

MINUTES

WORK SESSION
TUESDAY, JANUARY 29, 2013
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
6:00 P.M.

1. **Call to Order.**

Mayor Nabours called the Flagstaff Work Session of January 29, 2013, to order at 6:01 p.m.

2. **Pledge of Allegiance.**

The City Council and audience recited the Pledge of Allegiance.

3. **Roll Call**

Councilmembers present:

MAYOR NABOURS
VICE MAYOR EVANS
COUNCILMEMBER BAROTZ
COUNCILMEMBER BREWSTER
COUNCILMEMBER ORAVITS
COUNCILMEMBER OVERTON
COUNCILMEMBER WOODSON

Councilmembers absent:

None

Others present: City Manager Kevin Burke; City Attorney Rosemary Rosales

4. **Public Participation (Non-Agenda Items Only):**

Public Participation enables the public to address the council about items that **are not** on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone to have an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

Eva Putzova addressed Council on behalf of Friends of Flagstaff's Future. Ms .Putzova urged the Council to refrain the budget discussions of reducing contributions to local nonprofit organizations.

5. Preliminary Review of Draft Agenda for the February 5, 2013, City Council Meeting.*

**Public comment on draft agenda items will be taken under "Review of Draft Agenda Items" (Item No. 9) later in the meeting. Citizens wishing to speak on agenda items not specifically called out by the City Council for discussion under the second Review section may submit a speaker card for their items of interest to the recording clerk. The item will be called out during the second "Review of Draft Agenda Items" to allow citizens the opportunity to comment. Citizens are also encouraged to submit written comments.*

Council asked for clarification on item 10A – General Obligation Bonds; he would like to know what those bonds are being used for. It is requested that the use be added to the title so that it is clearer to the public.

Mr. Burke explained that they are for the balance of 2010 infrastructure utilities bond, parts of the Picture Canyon purchase and \$2M on Forest Health Bond.

Vice Mayor Evans clarified that she will have a presentation and visual aids for item 15A next week.

Council asked staff to include a map to go along with consent item 9A.

Mayor Nabours explained to those in attendance that the discussion topic of Item 9 on Water Policy is Vested Interests. This section discusses when someone gets their rights to use of water. The discussion will be limited to Vested Interest and there will be no other discussion about Water Policy.

Council rearranged the order of the agenda, Item 10 will be moved up to after Item 7.

6. American Recovery and Reinvestment Act - US Department of Energy, Energy Efficiency and Conservation Block Grant (EECBG), City of Flagstaff, Residential Retrofit Program Closeout Presentation.

Lucy Huffman, Sustainability Assistant, presented a PowerPoint presentation on the Energy Retrofit Program. She explained that a report was also given to the Department of Energy and that agency was happy with the City's program.

7. Flagstaff Cultural Partners (FCP) Annual Report.

Karl Eberhard, Community Design and Redevelopment Manager, introduced JT Tannous, Executive Director of Flagstaff Cultural Partners (FCP) and Melissa Collins-Cripps; President of FCP. Mr. Eberhard explained that FCP serves as the coordinating agency for the Arts and Sciences of Flagstaff and distributes the City's grants funds for these programs.

Ms. Cripps reported that they Flagstaff Chamber of Commerce has supported the impact study because they recognize the importance of the arts and sciences in this community and because they recognize the return on investment.

John Tannous presented a PowerPoint presentation on the Flagstaff Cultural Partners Annual Report.

Councilmember Barotz said that she serves as the City Council representative on the FCP Board, and she wanted to make sure that the Council and community knows that this organization does a tremendous amount of work on a limited budget. She then recognized each of the board members present.

Council clarified that the funds that go to FCP are 100% BBB funds; the BBB ordinance provides a certain percentage of funds to be used for arts and sciences. Mr. Tannous explained that FCP's funding is diverse; the City contributes a large portion of the budget through the BBB funds but funds come in through a lot of different areas.

10. Review of Draft Agenda Items for the February 5, 2013, City Council Meeting.*

Mayor Nabours moved Item 10 up in the agenda as there were members of the public that would like to address the Council.

Steve Thompson of Aspey Watkins and Diesel, on behalf of the owners of the property referenced in the request for proposals (RFP), addressed the Council on item 10D the Core Services Maintenance Facility. Mr. Thompson urged Council to not reject the proposal or resolicit the RFP and either approve the proposal and continue to negotiate or table the matter. He explained that the contract issues have been resolved and he encouraged Council to review Mr. Kelly's letter of 1/24/13.

Council clarified with Rosemary Rosales that the Council is unable to discuss the terms publicly because no action has been taken on the RFP. Council requested of Ms. Rosales some guidelines on what can and cannot be discussion at the next meeting.

8. Discussion of Civil Rights Ordinance

Deputy City Manager Josh Copley presented to Council a draft Civil Rights Ordinance, and gave a brief history of the process.

