CITIZENS' WATER ADVISORY COMMITTEE (CWAC)

Wednesday, March 2, 2016, 7:00 a.m.
Director's Conference Room
Tucson Water, 3rd Floor
310 W. Alameda Street, Tucson, Arizona

Legal Action Report

1. Roll Call:
The meeting was called to order by CWAC Chair Brian Wong at 7:00 a.m. Those present and absent were:

Present:

Brian Wong	Chairperson, Representative, City Manager
Mark Murphy	Representative, Mayor
Catlow Shipek	Representative, City Manager
Mark Taylor	Representative, City Manager
Placido dos Santos	Representative, City Manager
Chuck Freitas	Representative, City Manager
Mitch Basefsky	Representative, City Manager
Ryan Lee	Representative, Ward 1
Michelle Crow	Representative, Ward 2
Bruce Billings	Representative, Ward 3
George White	Representative, Ward 4
Mark Lewis	Vice Chair, Representative, Ward 5
Kelly Lee	Representative, Ward 6 (arrived after roll call)
Timothy Thomure	Tucson Water, Director, Ex-Officio Member
Jackson Jenkins	Pima County Regional Wastewater Reclamation Department Director, Ex-Officio Member

Absent:

Mark Stratton	Representative, City Manager
Jean McLain	Representative, City Manager

Tucson Water Staff Present:

Scott Clark	Deputy Director
Jeff Biggs	Water Administrator
Melodee Loyer	Water Administrator
Andrew Greenhill	Intergovernmental Affairs Manager
Fernando Molina	Water Program Superintendent
Daniel Ransom	Water Conservation Supervisor
Johanna Hernandez	Staff Assistant
Kris LaFleur	Staff Assistant
Beth Kleiman	Hydrology Intern

Others Present:

Chris Avery	City of Tucson, Attorney's Office
Amy Stabler	City of Tucson, Ward 6
Susan Spiess	City of Tucson, Central Accounting-Finance
Michael Block	Metro Water
Betsy Wilkening	Arizona Project Wet
Mark Day	Citizen

2. Announcements – No action taken.

3. Call to Audience – No action taken.

4. Review of February 3, 2016 Legal Action Report and Meeting Minutes – Committee Member Freitas motioned to approve the Meeting Minutes of February 3, 2016. Member Billings seconded. Motion passed unanimously by a voice-vote of 10-0.

Member Kelly Lee arrived at 7:01 a.m.

5. Director's Report –

a. Mayor and Council Items – On March 8th, Mayor and Council will consider an Intergovernmental Agreement with Pima County for water facilities related to World View, also known as Project Curvature. On April 5th, Mayor and Council will consider Tucson Water's Financial Plan and proposed rate structure.

b. Department Updates – Tucson Water currently has just over 50 vacancies, a number of active recruitments, and 9 pending new hires. The Utility is coordinating filling its vacancies with the City.

c. Informational Items – The City Executive Leadership Team is meeting frequently to discuss the general fund and address the structural imbalance of that budget. Those meetings have been productive and will continue.

The Utility debt refunding process is going well. Bond ratings are due next week, which could result in about $8 million cumulative savings.

Staff continues to work with Ward offices to improve Tucson Water's conservation and rainwater rebate programs.

CWAC will be copied on biweekly staff emails regarding department activities. Recently, this email reflected that in 2015, for the first time, Tucson Water pumped zero groundwater due to the use of renewable resources.

The main at 22nd and Alvernon was being tested for scheduled for repairs when it broke. The water is currently being diverted to a pond that feeds the Dell Urich golf course. The Utility is considering repair/replacement of the current pipe or to abandon the pipe and lay a parallel pipe. There are no service interruptions as a result of this break.

Staff will provide some form of analysis of the vacancies that addresses the skill levels of the frequently vacant positions.

6. Subcommittee Reports –

Technical, Policy, and Planning Subcommittee – Subcommittee Chair Murphy reported that the TPP received a staff presentation on prevention and contamination of water and problems related to the Flint Michigan incident (lead and the Tucson Water system).

Finance Subcommittee – Subcommittee Chair Billings reported that the Subcommittee is meeting today to discuss rates and cost of service.

Conservation and Education Subcommittee – Subcommittee Chair Shipek reported that the Subcommittee received presentation from CHRPA, a contractor for the conservation fund. They also reviewed the mid-year report. Coming up the members will consider the Subcommittee's mission, strategies, and new program ideas.

Bill Redesign Ad-Hoc – Subcommittee Chair Freitas reported that the staff recently completed multiple focus groups on the redesign of the statement. A meeting will be scheduled to review the results.

Member Ryan Lee arrived at 7:12 a.m.

RWRAC Update – Member Taylor reported that RWRAC discussed debt coverage ratios and the overall financial status of the organization. They will be meeting today to discuss the financial plan and rates.

Additionally, the Committee is discussing the needed capital investments in the Mt. Lemon and fairgrounds wastewater treatment plants, associated costs, and possible differential rates. The Committee also updated the rate ordinance, making minor changes. The Committee expects to discuss the use of effluent north of the plant in the future.

7. **Subcommittee Appointments** – Member Crow has requested to be appointed to the Conservation and Education Subcommittee. Member Billings motioned for Member Crow's appointment to Conservation and Education. Member Shipek seconded. There was brief discussion related to Subcommittee openings and appointments. Motion passed unanimously by a voice-vote of 13-0.

Member Crow arrived at 7:15 a.m.

8. **Avra Valley Glyphosate Communications Plan –** Tucson Water staff member Johanna Hernandez conveyed the Utility's plan for communication with the community regarding the use of glyphosate in the Avra Valley area. Staff has not been able to reach Mr. Albert Lannon, the citizen requesting additional communication, but has developed a plan. A written notice will be posted reflecting general timeframes for treatment of buffelgrass, including mowing and spraying of glyphosate; the areas to be sprayed with glyphosate will be physically flagged prior to spraying and; the Utility will coordinate with the residents to establish a point of contact from the community for day of notification. Additionally, the general notice will be posted on-line with a number to contact with questions and an automated call will be considered if community requests for notification merit such action.

9. **Consideration of CWAC Letter re M&C Policy Alignment with Financial Plan** – Chairperson Wong led discussion regarding the edits to the letter, and noted that inclusion of specific language regarding County residents and Tucson Water funding of relocation of infrastructure still needed to be determined. Member Freitas provided members with a packet of background information for their reference. Chairperson Wong requested clarification from staff regarding funding of relocation of infrastructure. Assistant City Attorney Chris Avery clarified that, since a 1979 IGA, Tucson Water and Pima County have split water relocation costs in the County right-of-way 50-50. Prior to 2003, costs for relocation in the City were also split 50-50; however, a 2003 Memorandum assigned 100% of costs for any relocation inside the City to Tucson Water. Member Murphy confirmed that any objections that the City Attorney's office voiced over previous iterations of the letter have been addressed. Members discussed whether the letter should include general policy inconsistencies and policy revisions, or only specifically address the specific issues currently in the letter. Member Billings motioned for acceptance and distribution of the letter, as revised. Member Taylor seconded. Motion passed unanimously by a voice-vote of 13-0.

10. **Consideration of Formation of CWAC By-Laws** – Chairperson Wong introduced the topic for discussion to the Committee. Member Lewis expressed the reasoning behind his push for the Committee to adopt more formal and detailed by-laws than the rules and regulations they currently operate under. Members discussed if the Committee needs such by-laws and discussed the specific issues noted by Member Lewis. Member Lewis motioned for formation of an Ad-Hoc Subcommittee to review, with the intent to enhance/improve, the Committee's rules, regulations and/or by-laws. The motion failed for lack of a second.

11. **Future Meetings/Agenda Items** – Member Lewis motioned to agendized a discussion regarding the amount of time spent on presentations versus the amount of time spent on discussions. Member Freitas seconded. Members discussed the need for such a discussion. Motion failed by a voice-vote of 4-7-2, with Members Kelly Lee, Basefsky, Freitas, and Lewis voting for the motion and Members Ryan Lee and Crow abstaining. See projected agenda for additional details.

