



MAYOR AND COUNCIL Study Session Minutes

Approved by Mayor and Council
on July 12, 2022.

Date of Meeting: October 19, 2021

MEETING NOTE: Due to the impacts of the COVID-19 pandemic, which prompted declarations of a public health emergency at the local, state and federal levels, this meeting was conducted using measures to protect public health. This meeting was held remotely through technological means, as permitted under Arizona law.

The Mayor and Council of the City of Tucson met in study session remotely through Microsoft Teams on Tuesday, October 19, 2021. The meeting was called to order by Mayor Romero at 1:03 p.m.

OFFICIAL MEMBERS

PRESENT:

Mayor Regina Romero
Council Member Lane Santa Cruz (Ward 1)
Council Member Cunningham (Ward 2)
Council Member Karin Uhlich (Ward 3) (arrived at 1:15 p.m.)
Vice Mayor Nikki Lee (Ward 4)
Council Member Richard G. Fimbres (Ward 5)
Council Member Steve Kozachik (Ward 6)

OFFICIAL MEMBERS

ABSENT:

None

STAFF:

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

1. **Executive Session –City of Tucson Claim No. 28344, Hourscht v. City of Tucson (City wide) SS/OCT19-21-203**
3. **Executive Session – Wiggins v. City of Tucson, et al., Pima County Superior Court Case No. C20213558 (City Wide) SS/OCT19-21-206**

(This item was taken out of order.)

5. Executive Session – Exchange and Conveyance of City-Owned Property Located at 7575 E. Speedway Boulevard and a Portion of Tax Parcel No. 133-13-005E for Property Owned by Centre East Center, LLC Located at 7820-7840 E. Broadway Boulevard (Ward 2) SS/OCT19-21-215

(This item was taken out of order.)

It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused), to enter into Executive Session for Items 1, 3 and 5 as noticed on the agenda.

RECESS: 1:07 p.m.

RECONVENE 2:15 p.m.

MAYOR & COUNCIL: All present

STAFF: All present

Executive Session was held from 1:09 p.m. to 2:03 p.m.

(Note: Council Member Uhlich arrived at 1:15 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 – City of Tucson Claim No. 28344, Hourscht v. City of Tucson (City Wide) SS/OCT19-21-204

It was moved by Council Member Cunningham, duly seconded, and carried by a voice vote of 7 to 0, to proceed as directed in executive session and settle the claim in the amount of \$27,987.

3. Executive Session – Wiggins v. City of Tucson, et al., Pima County Superior Court Case No. C20213558 (City Wide) SS/OCT19-21-206

(This item was taken out of order and considered after Item #1.)

4. Mayor and Council Direction Regarding Executive Session – Wiggins v. City of Tucson, et al., Pima County Superior Court Case No. C20213558 (City Wide) SS/OCT19-21-207

It was moved by Council Member Cunningham, duly seconded, and carried by a voice vote of 7 to 0, to direct the City Attorney to proceed as discussed in executive session including the authority filing legal claims against the driver who caused the accident at issue in the case.

5. **Executive Session – Exchange and Conveyance of City-Owned Property Located at 7575 E. Speedway Boulevard and a Portion of Tax Parcel No. 133-13-005E for Property Owned by Centre East Center, LLC Located at 7820-7840 E. Broadway Boulevard (Ward 2) SS/OCT19-21-215**

(This item was taken out of order and considered after Item #3.)

6. **Mayor and Council Direction Regarding Executive Session – Exchange and Conveyance of City-Owned Property Located at 7575 E. Speedway Boulevard and a Portion of Tax Parcel No. 133-13-005E for Property Owned by Centre East Center, LLC Located at 7820-7840 E. Broadway Boulevard (Ward 2) SS/OCT19-21-216**

It was moved by Council Member Cunningham, duly seconded, and carried by a voice vote of 7 to 0, to proceed as discussed in executive session.

7. **City Manager’s Report and Update on COVID-19; City and County Mitigation Measures; Update on Any Federal Actions Relating to Occupational Safety and Employer Requirements; and Update on Related Legal Matters (City Wide and Outside City) SS/OCT19-21-212**

Information was provided by Mayor Romero, who introduced Dr. Theresa Cullen, Public Health Director, Pima County Health Department.

