



GLENDALE CITY COUNCIL WORKSHOP SESSION
Council Chambers – Room B3
5850 West Glendale Avenue
April 1, 2014
1:30 p.m.

PRESENT: Mayor Jerry P. Weiers, Vice Mayor Yvonne J. Knaack and Councilmembers Norma S. Alvarez (telephonically), Ian Hugh, Manuel D. Martinez, Gary D. Sherwood, and Samuel U. Chavira

ALSO PRESENT: Brenda Fischer, City Manager; Jennifer Campbell, Assistant City Manager; Michael Bailey, City Attorney; and Pamela Hanna, City Clerk

CALL TO ORDER

WORKSHOP SESSION

1. ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, CHAPTER 2, ARTICLE V., DIVISION 5 (RISK MANAGEMENT TRUST FUND AND WORKERS' COMPENSATION TRUST FUND)
PRESENTED BY: Jim Brown, Executive Director, Human Resources & Risk Management; and Dianne Shoemake, Risk Manager

Staff is requesting council consideration for recommended changes to Glendale City Code, Chapter 2, Article V, Division 5, Risk Management and Workers' Compensation Trust Fund (RM WC TF). The purpose is to separate the Risk Management and Workers' Compensation Trust Funds into two distinct operating funds and describe the requirements of each Fund.

Mr. Brown said this work has been ongoing the last year and a half and stems from the audit that was done. Mr. Brown said this ordinance is required by state statute and it defines the use and oversight of the Risk Management and Workers' Compensation Trust Funds. The current ordinance combines the risk management and workers' compensation funds under a single city code and it is unclear what types of claims can be paid from the funds. Also, the ordinance is silent on terms and responsibilities of trustees.

Mr. Brown said Risk Management worked with legal staff to develop some recommended changes. Those include addressing the risk management and

workers' compensation trust funds separately in the city code, clarifying roles of risk manager and the city attorney's office regarding responsibilities and duties and providing a clear definition of who or what is covered under both funds; clearly addressing the use of funds in both trust funds; addresses trustee terms and responsibilities; clarifying types of audits needed and when they should occur. Mr. Brown said with these changes, will align Glendale with best practices in these areas, will help clarify appropriate use of funds and will help in addressing issues from the risk management audit.

Councilmember Alvarez asked if the trustees are bonded right now.

Mr. Brown said they are bonded.

Councilmember Alvarez asked when the last audit was done by an external auditor.

Mr. Brown said this was done recently and it was in the fiscal year ended June 30, 2013 CAFR. He said one of the items addressed in the audit was the breakout of the risk management and workers' compensation trust fund and it was done in the last CAFR audit.

Councilmember Alvarez said no more than one member of the governing body should be in the trust fund. She had a problem with that since the last external audit. She said the chairperson was aware and gave direction on the risk management and the workers' compensation about transferring. She said the best thing is for trustees to be members of the community and staff. She said with the past experience, the governing body should not be on that board.

Mr. Brown said the Arizona state statute specifies the makeup of that board.

Councilmember Alvarez had further comments and questions about the makeup of that board and further discussion was held.

Councilmember Alvarez also asked if they were bidding on the referral of claims to private law firms.

Mr. Bailey said it was a joint determination between the risk manager and the city attorney's office based on the needs of the organization balanced against the qualifications of the firm, including negotiating price.

Councilmember Alvarez said she was concerned about internally letting people come in or referring a lawyer, they needed to be careful of who they hire as lawyers. She said they need to examine who they are referring to in fairness to employees.

Councilmember Martinez asked what was the current makeup of the risk management and workers' compensation boards.

Mr. Brown said the boards were made up of three community members, a member of the Council and a staff member.

Councilmember Martinez said three community members, a staff member and a Councilmember. He said according to what was said in the statute, that makeup is allowed.

Mr. Brown said that was correct.

Councilmember Martinez said he had no problem with keeping the makeup as it is. He said the community was well represented and they should keep the boards as they are.

Councilmember Alvarez asked if the community members were members of different districts.

Ms. Shoemake said she was not positive what districts the community members were in, but could provide that information later.

Councilmember Alvarez said they should definitely not have a Councilmember who could influence the board on it.

Vice Mayor Knaack said she sits on those boards and said it is nice to have an elected official on the board to know what is going on. She also thought the board was supposed to have a representative from each district. She also said she thought there were more than five members.

Ms. Shoemake said there are five members and there was nothing in the statute or the current city code that indicates they have to have them from different districts.