The following spoke in favor of the Civil Rights Ordinance:

Susan Swanson
Jamey Hasapis
Kathryn Jim

Brad Garner
John Viktora
Paul Beier

Lisa Raynor
Kenneth McIntosh
Moran Henn
Gordon Watkins
Bruce Celiz-Hagen
Gary Robbins

Doug Ballard
Jim Burton
Peggy Sheldon-Scurlock
Nina Porter
Tim Swanson
Gary Rosenblatt

The following spoke against the Civil Rights Ordinance:

Dr. James (Jim) Dorman
Gabor Kovacs
Paul Meldrum

Comments included:

- Remember the Mission and Vision Statements of the City.
- Change gender identity to transgendered.
- Extend to LGBT the same rights enjoyed by other citizens.
- Respect the separation of church and state.
- Definition of employer – in addition to the Federal definition of 15 or more employees; would like to see ordinance offer extended coverage for employees working for an employer of any size and secure similar accommodations for public accommodation, public education and housing.
- Believe that this ordinance puts laws into place that are unnecessary and difficult to enforce.
- Ordinance is not necessary as the Constitutions of United States and Arizona already protect everyone from discrimination.
- Concern with fines included in the ordinance, heavy fines are an infringement against private property, suggest rewarding instead with tax credits.

A break was held from 7:23 p.m. to 7:37 p.m.

Council asked for clarification of the exclusion section – 14-2-01-004 E.

Mr. Copley explained that there are laws in place that prohibit certain public accommodation businesses from having intoxicated individuals; in this case someone could not say they could not be ejected because they were a protected class, if they were intoxicated.

Council indicated that they would entertain the discussion of different penalty options rather than just monetary.

Council asked for explanation of how the conciliator would be selected. Mr. Copley indicated that they would be selected through the use of the procurement policy and

defined procedures. If the amount of the contract is under \$50,000 the City Manager would have authority to approve.

Council asked about an appeals process. Ms. Rosales offered that the City Manager's office would do the initial screening and then it would be forwarded to a conciliator for resolution. If the conciliator is unable to get to resolution it would be sent to the City Attorney's office for determination of civil prosecution in court. There are multiple avenues if either party disagrees with the decision.

The ordinance is written in such a way that the conciliator is able to investigate and mediate the issue as necessary. The conciliator also submits findings to the City Attorney's office for further review.

Council asked for explanation of dress code requirements. Ms. Rosales explained that typically if an employer can show a rational reason for a dress code, that is what will prevail; this ordinance wasn't written to hinder the way employers choose a dress code, and the ordinance would not supersede that. This is not currently included in the ordinance. Council would like to see it in the ordinance.

Mr. Burke state that the dress code debate is not that they would be superseding a dress code; it is the gender expression issue. If someone is born female but they identify themselves as male, the question is if they would be protected if employer says they have to adhere to the female dress code.

Council asked for clarification on why other protected classes are included in the ordinance. Mr. Copley explained that this was similar language that came up in some of the example models. They were included as a way of affirming the city's commitment to equality for those classes as well.

Ms. Rosales stated that this draft was what staff came up with after a few years of comments from the City Council. There was direction from the City Council at one point to include all of the groups, but they would not be doing the enforcement for some of these groups; the intent was to recognize these classes.

Some members of the City Council were concerned that there might be misunderstanding in the community that this ordinance provides another avenue of recourse for discrimination for the already protected classes. Councilmember Barotz said that she did not see it as misleading, but rather there was an affirmation of protection for all classes.

The definition of educational institutions was discussed; private schools were excluded because they are excluded as a subdivision of the state.

Some Councilmembers were concerned about the fine of \$2,500. Mayor Nabours believed that no business is going to go to a conciliator without an attorney when they're at such a risk; this may change the complexion of what the City was trying to accomplish.

Discussion of page 9 paragraph E, regarding the conciliator considered an investigator and mediator; it was suggested that may be difficult to stay unbiased. There was concern about the confidentiality of the documents related to the investigation and findings. Further research by the City Attorney's office will be done for clarification on what can and cannot be made public.

Mayor Nabours said that he would like to see a provision that the conciliator cannot be called as a witness, nor can the report be used as evidence.

Questions were also raised as to why Page 10, paragraph B, regarding sales records was included and inspection of businesses. David Womochil, Assistant City Attorney, indicated that he was not certain why that period of time was provided; it was modeled after other cities and further examination will be done to understand why. Mr. Copley explained that there is quite a body of law under search and seizure; this section could use some additional language that indicates compliance to the law.

Council asked about how the amounts of the civil penalties were determined and if they were comparable to other civil penalties. Ms. Rosales stated that \$2,500 fine is usually the maximum. In looking at the other cities the maximum was always at \$2,500. Typically they like to give judges discretion to determine the amount of the fine.

Another concern with the ordinance was that the conciliator can require a respondent to give a statement under oath. Council would like for staff to look at that section as well to determine the legality of that process.

Questions were also raised regarding Page 6 section A, exclusion of a business on or near an Indian reservation. Mr. Womochil explained that this exclusion is based on federal law. This law only applies to a business that has a formal hiring practice that favors Native Americans. These exclusions were included in the ordinance in order to be consistent with federal law.