Dr. Cullen started off by providing information about the increase in number of West Nile Virus cases in Pima County. She said they had sent out an alert to all the hospitals. She then gave an update on COVID-19. She said Pima County was still in high transmission and gave the number of daily cases, cumulative number of deaths, percentage of persons vaccinated positivity rate, number of positive cases in schools, testing in schools, outbreaks and closures, as well as, testing overall.

Dr. Cullen also reported on the number of cases by ethnicity and age group by gender. She also spoke about the pandemic response, recovery, lessons learned, and essentials of recovery and resilience.

Discussion ensued; no formal action was taken.

8. **Proposed Revisions to Administrative Directive 2.03-7 Relating to Vaccination Requirements for City Employees; Discipline for Failure to Comply; and Other Mitigation Measures and Administrative Requirements (City Wide) SS/OCT19-21-213**

Introductory comments were made by Mayor Romero.

Information was provided by Michael J. Ortega, City Manager, regarding the implementation of further discipline up to and including termination for failure to comply with the Mayor and Council’s directive. He said in essence it was the

implementation of a continuity of operations plan and had asked directors to make assumptions about staffing levels to ensure employees, health, safety and welfare was maintained and also providing the services required by the City's Charter. He also gave an update on the information received through the State's database and there had been some discrepancies which staff were looking into.

Mr. Ortega stated he was taking these discrepancies very seriously and that if someone was not truthful in the attestation form, then he would deal with those very severely and accordingly. He said they were prepared to move forward with the plan based on the Mayor and Council's direction.

Mr. Ortega said that was a high-level overview and was prepared to answer any questions. He said he wanted to re-affirm that he was confident if the direction was given by the Mayor and Council to proceed with separation or termination of employees who were not compliant with the policy direction.

Discussion ensued on the number of employees not in compliance, due process, discussions and involvement by the labor groups, types of exemptions, 5-day suspension, and level of service on core services.

It was moved by Vice Mayor Lee, duly seconded, to direct staff to return to the Mayor and Council at the next regularly scheduled Study Session to give a presentation on the following:

1. the process the City of Tucson Business Services Department took to review the vaccination medical exemptions and religious accommodations, including the explanation and appeals process for employees who were denied,
2. a detailed plan on how the City of Tucson will continue delivering essential and core services within each city department if the proposed plan to terminate unvaccinated employees goes into effect in December,
3. a detailed plan on how the City Business Services, Human Resources, Labor, Civil Service Commission and any other departments effected will manage the magnitude of termination paperwork, processing and appeals if the proposed plan goes into effect in December, and
4. be consistent with the direction currently given from President Biden of employers with over 100 employees must require their employees to be vaccinated or be tested weekly, which was also consistent with the existing Mayor and Council policies, provide the City's plan to oversee the weekly testing in a way that does not burden the existing administration, possibly using technology.

Mayor Romero asked the City Attorney to talk about the legal ramifications of meet and confer, that she believed had been answered by the courts.

Mike Rankin, City Attorney, responded that it was one of the core issues in the case itself filed by the Tucson Police and that additional labor unions had jumped in. He said that case was still pending and a second, amended complaint had just recently been filed. He said the City Manager described it correctly that these mitigation measures had been imposed to date and the City Manager's recommendation was within his managerial rights as being necessary to protect and preserve workplace health and safety as well as Community health and safety and the City was going to continue to proceed along those lines, which were outside the meet and confer requirements.

Council Member Santa Cruz asked what the expectations were for department heads to move quickly with these disciplinary issues and concerns regarding the proceedings at the Arizona Supreme Court in November that might affect this timeline.

Mr. Ortega responded that to initiate this plan by December 1st, his plan was to get the Continuity of Operations Plan (COOP) in place and then move towards potential separation or termination. He said he might have to bring in additional resources to assist with that. He said his plan or approach was to make sure that he was shoring up the human resources function to make sure that the City had the opportunity to recruit and get the marketing pieces accomplished.

Mayor Romero stated she was not going to support the motion. She said she felt the Mr. Ortega had been very clear about how he intended to proceed in terms of supporting the 83% of City employees who had reacted or acted responsibly and getting their shots. She said she thought that at this point, it was mostly insubordination.

