

***PLEASE NOTE:** Since the Glendale City Council does not take formal action at the Workshops, Workshop minutes are not approved by the City Council.



**MINUTES OF THE
GLENDALE CITY COUNCIL
SPECIAL WORKSHOP AND EXECUTIVE SESSION MEETING
Council Chambers
5850 West Glendale Avenue
June 7, 2012
10:15 a.m.**

PRESENT: Vice Mayor Steven E. Frate and Councilmembers Joyce V. Clark, Yvonne J. Knaack, H. Phillip Lieberman, and Manuel D. Martinez,

ABSENT: Mayor Elaine M. Scruggs and Councilmember Norma S. Alvarez

ALSO PRESENT: Ed Beasley, City Manager; Horatio Skeete, Assistant City Manager; Craig Tindall, City Attorney; and Pamela Hanna, City Clerk

1. EXECUTIVE SESSION

As a point of order a motion was made by Lieberman, as there was incomplete membership and no time to review the material, to postpone the meeting. The motion failed on lack of a second.

The motion was made by Martinez, and seconded by Knaack, to move to Executive Session. The motion carried. Aye votes: Clark Knaack, Frate and Martinez. Nay vote: Lieberman.

Entered into Executive Session at 10:21 a.m.

Reconvened at 1:45 p.m.

WORKSHOP SESSION

2. REVIEW OF ARENA LEASE AND MANAGEMENT AGREEMENT AND NONCOMPETITION AND NON-RELOCATION AGREEMENT

Mr. Gary Birnbaum, Managing Director of Mariscal, Weeks, McIntyre & Friedlander, P.A and senior litigation attorney with the firm, and Jill Welch, Chief Operating Officer, Economist, Elliott D. Pollack and Company and Real Estate Consulting presented information as well as Arthur Lynch, SRJ Consultants.

This is a request to provide an update to the City Council on the status of the Arena Lease and Management Agreement and the Noncompetition and Non-Relocation Agreement which are the subject of negotiations.

In 2001, City Council entered into an Arena Development Agreement, an Arena Management and Use Agreement (AMULA), and a Mixed-Use Development Agreement (MUDA). The purpose of these actions was to create a high-quality major economic center in Glendale, consisting of offices, hotels, entertainment, retail and restaurants. As part of this action, Council entered into a related agreement to redevelop the former Manistee Town Center into what is now the very successful Northern Crossing Retail Development located at 59th and Northern Avenues. This center is contributing in excess of \$2 million per year into the city, generating public safety and transportation funds.

In the past, Council approved multiple Arena-related agreements including a Memorandum of Understanding (MOU) for Development of Hockey Arena Site (April 2001), Arena Development Agreement (November 2001), Arena Management and Use Agreement (November 2001), and Mixed-Use Development Agreement (November 2001).

Staff brought forward an MOU to Council for potential buyers of the Phoenix Coyotes on April 13, 2010 and June 8, 2010. Neither potential buyer moved forward with viable plans to purchase the team. Thus, on May 11, 2010, Council authorized an agreement with the NHL to retain the team in Glendale for the 2010-11 season while city staff completed the necessary negotiations with potential new owners.

On December 14, 2010, staff brought forward an Arena Lease and Management Agreement and a Use and Non-Relocation Agreement with Arizona Hockey Arena Holdings, LLC and Coyotes Newco, LLC. The potential buyer did not move forward with plans to purchase the team.

On May 10, 2011, Council adopted a resolution extending the management agreement between the City of Glendale and the NHL, to satisfy the NHL's requirements in order for the NHL Phoenix Coyotes to remain in Glendale during the NHL 2011-12 season.

City staff has been working with several potential buyers since May 10, 2011 and are currently in negotiation to finalize agreements with Mr. Greg Jamison of Arizona Hockey Partners, LLC.

This is for Council information only. Staff is available to answer any questions regarding the information provided.