12. **Adjournment** – Meeting was adjourned at 8:02 a.m.

cwac

Citizens' Water Advisory Committee
City of Tucson
P.O.Box 27210
Tucson, AZ 85726-7210

DATE: February 3, 2016

TO: Honorable Mayor and Council Members

FROM: Brian K. Wong
Chair, CWAC

SUBJECT: City of Tucson Mayor and Council Water Policies Clarifications

Over the past year, discussion amongst the committee members about the Mayor and Council Water Policies has come up on multiple occasions. The Water Policies document was passed by Mayor and Council on January 26, 1998, and is currently 18 years old. CWAC has identified a number of issues with certain policies and is concerned about which polices should continue to be followed and which policies need to be revised. Tucson Water is currently developing the FY 2017 financial plan with a FY 2018-2021 proposed plan. There are three items for which CWAC requests direction from Mayor and Council (M&C):

1. PAYMENT IN-LIEU OF PROPERTY TAX

For the past six years the City of Tucson has charged Tucson Water $1.6 million per year for Payment In-Lieu of Property Tax (PILOT). These monies are in turn collected from the ratepayers – including County residents – with the funds going into the General Fund. This payment will increase to $2.0 million (FY 2017) at the direction of the ~~COT~~City of Tucson Finance Department and continue into the future. ~~This action is not in accordance with COT Water Policies. This is also contrary to Chapter XIII, Section 10 of the City Charter[1]. This assessment upon water ratepayers was done without a specific motion by M&C permitting a new tax, and without the City Charter requirement for a specifically related public hearing. Listing the PILOT within a financial plan does not meet the requirements of the City Charter. Having a public hearing and motions on an annual "omnibus" budget with the PILOT buried therein does not meet the letter nor the spirit of the City Charter.~~ Will this fee be a permanent charge to Tucson Water?

Comment [BW1]: Up for discussion

2. LOW-INCOME ASSISTANCE PROGRAM

According to M&C Water Policies (III.A.1.e), funding of this program will be "from the general fund of the City and not from water rates." Since FY 2011, Tucson Water has funded this program. Initially, funding was $500,000, and the proposed budget figure for FY 2017 is $925,000 and increasing into the future.

CWAC has been informed by Tucson Water that "the Low-Income Program and the adopted Water Policies can in fact coexist with the knowledge of M&C." Is this the position of Mayor & Council?

3. PUBLIC WORKS FUNDING

The M&C Water Policies (III.A.5.e) state: "Capital requirements for relocations or other modifications to the water system required to accommodate other public works shall be derived from sources other than

~~[1] Chapter XIII, Section 10: Property exempt from taxation; general requirements for taxes.~~
~~There shall be exempt from taxation all federal, state, county and municipal property; …every ordinance imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied.~~
~~(Ord. No. 1142, eff. 6/23/48)~~

DRAFT

the water utility." Tucson Water has been funding its own relocation of infrastructure during public works and road improvements over the past years. What is Mayor & Council's position on this policy?

Comment [BW2]: Has TW ever received funding in accordance to this policy?

Date: March 2, 2016

TO: CWAC Members

FROM: Chuck Freitas
Tucson Water Customer

SUBJECT: CWAC Meeting February 3, 2016.
Item 8: Consideration of CWAC Letter to M & C

I realized that some of the newer CWAC members may not be familiar with Item 1. Payment In-lieu of Property Tax. Therefore, I am providing some public documents that provide history, facts, and "backup" for your use.

If you have any questions, my email is: falcnpools@aol.com

The City of Tucson takes $7 million, plus,annually, from Tucson ratepayers for administrative and other services provided by it for Tucson Water. Why, then, does the City take an additional $1.6 million,annually, from the ratepayers- including County residents- the funds going into the General Fund?

This type of action is contrary to the City Charter! * This assessment upon water ratepayers was done without a specific motion of Mayor & Council permitting this new tax and,also, without the City Charter requirement for a specifically related public hearing. Simply listing the new in-lieu property tax within a financial plan does not meet the requirements of the City Charter .Having a public hearing and motions on an annual "omnibus" budget with the in-lieu tax buried, therein, does not meet the letter nor the spirit of the City Charter.

* Section 10 Property exempt from taxation...There shall be exempt from taxation all federal, state, county and municipal property;.....every ordinance imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied. (Ord. No. 1142, eff 6/23/48)

Chuck Freitas

FROM COT CHARTER

limitation on indebtedness and method of increase of debt limitation, approved by the governor Oct. 1, 1980, was repealed.

(16a) *Vote required for certain types of bond issues.* Notwithstanding any other provisions of this Charter, and with the exception of refunding bond issues, special assessment or improvement district and redevelopment or tax increment bonds, after the effective date of this subsection the city shall not issue or authorize the issuance of any bonds which pledge city tax revenues as a guarantee for their payment, in whole or in part, without the approval of a majority of the qualified electors of the city voting at an election called for that purpose. (Ord. No. 4704, eff. 11-28-77)

(17) *Assessment, levy, etc., of taxes in excess of rate permitted by Charter.* To assess, levy and collect taxes exceeding the said dollar rate permitted in this Charter, for general municipal purposes; provided, that before such assessment and levy can be made, the proposition to make such assessment and levy shall have been first approved by a majority of the taxpayers, who shall be qualified electors of the city, voting at a general election or at a special election called for the purpose by the legislative authority of the city; provided, however, that the said dollar rate limitation on each hundred dollars valuation shall not apply to the levying and collecting of taxes for the payment of interest, and providing a sinking fund, upon the bonded indebtedness of the city. (Ord. No. 1142, eff. 6-23-48)

(17a) *Added by Ord. No. 1835; repealed by Ord. No. 2297.*

(18) *Licensing and regulation of professions, trades, etc.; regulations and restraint of certain businesses; suppression of gambling, bawdy houses, etc.** To license and regulate places of amusement and the carrying on of any and all professions, trades, callings, occupations and kinds of business carried on within the limits of said city, and to fix the amount of license tax thereon, to be paid by all persons engaged in carrying on such places of amusement and such professions, trades, callings, occupations and kinds of business in said city; and to provide for the manner of enforcing the payment of such license tax; and to regulate, restrain, suppress or prohibit hawking and peddling, and the carrying on of any laundry, garage, gasoline or other oil or service stations, livery and sale stable, cattle or horse corral, planing mill, rolling mill, rockcrusher, tank or refinery, foundry, brick yard, slaughterhouse, butcher shop, manufactory or manufacturing plant, and the keeping of animals, cattle or fowls within the limits, or within any designated portion of, said city; and to prohibit and suppress all games of chance, gambling houses, bawdy houses, and all places where intoxicating liquors are sold or kept, or offered for sale or given away, and any and all obnoxious, offenses [offensive], immoral, indecent or disreputable places or practices within the said city.

(19) *Protection against fires, floods, etc.; police and sanitary regulations.* To make, adopt and enforce all necessary rules and regulations for the prevention of fires, floods and riots, and to make and enforce all such local, police, sanitary and other regulations as are deemed expedient to maintain the public peace, protect property, promote the public morals and welfare, and preserve the health of the inhabitants of the city.

*Annotations—Ch. IV, § 1(18) authorizes the city to license and regulate electricians, so long as said licensing and regulatory provisions are not arbitrary or unreasonable. **City of Tucson v. Stewart**, 45 Ariz. 36, 40 Pac. 2d 72.

Person who raises plants and sells them as seedlings for transplanting is liable for occupational tax as nurseryman even though many plants are nonbearing fruit trees. Plaintiff's contention that the tax was illegal because of statute providing right of producer to sell his own food products would not be restricted was rejected. **Monthan v. City of Tucson**, 80 Ariz. 179, 294 P. 2d 668.

Mortuaries are subject to reasonable police regulation as to location as well as the manner in which they are conducted. **City of Tucson v. Arizona Mortuary**, 34 Ariz. 495, 272 Pac. 293.

resolutions, and on the final action of the mayor and council in the granting of franchises, in the authorization of contracts, in the ordering of work to be done or supplies or other public improvements; in all other cases, upon the call of any member.

Sec. 4. Mayor and council to adopt rules of proceedings; substantive action to be by ordinance or resolution.

The mayor and council shall establish rules for their proceedings, and shall act only by resolution or ordinance.

Sec. 5. Quorum for mayor and council; vote required except for procedural motions; signature, attestation of ordinances and resolutions.

The mayor and a majority of the members of the council, or, in the absence or disability of the mayor, four (4) members of the council, shall constitute a quorum to do business, and four affirmative votes of the mayor and council, or four (4) affirmative votes of the members of the council, shall be necessary to adopt any ordinance, resolution or motion, or pass any measure, unless a greater number is specifically required by this Charter. Every ordinance or resolution adopted by the mayor and council must be signed by the mayor and attested by the clerk.

Annotation—Under provision of 1883 Charter authorizing the vice-chairman of the council to act as mayor in the absence of mayor, similar to ch. VIII, § 1, hereof, held that the vice-chairman may sign ordinances when acting as mayor. **City of Tucson v. Arizona Mortuary**, 34 Ariz. 495, 272 Pac. 923.

Sec. 6. Form of ordinances and resolutions; enacting clause.

Each proposed ordinance or resolution shall be introduced in written or printed form. The enacting clause of all ordinances adopted by the mayor and council shall be

"BE IT ORDAINED by the Mayor and Council of the City of Tucson."

Sec. 7. Vote on motion to reconsider ordinance.

When an ordinance put upon final passage fails to pass, and a motion is made to reconsider, the vote on such motion shall not be taken within twenty-four (24) hours thereafter.