Council Member Uhlich stated she respected employee's rights to a transparent and clear process but felt that the Mayor and Council had made it clear that they were directing the City Manager and City Attorney to ensure that this was afforded to employees. She said she felt that public services were already being impacted and there were members of the public who were concerned about that. She stated there were City employees in highly interactive positions and public facing positions who may not be vaccinated and that could cause reluctance to turn to the City for services that residents and businesses were entitled to. She said she was also concerned about the 83% of employees who have every right to expect a safe work environment for themselves and their families and while the City can point to protective measures like masks and distancing, the truth was that the virus was still spreading and was primarily occurring amongst and through people who were not vaccinated.

Council Member Uhlich said she wanted to understand better how to support employees who were struggling with the decision to get the vaccination, their resistance and how to address those concerns and fears.

Council Member Kozachik stated he appreciated all the comments made by Council Member Uhlich and that they were spot on. He said every community member and their families, and every co-worker deserved to know that interaction they had with a City employee, they were being safe. He said it had been two months since the Ordinance requiring employees to be vaccinated went into place and the Ordinance reaffirmed this was a local public health emergency.

A substitute motion was made by Council Member Kozachik, duly seconded, to move forward the City Manager's recommendation and give direction to follow that.

Mr. Rankin stated he wanted to answer Council Member Santa Cruz' question about the Supreme Court case. He said the status of the case was that it was scheduled for oral argument on November 2nd and the City had filed their brief in the case. He said it was impossible to know how quickly after oral arguments the Supreme Court would rule. He stated he thought the Supreme Court would rule within a month of the oral arguments, but there was no set time frame. He said as of now, the legal standpoint was the statute that would otherwise prohibit the City from requiring any person to get vaccinated, but that law was currently thrown out as being unconstitutional, so it was only if the Supreme Court reverses the ruling.

Discussion continued.

The motion to move forward with the City Manager's recommendation was passed by a roll call vote of 4 to 3 (Vice Mayor Lee and Council Members Cunningham and Fimbres dissenting).

9. FY 2021/22 Unrestricted General Fund Financial update for Budget to Actuals and Working Projections (City Wide) SS/OCT19-21-210

Information and presentation were provided by Jeffrey Yates, Business Services Department Director, who fielded and answered questions on FY 2021/22 Unrestricted General Fund Financial Update for Year-to-Date Budget to Actuals and Working Projections and Position Vacancy Analysis.

Discussion ensued; no formal action was taken.

14. Presentation and Discussion on Gender-Based Violence (City Wide) SS/OCT19-21-211

(This item was taken out of order.)

Information was provided by Mayor Romero and Council Member Santa Cruz regarding Gender-Based Violence and its affects.

Information and presentation were provided by Anna Harper-Guerrero, Executive Vice President and Chief Strategy of Emerge, Xavi Ramirez, Emerge and Jesus Ruiz,

Chicanos Por La Causa, who fielded and answered questions on Building Capacity for Community Responses to Domestic Violence

Discussion ensued.

It was moved by Council Member Santa Cruz, duly seconded, and carried by a voice vote of 7 to 0, to direct the City Manager to explore options for initiating a City-wide gender-based violence training in partnership with Emerge! Center Against Domestic Abuse, and to return to Mayor and Council within 60 days with an update on the proposed training model and implementation plan.

10. Update on PFAS and the City of Tucson Water Supply (City Wide) SS/OCT19-21-205

Information and presentation were provided by John Kmiec, Tucson Water Department Interim Director, who fielded and answered questions on PFAS and the City's water supply.

Information was also provided by Andrew Greenhill, Intergovernmental Relations Manager, with regards to legislative updates on PFAS that might be occurring at the federal level.

Discussion ensued.

It was moved by Council Member Fimbres, duly seconded, that the Mayor write a letter to the Environmental Protection Agency and relevant federal agencies to urge the federal environmental agency to expedite the process of establishing a national drinking water standard and classification of PFAS as a hazardous substance and to work with our Congressional delegation to pass federal legislation and to fully implement the Biden/Harris Plan to combat PFAS pollution.

Discussion continued.

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

11. Review of Water Service Area Policy in light of pending Tier 1 drought conditions (Outside City) SS/OCT19-21-209

Information and presentation were provided by John Kmiec, Tucson Water Department, Interim Director, who fielded and answered questions on the on-going tier shortage of CIP water and drought conditions at Lake Mead and the Colorado River.