Ed Beasley, City Manager, provided a brief overview on this item. The NHL team in the agreement stays in Glendale for the 20 year term of the lease. The city will continue to receive a ticket surcharge on every ticket sold in the arena, estimated approximately at \$60 million. The city will receive 15% of naming rights revenue for the arena. The city does not issue any new debt and the city is not responsible for parking obligations. The city estimates sales from the events to the arena to be approximately \$30 million. He said that most importantly, this agreement meets the constitutional test regarding the gift clause. They believe the city is much better if the team stays than if it is gone and revenue from Westgate was not included. Staff is available to answer any questions regarding the information provided.

Councilmember Clark asked for further explanation and clarification on the gift clause issue and on the city's belief that they are not in violation of the clause.

Craig Tindall, City Attorney, stated that Mr. Gary Birnbaum, Managing Director of Mariscal and Weeks, was here to offer the city an opinion on that topic.

Mr. Birnbaum explained there was nothing black and white about gift clause jurisprudence in Arizona. However, as in article 9, section 7 of the Arizona constitution; it precludes subsidies from cities to private parties. Of course, that statement is much simpler than the answer. The Arizona Supreme Court has provided guidance in three different legal cases. From those three rules you can develop the following frame work. To satisfy the gift clause, (1) there has to be a public purpose for the agreements, (2) there has to be bargain for consideration, not to be grossly disproportioned to the consideration being received by the city. He asked to comment on something that has already been noted by the city manager. He said the most conservative analysis that can be done was to take some of the really important benefits and basically not consider those things. He explained that for the purpose of this analysis, they treat those as indirect benefits that should not be considered. Therefore, the analysis is only what you receive and what you are giving up as well as the operating loss that is being avoided through the transaction. In simplest terms, determine what benefits are being conferred on the private party and compare that to the benefits being received by the city and the losses that are being avoided through this transaction. In this case, the city hired the state's leading economist, Elliott D. Pollack and Company to do the analysis. The Pollack study determined that since the city will still have to pay a management fee and expenses, they will essentially pay in the 20 years \$177 million in expenses that can be avoided through this transaction. He explained the study showed a \$222 million benefit for the city and \$203 million being conferred by the city. He said that in this case, not only are the benefits received not grossly disproportionate to the benefit being paid but in fact it appears that the total benefits to be received actually exceed the benefits being conferred on the private parties. He added that under current state law, based on that analysis, it does appear that a court faced with a gift clause question should determine there are valid public purpose served by this transaction and that the total benefits by the city are not grossly disproportionate to the benefits being paid by the city.

Councilmember Martinez asked for clarification on what is meant by grossly disproportionate. Mr. Birnbaum explained that the Supreme Court has said that the test was to compare the

benefits received to the benefits conferred and determine whether they are grossly disproportionate. He noted the court has not been clear on whether it should be a 5% difference or a 15% difference. He reiterated that in this case, the total benefits received actually exceed the benefits being conferred and resolves the disproportionate issue.

Councilmember Clark stated that Mr. Birnbaum's legal analysis was based on information compiled by the Pollack Company. Mr. Birnbaum stated she was correct. Councilmember Clark commented on the three previous court decisions discussed by Mr. Birnbaum that determined the frame work of what the gift clause is all about. They basically state that there has to be a valid public purpose, the benefits that the city receives must be sufficient for the purposes of the investment. Mr. Birnbaum explained that meant once again, not grossly disproportionate.

Councilmember Clark stated the third element was for the city to try and mitigate the loss to the city and residents. Mr. Birnbaum stated that was actually part of the second element. He provided an example of a court decision in another case very similar to this case. He indicated that in this case, the Pollack report estimated that over 20 years, the present value of losses likely to be sustained would be \$177 million. Those losses are projected to disappear as part of this transaction. He explained how the Pollock Company regards using the present value model which is a conservative way of looking at this instead of assessing this in gross numbers. This provides for a more meaningful comparison.