Sec. 8. Signing, attestation, effective date of ordinances, resolutions, franchises; emergency measures; publication and posting required.

All ordinances, resolutions or franchises shall be signed by the mayor and attested by the clerk, and transcribed in the proper books therefor, but no ordinance, resolution or franchise shall take effect and become operative until thirty (30) days after its passage, except measures necessary for the immediate preservation of the peace, health or safety of the city; but no such emergency measure shall become immediately operative unless it shall state, in a separate section, the reasons why it is necessary that it should become immediately operative, and be approved by the affirmative vote of five-sixths of the council, taken by ayes and noes; provided, further, that all ordinances and resolutions having the effect of ordinances or required to be published, except emergency ordinances and resolutions, shall be published at least three (3) consecutive times in the official newspaper of the city, and a copy thereof posted on a bulletin board in front of the City Hall, before they become effective and operative.

Cross reference—Printing and publication of propositions required to be submitted to voters, ch. XIX, § 5.

Annotations—Adoption of an electrical code by resolution which was in turn adopted by an ordinance which complied with the requirements of ch. IX, § 8. constituted an effective adoption of the electrical code, **City of Tucson v. Stewart**, 45 Ariz. 36, 40 p. 2d 72. Chapter IX, § 10 does not mean that emergency measures passed pursuant to ch. IX, § 8 will not become effective until thirty days after passage; they become effective upon passage under ch. IX, § 8 above. **Burton v. City of Tucson**, 88 Ariz. 320, 356 P. 2d 413.

Sec. 9. Manner of revising, amending, reenacting ordinances.

Ordinances shall not be revised, reenacted or amended by reference to title only, but the ordinance to be revised or reenacted, or the section or sections thereof to be amended, or the new section or sections to be added thereto, shall be set forth and adopted in the method provided in this chapter for the adoption of ordinances.

Sec. 10. Publication, effective date of ordinances.

All ordinances adopted under this Charter, except emergency ordinances, shall be published forthwith in the usual manner three (3) consecutive times in the official newspaper, and no [such] ordinance shall take effect until thirty (30) days after its passage.

Annotation—Chapter IX, § 10 does not mean that emergency measures passed pursuant to ch. IX, § 8 will not become effective until thirty days after passage; they become effective upon passage under ch. IX, § 8, **Burton v. City of Tucson**, 88 Ariz. 320, 356 P. 2d 413. The word [such] was inserted by editors to show effect of said case.

Sec. 11. Manner of repealing or suspending ordinances.

No ordinance or section thereof shall be repealed or suspended except by ordinance adopted in the manner provided in this chapter.

Sec. 12. Minutes to be public.

Any citizen of the city may have access to the minutes, upon application to the clerk.

Sec. 13. Right to petition mayor and council; consideration of petitions.

Any citizen of the city may appear before the mayor and council at any regular meeting, and present a written petition; such petition shall be acted upon by the mayor and council in the regular course of business, within fifteen (15) days.

Sec. 14. Failure to vote.

No member shall be excused from voting except upon matters involving the consideration of his own official conduct. In all other cases a failure to vote shall be entered on the minutes as an affirmative vote.

Sec. 15. Exercise of powers under charter when no procedure prescribed by law.

Wherever, by any provision of this Charter, it is prescribed that any power, duty or procedure shall or may be exercised, performed or adopted in the manner established by any law of the State of Arizona, and there be no procedure established by state law therefor, then the mayor and council shall by ordinance prescribe the procedure.

CHAPTER X. POWERS AND DUTIES OF OFFICERS OTHER THAN MAYOR AND MEMBERS OF THE COUNCIL*

Sec. 1. City manager.

Subject to the control of the mayor and council, the manager shall have the general supervision and direction of the administrative operation of the city government; he shall supervise and direct the official conduct of all appointive city officers except the auditor,† attorney, treasurer,† health officer,† clerk and magistrate; he shall supervise the performance of all contracts made by any person for work done for the city, and in that behalf

*Cross references—Officers and salaries generally, ch. V; work day, minimum wage, citizenship requirements for employees, ch. XV, § 5; officers and employees generally, ch. XVIII; civil service, ch. XXII; political activities by employees prohibited, ch. XXV, § 8; purchasing agent, ch. XXVII; director of public works, ch. XXVIII, § 1; director of finance, ch. XXIX; director of parks and recreation, ch. XXXI.

†**Editor's note**—The office of auditor was abolished by repeal of § 2 of this chapter, and his functions are now performed by the director of finance under ch. XXIX hereof. The office of treasurer was abolished by repeal of § 3 of this chapter, and his functions are now performed by the director of finance under ch. XXIX hereof. Chapter XI, § 1, providing for a health officer has been repealed.

Cross references—Appointment, term and removal of city manager, ch. V, § 3; budgetary duties of city manager, ch. XIII, §§ 3, 4; duty of manager to keep franchise record, ch. XVII, § 13; duty of manager to issue temporary permits for franchise holders to use streets and public places, ch. XVII, § 14.

Sec. 8. Justice of the peace to perform duties if magistrate does not.

If at any time the magistrate refuse or fail to perform the duties of his office, or in case of his absence or inability to act, it is hereby made the duty of any justice of the peace within said city to perform the duties of said magistrate, with all the jurisdiction conferred by law upon said magistrate; provided, however, that said mayor and council may designate the particular justice who shall exercise said jurisdiction, in which case no other justice shall possess the same.

Sec. 9. Ordinances giving effect to chapter required.

The mayor and council shall pass all necessary ordinances to give effect to the provisions of this chapter, not otherwise herein provided.

CHAPTER XIII. FINANCE AND TAXATION*

Sec. 1. Fiscal year.

The fiscal year of the city shall commence upon the first day of July of each year.

Sec. 2. Mayor and council to provide for assessments, levy, collection of taxes; use of county services; statutory powers authorized.

The mayor and council shall by ordinance provide a system for the assessment, levy and collection of all city taxes, not inconsistent with the provisions of this Charter.

The city shall have power to avail itself by ordinance of any law of the State of Arizona, now or hereafter in force, and comply with the requirements thereof, whereby assessments may be made by the assessor of the county in which the city is situated, and taxes collected by the tax collector of said county for and in behalf of the said city, and may avail itself by ordinance of the laws of the state, nor or hereafter in force, and comply with the requirements thereof in regard to the ordering, making and collecting of special assessments upon any and all property benefited. Other provisions of this Charter concerning the assessment, levy and collection of taxes shall be subject to the provisions of any such ordinance while the same shall be in force.

Sec. 3. Annual estimate of expenditures required.

On or before the first Monday in May of each year, or on such date in each year as shall be fixed by the mayor and council, the manager shall prepare a careful estimate in writing of the amounts of money, specifying in detail the objects thereof, required for the business and conduct of the affairs of the city during the next ensuing fiscal year.

Sec. 4. Submission of estimate of expenses and revenues to mayor and council.

On or before the first Monday in June of each year, or on such date in each year as shall be fixed by the mayor and council, the manager shall submit to the mayor and council the estimates of each department and his own personal report and recommendation and estimate as to the probable expenditures of the city for the next ensuing fiscal year, stating the amount in detail required to meet all expenditures necessary for city purposes, including interest and sinking funds, and outstanding indebtedness, if any there be; also an estimate of the amount of income expected from all sources in each department, and the probable amount required to be raised by taxation to cover such expenditures, interest and sinking fund.

Sec. 5. Annual budget, required; publication; notice of meeting to fix tax levy.

The mayor and council shall meet annually prior to fixing the tax levy, and make a budget of the estimated amounts required to pay the expenses of conducting the business of the city for the ensuing fiscal year. The budget shall be prepared in such detail as to show the aggregate sum and the items thereof allowed for each and every purpose, and such budget, together with a notice that the mayor and council will meet for the purpose of

*Cross references—General power to tax, ch. IV, § 1015; limitations on claims for damages, ch. XXV, § 12; department of finance, ch. XXIX.

making tax levies, in accordance with said budget, at the time and place set out in said notice, shall be published in the official newspaper of the city once a week for at least two (2) consecutive weeks following the tentative adoption of such budget.
(Ord. No. 1142, eff. 6-23-48)

Sec. 6. Adoption of budget and tax levy.

The mayor and council shall meet one (1) week previous to the day on which tax levies are made, and at the time and place designated in such notice, when and where any taxpayer who may appear shall be heard in favor of or against any proposed tax levy. When such hearing shall have been concluded, the mayor and council shall adopt the budget as finally determined upon. All taxes shall be levied or voted upon in specific sums, and shall not exceed the sum specified in such published estimate.
(Ord. No. 1142, eff. 6-23-48)

Sec. 7. Adoption of ordinance setting tax rate.

