wakeman; Community Relations Manager Shelley Hearn; Mike Williams, State Contract Lobbyist

Amber Wakeman presented the 2008 State Legislative Agenda.

Councilmember Shekerjian understood there will be a global studies/international studies bill that will be introduced and she asked, since it's on the Education, Technology and Economic Development Committee's work plan, that Council directs our state lobbyist to lobby on behalf of the City. She would like that to be part of our legislative agenda.

Mayor Hallman clarified that Ms. Wakeman will return with the bills as they come out, and at that point Council will give direction. As a general matter, however, Councilmember Shekerjian is asking that it be like the other items of support listed.

Councilmember Shekerjian added that the Tempe Union High School District has started an International Baccalaureate (IB) Program this year and they do not have a lobbyist, so we can help them with support at the legislature. Also, the Tempe Elementary School District is planning to start their middle school IB program.

Mayor Hallman added that he thought that issue is captured in our general statement that together with our partners at ASU and the three school districts we will be promoting and assisting them in advancing bills they find of interest. He asked for Council's consensus.

Council agreed.

Councilmember Ellis added that under Transportation, the City has been talking about commuter rail, and it should be noted that the City advocates commuter rail as another transportation option.

Councilmember Arredondo commended Ms. Wakeman on a well-done summary.

CONSENSUS

Approved as presented with the addition of:

- Global/International Studies for IB monies in conjunction with ASU;
- Place on list as bill comes up, and advocate for commuter rail.

Follow-up Responsibility: Amber Wakeman, Shelley Hearn

Western Canal Multi-use Path & HAWK Pedestrian Crossing

INFORMATIONAL BACKGROUND available in City Clerk's Office.

DISCUSSION – Presenter: Public Works Manager Glenn Kephart; Senior Transportation Planner Eric Iwersen; Senior Civil Engineer Christine Warren

Eric Iwersen summarized that this project has been under design for the past year and a half by working with neighborhood associations, Salt River Project, and other community stakeholders. The project involves a 6-mile pathway running from the 101 Freeway to Arizona Mills Mall along the Western Canal bank. It is the largest portion of pathway in Tempe. It includes five arterial street crossings, one collector street crossing and landscaping, lighting, and public art. The two locations for the HAWK signal are at Rural and McClintock. Some improvements will be done in Stroud Park to enhance the connection through landscaping and ADA access.

Mayor Hallman asked if the park connections are being taken through the neighborhood associations.

Mr. Iwersen responded that staff is working with the neighborhood association as well as with Parks and Recreation to make sure that it works with their master planning process. The path goes through Ken MacDonald Golf Course and there have been some conflicts with the course itself so the tee box at Home #11 will be modified. He showed an example of a HAWK crossing in Tucson. Plans are at 90% currently and staff is anticipating that process completed by the end of this month, going into final plans in January and construction by the end of March with about a year for construction.

Mr. Kephart introduced Fernando Torres and Tom Bauermeister who assisted in demonstrating the HAWK system.

Christine Warren summarized that HAWK stands for High Intensity Activated Crosswalk. Tucson designed the system after they viewed something similar in Europe. If we go forward with installation, the HAWK at Rural and McClintock will make Tempe the fourth city in the nation to have the system. Staff is partnering with the Federal Highway Administration to evaluate its effectiveness. The HAWK is a regulatory device so when a person does not stop on red, they can be ticketed consistent with a standard signal. There are two major differences. First, instead of the red-yellow-green configuration, there are two red at the top, and a yellow in the bottom. It doesn't have a standard light sequence. She demonstrated the HAWK signal. The system strives to balance a quicker demand for the pedestrian and less delay for the vehicles.

Mayor Hallman asked for the typical length of the sequence.

Ms. Warren responded that the average time is five seconds, but because it is a multi-use path with a higher percentage of pedestrians, it will be moved to seven seconds.

Councilmember Arredondo suggested that an educational component be added. He suggested that staff work with the City Manager for an educational component, such as in the water bill. He would expect staff to return with an update.

Ms. Warren added that Council has been provided with a brief outline of a brochure staff has developed for educational purposes, as well as their plan for public outreach. The demonstration tonight is not only for Council, but it can be taken to special events as well so that people can experience the system.

Councilmember Ellis asked how this works with emergency vehicles.

Ms. Warren responded that it would be tied to the vehicle pre-emption so the person would still see the solid “don’t walk” hand.

Councilmember Arredondo suggested that staff also go to the area schools, high schools, drivers’ education, and neighborhood associations and let them know.

Councilmember Shekerjian added that since one of those crossings is close to the YMCA, staff should include them as well. Channel 11 is also available.

Vice Mayor Hutson asked for an explanation about lack of the Federal Highway Administration approval.