Vice Mayor Knaack said when she came onto the board, she thought it should be an option whether the elected official is the chair of the board or not. She said the current chair does a much better job than what she could do. She said it should not be a practice to put the elected official board member as the chair of the committee. She also said Ms. Shoemake did a great job with all the work she has done and agreed with all the recommendations.

Councilmember Chavira said the chair position should not automatically go to the elected official.

Councilmember Sherwood said he agreed with the recommendations. He asked if there was a need to split the money going to these funds into two separate funds.

Mr. Brown said the funds themselves are separate. He said the workers' compensation trust fund dollars are separate from risk management fund dollars and the workers' comp is regulated by the Industrial Commission.

Councilmember Alvarez said she is in support of separating them but she is concerned because they have been discouraged from attending commission meetings because they do not want to influence the commissions. She said this is a commission and she doesn't feel the Council should be making any kind of decision there. She said past experience has shown that nothing was ever reported to Council as to what happened in the past. She said that cost the city a lot of money for an audit. She said the citizen members should come from different districts. She supports that these funds separate.

Mayor Weiers said there was consensus to support this item as recommended by staff.

Councilmember Alvarez said for the record, she was not in agreement.

2. COUNCIL ITEM OF SPECIAL INTEREST: DOWNTOWN PARKING
PRESENTED BY: Cathy Colbath, Interim Executive Director, Transportation Services

This report is a follow-up to the Council workshop of December 3, 2013. At that time, Council directed staff to solicit input from the downtown businesses regarding the existing two-hour parking restrictions and report back with the results.

Ms. Colbath said Transportation and Marketing staff met with the downtown merchant's group in February to discuss parking and a survey was conducted of the 95 downtown businesses. She said only 14 merchants responded to the survey and the responses were mixed. Nine supported making changes and 5 supported maintaining the 2 hour parking restrictions. About 30 percent of the downtown parking spaces are governed by the 2 hour parking restriction.

Mayor Weiers said if 64 percent said they would like the parking to be different, that was not the majority.

Ms. Colbath said they received 14 responses from the 95 surveys that were sent out; therefore indicating there probably was not a concern with the merchants about the parking issue. She said after the meeting with the merchants, they have not received any concerns about parking. Staff recommends not making any changes to what is currently in place, but they will continue to monitor the merchants and review on a case by case basis any issues that arise with parking.

Mayor Weiers said assuming that people agree when they do not respond is not factual. He said the assumption should be made that half the people do not care and the other half of the people do not take the time to care. He said it is a big deal for the people that care.

Councilmember Chavira said it is hard to get responses to surveys and information from people and thanked Ms. Colbath for her efforts.

Councilmember Martinez said from what he has heard and staff's recommendation, he disagrees that the large majority, just because they did not respond don't care. Councilmember Martinez said to him indicates most of them must be satisfied or they would be letting the Council know. He said when he read the staff report and recommendation, he put in a note that said don't fix it if it is not broken.

Vice Mayor Knaack said she knows how busy people are, but if they had an issue with the parking, they would have responded. She said she is downtown a lot and can almost always find a parking space. She didn't see anyone having an issue with the parking downtown. She said she is agreeable to keeping things the way they are.

Ms. Colbath said they have heard from the businesses and what they have heard is a need for two hour parking in some locations and unrestricted parking in other locations. She said they will continue to work with each of the merchants on any issues that come.

Mayor Weiers said if a 2 hour limit sign is put up and there is no enforcement, what is the point of putting up the sign. He said they should either enforce the signs that are up or take the signs down.

Councilmember Hugh said he hoped for some type of change to make Glendale the friendly city. He said it doesn't exactly say that when people have to move their cars after two hours. He said he was hoping for free parking where visitors could come downtown, enjoy it and realize it is free.

Mayor Weiers said he would like to see a free parking sign.

Vice Mayor Knaack suggested putting signs up saying there is plenty of free parking in the parking garage or at city hall. She asked if that was a possibility.

Ms. Colbath said staff had looked at that and also said there was discussion about putting up signs that there is a large amount of free parking without restrictions on them, to indicate to visitors where that parking was located. They estimated that would be about \$50 to \$100 per sign and said 8 to 10 signs could probably cover the downtown area.

Mayor Weiers said there was not a consensus to move forward with this issue.

3. PROCUREMENT PROCESS

PRESENTED BY: Tom Duensing, Executive Director, Financial Services; and Michael Bailey, City Attorney

The purpose of this presentation is to bring information to the City Council regarding the city's procurement process governed by Article VIII of the Glendale City Charter and Chapter 2, Article V of the Code of Ordinances. This presentation

will provide information to the City Council with regard to procurement rules and the different types of processes the city can use to purchase goods and services.