On the day set for making tax levies, and not later than the third Monday in August, the mayor and council shall meet and adopt an ordinance levying upon assessed valuation of property within the city, subject to the provisions of this Charter, a rate of taxation upon each one hundred dollars ($100.00) of the assessed value of all real and personal property within the city for municipal expenses, sufficient to raise the amounts estimated to be required in the annual budget, less the amount estimated to be received from fines, licenses and other sources of revenue.
(Ord. No. 1142, eff. 6-23-48)

Sec. 8. Additional power to tax for bonds, libraries, advertising.

The mayor and council shall have the power to levy and collect taxes in addition to the taxes herein authorized to be levied and collected, sufficient to pay the interest and maintain the sinking fund of the bonded indebtedness of the city, and to provide for the establishment and support of free public libraries, and for advertising the advantages of the city.

Annotation—The authority to collect taxes to advertise the city is not subject to the limitation of amount imposed by A.R.S. § 9-493. City of Tucson v. Sunshine Climate Club, 64 Ariz. 1, 164 P. 2d 598.

Cross reference—Limitations on ad valorem tax, ch. IV, § 2.

Sec. 9. Taxes to be uniform, for public purposes only.

All taxes shall be uniform upon the same class of property within the corporate limits, and shall be levied and collected for public purposes only.

Sec. 10. Property exempt from taxation; general requirements for taxes.

There shall be exempt from taxation all federal, state, county and municipal property; property of educational, charitable and religious associations and institutions not used or held for profit shall be exempt from taxation.

Public debts, as evidenced by the bonds of Arizona, its counties, municipalities, or other subdivisions, shall be exempt from taxation. There shall further be exempt from taxation the property of widows and others, residents of this city, where by the laws of the state such property is made exempt from the state and county taxation.

All property in the city not exempt under the laws of the United States, the laws of the State of Arizona, under the Charter and ordinances of this city, shall be subject to taxation, to be ascertained as provided by ordinance.

No tax shall be levied except in pursuance of this Charter and the laws of the State of Arizona, and every ordinance imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied.
(Ord. No. 1142, eff. 6-23-48)

Sec. 11. Deposit of city funds; interest required.

The mayor and council shall cause the city's monies, other than sinking funds, to be deposited in any bank or banks in the city designated by said mayor and council, upon sufficient security, of the kind and character mentioned in the following section, to assure the safety of any such deposit or deposits, being given the city therefor by said bank or banks, said security to be approved by the mayor and council.

Initiate An In-Lieu of Property Tax for Tucson Water properties $1,643,146

Municipal-owned utilities are exempt from property taxes. In order to compensate the City for the lost property tax revenues and treat Tucson Water as a true enterprise, the Mayor and Council could impose an in-lieu of tax.

The tax rate would be the City's combined (primary and secondary) property tax rate. However, unlike the City's property taxes from which a portion is earmarked for debt service; the entire amount of in-lieu of tax collected could be used for general government purposes.

Because municipal-owned utilities are exempt from property taxes, neither the Arizona Department of Revenue (that values utilities) nor the County Assessor's Office (that values other commercial property), would have an interest in valuing Tucson Water. Therefore, in order to observe the "ad valorem" character of the tax, the City could use book value of Tucson Water's fixed assets within the City and then apply the statutory assessment ratio for utilities of 25% to determine taxable value. Amounts from statement of net assets, June 30, 2008.

Total book value	$ 907,566,793
Construction wk-in-progress	
At 50% (ARS)	$ 61,841,001
Adjusted	$ 969,407,794
Est. value within the City	60%
Total value within the City	$ 581,644,676
Assessment ratio (ARS 42-15001)	25%
Taxable value	$ 145,411,169
City combined rate per $100 A.V.	$ 1.13
In-Lieu tax	$ 1,643,146

In order to establish an in-lieu tax, Mayor and Council would have to consider this tax as a proper charge against the utility and build this charge into the utility's rate structure. Also, in keeping with property tax concept, the in-lieu tax could be scheduled for payment in two equal installments – half due on the first business day in November and half on the first business day in May.

Model City Tax Code (MCTC) Amendments

1. Reinstitute a 2% privilege tax on advertising.

   Representatives of the industry approached Mayor and Council about exempting advertising from privilege tax in 1990. The exemption for non-local advertising was amended and the rate phase went down to zero after July 1993. 1990-91, the last year the tax rate was 2%, **$964,000** was collected.

   Would require adoption of an ordinance establishing a tax rate greater than zero.

Revenue Enhancements

Subsequent to the generation of the Revenue Enhancement report, staff identified additional revenue sources whose fees are governed by ordinance and thus constrained from cost recovery principles. These fees primarily originate in the Transportation and Real Estate departments and include:

- Work Zone Fees
- Utility Permits
- Excavation Permits
- Application Fees for Real Estate Services
- Animal Control Fees

IN-LIEU NOT LISTED

COT 3/17/2009
M&C

3/17/2009

Revenue Enhancements

Proposed Revenue Enhancements

Tax Category	Current Rate	Proposed Rate	Financial Impact
Public Utility	2%	3%	$3.4 Million
Advertising Tax	0%	2%	$964,000
In-lieu Property Tax	N/A	1.13%	$1.6 Million
Residential Rentals	0%	2%	$12.0 Million
Transient Rental Surtax	$1/night	$2/night	$1.8 Million
Health Spa Memberships	0%	2%	$500,000
Contracting – repeal cost of land deduction	N/A	N/A	$290,000
Tanning Salons	0%	2%	$15,000
License Owners of Real Property	$0	$45	$13,000
Special Events Licenses for "Promoters"	$0	$28 & $45	$36,000
		TOTAL	$20,618,000

Fiscal Year 2011 Potential Revenue or Fee Increases Options

For Mayor and Council Discussion on 3/23/2010

BOBS #	Potential Revenues or Fee Increases Project	Do Not Pursue	Direct Further Review in Recommended Budget	Direction Requested Regarding Proposed Action Plan	Discuss in Further Detail
B-1	Advertising Tax	X			
B-2	Charging Business Privilege Tax on UA Stores' Transactions			X	
B-3	Contracting the Operation of El Rio, Silverbell, and Fred Enke Golf Courses			X	
B-4	Development Services: Premium for Overtime Inspections		X		
B-5	Environmental Protection Fee on Water Meters to Fund the Stormwater Quality Program			X	
B-6	Fire Inspection Cost Recovery for Outdoor Events and Gas Stations			X	
B-7	Food Tax		X		X
B-8	In-lieu of Property Tax on Tucson Water	X			
B-9	Jet Fuel Tax	X			
B-10	Leases: $1.00 for Non-Profit Organizations		X		
B-11	Licensing of Bicycles	X			
B-12	Litter Assessment Fee - Refuse/Recycling Collection Vehicles			X	
B-13	Malicious Criminal Offense Cost Recovery				X
B-14	Naming Rights			X	
B-15	Occupational Privilege Tax (Head Tax)	X			
B-16	Parks Fees		X		
B-17	Pawn Shop Transaction Fee			X	
B-18	Photo Enforcement Program Expansion			X	
B-19	Procurement Card (pCard) Program Expansion			X	
B-20	Repeal Big Box Ordinance				X
B-21	Sale of Randolph North Golf Course for Mixed Use Development	X			
B-22	Sun Tran Fare Increases				X
B-23	Tort Liability Charge on Primary Property Tax Assessment				X
B-24	Towed and Impounded Vehicles Fees				X
B-25	Pima Animal Care Center Fees (See Attachment 2: ADDED 3/23/10)				X

Copyright ©2010 Phoenix Police Fundraiser. All rights reserved.

Attachment 1

CWAC
Citizens' Water Advisory Committee

ATTACHMENT B

DATE: February 10, 2010

Sarah Evans
Chair, CWAC

Martha Gilliland
Vice Chair, CWAC

TO: Honorable Mayor and and Council Members

FROM: Martha Gilliland
Vice Chair, CWAC

SUBJECT: CWAC Report and Recommendations on Tucson Water's FY 2010 – 2015 Financial Plan and Conservation Fund Financial Plan

Recommendation

On February 3, 2010 CWAC received both Tucson Water's proposed FY 2010 – 2015 Financial Plan and Conservation Fund Financial Plan (both Plans are included in the Exhibit attached to the resolution). At that meeting CWAC approved the Conservation Fund Plan unanimously, and approved the overall Financial Plan by a vote of 10 in favor and 2 opposed.

The overall Plan includes a 9.7% increase in water sales revenues for FY 2011 (to be implemented with rate changes effective July 5th, 2010), followed by 7.5% increases in revenues for FY 2012 and FY 2013; followed by 5.0% increases in FY 2014 and FY 2015.

These proposed revenue increases are smaller than were included in the Plan adopted last year, which proposed increases of 10% in FY 2011, and 8.1% for FYs 2012, 2013, and 2014.