Ms. Warren responded that it is not currently a standard in their manual. Since it is innovative, they will go through an evaluation process to see if it should be included in their manual.

Vice Mayor Hutson asked if that exposes the City to more liability.

Mr. Kephart responded that staff has partnered with the Federal Highway Administration and we are approved to use this device under their guidance. Thanks to Ms. Warren’s work, she has made that happen. We are one of only several cities approved to use this signal.

CONSENSUS

Staff was directed to work with City Manager to add educational component, i.e. schools, neighborhood associations, YMCA, Channel 11.

Follow-up Responsibility: Glenn Kephart, Christine Warren

Prosecution/Adjudication for Repeat Property Offenders Update Nuisance and Property Enhancement Code Changes

INFORMATIONAL BACKGROUND available in City Clerk’s Office.

DISCUSSION – City Attorney Andrew Ching; Community Development Manager Chris Salomone; Neighborhood Enhancement Administrator Jan Koehn

Andrew Ching stated that on two separate occasions at IRS this year, he has been asked to develop solutions to the most extreme examples of property code violations. The Neighborhood Enhancement Division was also working on revisions to the Code and some of those revisions touch upon areas of the recommendations he was going to make at the previous IRS session. We are already in the process of extending the time for abatements so there is a larger window for staff to go back out without having to get re-approval to abate the property again.

Jan Koehn summarized the most significant changes:

- Definition of a habitual offender and what the recourse of action is. Staff is proposing that a habitual offender is anyone who has been convicted of having a code violation at least once within the last twelve months or someone who has had previous abatement action initiated against the property. The word “initiated” is used because many times staff will seek an abatement and at the eleventh hour someone will bring the property into compliance, only then to re-offend a month or so later.
- Staff is asking that there be an additional significant fine attached to the habitual offenders. Particularly in rental properties, there are many repeat offenders, such as property owners who pass the fines on to their tenants and are not as concerned about the accumulating fines. Staff is asking for a \$500 fine for habitual offenders and to actually defer those funds into a separate account that would go to offset property cleanups for elderly or disabled people.
- The remaining changes are simply clarifying changes. There are a couple of new additions, for example, broken windows for owner-occupied properties. Currently there is a broken window violation code for rental properties but not for owner-occupied properties. There is also the bulging garage door issue and being able to address bees and wasps on owner-occupied properties.

Mayor Hallman stated that he didn't think a 12-month period of adjudication is sufficiently long. We are saying that if you've had at least one violation within a 12-month period, you have to have been convicted either civilly or criminally or have a default judgment entered. This is not someone who has been given notice and fixed their property and then they get another notice to fix their property. This is someone who got notice, didn't fix their property, got fined, didn't go through a process, and we ended up going after them civilly or criminally. He didn't think anyone should get one free abatement action every year. It should be one in five years. If the City has to abate a property, those are the properties that are the most extreme. In his opinion, if there's ever been an abatement on a property, that person is forever an habitual offender. He also felt that the fine is not large enough. Once someone is an habitual offender, \$1,000 isn't unreasonable. If it isn't paid, then it goes as a lien against the property. This is not about the average Tempe resident, but those eight or ten residents who really abuse the system.

Vice Mayor Hutson cited an example. There's a rental property in a nice neighborhood and they've been fined two or three times within one year. The owner of the property lives out of town and pays the fine. The front yard was torn out and is still dirt after a year. The car is parked the opposite way with no tags on it for over a year. The car is moved to the backyard, but it is replaced with a car that doesn't have tags, backed into the

driveway so you can't see the missing tag. Nothing he suggested was abatable. How could we get them to the habitual status?

Mayor Hallman responded that it designates one conviction, either civil or criminal. If we cite them for property violation because they did not comply with the code within the given period of notice, then they get a citation and the next time they get a citation, they are an habitual offender.

Vice Mayor Hut clarified that two citations are habitual.

Mayor Hallman clarified that with one citation, the next time you get one, you are habitual. It doesn't specify the same conviction. It's any offense. A period of twelve months is too short, however. If something like that happens in two or three years, the penalty should be stiffened and moved forward with the next step. The goal is to stop the deterioration of properties and the imposition on neighborhoods by habitual offenders. The abatement action should also have a longer period. It has to be the same property owner or combination of owners. It could specify 50% common ownership. He suggested including a direct or indirect standard so someone can't set up limited liability companies, put the properties in, and then when they get fined the first time, move it to another one.

Councilmember Ellis asked about the requirement that swimming pools be fenced and all gates be self-closing and self-latching. Is that just for new pools or for every pool in Tempe?

