

MAYOR AND COUNCIL – STUDY SESSION

LEGAL ACTION REPORT AND MINUTES FOR THE MEETING OF

WEDNESDAY, AUGUST 8, 2018

MAYOR AND COUNCIL CHAMBERS

CITY HALL, 255 W. ALAMEDA, TUCSON, AZ

Mayor Rothschild called the Study Session to order at 12:05 P.M. in the Mayor and Council Chambers, City Hall Tower, Tucson, Arizona.

OFFICIAL MEMBERS

PRESENT:

Mayor Jonathan Rothschild
Vice Mayor Paul Cunningham (Ward 2)
Council Member Regina Romero (Ward 1)
Council Member Paul Durham (Ward 3)
Council Member Shirley C. Scott (Ward 4)
Council Member Richard G. Fimbres (Ward 5)
Council Member Steve Kozachik (Ward 6)

OFFICIAL MEMBERS

ABSENT/EXCUSED: None

STAFF: Michael J. Ortega, City Manager
Michael Rankin, City Attorney
Roger W. Randolph, City Clerk

AGENDA ITEM / MAYOR AND COUNCIL ACTION

1. [Executive Session - Swank v. City of Tucson, TCC, Pima County Superior Court Case No. C20172931 \(City Wide\) SS/AUG08-18-110](#)
3. [Executive Session – Duffy v. City of Tucson, District Court Case No. 4:17-cv-00520 \(City Wide\) SS/AUG08-18-112](#)
5. [Executive Session - Potential Sale of City-Owned Property Located at 114 & 124 E. Broadway Boulevard \(Ward 6\) SS/AUG08-18-117](#)
7. [Executive Session - Potential Sale of City-Owned Property Located at 930-948 E. Broadway Boulevard \(Former Broadway Volvo Site\) \(Ward 5\) SS/AUG08-18-120](#)
9. [Executive Session – Proposed License Agreement with Tucson Indoor Football, LLC for Use of Tucson Convention Center for Arena Football Games \(Ward 6\) SS/AUG08-18-123](#)

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Items 3, 5, 7, and 9 were taken out of order.

It was moved by Council Member Fimbres, duly seconded, and CARRIED by a voice vote of 7 to 0, to enter into Executive Session for Items 1, 3, 5, 7, and 9 as noticed in the agenda.

RECESS: 12:06 p.m.
RECONVENE: 2:15 p.m.
MAYOR & COUNCIL: All present
STAFF: All present

Executive Session was held from 12:09 p.m. to 2:03 p.m.

It was moved by Council Member Fimbres, duly seconded, and CARRIED by a voice vote of 7 to 0, to return to open session.

2. [Mayor and Council Direction Regarding Executive Session - Swank v. City of Tucson, TCC, Pima County Superior Court Case No. C20172931 \(City Wide\) SS/AUG08-18-111](#)

It was moved by Council Member Fimbres, duly seconded, and CARRIED by a voice vote of 7 to 0, to authorize and direct the City Attorney to proceed as discussed in Executive Session, and to settle this lawsuit for the amount of \$65,000.

3. Executive Session – Duffy v. City of Tucson, District Court Case No. 4:17-cv-00520 (City Wide) SS/AUG08-18-112

This item was taken out of order and considered before item 2.

4. [Mayor and Council Direction Regarding Executive Session – Duffy v. City of Tucson, District Court Case No. 4:17-cv-00520 \(City Wide\) SS/AUG08-18-113](#)

It was moved by Vice Mayor Cunningham, duly seconded, and CARRIED by a voice vote of 7 to 0, to authorize and direct the City Attorney to proceed as discussed in Executive Session.

5. Executive Session - Potential Sale of City-Owned Property Located at 114 & 124 E. Broadway Boulevard (Ward 6) SS/AUG08-18-117

This item was taken out of order and considered before item 2.

6. [Mayor and Council Direction Regarding Executive Session – Potential Sale of City-Owned Property Located at 114 & 124 E. Broadway Boulevard \(Ward 6\) SS/AUG-08-18-118](#)

It was moved by Council Member Kozachik, duly seconded, and CARRIED by a voice vote of 7 to 0, to direct the City Manager to proceed as discussed in Executive Session, and to negotiate the terms of an Offer to Purchase with the Rio Nuevo Multipurpose Facilities

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District and to bring that Offer to the Mayor and Council for consideration and approval within 90 days.

