



CITIZENS' WATER ADVISORY COMMITTEE (CWAC)

Wednesday, February 3, 2021, 9:00 a.m.

Virtual Meeting – Microsoft Teams

Legal Action Report and Meeting Minutes

1. Roll Call:

CWAC Mark Taylor called the meeting to order at 9:01 a.m. Those present and absent were:

Present:

Mark Taylor, Chair	Representative, City Manager
Alison Jones, Vice Chair	Representative, Ward 6
Ed Hendel	Representative, Mayor
Mitch Basefsky	Representative, City Manager
Rory Juneman	Representative, City Manager
Steven Washburn	Representative, City Manager
Mark Stratton	Representative, City Manager
Placido dos Santos	Representative, City Manager
Raye Winch	Representative, City Manager
Raul Ramirez	Representative, Ward 1
Steve Arnquist	Representative, Ward 2
Val Little	Representative, Ward 3
George White	Representative, Ward 4
Mark Lewis	Representative, Ward 5

Absent:

2. **Announcements** – Jessica Rodriguez requested a reordering of the agenda items immediately following roll call. Chair Taylor explained the call to audience will be specifically related to EDU fee and Differential Rates discussion. Marie Pearthree was introduced as a new member representing the City Manager's Office. Chair Taylor announced the purpose for this meeting was to allow CWAC members to educate themselves and be prepared to debate and make recommendations at a future meeting. Member Lewis advised there were some issues with the meeting links, Member Little offered to forward the links. Member Lewis would also forward emails to incorporate those people who wished to view the meeting.

2. **Pre-Annexation and Development Agreements (PADA) Differential Rate Discussion (item taken out of order)** - John Kmiec explained his new role as Interim Director of Tucson Water and Timothy Thomure as the Interim Assistant City Manager for The City of Tucson. Mr. Thomure explained the information presented is for information and educational purposes, Mr. Thomure and City Attorney Christopher Avery would be presenting the information together and take question and answers through the presentation. The information presented and discussed was:
- Pre-Annexation Development Agreements and Differential Rates About 34% of Tucson Water customers are located outside of the city limits
About 28% are located in unincorporated Pima County
 - About 6% are in another jurisdiction: Marana, Oro Valley, South Tucson

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- Differential Rates are allowed. Requires a rational relationship to services provided. This has been tested in Court in AZ
- Legal Context of ARS 9-511
 - If a municipality provides water to another municipality, the rates it charges for the water to the public in the other municipality shall be one of the following:
 - The same or less than the rates it charges its own residents for water.
 - The same or less than the rates the other municipality charges its residents for water.
 - If the other municipality does not provide water, the average rates charged for water to the residents in the other municipality by private water companies.
 - Rates determined by a contract which is approved by both municipalities and in which such rates are justified by a cost-of-service study or by any other method agreed to by both municipalities.
- Differential Rates Are Commonplace
 - Chandler
 - Yuma
 - Flagstaff
 - Flowing Wells
 - Glendale
 - Metro Water
 - Phoenix
 - Scottsdale
 - Tempe
- Updated survey is being conducted:
 - Do you serve any water customers outside of your jurisdiction? If so, what percentage is that of total customer base?
 - Do you charge a differential rates to customers outside your municipality?
 - If you charge a differential rate, what year was it established?
 - If you charge a differential rate, how much is it?
 - If you do charge a differential rate, what is the basis? (e.g. Revenue generation, cost-of-service, or support policy outcomes such as annexation)
 - Where does the revenue from differential rates go? (e.g. Stay in the utility or other city fund?)
- 1979 IGA and the water v sewer service commitments
 - 1970 Lift Charges
 - On June 26, 1979, the City entered into an Intergovernmental Agreement (the “IGA”) with Pima County (the “County”). The IGA transferred ownership of the City’s sewage treatment plants and conveyance system to the County while the City retained ownership of the effluent
- City policy re: annexation
 - Policy objectives (“why differential rates?”)
 - 2016 Memo 362,082 Residents in unincorporated don’t contribute as much to state shared revenues
 - SSR at \$286 = \$103.7 M
 - VLT/HURF split between city & county
 - Analysis of 2016 showed county received \$42.6 million less in state shared revenues to the region. The motivation behind council evaluation

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of incorporation, annexation, and or differential rates as a possible solution to lost revenues.

- Splits at <https://www.azleg.gov/ars/42/05029.htm>
- Financial risk borne by City customers via the general fund
- Fairness
- Industry policy norms
 - Inside City customer-ownership
 - Revenue risk of outside customers
 - Financial backing of General Fund
- Under this proposal, rates in unincorporated areas would approximately match prior financial plan
- Utilization of funds
 - Use in General Fund is legal
 - Use within TW is legal and could offset general rate increases
 - Use within TW is legal and could be directed to assistance programs, etc. that benefits all customers
- Next Steps
 - Stakeholder Outreach now through April 6, 2021
 - Return to Mayor and Council with summary of public outreach and Notice of Intent (NOI) for consideration on April 6, 2021
 - Public Hearing June 8, 2021 Effective Date July 5, 2021

Committee members had clarifying questions throughout the presentation to expand on their understanding of the subject. Additional questions were included in the group chat for response by the presenters and staff. No Action was taken.

3. **Call to Audience** – Chair Taylor gave a call to the audience relating to the differential rate discussion. David Godlewski of Southern Arizona Home Builders Association (SAHBA) and Tucson Regional Water Coalition stated his comments against the Pre-Annexation Development Agreement (PADA) Equivalent Dwelling Unit (EDU) Fee and annexation. Mr. Godlewski expressed concerns for the EDU fee and Differential Rates identifying it to be a policy discussion, separated from water rates on a regional level. Member Lewis reminded the committee SAHBA presented a list of questions for follow up. Peter Abraham requested a clarification on state statutes and profits.
4. **Mayor and Council Memorandums (item taken out of order)** – Technical Planning and Policy Subcommittee Chair Mitch Basefsky presented a memorandum recommending support for a Pre-Annexation Development Agreement (PADA) Equivalent Dwelling Unit (EDU) Fee after the subcommittee review of information presented. Member Basefsky clarified the fee is not based on cost of service and there was not a rational relationship to the cost of service. The subcommittee requested additional information and the allocation of those funds was requested to stay within the utility.

Motion: Member Basefsky motioned to approve the memorandum as written with provisions that the council provide a rational relationship to cost of service and the funds remain with the utility. The motion was duly seconded by member Little. **Discussion:** members offered comments expressing concerns with the EDU fee and limited information provided. **Substitute Motion:** Member Placido dos Santos, The CWAC & TPP committees discussed \$1000 EDU

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fee, the committee has additional questions and concerns yet to be answered. The committee will provide a recommendation at a later date. The motion was duly seconded by Member Rory Juneman. **Discussion:** It was asked and clarified that member Basefsky and Chair Taylor would draft a new memorandum with the assistance of TPP subcommittee. Mayor and Council has requested a recommendation prior to the February 9, 2021 council meeting, and the committee does not have enough information to provide a recommendation. Mitch clarified the discussion would continue at TPP subcommittee meeting on February 11, 2021. Motion passed on a voice vote 9-0.

Next steps: Member Basefsky advised the subcommittee will redraft the memorandum at the next subcommittee meeting.

5. **Adjournment** – Meeting ended at 11:22 a.m., missed agenda items will be added to the next meeting under old business.