Mr. Bailey said he wanted to start policy level discussions about procurement due to the number of questions that have been asked over the last several weeks. In the charter, there is a provision that provides that Council will establish by ordinance, guidelines that regulate the procurement of goods and services. He explained the city has adopted a procurement policy in the City Charter, Article VIII, regarding competitive bidding. They have also adopted that in Chapter 2 of the city code. He said this does not include vertical construction because that is governed by Title 34 of state statute. He said there are many reasons why the city buys things so this is not a black and white process, there are alternatives and exceptions. He said this just recognizes the complexity in procuring goods and services for an entity with a budget this size.

Mr. Duensing said they are talking about the procurement and regulations surrounding procurement, which includes the consultants, the cars and the supplies the city purchases. He said the ordinance establishes procedures and those include formal vs. informal, emergency purchases, sole source procurements, cooperative purchasing and professional services. He said everything but professional services is explicit in the City Code. He said professional services are explicit in the City Manager Directives. He said construction contract purchases are regulated by Title 34 of the Arizona State Statutes and goods and service purchases are regulated by the City Charter, the Code of Ordinances and City Manager Directives. Mr. Duensing said purchase of goods and services guidelines are established by ordinance and the ordinances guide when competitive bidding is required.

Mr. Duensing went over Chapter 2, Article 5 of the Code of Ordinances and first explained formal purchase procedures, purchases over \$50,000. He went over the two separate ways of procuring services, IFB and RFP. He said an IFB is awarded to the lowest bidder. The RFP procedure has a certain criteria laid out for procurement and Council may or may not approve the lowest cost. It is most advantageous to the city to take the most responsible and responsive proposal, which may not be the bid with the lowest price. He also said there may be clarifications during the RFP process.

Mr. Duensing went over some exceptions to competitive bidding regarding professional services in Section 2-145(1) e. He explained this section talked about budgeted line items specifically identifying products and services. The essence of this could be approved by award of the materials manager and deputy city manager. He said the description of what a specifically identified product or service was is open to interpretation. He said he has not seen any contracts or awards brought forth under this section since he has been with the city where the intent was to not go through competitive bidding or not go through Council.

Mr. Duensing explained Section 2-145(1)i – which said the City Manager directives prescribe procedure for the procurement of supplies and services, which exceed the formal purchase dollar threshold, and because of specific circumstances competition is not applicable. He said the interpretation there could be that a certain purchase does not have to go through the procurement process. He said the intent for staff is to go back and evaluate this based on Council input to see if modifications need to be made. He said flexibility could be written into the code and the policies and procedures.

Mr. Duensing went over Section 2-145(1)g, which says with approval of the City Manager, formal purchase procedures of Section 2-145, may be waived when there has been a written determination that the formal purchase procedure would not be likely to result in a lower price to the city or would cause unnecessary expense or delay under the circumstances. He said there is formal Council approval unless exempted.

Vice Mayor Knaack asked if these procedures are similar to what other cities have.

Mr. Duensing said there are other cities that exempt certain things from procurement, such as legal services.

Ms. Fischer said these procedures are looser than in any of the other cities she has worked in. She said there is always a certain amount of flexibility when it comes to professional services, but if it reaches the threshold of whatever the city has set as their budgetary cap for the city manager approval, regardless of the process, it goes to council after that point. She recommended tightening these procedures up.

Councilmember Martinez said following up on that, he asked if there was a threshold of \$50,000, and asked if it could be any amount.

Mr. Duensing said that is correct.

Councilmember Martinez said he was glad to hear what Ms. Fischer had to say because if there is an area that needed tightening up, it was the area with respect to professional services.

Mr. Duensing then went over Section 2-146, informal purchase procedures, those equal to or less than \$50,000. He said purchases between \$10,000 and \$50,000 would require at least three written quotes, and purchase between a small purchase amount and \$10,000 may be made using verbal or written quotes. He said small purchase dollar amounts have been interpreted at the city as authorization levels. Mr. Duensing explained those authorization levels in more detail.

Vice Mayor Knaack asked about purchases between \$10,000 and \$50,000 where it said “wherever practical.” She said sometimes you might only get two quotes.

Mr. Duensing said that was correct.

Councilmember Alvarez wanted to go back to the audit where it was over \$30 million. She was concerned about this and they need to look at services and more. She disagreed with this.