7. Executive Session - Potential Sale of City-Owned Property Located at 930-948 E. Broadway Boulevard (Former Broadway Volvo Site) (Ward 5) SS/AUG08-18-120

This item was taken out of order and considered before item 2.

8. Mayor and Council Direction Regarding Executive Session – Potential Sale of City-Owned Property Located at 930-948 E. Broadway Boulevard (former Broadway Volvo Site) (Ward 5) SS/AUG08-18-121

Council Member Fimbres said the Mayor and Council have had the opportunity to review the proposals submitted in response to the invitation to submit offers to purchase for this property.

Based upon the recommendations of the evaluation committee, and based upon the terms of the Invitation for Offers, it was moved by Council Member Fimbres, duly seconded, and CARRIED by a voice vote of 7 to 0, to select “Martha and Mary/Welcome Hospitality” as the preferred purchaser and developer of the property; and to direct the City Manager and his staff to finalize all agreements and documents necessary to carry out the sale and development of the property as proposed by the developer in its Offer to Purchase and subject to all of the conditions included in the Invitation for Offers, to include:

- purchase price based on appraised value;
- prohibition of incompatible uses, such as high-density student housing, convenience store with gasoline sales, large retail establishments, billboards, and auto repair;
- transit-oriented, or mixed-use development that is aesthetically compatible and in scale with surrounding development and neighborhoods;
- ongoing coordination with the neighborhood liaisons, including Barrio San Antonio and Miles neighborhoods;
- strategies for addressing neighborhood concerns over property maintenance, excessive noise, construction activity, and other public nuisances; and
- incorporating street-level amenities, and encouraging pedestrian activity; and identifying parking strategies that encourage shared-parking in existing or new parking lots or structures at or near the site.

The City Manager is further directed to coordinate with the selected proponent to move forward with the Planned Area Development process, to include all associated public notice and stakeholder proceedings, and to return to Mayor and Council as needed to carry out the purposes of this motion.

9. Executive Session – Proposed License Agreement with Tucson Indoor Football, LLC for Use of Tucson Convention Center for Arena Football Games (Ward 6) SS/AUG08-18-123

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This item was taken out of order and considered before item 2.

10. Mayor and Council Direction Following Executive Session - Proposed License Agreement with Tucson Indoor Football, LLC for Use of Tucson Convention Center for Arena Football Games (Ward 6) SS/AUG08-18-124

It was moved by Council Member Kozachik, duly seconded, and CARRIED by a voice vote of 7 to 0, to direct the City Manager and City Attorney to proceed as discussed in Executive Session, and to finalize and execute a license agreement with Tucson Indoor Football, LLC, so long as that agreement includes the following terms and conditions:

- 1) a term not to exceed 5 years;
- 2) no City commitment to any capital investments or up-front expenditures;
- 3) the Team will pay a license fee of \$8,824 per game, with a Consumer Price Index adjustment for subsequent seasons;
- 4) for concessions and parking, the Team will get 50% of the Net revenues, with the City retaining the rest;
- 5) dates for games will not conflict with dates committed to other users under other agreements; and
- 6) the ability to terminate the agreement if the Team defaults or is in breach of the agreement.

Assuming these terms can be reached, the City Manager is authorized to execute the agreement.

11. Discuss Possibility of Raising the Age to Purchase Tobacco and Nicotine Delivery Products in the City of Tucson to 21 (City Wide) SS/AUG-08-18-116

Introductory comments were provided by Council Member Durham and Vice Mayor Cunningham.

Information and presentation was provided by Jeff VanArsdale, Empire High School, and members of the Student Wellness Advocacy Team (S.W.A.T.) from Empire High School and Anza Trail Middle School.

Additional information was provided by Dr. Robert Crane, President, Preventing Tobacco Addiction Foundation, who fielded and answered questions.

Dr. Crane explained how the brain is affected by nicotine. He also spoke about law enforcement efforts that focus on the under-age purchaser and the employee completing the transaction, instead of focusing on the retailer.

Michael Rankin, City Attorney, explained how age-based liquor and tobacco laws are currently enforced, and he provided information on new laws in Cottonwood and Douglas that prohibit the sale of tobacco and vapor products to persons under the age of 21.