Revenue increases continue to be necessary for two reasons: (1) the additional revenues allow Mayor and Council to ensure water system reliability and continues our investment in the sustainability and stability of the community and its water future, and (2) the continued economic downturn in our community and the nation has almost completely diminished the housing market and associated water-related development fees, and declines in per connection water consumption have resulted in lower than average revenue expectations in all years of the Financial Plan.

The City Manager has proposed that the Water Department fund the ongoing Low Income Assistance program and a new In-lieu-of-Property Tax. Both of these elements are included in all years of the proposed Plan (e.g., FY 2011 includes $500,000 for the Low Income program and $1.6 million for the In-Lieu-of-Property Tax).

The In-Lieu-of-Property Tax is a tax the City has the ability to assess Tucson Water to recover the "lost property tax revenue" that the City would have collected if the Utility were a private business. The In-Lieu-of-Property Tax amount would be calculated based upon the net-book value of Tucson Water assets located within the City limits. The preliminary cost estimate is $1.6 million.

P.O. BOX 27210 TUCSON, ARIZONA 85726-7210 (602) 791-4331

The Low Income Program is a program to assist Low Income customers on a twice yearly basis with their Utility bills. Low Income customers must have income levels at or below 150% of the Federal Poverty level to be eligible for assistance. The Program is administered through the Pima County Community Action Agency on behalf of the City. This program is projected to cost the Utility $500,000. It was previously funded by the General Fund.

Because of concerns about the proposed In-Lieu-of-Property Tax, the CWAC vote was *not* unanimous to recommend approval of the FY 2010 - 2015 Financial Plan (the vote was 10 in favor and 2 against the proposed Plan).

CWAC requests that if the In-Lieu-of-Property Tax is adopted by the Mayor and Council, that the tax be reviewed each year to determine if the City needs to impose this tax upon customers of the Water Utility.

System Reliability and Sustainability

A 9.7% increase in water sales revenues, effective in July 2010, will generate a projected $12.3 million in additional revenues over those expected to be generated from existing rates. Total FY 2011 water sales revenues at existing rates are forecast to be approximately the same as those projected in the Adopted Plan. If approved, the additional revenues from the 9.7% increase will enable Tucson Water to:

- Ensure water system reliability, including necessary system maintenance;
- Continue capital projects that will allow Tucson to receive, recharge and deliver its full annual CAP allocation;
- Continue important potable distribution projects and other infrastructure replacement projects ensuring system reliability; and
- Protect the fiscal stability of Tucson Water by meeting required debt service coverage and reserve levels.

The proposed annual revenue increases over the 5-year Plan period, are projected to generate an additional $163.1 million over the five-year period. These annual increases will help the Mayor and Council to continue investments in capital improvements that will provide capacity for recharge, recovery and delivery of CAP water to substantially meet the entire customer potable water demand by the end of FY 2015. These capital expenditures will also permit the continued investment in the rehabilitation of Tucson Water's existing system.

CWAC strongly supports conservation as a major building block of sustainability over the long run. Investing in conservation entails up-front costs in actual programs and services, and reduced revenues resulting from lower consumption. CWAC believes these are the costs of investing in our future and believes the community is prepared to make this investment.

Decline in Revenues

The two primary sources of Tucson Water revenues are water sales and fees relating to customer growth (i.e., meter connection fees, the System Equity fee, and the CAP Water Resource fee). During the current fiscal year, revenues from these sources have been relatively close to the levels projected in the Adopted Plan from last March. This is due to the extremely conservative projections included in the Adopted Plan which anticipated that the decline in the economy would continue throughout most years of the Plan.

AGENDA ITEM/MAYOR AND COUNCIL ACTION	STAFF ACTION
2. Fiscal Year 2011 Budget Balancing Discussion (City-Wide) SS/MAR23-10-102 (continued from previous page) Council Member Scott MOVED and it was duly seconded to wait on B-25 Pima Animal Care Center Fees so that City fees increases coincide with Pima County rate increases. Motion PASSED by a vote of 6 to 0 (Council Member Romero absent/excused). Council Member Scott MOVED and it was duly seconded to approve the City Manager's Recommendation for items in the Direction Requested Regarding Proposed Action Plan column of the matrix with the following changes: • B-2 – Charging Business Privilege Tax on UA Stores Transactions – move to the Do Not Pursue column • B-17 – Pawn Shop Transaction Fee – This item will be considered at the April 13, 2010 Regular Session following Police Department outreach to stakeholders. Motion PASSED by a vote of 7 to 0. Vice Mayor Glassman MOVED and it was duly seconded to approve the items in the Direct Further Review in Recommended Budget column of the matrix. Council Member Kozachik requested a friendly amendment to B-8 In-lieu of Property Tax on Tucson Water to sunset for FY12. The amendment was ACCEPTED by the maker. Motion as amended PASSED by a vote of 7 to 0. Council Member Uhlich MOVED and it was duly seconded to move B-11 Licensing of Bicycles to the Direct Further Review in the Recommended Budget column to allow for further consideration. Motion PASSED by a vote of 6 to 1 (Vice Mayor Glassman dissenting).	

TUCSON WATER

Talking points for M&C study session on TW Financial Plan:

- This financial plan is very fiscally responsible because it continues with planned revenue increases that had been included in Financial plans for the past 6 years despite significant challenges resulting from cost increases outside of TW control – i.e. CAP rates and Admin Service charge
    - CWAC Finance committee looks forward to working with City Finance Dept. to better understand all components of the Admin Service charge
- This plan includes the In-Lieu of Property tax for 2014 only; we look forward to future discussion and guidance on this issue by M&C
- The plan continues improvements to the Utility's ability to fund future capital projects by increasing cash reserves and meeting the debt service requirements established by M&C and recommended by bond rating agencies
- CWAC and the Finance subcommittee are committed to ensuring that planned revenue increases are translated into water rates that are equitable to all TW customers, that preserve incentives for conservation that have been built into the rates, and that maintain the fiscal stability of Tucson Water

Monday, December 16, 2013
$1 plus tax • $3 outside Southern Arizona

City still collecting temporary water tax

$4.8 million has been collected; levy was supposed to die in 2011

By Darren DaRonco
ARIZONA DAILY STAR

A tax on Tucson Water that was supposed to expire almost three years ago is still being charged by the city.

City budget officials asked the City Council in March 2010 to approve a $1.6 million tax on Tucson Water to cover some budget holes.

The council unanimously approved the tax, but stipulated it had to expire the following year. But the city kept collecting the expired tax, and so far, ratepayers have had to cover $4.8 million of "in-lieu property taxes" charged to the water company over the past three years.

The continued payments were approved by the council each year, although elected officials said they had no idea because staff members failed to mention it was still in the budget.

"Why have a City Council when no matter what we decide, staff does whatever they want?" said Councilman **Paul Cunningham**. "The tax may be justified, but that's not the point. The council wasn't given the final say."

City officials plan on charging the fee through at least fiscal year 2018 because the staff has includ-

See WATER TAX, A4

Monday, December 16, 2013 / Arizona Daily Star

WATER TAX

Continued from Page A1

ed it in every year's budget as line item for Tucson Water.

Council members say the staff should have pointed it out and not tucked it away from scrutiny.

"It might not be hiding, but it's obfuscating," said Councilman **Steve Kozachik**, who inserted the sunset clause in 2010. "We shouldn't have to get a magnifying glass out to look at the budget to see what's sun-setted and what hasn't."

City staff members said the issue slipped through the cracks during budget talks.

"The total budget is $1.3 billion dollars and very complicated," the city's chief financial officer, **Kelly Gottschalk**, said in an email. "Given the context of the overall size, complexity and ongoing challenge to continually respond year after year to budget deficits, the in-lieu sunset language in a prior year motion was not forward in the minds of staff."

She said while no requirement exists that the item be approved other than what was done each year, the staff could have reminded the council of the motion regarding the sunset.

A FEE OR A TAX?

City officials insist it's not a tax. Instead, they call it a fee, even though it was originally calculated using the city's property tax rates.

Since the city can't levy property taxes on public buildings, the Tucson Water tax is called an in-lieu-of property tax. In lieu-of-taxes are primarily used by the federal government as way to compensate local governments for the untaxable federal lands within their boundaries.

practice will continue as long as cities have the ability to transfer money from utilities to cover budget holes.

"DEFICIT MITIGATION"

Although city officials now say the tax is to cover city services Tucson Water benefits from, the original reason was to fill budget gaps.

"I see this as a deficit mitigation," said former City Manager **Mike Letcher** during the March 23, 2010, council meeting discussion on the in-lieu-of tax, adding he hoped the city's finances would eventually improve so the city wouldn't have to resort to taxing Tucson Water to cover budget holes.

The sunset clause approved by the council says it expires at the end of the fiscal year "unless we bring it back up again," which didn't happen, at least not overtly.