Councilmember Clark inquired that just strictly in dollars and cents, would the city be \$18 million better off in accepting the Jamison deal than trying a different strategy to manage the arena. Mr. Birnbaum noted it was much different than that. He said if they accept the Jamison deal, their benefits exceed their detriments. If they don't proceed with the deal according to the Pollock analysis, the projected expenses the city would have to bear after offsetting projected revenues are in excess of \$177 million over 20 years. However, if the city decides to go in another direction, they may do better or they may do worse. Nevertheless, the Pollock report informs them the risk may be as much as \$177 million in expenses the city will have to bear without the deal.

Councilmember Clark asked if it was safe to say that Mr. Birnbaum had "no dog in this fight" and he was strictly a neutral party objectively looking at the issue and offering his conclusions whether the Council liked his conclusions or not. Mr. Birnbaum stated Councilmember Clark was totally correct in her assumption. He noted he was not hired to negotiate or review the transaction and only hired after the transaction was in negotiation largely complete and look at the final documents. Councilmember Clark noted he and his firm were only hired to look at the gift clause objectively. Mr. Birnbaum stated she was correct.

Councilmember Knaack stated she would like to hear from a representative from Elliott D. Pollack and Company on how they determined some of the figures to substantiate some of what Mr. Birnbaum has said.

Jill Welch, Elliott D. Pollack and Company, stated they were provided much of the original assumptions from the city who received them from TL Hocking and Associates. The

assumptions were very reliable for running a number of different scenarios and obtaining information.

Councilmember Knaack asked what figures were used to determine the cost of the Coyotes. Ms. Welch commented on the issues of having maintenance costs, capital expenses and a management fee without having a team present. Councilmember Knaack said the figure of approximately \$8 million a year plus capital expenses was a number that came up. This figure was without the team staying and excluding all taxes and Westgate employment numbers. Therefore, these were very conservative numbers. Ms. Welch offered to run through the numbers. The arena management fees over the 20 years without the team have a net present value of \$171 million. The total cost of the repair and replacement expenses was approximately \$7 million over the 20 years net present value. The major capital expenses were about \$14 million. The three together would be \$192.2 million over 20 years at the net present value. She noted there were also some surcharges on the tickets and those revenues would still be received and that would be at \$15.7 million. Therefore, at net present value of the expenses versus the revenues, would be \$176.6 million over the 20 years without a team.

Councilmember Knaack noted that the \$176 million avoided loss versus a possible \$18 million benefit over a 20 year period with the Coyotes was important.

Councilmember Clark wanted to clarify that their comparison was based on the arena with and without the Coyotes and without any revenue from the restaurants at Westgate, no concession sales, no anything, and this was only comparing apples to apples. Ms. Welch stated she was correct.

Councilmember Clark asked what two management arena fee figures were used. She understood that with the deal and the Coyotes the figure was \$9 million and without the Coyotes it was \$8 million. Ms. Welch stated she was correct.

Councilmember Lieberman stated the numbers given were somewhat confusing. He said reading from their own conclusion, there was a huge difference between present and future values. He said the present value of \$220 million was not grossly disproportionate and in fact exceeds the payments to be made by the city, present value \$203 million. According to this study, the benefit is \$17 million in twenty years. He believes it will cost the city close to \$324 million to keep the Coyotes in Glendale. He wondered how they came up with these figures and believes with a private promoter they could have made a lot more money and the city would benefit far more than the \$17 million. He said that was less than \$1 million a year. He indicated he would like to speak to them after the meeting to learn how these figures were obtained. However, he realizes their firm was well known and had a great track record. He was the only one that believes the city can survive beautifully without the Coyotes. The city cannot afford to keep the Coyotes in Glendale and has used city funds in the past to help keep them here. He added the \$40 million the city borrowed from the water and sewer trust fund if paid back in 20 years will cost \$1.5 million a year in interest. He was very concerned what that \$92 million will do to Glendale in the next five years for streets and public safety. He restated the city was not in the position to

give \$17 million a year to a potential hockey owner and now they are raising the sales and property taxes.