Council asked the City Attorney to address the issues raised and bring back to the next work session for further review. Council suggested bringing back some different options to avoid the need for continual redrafting.

Mr. Burke suggested that the quickest way to get this back in front of Council would be as a discussion item at a regular meeting. He suggested that they tentatively schedule it for February 19, 2013, but recommended that the public watch the agendas.

Council agreed that fines were okay, but they would like additional information on other fines and what other cities do as well as an alternative paragraph with deferred action.

Ms. Rosales offered that the purpose of the conciliation process is deferred action. The language in the document could be clearer and staff will look at adding more information in this area.

9. Presentation on Principles of Sound Water Management - Water Policies

Brad Hill, Utilities Director, offered a PowerPoint presentation on Section B2.2 of the Water Policy.

Roger Eastman, Zoning Code Administrator continued the presentation.

He said that once land is subdivided the plat is recorded through the County and there is now an entitlement to land and the water is guaranteed in perpetuity.

A Zone Change would allow two years to apply for a building permit and therefore guarantee water; if longer than two years that guarantee may not be there.

Council asked if a vacant parcel that is zoned industrial would be given some designation of water allocation as it sits vacant. Mr. Hill responded yes, it would have a specific designation; the City evaluates the water demand needs based on existing zoning, or the regional plan.

The whole concept of Arizona's water management programs is to tie growth and development with water supply. They have been developing without any recognition of water needs, and this program will provide this recognition and planning. He said there are tremendous volumes of state law regarding water and its allocation.

It was suggested that in a way they would be using water as an incentive for economic development by allocating a certain amount. Council asked about the parameters of allocation and incentives.

Mr. Eastman said that they would be using the criteria in section B2.2g. Utilities, Community Development and Economic Vitality would have to work together to determine the allocation. It is a first come, first serve process.

Council asked about a safety mechanism to avoid over allocation. Mr. Hill explained that currently they do not track; they are putting in a tracking mechanism that will record every subdivision plat. This gets recorded with the Arizona Department of Water Resources and removes that water from their designation in order to keep track of what is currently available.

The following individuals addressed Council about the Water Policy:

- Karen Goodwin, Friends of Flagstaff's Future, urged Council to refrain from permitting use of reclaimed water for food crops. Ms. Goodwin offered other concerns in writing to City Council.
- Cerissa Hoglander, Flagstaff resident, offered some clarifications to section B.
- Rudy Preston, Flagstaff resident, suggested that promising water into perpetuity is not a good idea. He would like the City to get to a goal of conserving water, not using it.
- Tom Wyatt, on behalf of Flagstaff Restaurant and Lodging Association, suggested incentives for businesses and expanding the two year time period. He also suggested that the Council look into the possibility of being able to transfer water that may not be used.
- Katie Nelson, Flagstaff resident, suggested that they consider capping where they get the water from and consider environmental impacts of acquiring new water sources.

Councilmember Barotz asked that Cerissa Hoglander submit her comments in writing as she was unable to understand what she was saying.

Mr. Eastman clarified that they were not saying it was an absolute two years; it does vary on size of project and on discretion of the City Council.

Council asked staff to address the following:

- 1) *Does this document address the question of whether the City of Flagstaff should sell reclaimed water outside of City limits?*
- 2) *Did the Water Commission discuss sale of potable water outside the City limits?*
- 3) *Asked for a copy of any resolutions or policies that deal with these two questions.*

Additionally, staff was asked if they ever had a conversation about selling water outside the City limits or requiring annexation of properties that are requesting water. There were also questions about a stand pipe policy. Mr. Hill will look into these questions and report back to Council.

11. Public Participation

Rudy Preston, Flagstaff resident, addressed the Council about Snowbowl in comparison to the Civil Rights Ordinance.

12. Informational Items To/From Mayor, Council, and City Manager.

Councilmember Brewster asked for an update on the proposed development on Franklin and South San Francisco and an update on the status of the Downtown and Fourth Street Manager.

Vice Mayor Evans commented on the old Nissan dealership, noting that it has been vacant for well over three years and complaints are coming in from residents. She asked staff to provide an update and timeline. Councilmember Woodson added that there is security fencing that is blocking the sidewalk on Arrowhead.

Councilmember Oravits stated that he accompanied Senator Crandell and Representative Thorpe to tour the Center for Microbial Genetics and Genomics at NAU, and it was a very interesting tour.

Kevin Burke said that he attended the Compounds of Emerging Concerns on Friday, and although they were missing one of the star panelists he thought the format worked very well. He is excited to go to the next meeting. They will be refining their notes and providing a summary of the next step.

Councilmember Barotz stated that she also attended that event and said that the way the tables were set up was great and suggested it for future budget retreats.

13. Adjournment

The Flagstaff City Council Work Session of January 29, 2013, adjourned at 9:49 p.m.

MAYOR

ATTEST:

CITY CLERK