Kozachik said ignoring council direction on the sunset clause is emblematic of a city staff that's increasingly dismissive of elected officials.

"This is not going to be the way we're doing this year's budget," he said. "There's far too much at stake for either withholding information, giving out differing bits of information, or surprising us with information. All the cards will be on the table, and we'll all be playing the same hand."

Gottschalk said council directives aren't being ignored. She said it's difficult to keep track of the numerous motions and directions the council makes every year, especially with a truncated staff, "given the huge staff reductions and retirement of many long-term employees we have had in the last few years."

ADMIN. SERVICE CHARGE PAYS THIS →

In the city's case, the in-lieu-of tax is used to recoup lost property-tax revenues and to offset Tucson Water's use of public resources such as police and fire services, city officials said.

City Attorney **Mike Rankin** said state law doesn't prohibit the practice, and it's a way for the city to link Tucson Water's fee for receiving city services to something concrete, like the property-tax rate.

Since enterprise funds are supposed to operate as if they were a private business, Rankin said it's fair to charge Tucson Water in a similar fashion.

Although 36 percent of Tucson Water's customers live outside city limits, Rankin doesn't consider the fee an unjustified tax on county residents since it's charged equally to all water users for service.

Taking money from enterprise funds to cover other expenses isn't new for larger cities. Scottsdale and Phoenix both do it.

Kevin McCarthy, president of the Arizona Tax Research Association, said cities resort to surreptitious taxes on residents through utilities because it's quick, easy and residents rarely pin the blame on city officials.

"It's the path of least resistance," McCarthy said. "Any time a governmental entity can indirectly raise funds without raising general tax rates, they're going to do it."

McCarthy predicts the

Councilwoman **Regina Romero** said claiming to overlook bringing the tax before the council isn't an acceptable excuse. "These types of details have to be paid attention to on every issue," she said.

Romero said this isn't the first time the staff has kept things from the council.

"Mayor and council are elected to make policy, and staff is there to follow through on that policy," Romero said. "They cannot make those decisions by themselves."

Cunningham said council members have been kept in the dark for too long on too many issues.

"The major problem we have is there are number of issues that are staff driven and cause our transparency issues," Cunningham said. "That culture has to change."

City Manager **Richard Miranda** said his staff isn't playing fast and loose with information.

"There are expectations that we provide the mayor and the council with the best information available to allow them to make informed decisions," Miranda wrote in an email. "We are doing everything we can to meet this expectation."

Kozachik said he wants a resolution to the tax issue sooner rather than later and has asked for the item to be brought before the council for consideration.

Contact reporter Darren DaRonco at 573-4243 or ddaronco@azstarnet.com. Follow on Twitter @DarrenDaRonco

Ward 6 Staff

Steve Kozachik

Ward 6 - Newsletter

Tucson First

In Lieu Tax

Integrated with planning is the issue of trust. Sometimes even when it's in writing, what we vote to do isn't done. First let me say that ultimately each of us on the Council could have caught the fact that our vote to sunset the "In lieu of property tax" charge to Tucson Water was ignored. And yet our role is policy – staff's role is to carry it out. But I'll take bring our financial situation out into the light of day so you can see how your money is being spent. And I will hold staff accountable for delivering a consistent message to us all.

And if the in lieu fee is going to be continued, it deserves a public vote, not hidden in the midst of a budget document and a 5 year finance plan. The fact is that we likely would have approved the extension because of the tough financial condition we were in. But the fact is also that extending it was deserving of separate consideration since we had told staff to get rid of it after the first year it was in force. Trust is everything.

I've asked for an up/down vote on this item for the January 8th M&C meeting.

Admin Charges on January 22nd

Similarly, we have to get all departments on board with how our finance people are arriving at the administrative charges they get assessed. I've asked for a study session on January 22nd to talk about that.

Right now each operating unit is benefitting from the services provided by Human Relations, I.T., Procurement, and other support staff positions. Those come with a cost, and yet my rough polling of some of the top people in some of the departments make it clear that there's not sufficient buy-in to the level of admin service charges coming out of Finance. From the perspective of Finance, they're not high enough.

The issue is how departments pay for support services. Not every department has a specific line item called "Administrative Service Charges." But they all use H.R., Procurement and the others. I'm not concerned with what we're calling the charges to the departments as I am at arriving at fair and defensible charges. Some departments might want to pull some of the overhead functions in-house.

Every dollar that comes out of an operating unit is a dollar that could have gone to providing services to you. For that reason, we have to come to common ground on minimizing the administrative charges departments are paying so they're left with as much of a budget capacity as possible to do things like fix the roads, show up at burglaries, and put out fires.

I have no preconceived idea how the information we're given on the 22nd will turn out, but it's a conversation that needs to happen before we get too far into the FY'15 budget talks. If you work for an operating unit and feel there are things I should know on this topic, please don't hesitate to call. Remember – all voices deserve to be heard.

my share of the blame for not combing through the data closely enough. And I'll also maintain that there has to be a level of trust such that that level of scouring isn't necessary.

In March, 2010 we adopted a matrix of budget related items for the FY'11 budget. They included things such as changes in how much we funded outside events, changes in funding for graffiti abatement, increases in towing and impoundment fees, and an item called the "in lieu of property tax". That was an assessment on Tucson Water that yielded the General Fund about $1.6M. The idea was that Tucson Water – being an enterprise department – was exempt from paying property taxes on the property that it controlled. However, the M&C has the legal authority to levy the fee inside of city limits. The cost would be spread among all Tucson water customers – both inside and outside of the City. We adopted the fee to help balance our FY'11 budget – and at the time of the vote I offered a "friendly amendment" that it would sunset for FY'12. The vote was 7-0 in favor.

But staff did not sunset the tax. Nor did they in fiscal year 13. Early this year I got into an exchange with the City Manager's representative to the Citizen's Water Advisory Committee and he brought to my attention that the in-lieu fee was still being imposed on the utility – and by extension to all TW customers. When I brought this to the attention of our finance folks there was no hesitation in their acknowledging that they had not un-setted it, but there was a reluctance to stop it and have to find $1.6M new money in the middle of the fiscal year. I agreed to let it go with the understanding that it was going to be sun-setted for FY'14. Why? Because the money that was going into the General Fund was being used to provide services to the public. It wasn't lost, but it was a continuing charge to Tucson Water. Last week I learned that it had been included in the fy'14 Tucson Water 5 year plan, and therefore by extension in our budget.

I have asked for a study session for staff to formally bring this item to us in order for them to ask for it to be extended. It is certainly true that when we vote on a budget, each item is included – therefore according to the strict interpretation of the legality of keeping the fee moving forward, it was legal. We voted for the budget. And I didn't tip over the shell that had the in lieu pea under it.

The budget process should not be a shell game. Staff should have sun-setted the in lieu fee back in FY'12 as we voted to do. Instead, without mentioning that it was being proposed for continuation, it was simply slipped into the budget for FY'12, FY'13, and now FY'14. Because it's legal doesn't make it right.

We were surprised with having to purchase an 8th streetcar. We were surprised with a $13M funding gap in the streetcar. Employees were not shown a Power Point that speaks of a "smaller" workforce when they were asked if they approved of a pay increase. Some council offices were told our personnel situation would take care of itself through attrition. When I asked if "smaller" meant layoffs, I was told that staff preferred to use the term 'furlough.' And I could go on, but the point is very basic; to staff, give us the information – make it the same for every audience you face – say in public what you've said in private meetings – and when we vote to give direction, do what we said to do.

I ask three very basic things from our finance/budget people. Do what we say to do / keep your word / don't make a shell game out of the budget. On the in lieu issue they couldn't check any of those three boxes.

As we approach the FY'15 budget discussions that has to change. I will do what I can to

WATER POLICIES TUCSON M&C 1/20/1995

III. POLICIES

A. Finance

1. Enterprise Basis

a. The Utility shall be a self-supporting enterprise with all costs associated with the Utility to be funded from revenues derived from the sale of water and other water-related income sources.

b. An annual average debt service coverage of 1.75 shall be maintained.

c. Revenues collected in excess of operating needs of the Utility shall be carried forward for future capital bond funding requirements and shall not be transferred to the City's General Fund.

ILT

d. The Utility shall maintain cash reserves adequate for known future obligations plus an allowance for unbudgeted contingencies set at five percent (5%) of revenues from water sales.

e. Low-income water users living within the City may be supplied a minimum amount of water at reduced rates or other form of subsidized water service at the discretion of Mayor and Council. The cost of this subsidy will be funded from the general fund of the City and not from water rates.