Councilmember Clark noted the Pollack Company used the figure of 25 nights by a promoter other than the Jamison Group. She asked how they came up with the figure of 25 nights. Ms. Welch indicated the figure was actually 50 events. Councilmember Clark explained the Pollack Company relied on the figures as they exist now and took out the nights of hockey and arrived at the figure. She added that with a different management company, she assumes they would not do any worse than what currently exists. Therefore, this was a very conservative approach. She noted no one had a crystal ball and could predict that some other management company would come in and do unbelievably better than what is currently happening at the arena.

Councilmember Martinez commented they all heard in the past of promoters that can bring in all kinds of events to the arena. However, this was a very competitive market in getting events to come to an arena anywhere in the Phoenix metropolitan area. Those events go first to the A markets and then what they consider the B markets which is Phoenix and Glendale. Therefore, there are no guarantees on events that could be brought to Glendale with that kind of competition. As far as borrowing city funds, he asked Mr. Beasley to provide any new updates on the Coyotes issue.

Mr. Beasley stated he spoke to the Commission and they had been willing to work with the city in regards to the initial payment of \$25 million. Councilmember Martinez commented on the sales tax issue and the possibility of using a tier system. He asked Mr. Horatio Skeete, Assistant City Manager, to further explain this issue. Mr. Skeete stated the city has been in touch with representatives from the car dealers and are exploring a two tier system with items over a certain dollar figure. Staff is evaluating different rates and trying to determine the impact to the city budget as well as for the consumer using those proposed changes. They will bring this item and staff's recommendation to the next workshop on June 19, 2012.

Councilmember Martinez remarked no one wants to raise taxes and he appreciates anything staff can do to ease the burden on businesses and the residents of Glendale. He thanked staff for their work on this matter.

Vice Mayor Frate remarked on the figures presented today. He reiterated the figures were not inflated and were very conservative. He noted no sales revenues were included in their equations or analysis.

Vice Mayor Frate, asked Mr. Birnbaum to explain a letter from the Goldwater Institute regarding parking rights and how they should be included in this study. Mr. Birnbaum explained this issue started when the city was in discussions with the Hulsizer Group and parking rights. In the Hulsizer transaction the revenue stream that was then anticipated from the parking was to be transferred back and utilized by the city to support the issuance of bonds. He indicated there was a time when that was being looked at and that is what the Goldwater Institute is referencing. However, for the purpose of the current transaction, the parking just like the restrooms, are going to be under the control of the arena operator. The Pollack analysis did not put any particular

value on those parking rights being transferred to the arena operator. Therefore, in the gift clause analysis, if the Goldwater Institute is suggesting the city is providing potential parking with the arena is some independent economic matter. He, however, does not know of anything that can support that view.

Councilmember Clark remarked this was like when you bought a house you expect to also get the parking spaces.

Councilmember Clark commented when the city considered previous deals such as the Hulsizer deal, there was not much difference than what has been happening with this deal. She said things have been moving fairly quickly as in the other deals and in the same timeframe. She added that if anything this deal has taken longer than most and yet people are saying the city was rushing into this deal. She explained this has been the only deal the city has put up on their website for public input. Since Monday, the actual final draft has been up on the website and the city has been hearing from people who support it and people who do not. She does not believe they have rushed this deal or have done anything different than what was done with the other deals. She suspects the people who are saying this are the people who do not like the deal and are looking for ways to delay its approval. She asked Mr. Craig Tindall, City Attorney, to explain the emergency clause.

Mr. Tindall explained there were two actions that will be before Council tomorrow, one is a resolution and one is an ordinance. The resolution authorizes the city manager to sign the final draft on the arena management lease and the non-relocation agreement. However, as part of the arena management agreement, there is a lease hold interest and the Charter requires that the sale be done by ordinance. In order to assure that both those actions become effective at the same time, there is an emergency clause in that provision that makes the ordinance effective immediately in the event there is an argument that it's not.