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Discussion ensued regarding looking at what other jurisdictions are doing, what else can be done in terms of education, prevention, and treatment of addiction, efforts at the county and state level, increasing license fees to provide funds for enforcement efforts, and not wanting to criminalize under-age customers.

It was moved by Council Member Durham, duly seconded and CARRIED by a voice vote of 7 to 0, to direct the City Manager:

- 1) to engage with stakeholders and bring back a plan to implement and enforce Tobacco 21 in Tucson;
- 2) that any costs associated with implementation and enforcement be paid for by adjusting the annual Tobacco Retail License fee to make this change revenue-neutral to the General Fund;
- 3) to engage with surrounding municipalities and other jurisdictions, including the Pima County Health Department, to gauge interest in moving forward as a region to raise the age to purchase tobacco and nicotine products to 21.

Council Member Durham said he envisioned the forthcoming ordinance would not contain enforcement provisions that affect consumers under the minimum age of 21.

12. [Regulation of Electric Bikes; Recommendation of the Tucson-Pima County Bicycle Advisory Committee \(T-PCBAC\) \(City Wide\) SS/AUG08-18-115](#)

Introductory comments were provided by Council Member Durham.

Information was provided by Andrew Bemis, Transportation Department, who fielded and answered questions.

Mr. Bemis explained what is considered an electric bicycle (e-bike), federal regulations regarding manufacturer labeling of e-bikes by “class” based on the method of electric assistance provided by the bicycle, pre-existing laws and new state legislation regarding operation in areas other than roadways, and statistics regarding e-bike usage and crashes. He said the recommendation from the Tucson-Pima County Bicycle Advisory Committee (TPCBAC) is to allow operation of all three classes of e-bikes on shared-use paths as long as they stay under 20 miles per hour or the posted speed limit, whichever is lower, and to remove the prohibition of operation by those under the age of 16.

Discussion ensued as the Mayor and Council Members each expressed their different concerns they wished to address, which included: the safety of e-bikes using multi-use use paths instead of bicycle lanes, adjusting speed limits, imposing restrictions on passing, consistency with Pima County regulations on The Loop, education, and enforcement.

It was MOVED by Council Member Durham, duly seconded, to direct the City Attorney to prepare an Ordinance that would amend the Tucson Code to carry out the vision of the Tucson-Pima County Bicycle Advisory Committee’s recommended essential terms for e-

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bikes, and schedule the Ordinance for consideration at the next Mayor and Council meeting.

Mayor Rothschild asked if the motion could include addressing the different concerns raised during their discussion.

Council Member Kozachik specified that the concerns to be addressed were safety-related, such as speed and passing.

Council Member Durham CLARIFIED that the motion included addressing the concerns as discussed, as long as the same rules would apply to both e-bikes and regular bicycles.

Discussion ensued regarding bicycle lanes, multi-use paths, walking paths, and the proposal's potential impact on their designations.

Michael J. Ortega, City Manager, said Mayor and Council's desire was understood, and staff would try to bring back something that addresses their concerns.

The motion, as clarified, was CARRIED by a voice vote of 7 to 0.

13. [2018 Parks and Recreation General Obligation Bond Program \(Continued from the meeting of July 10, 2018\) \(City Wide\) SS/AUG08-18-122](#)

Information was provided by Michael J. Ortega, City Manager, who reviewed potential options for addressing maintenance costs associated with the proposed improvements in the bond program.

Mayor Rothschild and Council Member Kozachik said it was important to show voters not only that the projects can be completed on time and within budget, but also to show how the improvements will be maintained.

Discussion ensued regarding committing to establishing a segregated fund or a dedicated funding source for maintenance, and clearly communicating to voters how maintenance needs will be funded.

Krista Hansen, Transportation Department, introduced an interactive online map that will provide detailed information on projects included in the bond program, as questions were fielded and answered by Andrew Squire, City Manager's Office.

Mr. Ortega said staff will prepare a press release and provide information in Spanish.

No formal action was taken.

(Note: Council Member Kozachik departed at 4:07 p.m.)

14. [C8-18-04 Medical Marijuana Sunset Date \(City Wide\) SS/AUG08-18-114](#)

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Introductory comments were provided by Michael J. Ortega, City Manager.

Information was provided by Scott Clark, Interim Director, Planning and Development Services Department (PDSO).

(Note: Council Member Kozachik returned at 4:09 p.m.)