PG 3

5. Capital Improvements

a. Various combinations of revenue, general obligation bonds, tax-secured bonds and water revenues shall be used to finance water capital improvements.

b. Repayment of the bonds shall be made from water system revenues.

c. The type of bond financing to be used shall result in the least total cost to rate-payers based on present value.

d. The term of repayment of debt shall not exceed the useful life of the improvement funded by such debt.

e. Capital requirements for relocations or other modifications to the water system required to accommodate other public works shall be derived from sources other than the water utility.

PG 6

f. Revenues accumulated in any reserve fund shall be set aside for specific purposes, such as water augmentation or water quality projects.

We must take a page from the story of the old man and the starfish. After a huge storm had brought a mini-tidal wave to his beach community one night, there were tens of thousands of starfish washed up on the shore that next morning. Amidst the masses of starfish the old man could be seen patiently picking them up and tossing them back into the sea. Along came a young lad in his twenties with green hair, eyebrow rings and a scornful face. He started laughing and mocked the old man with cynical derision. "You have to be crazy, old timer. You can't possibly save those starfish; there's thousands of them. You're wasting your time, you fool. YOU CAN'T MAKE A DIFFERENCE!"

The old man looked up at the insolent youth and smiled. He then reached down and picked up one of the struggling starfish and winged it far out into the water, replying to his tormentor, "Made a difference with that one, didn't I?"

Every one of us has to choose whether we will try to make a difference or give in to indifference. Will we fight to inform our neighbors or succumb to the easy road of apathy? Will we opt for principle or popularity? Will we succumb to the statist thugs on the far left, or fall for the anarchic screwballs on the far right? The "mean" of constitutional sanity beckons to the percipient among us. Will it survive the tumult ahead?

Not everyone, naturally, has the time and mental wherewithal to forcefully fight the "ideological indoctrination" destroying our country today. But many of us do. Our power lies in our minds and the strength of our personalities. We who possess this inner strength feel compelled to spread the word in any way we can for as long as we live. We feel compelled to wing as many starfish back to life as we can.

The apathetic and cynical will scorn all this as senseless, just as the green-haired youth did. They will choose to remain wards of the state and sanction their enslavers. This has always been the nature of most humans. When such wards see others fighting valiantly against seemingly insurmountable odds for the freedom they have scorned, they are subconsciously humiliated because they are not deep in the thick of the fight themselves. They have chosen to avoid the fight and sanction the tyrants who are destroying our way of life. Thus, they must find a way to salve their consciences. That way is to caustically mock the Davids who go up against the Goliaths, to smear the Rolands of Roncesvalles that history hands down to us as heroic exemplars.

CWAC RULES & REGULATIONS
February 4, 2015

I. DUTIES AND RESPONSIBILITIES

1) <u>Chairperson</u>

Shall preside at all meetings of the Committee. In this regard, the chairperson shall:

a) Preserve order;
b) Decide all points of order and procedure, subject to appeal to membership;
c) Declare all votes;
d) When more than one member wishes to speak, shall determine the order in which the members will speak;
e) Understand open meeting law requirements, and facilitate compliance therewith;
f) Represent the committee within and outside of the City organization, including signing correspondence for the committee, or may designate a CWAC member to represent CWAC when appropriate;
g) Oversee the creation of the committee's annual report, to be submitted to the Mayor and Council by March 1 of each year for the preceding year.

3) <u>CWAC Subcommittees:</u>

a) CWAC shall appoint at will all members to CWAC subcommittees and name the members thereof;
b) CWAC may establish any ad-hoc subcommittees as appropriate to further the work of CWAC.

2) <u>Vice-Chairperson</u>

In the absence of the chairperson, shall preside at meetings and represent the committee as described above. If both the chairperson and the vice-chairperson are absent, the committee selects a member from among those present to preside.

4) <u>Subcommittee Chairs</u>

a) Shall schedule timely subcommittee meetings in coordination with staff to ensure the purposes and functions of the CWAC are carried out;
b) Shall coordinate with staff to create agendas for those meetings;
c) Shall preside at those meetings as discussed above;
d) Shall report to the committee on a regular basis.

5) <u>Members</u>

a) Members shall come to meetings fully prepared to discuss items on the agenda;
b) Attendance at meetings:
    1. It is appreciated that CWAC members may not be able to attend every meeting. Attendance at as many meetings as possible will help CWAC to accomplish the purposes and functions for which it was created, and will demonstrate respect for fellow members, respect for the appointing/nominating authority (Mayor

and Council/City Manager), and also respect for Tucson Water customers who are relying on CWAC to represent them.

2. In order to help ensure that a quorum will be present for meetings, members are requested to contact the staff liaison if they know in advance that they will be unable to attend a scheduled meeting.
3. The Mayor and Council have established minimum attendance requirements for members of City committees. A member who misses four (4) consecutive meetings for any reason or who fails to attend for any reason at least forty (40) percent of the meetings called in a calendar year is automatically and immediately removed as a member of the body (see Tucson Code 10A-134 (e).)

6) <u>Public</u>

a) Citizens attending meetings shall observe rules of propriety, decorum, and good conduct. Any person making personal, impertinent, or slanderous remarks will be requested to leave.
b) The public will be invited to speak during Call to the Audience. Individual comments will be limited to five (5) minutes. The chairperson may refer comments made during Call to the Audience for subsequent review by staff or the committee. During other parts of the meeting, the public will not be permitted to speak unless recognized by the chairperson.

II. MEETING QUORUMS

a) <u>CWAC</u>: A majority of the authorized voting member positions, whether filled or not, shall determine the quorum. As CWAC is authorized a total of 15 voting members, 8 voting members are necessary at all times for a quorum.
b) <u>Subcommittees</u>: At a subcommittee meeting, only business relating to items on the subcommittee agenda will be conducted and only by members of the subcommittee. A majority of the appointed subcommittee members shall constitute the quorum of a subcommittee.
c) For purposes of information sharing, CWAC members are encouraged to attend meetings of subcommittees to which they are not an appointed member. In such circumstances, the non-member of the subcommittee shall not count toward the quorum, and will participate as a member of the audience (i.e., be allowed to speak at Call to the Audience and when recognized by the subcommittee chairperson).

III. MOTIONS and VOTING

a) The committee chairperson at CWAC meetings (and the subcommittee chairperson at subcommittee meetings) shall not make motions.
b) Motions may be determined by voice vote, or at the request of any member by roll call. (Note: roll-call votes will be taken for Financial Plans and Elections)
c) Abstentions: A member who abstains from a roll call vote will not be counted in the vote total. However, should the vote of that member determine the outcome of the overall vote, the member shall be asked a second time for their vote. Should the member abstain a second time, the abstention will be counted as an affirmative vote.

IV. OPEN MEETING LAW CONSIDERATIONS

a) All members shall fully comply with open meeting law as revised from time to time.
b) Meeting Location: In compliance with open meeting law considerations, committee and subcommittee meetings shall be fully accessible to the public. The facility must have the space to accommodate public attendance, and any member of the public must be able to come in and attend. Meetings may be held in public facilities like the Tucson Water Building, libraries, or community centers.
c) E-mail Communications: E-mail communication among members of the committee or a subcommittee prior to a meeting about issues facing the committee or a subcommittee is not permissible under the Arizona open meeting law. If committee or a subcommittee members e-mail each other in advance of a committee or a subcommittee meeting to discuss issues relevant to the subcommittee, they are already holding a meeting under the definition in A.R.S. Sec. 38-431(4):
d) Preparation of Meeting Agendas: Individual members may send one-way agenda requests to the chair through staff (with the chair deciding whether to put it on or not); consultation on future agendas is prohibited, except during a noticed public meeting where such item is on the agenda.

V. RELATIONSHIP BETWEEN CWAC AND TUCSON WATER

CWAC is appointed by, and advisory to, the Mayor and Council. Staff is responsible to the City Manager, who is responsible to the Mayor and Council. Both CWAC and staff have a pervasive, shared responsibility to Tucson Water customers, related to the cost and availability of water for the community.

In their separate roles, CWAC and staff must maintain a respectful and cooperative relationship. Neither CWAC nor staff can accomplish their assigned functions and responsibilities without the assistance and cooperation of the other.

Tucson Water will provide CWAC with full information and transparency with regard to Tucson Water operations, and CWAC will respect the responsibility of the Tucson Water Director to manage staff and the operations of the department.

VI. ELECTION-RELATED ACTIVITIES

a) A.R.S. Sec. 9-500.14 prohibits the City from using its personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections. This prohibition extends to the actions of City committees.
b) City committees may not invite outside partisan groups to the committee to promote a community-based ballot initiative. Since the City cannot exert control over outside partisan groups, the City cannot permit such groups to make presentations in its committee meetings without potentially violating the statute.
c) However, from time to time City committees, such as CWAC, may be permitted and even encouraged to provide information to the public on City-proposed ballot issues. For example, CWAC might be invited to discuss water-related issues with the public before a water revenue bond election. Such presentations must be for informational purposes only, a permissible exception under the statute, and be

approved (and therefore controlled) by the city to ensure the presentations remain informational and do not violate the state statutory prohibition.

d) Committee members are free, as private individuals and not associated with any committee function, to attend outside partisan presentations, to express their opinions privately and publicly, and to campaign for or against any ballot issue on their own time.