Councilmember Clark asked Mr. Tindall to explain the non-relocation agreement. Mr. Tindall explained the non-relocation agreement is the agreement that binds the team to remain in the arena playing its home games for a period of 20 years. This also obligates the arena manager to the same effect to the extent they have control of the team. The other important part of the agreement is the damage provision should that not occur. The city has a right to go to court to obtain an order for the team to remain in the arena for 20 years or specific monetary damages.

Councilmember Clark commented on the management lease agreement 20 year lease. She explained the \$17 million referred to in the agreement was a sliding figure and the average for the 20 year lease was closer to \$15 million. Mr. Tindall stated she was correct. He provided information on the lease agreement and the benefits to the city.

Councilmember Knaack asked Mr. Tindall to address the Tohono O'odham Nation offer to partner with the city to relieve some financial obligations related to the arena. Mr. Tindall stated he had not heard of any communication from the Tohono O'odham Nation relating to that type of offer. He was at a loss as to what they were referring to with those statements. He mentioned an

added option in the agreement for the arena manager to purchase the arena. Councilmember Clark stated that was a major point in the city's benefit.

Vice Mayor Frate stated the city was not rushing into this deal since they have been at this for three years. He explained the detailed process the Council goes through in order to understand the material fully. Mr. Tindall agreed and added this had been three long years and very well publicized internationally.

Councilmember Clark commented on the other deals the city considered including the Hulsizer deal. She stated those other deals had not been in the best interest of the city and its residents. She indicated this deal has none of those questionable components and is a much cleaner deal. The important point for any arena management fee was that the city cannot afford to let the arena sit vacant since the city still had maintenance costs and capital repair costs associated with the arena. She talked to a promoter that said they held the Jamison Group in the highest regards with their ability to book events other than hockey into their venue. She had every confidence that the Jamison Group will do very well for the Coyotes and the Glendale arena. She believes the city will come back stronger than ever in three to five years. She noted the Council may disagree on this issue, but all are genuinely committed to doing the very best thing for Glendale that they believe possible.

Mr. Beasley stated the arena was not built to only promote hockey and sports but to create a destination point for Glendale. He added this was a 20 to 30 year scenario. He asked Mr. Art Lynch, consultant, to speak to the history of the arena.

Mr. Lynch explained this project started in 1999 when the citizens were talking about creating a regional destination. The focal point has three major components, the arena, Westgate and Northern Crossing. He indicated that people tend to forget that arena has other components not only hockey. He explained this project was not built solely for financial issues but was voted on in 1999 with proposition 2 for economic development in a bond election. He explained the city's initial investment in this project which goes back to when the voters approved creating economic development in Glendale not just building roof tops. The vision from the Mayor and Council was creating something that can benefit the citizens the most.

Councilmember Clark said the Council had decided 10 years ago that they could do a couple of things with the western area of Glendale. The city had the option to build homes in that area or turn it into another viable economic engine for the city. She stated everything was going well until 2007 when the recession hit everyone. She believes that if the recession had not hit everyone, no one would be opposed to this deal this year. She noted they live in a society where everyone wants instant solutions quickly; however, this will take time. She however has no doubt they will come out on top.

Councilmember Knaack asked Mr. Lynch to expand on the economic cycle that has been occurring and the city's contingency fund. Mr. Lynch stated one of the Council's goals has always been to build the contingency fund as a part of prudent financial management. This is reinforced by the rating agency and by the financial intermediaries or any other business entity.

He explained having a healthy fund provides a cushion. He discussed Glendale history as it relates to past contingency funds and how the economic cycle changes around the world affecting everyone's funds not only in the states.

Vice Mayor Frate thanked the citizens of Glendale for their attention today. He said that tomorrow the Council will vote on a decision. The decision approved might not be one that everyone agrees with but will be made in the best interest and benefit for the city of Glendale. He explained each Councilmember has done their due diligence with the information provided. He thanked staff for all their work on this project and for staying the course for the long three to four years. He hopes citizens continue to be involved and be part of the vote tomorrow.

As no further comments were made, Vice Mayor Frate adjourned the meeting.

ADJOURNMENT

The meeting was adjourned at 3:31 p.m.