Ms. Koehn responded that it is for every pool in Tempe. It was an existing code provision under a different chapter at one time, and when the building code was amended, that chapter section was repealed so we are actually clarifying and reiterating the building code requirements. It's not a separate fence inside of a pool gate, but it could be the exterior block wall. Any fences leading to that backyard pool are to be self-closing and self-latching.

Councilmember Ellis asked for clarification on the chart that says "violations—essential services". What are essential services?

Ms. Koehn responded that essential services under the rental housing code are those which are required by the property owner to have inside the unit, such as lights and water. It can also be both health and safety, but if an owner puts in a stove, that stove must be working to be considered an essential service.

Councilmember Ellis noted "home occupations" on the last page. Does that mean a business run from a home?

Ms. Koehn agreed.

Councilmember Ellis asked why parking specifies 14 days.

Ms. Koehn responded that under the Zoning Code, parking refers to parking lot issues or required parking areas, so it might be someone who enclosed a garage and failed to provide other parking on site and it might involve a longer process to come into compliance.

Councilmember Mitchell noted that under habitual offenders, it specifies the violation is billed to the responsible party. Is that exclusively the owner?

Ms. Koehn responded that a responsible party would include a tenant, an off-site owner, or an occupant.

Councilmember Mitchell added that this issue has surfaced in the past. If we notice the tenant, and the tenant moves out in three months, and then the repeat violation happens, how do we make sure we hold the landowner accountable for those repeats?

Ms. Koehn responded that under the Rental Housing Code, we actually issue notices of violation to both property owner and tenant when there is violation. We actually issue the citation to the property owner because he is in ultimate control of the property. They can both be held responsible.

Councilmember Shekerjian asked Ms. Koehn to describe the process by which we get to a point where there is a civil or criminal conviction or a default judgment regarding a violation.

Ms. Koehn explained that under the proposed table of time, the City is required to give at least one notice every twelve months. If it is someone we've never seen before, we would give them a notice, for example, in January to cut weeds. If they fail to cut the weeds and we haven't seen them before, we might give them a second notice. If they fail to correct it, we issue a citation. The civil citation is a ticket to court, like a traffic ticket. We have to allow at least two weeks for them to appear in court and then a number of things can happen. They can pay the ticket in that time period and not cure the violation, they can pay the ticket or request a hearing in court which would then be bumped out another two weeks to 30 days, or they could not pay the ticket and not appear in court and not cure the violation which then pushes the process through another 30 days from the last notice, at which point we might seek abatement for the property. If they request a hearing, it is usually a 30-day and up to a 45-day window before we can actually get on the hearing officer's agenda to seek abatement. If someone doesn't want to comply, it can be easily three to four months.

Councilmember Shekerjian clarified that if someone has grass that's too high and they get a notice, that's not an automatic ticket. If your grass is high another time, you get another notice. This is about responsiveness of our citizens who are not in compliance. If they are responsive to the original notice, they won't get a ticket. They won't start to fall into this pipeline of being considered a habitual offender. What are the steps that would lead to abatement.

Ms. Koehn responded that it has to be pretty bad. Generally, it is either someone we have had to abate in the past and we know they will not comply, or someone who has gone through the civil citation process prior to seeking abatement and if they fail to respond to the court process, then we would seek abatement.

Mayor Hallman asked for concurrence on the suggestion of a greater period of time included in the definition of habitual offender, as well as an inclusion of a habitual offender fine that steps up as well. For "Habitual Offender (new)", instead of "\$500 + sum of other fines", he suggested \$500, \$1,000, \$2,000.

Councilmember Arredondo stated that he had no problem with that, but he would ask that this go back to staff and staff can develop the plan.

Councilmember Shekerjian agreed with sending it back to staff. If our fines are increased for the habitual offenders, it is a great way to put a sting into the absentee landlords. Some of our neighborhoods are having difficulty dealing with properties owned by absentee landlords. If the fines are significant, they might take care of the problem.

Mayor Hallman added that increasing fines to change behavior works. Council did this with the false alarms a few years ago. He also asked staff to consider some indirect ownership chain so we don't fall into the same problem as we did with sales tax with landlords playing games with dozens of properties in single owner entities and avoiding their tax obligations.

CONSENSUS

The following changes were recommended:

- Definition of habitual offender should include greater period of time.
- Indirect ownership added to include responsibility.
- Consider higher step fees for habitual offender.

Follow-up Responsibility: Jan Koehn, Andrew Ching

Regulatory Licensing Ordinances Appeals Process

CONSENSUS

Referred to Council's Finance, Economy & Veterans Affairs Committee.

Follow-up Responsibility: Jerry Hart

Formal Council Agenda Items

No agenda items were discussed.

Future Agenda Items

Councilmember Ellis asked for an update on the Tempe Aviation Commission.

Mayor's Announcements/Manager's Announcements

None.

Meeting adjourned at 7:15 p.m.