Adopted by motion 2/4/2015

By-Laws / Rules and Regulations

General Considerations:

1) Sample documents gathered by Tucson Water and City Clerk staff as part of the recent BY-Laws Ad Hoc Committee activities include similar basic structure but differ in many ways depending upon the way in which a group is formed, the purpose of the group and the complexity of the committee's responsibilities.

2) No By-Laws can cover all scenarios related to self governance as the number of variables associated with members, meetings, issues and processes would be limitless. Most By-Laws attempt to address common or likely scenarios which provide guidance when similar situations arise.

CWAC Specific Considerations:

The following SAMPLE foundational suggestions are provided for demonstration/discussion only. Any actual CWAC By-Law development would reflect what the CWAC members themselves desired to establish.

A) Start with 2012 CWAC document as baseline for content and intent.

Then, consider:

B) 15 equal members, no intent to provide any member with any more or less authority than other member except as necessary to conduct meetings.

C) Chair (s) have no authority that majority of members do not possess through Parliamentary process via By-Law procedures.

D) No seniority status, as all members should have equal access to all committees etc, with the caveat that some rules need to be in place to ensure committees are large enough to represent a cross section of perspectives, maintain continuity, yet not so large as to have quorum issues related to full CWAC.

E) By Laws need not address how members are selected and their terms as those matters are covered in City Code.

F) Clarify the relationship between sub committees and full CWAC. Including all CWAC business must flow through main body to be official. Establish standing committees and respective responsibilities.

Typical By-Law Sections:

1) Officers
   - A) How to elect, appoint, remove, and term limits, position restrictions (ex: no more than 1 position simultaneously such as CWAC & Committee Chairs)
   - B) Duties
   - C) Authority

2) Members
   - A) Duties
   - B) Authority

3) Committees
   - A) Standing (function & composition)
   - B) Ad-Hoc
   - C) How to form
   - D) Chairs/Co Chairs
   - E) Meetings
   - F) Term Limits

4) Agendas
   A) How to get items on agenda
   B) Support Materials in advance

5) Training / Conflict of Interest

6) Limitation of Authority

7) Parliamentary Procedures (Which version of Roberts Rules are we using)?

8) Meetings (and actions without meetings such as polling for meeting times)

9) Study Sessions

10) Amendments

Examples of CWAC related scenarios which <u>could</u> be addressed:

(27 Examples, representing range of applicability)

<u>Items which we are doing that are not (may not be) aligned with City Code:</u>

(1) 27-63 of City Code "members shall adopt their own rules and regulations in relation to the committee's powers and duties (our R&R have no such sections). (Concepts are there, in part, but typically made official through adoption of By Laws). Suggest we use 27-61 as core of this section, elaborated as desired of CWAC at the member level.

(2) Same section 27-63 requires that we "shall appoint their own executive committees, standing committees and sub committees". Again, By-Laws are typically used for this purpose. No such committees are established in our current R&R's. (I assume we like having the standing committees)

(3) ~~Same section 27-63 we are suppose to be electing our Chair and Vice Chair on the second Monday in December. Suggest we ask M&C to change this in upcoming Code changes, yet until it's changed; it's the rule and should be consistent with our practice.~~ Fixed in early 2015 (Ad Hoc Committee)

(4) Our ~~R&R section I(2), needs to be reworked, in conflict with 27-63~~. Fixed in early 2015 (Ad Hoc Committee)

<u>Areas of ambiguity within our current R&R's: (Which means there could be code conflict depending upon the way we interpret them):</u>

(5) Current By-Laws are silent on basic questions such as "does Vice Chair become Chair for balance of year if Chair leaves post" (leaves CWAC or simply decides not to serve as Chair any longer)? And/or, If Vice Chair is absent, and Chair leaves meeting, does that mean the meetings over for the other 13 members, or can the body simply (by motion), elect a Chair for the balance of the meeting? Would the same be true for sub committees?

(6) Rule I(1)b speak of "appeal to membership" but that process is undefined.

(7) Rule I(1)g speaks to "overseeing" the annual report, again, no context. What does it mean to oversee?

(8) Rule I(3) "suggests" the meeting being discussed is the full CWAC, but just says "committee", could be changed to "Committee" for clarity. This is important throughout document as we use the word "committee" in various ways. Could be Committee (means CWAC) and lower case "committee" means sub. Whatever is desired, as long as it's consistent.

(9) Rule I(5) a says "members should come to the meetings fully prepared to discuss items on the agenda, yet we specifically operate in the reverse fashion as we do not expect members to review the material in advance (as least that's what I was told in Chair/Vice Chair meeting).

(10) Rule I(5)b(3): Is this rule for sub committees as well, it doesn't clarify.

(11) ~~Rule II(d): I think it says that when (if) there are at least 8 CWAC members at a subcommittee meeting, all CWAC members may discuss and vote on sub committee agenda items, presumably after a majority of actual subcommittee members were in attendance to establish a quorum, but it is not clear. Not sure what CWAC shooting for on this one, but clarification would be helpful~~. Fixed in early 2015 (Ad Hoc Committee)

(12) Rule III (a) makes it clear that Chairs cannot make motions. Silent on "seconding motions". This was an issue at the January CED meeting in which a Motion that was desired for approval by the majority was not possible unless the member in opposition to the motion seconded the motion for discussion, because the acting CED Chair was told they could not second a motion for discussion as Chair of that meeting. Clarification here would be helpful. *(Also, same meeting 15 minute no quorum rule)*

(13) Rule IV (d) speaks to "one way agenda item requests", but we do this by open dialog at meetings. Whatever the plan is, we should do it that way.

<u>Areas where our R&R's are silent, but could easily be addressed:</u>

(14) If the Chair of a Sub Committee was unable to be at a meeting, or was late, how does the "acting chair" get appointed? (Recent CED)

(15) Current By-Laws do not address what happens if annual Officer Elections do not happen in Dec, (typically, Officers serve until their successor if elected).

<u>Areas where CWAC could use the By-Laws to address (Basic)</u>

(16) If 3 or more members wanted an item on a future agenda, the item would be on the agenda.

(17) What is the minimum time required for a CWAC or subcommittee meeting to be called (non emergency). (Is the 15 minute rule desired for quorum?)

(18) What is the procedure for CWAC members to request information and/or documentation? Are there restrictions? Do such requests require a vote of a committee and/or the full CWAC?

(19) Requirement that CWAC meetings be held in each service area at least 1 time every three years. (Each of 10 TW service areas).

(20) Study Sessions. Who can establish, is quorum required, what are rules associated with public input, other CWAC member input, can any action be taken, are there minutes, can work product be produced. Is there a difference between CWAC Study Session and Sub Committee Study Session. Where can Study Sessions are held. *Basic Study Session R&R's*.

(21) Identify status of "guest speaker" at CWAC and Sub Committee meetings. Who invites?, is motion and majority approval required. (Public guest speakers, not COT or TW staff). Example: Brad Lancaster or Sharon Medgal? Maybe Scott Cloverdale (exec director of CHRPA).

<u>Areas where CWAC could use the By-Laws to address (Advanced)</u>

(22) Create Officer position of Secretary who duties would include being the information and documentation interface between CWAC members and staff ensuring that such requests were concise, not already available, and made available to all members. This process would minimize staff time and ensure members had access to information and documentation required to perform their duties.

(23) Process where appointment to standing Sub Committees is established by some method which allows new blood on committees without requiring an uncomfortable "removal". Typically, this would be a "consecutive term limit" IF there were other members interested.

(24) Attendance requirements at subcommittee level. Some basic "no more than __ consecutive, or more than __ per calendar year. Can always be reappointed when more available, if there is an opening. This is a good example of CWAC rule 5C, but lack of clarity if it relates to subcommittee.

(25) Process where TW senior staff can ask for some sort of private meeting with CWAC Chair(s) and another CWAC member in the event TW staff feels the working relationship with the CWAC is being disrupted by some scenario related to said member. (No action possible, simply discussion).

(26) Same as(25), but in reverse, with Chair and Co Chair agreement and participation, CWAC member can ask for meeting with TW senior staff to ensure working relationship is maintained.

(27) As an alternative to (25) & (26), Establish a standing "Executive Committee" as enabled in 27-63 who's purpose would include addressing any (if any) scenarios where matters arise that are best addressed by a sub group as they deal more with "process" than with the day to day function of CWAC. This same concept could be used to address (20) as well. In this example the "Executive Committee" is there to maximize CWAC / TW cooperation and effectiveness. (Ties into our current Rule V)

End of ML notes 5/2/15