It was MOVED by Council Member Fimbres, duly seconded, to direct staff to begin the process to extend the provisions of the Medical Marijuana Ordinance for another 3 years, while incorporating input from stakeholders and owners of the 11 existing dispensary sites related to odor mitigation requirements and revising the data source used to identify the location of public parks.

Daniel Bursuck, PDSO, explained the minimum required distance from schools and parks in commercial and industrial zones.

The motion was CARRIED by a voice vote of 7 to 0.

15. [Historic Preservation Zone \(HPZ\) Height Modification Unified Development Code Text Amendment \(City Wide\) SS/AUG08-18-119](#)

Introductory comments were provided by Michael J. Ortega, City Manager.

Information was provided by Scott Clark, Interim Director, Planning and Development Services Department. Mr. Clark explained the different perspectives of the four Historic Preservation Zone Advisory Boards, and the process for reviewing the proposed amendment.

It was MOVED by Council Member Kozachik, duly seconded, to direct staff to continue with the current text amendment, as-is, and refer it to the Tucson-Pima County Historical Commission – Plans Review Subcommittee for a recommendation, then to the Planning Commission for a recommendation to Mayor and Council.

Discussion ensued regarding finding a solution that everyone would support.

The motion was CARRIED by a voice vote of 7 to 0.

16. [Updates on State and National Legislation and Regional Committees; and Request to Join as Amicus Curiae in *Planned Parenthood v. Azar* Relating to Title X Funding \(City Wide\) SS/AUG08-18-107](#)

Andrew Greenhill, Intergovernmental Relations Manager, provided an update on legislation introduced by Congressman Raul Grijalva, related to postal reform.

It was moved by Council Member Fimbres, duly seconded and CARRIED by a voice vote of 7 to 0, to support House Bill 6523 as introduced by Congressman Grijalva.

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Mr. Greenhill provided an update on legislation regarding “Opportunity Zones” which provide tax benefits for investing capital gains in low-income census tracts, and Congressional reauthorization of Career and Technical Education funding which is available to community colleges for workforce and educational training.

Michael Rankin, City Attorney, provided information regarding a request from other cities to join their support of Planned Parenthood in an action that challenges new rules and criteria for Title X funding and grants, which pay for family health and family planning services. Earlier in the year, the United States Department of Health and Human Services announced changes that are designed to exclude from Title X eligibility, groups that provide particular types of health and family planning services. These groups provide birth control, abortion or abortion referral services, and the changes would instead direct the funding to faith-based agencies that provide family planning services such as abstinence.

It was moved by Council Member Romero, duly seconded and CARRIED by a voice vote of 7 to 0, to authorize and direct the City Attorney to join the litigation as amicus along with other cities in support of Planned Parenthood’s request that a Federal court issue an injunction to prevent the United States Department of Health and Human Services from imposing new and unlawful criteria for Title X funding that would have the effect of defunding providers of family planning services that have long been the main sources of family planning care in many communities throughout the nation, including in Tucson.

17. [Mayor and Council Discussion of Regular Agenda \(City Wide\) SS/AUG08-18-108](#)

It was MOVED by Council Member Romero, duly seconded, to continue Consent Agenda Item c to the meeting of September 5, 2018:

- 7c. Parks and Recreation: Approval of Management Agreement with the Reid Park Zoological Society (City Wide) AUG08-18-285

Discussion ensued.

The motion was CARRIED by a voice vote of 6 to 1 (Council Member Durham dissenting).

Council Member Kozachik inquired why the jail bed costs increased, as presented in the agenda material for Consent Agenda Item i.

- 7i. Intergovernmental Agreement: with Pima County for the Incarceration of City Prisoners (City Wide) AUG08-18-282

Michael J. Ortega, City Manager, said the per diem costs increased for health care and mental health, but lower overall costs were anticipated due to pre-trial services.

18. [Mayor and Council Discussion of Future Agendas \(City Wide\) SS/AUG08-18-109](#)

Council Members Romero and Fimbres submitted a memo requesting an agenda item regarding water quality, to be scheduled for the September 5, 2018 Study Session.

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ADJOURNMENT: 4:48 p.m.

AUDIO RECORDING AVAILABLE UPON REQUEST FROM THE CITY CLERK'S OFFICE FOR TEN YEARS FROM THE DATE OF THIS MEETING.