Ms. Fischer said the audit came out in February and she met with the directors. She gave them 90 days to submit a report on how each of those expenses occurred. These policies being presented today have not been changed since she started with the city and were applied to some of those purchases. She said she will be happy to share the results of those reports. She said that is the reason they are discussing these issues today. She said in some case it may be that the collective spending with a vendor beat the threshold of \$50,000. She listed as cell phones as an example. She said individually, a department might only spend about \$1,000 on a cell phone, but across the organization, that total amount may be much higher. She said they need to start looking at purchases not as transactional based, but as vendor based. She said when the audit mentioned by Councilmember Alvarez was requested, it was specific to a single vendor. She said she will have more information by the end of May and will come back with some recommendations.

Mayor Weiers asked if she expected to get results sooner than the 90 days.

Ms. Fischer said staff was working in the midst of the budget, and she will give them an extension if they need it. She said if she gets it earlier, she will share it.

Mr. Duensing discussed Section 2-147, emergency purchases, and said it was very difficult to go through a formal procurement process in an emergency. He said it is necessary expenditure and if it is over \$50,000, it would come back to Council for confirmation after the fact. He said typically these purchases are not controversial.

Mr. Duensing explained Section 2-148, sole course procurements, where this is only one known source for the supply or service. He said this is detailed in City Manager Directive 30 for written determination justifying the purchase. Purchases over \$50,000 do require City Council approval.

Mr. Duensing next went over Section 2-149, cooperative purchasing. He said the definition was procurement conducted by, or on behalf of, more than one public procurement unit. He said this was a very common practice. He explained cooperative purchase is a method to procure goods or services that another public agency has gone out and done the RFP process or has a current contract. He said Glendale is able to purchase off other agency's contracts, but it must be within the scope of the City Code. Purchases over \$50,000 still require City Council approval. He explained the benefits of cooperative purchasing, which include saving time and money, it is a government best practice and it complies with the City Code. Mr. Duensing said it is a very efficient way to do business and does not involve a lot of staff time and effort.

Councilmember Alvarez asked if the purchase of the fire truck would fall under this cooperative purchase.

Mr. Duensing said the contract brought before Council was brought forward as a cooperative contract. He said they are going to look at how to standardize the language that is brought before Council. He said if they are very upfront with consistent language when they do a cooperative purchase. He said this will take a lot of question and mystery out of this process.

Mr. Duensing went over professional services and talked about City Manager Directive 24, which stated the City Manager or designee may exempt from competition a professional service or approve an alternative procurement method when deemed in the best interest of the city. In the event that the competitive requirements of this directive are exempted, departments shall have a written determination signed by the City Manager or designee. He said it defined professional services as architects, lawyers, certified public accountants, consultants, appraisers and engineers. He said award recommendations shall be submitted to City Council for approval.

Mr. Duensing said the next steps are to clarify the City Code and City Manager Directives which will clear up inconsistencies, clearly define exceptions and administrative processes and clearly define awards vs. purchases vs. contracts. This will also centralize management of the procurement process and ensure staff understands procurement policies. He said they are requesting two additional buyer positions in the budget process. He said it is time to review the City Code as it has been over 10 years since that process has been reviewed. He said the city also needed to do a very clear procurement manual and make it available on the webs

Councilmember Sherwood said he was not aware that one position had been reclassified to procurement manager and it was important to bring that position back. He commented that the more exceptions you have to a process, the more confusing it becomes. He said they need to look at all the exceptions and pull them together. He said he saw administrative award and said that was in many of the sixty nine findings the city auditor came up with. He said he did not see any place where administrative award was defined. He said this Council wants to see everything over \$50,000 for approval. When we are awarding contracts that can actually make the city money, he said they should be put out for bid. He said the fact the city might not make any money vs. making money is a factor to be considered. He said this does need to be overhauled and this is a good start to the process.

Councilmember Martinez complimented staff for their excellent job and he was pleased to hear the direction they were taking. He said he knew the City Manager had this on her radar. He said he knew he has been asked about contracts and bidding. He said in looking at it, he felt there were too many exceptions and it was a little broad and they were giving more latitude than they should. He said after what

he has heard today, he felt these issues were going to be resolved and he is encouraged by today's session and looks forward to the recommendations that comeback.

Councilmember Alvarez said she was looking at personal interest. She gave an example of an employee who had a relative that was providing services; she asked who would protect the city.