Discussion ensued; no formal action was taken.

12. Move Tucson Update – Move Tucson Draft Plan (City Wide) (City Wide) SS/OCT19-21-208

Mayor Romero announced that in the interest of time and the materials for this item were more than 300 pages, she said she felt the item needed more time for discussion and asked if it was possible to bring the item back for discussion and consideration at the November 9th meeting.

A brief, high overview of the item was presented by Diana Alarcon, Department of Transportation and Mobility Director. She said there was about 140 pages that was the “meat and potatoes” of the presentation and the rest was the appendix of materials collected that support the item as well as input from the community.

Council Member Santa Cruz stated she want to go on record regarding the east/west connections on the freeway north of 29th and Silverlake. She said she also wanted to make sure that they did not lose sight of the east/west connection south of that, specifically Ajo, Irvington, Valencia because those streets went over I-19 and was older infrastructure that did not accommodate for transit and people on bikes or walking.

Council Member Cunningham stated this document could be the City’s template to a Plan B if the RTA did not pan out. He said this could be the City’s chance with Move Tucson over a 20-year period, it gives the City about \$20 billion to do some of the things in the Plan.

No formal action was taken at this time.

13. Proposed Agreement with Tucson Police Officer Association (TPOA) Labor Agreement (City Wide) SS/OCT19-21-214

Information was provided by Michael J. Ortega, City Manager. He said his intent was to discuss his detailed memorandum with the Mayor and Council. He stated he could go over the high-level points such as the accountability and parity between TPOA and some of the other City employees. He said he was recommending bringing the item back to the Mayor and Council for consideration during the November 9th meeting given the time.

Mayor Romero stated she thought it was important to have the conversation that evening before the regular meeting.

Council Member Uhlich stated she saw some very positive elements in the Agreement and was pleased in speaking with TPOA that they openly stated they viewed this as a way to strengthen the Department and make sure that people who were not embodying the values of public service and the caliber of service that was expected of those individuals were subject to appropriate oversight and disciplines. She said she was surprised by the 5-year term of the contract, when typically, it has

been a 2- or 3-year contract with annual extensions up to 5-years. She asked that when the item came back to the Mayor and Council, that be addressed.

Mr. Ortega said he would reach out to TPOA regarding that and before he returned to the Mayor and Council

Mayor Romero said she agreed with Council Member Uhlich. She said there was a lot of movement currently happening at TPD. She stated it was important to set the stage in terms of what labor agreement was and what it was not. She said it was to establish the benefits, hours, pay and other terms and conditions of employment between the worker and the employer, not a place to set policy of how the policies of the Mayor and Council, the City Manager and the Chief of Police will reflect on where they want to take the department.

Discussion ensued regarding internal discipline, allowing officers who to use vacation time when suspended, transparency, overtime, shift changes, public input and expectations.

No formal action was taken.

14. Presentation and Discussion on Gender-Based Violence (City Wide) SS/OCT19-21-211

(This item was taken out of order and discussed after Item #9.)

15. Updates on State and National Legislation and Regional Committees (City Wide) SS/OCT19-21-200

Information and presentation were provided by Andrew Greenhill, Intergovernmental Relations Manager, who fielded and answered questions.

Discussion ensued regarding the Proposition 301 and the education cap and postal distribution centers.

No formal action was taken.

16. Mayor and Council Discussion of Regular Agenda (City Wide) SS/OCT19-21-201

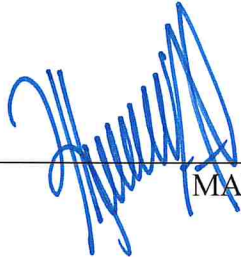
No items were identified.

17. Mayor and Council Discussion of Future Agendas (City Wide) SS/OCT19-21-202

No items were identified.

18. **ADJOURNMENT** – 5:44 p.m.

AUDIO RECORDING FOR THIS MEETING IS AVAILABLE ON-LINE AT <https://www.tucsonaz.gov/gov/meeting-schedules-and-agendas> FOR TEN YEARS FROM THE DATE OF THIS MEETING.



MAYOR

ATTEST:



CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the study session meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 19th day of October 2021, and do hereby certify that it is an accurate transcription.



DEPUTY CITY CLERK

RWR:yl