Mr. Bailey said when they look at a conflict of interest in contracts; the Charter provides they look to state law. He said when they look at state law, they have to look at a substantial vs. a remote interest and they have to focus on whether there is a direct benefit that arises out of that. He said any issue with regard to conflict of interest is a factually specific inquiry. He said they due diligence on any issues brought to their attention to make sure that any conflict does not rise to anything greater than a remote interest. He said a remote interest is not unlawful. He said it becomes a problem when it becomes a substantial interest.

Ms. Fischer asked Mr. Bailey if the fact they were doing cooperatives would that insulate the city from those concerns as well because cooperatives are generally negotiated by another party.

Mr. Bailey said it is a fact specific process. He said the more they have separation, the less like they have a degree of benefit. He also said not all conflicts are illegal. He said the issue is they have to advise people of those conflicts.

Mayor Weiers said it has to pass the smell test. He said he has heard comments that there might be three or four people that offer the same service that were going through the procurement process from another city and they qualified. He said the question becomes why did they choose this person if they had three or four other choices if it happened to be someone who related to Council. He said they had to protect the city.

Mr. Bailey said they recognize that and the primary purpose is to identify any issues so everyone knows what the issue is. If they need to do something to alleviate whatever interest that may exist, they would do so.

Councilmember Alvarez said she would give an example; she was not giving a fact. She was asking what they have in a file or what proof do they have that they looked into the issue and it was okay. She said she wanted a legal opinion that was researched.

Mr. Bailey said they look at any issues and if there is a desire for a formal opinion, they will prepare one. He said they try and resolve these to the extent they know about them. He said the attorney's office cannot go through a legal analysis of conflicts with every single contract

Mayor Weiers asked if there was a policy as far as due diligence for a department to bring forward any issues if they are aware of them.

Mr. Duensing said he was not aware of any specific policy.

Ms. Fischer said there is a Human Resources policy that talks about employee conduct and you cannot use your position for personal gain.

Mr. Brown said there is a conflict of interest policy and a code of ethics. He said those two should prevent this type of thing from occurring within the organization. He said if they do find an issue, it would be considered conduct unbecoming and it would be addressed by Human Resources.

Mayor Weiers said his question was about being aware of a potential conflict by the party they are buying from and a potential liaison with council.

Councilmember Alvarez said she is asking these questions because it has happened before. She said the audit made them aware. She said she is trying to have something in place that protects the city if that should happen again. She said they need to make sure this does not happen again.

Councilmember Martinez asked if they were aware of a case where there was a conflict of interest and asked if anyone had an example. He said his question was going to be, say one of his family members is in a business and there is an RFP where the city is going out for bids, he asked if they were prohibited from bidding on the contract or an RFP.

Mr. Bailey said there was no prohibition against them bidding; however, the laws apply to the Councilmember that they would need to disclose the interest and that Councilmember would not be able to vote on that issue.

Councilmember Martinez said that was the point he was going to make. He said there is something in place that is up to the individual to recuse himself from voting. He said if there was a situation like that, someone would be aware and bring it to the attention of the Council. Councilmember Martinez said if anyone knows of any particular case, he would sure like to know about it.

Councilmember Alvarez said she is going by personal interest and it says no officer or employee shall have a financial interest as defined by the laws. She asked if the city had a policy that they will never have this. She said as far as happening, they have to look at the past.

Ms. Fischer added if something goes to Council and there is a perceived staff conflict, staff does not make the final decision on what the city purchases. Most of it goes to Council and if there is a conflict, staff does not have control over those final decisions.

Councilmember Alvarez said not everything goes to Council and that is what she is worried about. She said it is just a piece of paper that they would sign.

Mayor Weiers said there was consensus to move forward.

Ms. Fischer said this would be brought back to another workshop with any changes.

CITY MANAGER'S REPORT

The City Manager had nothing to report.

COUNCIL ITEMS OF SPECIAL INTEREST

Councilmember Sherwood said concerning traffic signals, he would like Transportation or Police to explore moving the signals, which currently move to flash at midnight, to look into moving them into flash at 10:00 p.m.

Councilmember Alvarez would like to hear more about irrigation. She said there has been a lot of concern about needing it in the Ocotillo District. She also said diversity when she received an email from someone asking about women executive administration. She said her question is having diversity in employment with the city and diversity that they be proud of their ethnic composition. She said it has nothing to do with what the memo said.

Councilmember Martinez had a constituent that was concerned about short term rentals with the Super Bowl coming up. He said the last time around there were some problems with that.

Councilmember Chavira said he had the same concern as Councilmember Martinez.

Vice Mayor Knaack wanted staff to look into electronic voting by Council.

ADJOURNMENT

The meeting was adjourned at 2:50 p.m.