



COUNCIL MINUTES

February 18, 2021

The City Council of the City of Mesa met in a Study Session Meeting via a virtual format streamed into the lower level meeting room of the Council Chambers, on February 18, 2021 at 7:30 a.m.

COUNCIL PRESENT

John Giles*
Jennifer Duff*
Mark Freeman*
Francisco Heredia*
David Luna*
Julie Spilsbury*

COUNCIL ABSENT

Kevin Thompson

OFFICERS PRESENT

Christopher Brady
Dee Ann Mickelsen
Jim Smith

(*Council participated in the meeting through the use of video conference equipment.)

Mayor Giles conducted a roll call.

1. Review and discuss items on the agenda for the February 22, 2021 Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflict of interest: None

Items removed from the consent agenda: None

City Manager Christopher Brady provided information on Item 8-d, **(Approving and authorizing continued negotiations to acquire certain property along the Signal Butte Road Improvement Project, between Williams Field Road and Germann Road, and in order to avoid unnecessary construction expense and delays, authorizing and directing that fee title, easements, or other interests in, and possession of, certain property be acquired by the City of Mesa through eminent domain as a matter of public necessity. (District 6))**, on the February 22, 2021 Regular Council meeting agenda. He explained the City has agreements with almost every property owner and have agreed upon the terms and the property value. He commented in this case, the process is more of a necessity in order to expedite the acquisition of the property because of the federal funding for the road improvements.

2-a. Hear a presentation, discuss, and provide direction on a proposed non-discrimination ordinance.

Diversity Administrator Andrea Alicoate introduced Assistant City Attorney III Jacqueline Ganier and displayed a PowerPoint presentation. **(See Attachment 1)**

Ms. Alicoate explained the Non-Discrimination Ordinance (NDO) ensures access to goods, services, employment, and housing to Mesa's diverse population. (See Pages 2 and 3 of Attachment 1)

Ms. Alicoate stated Mesa's NDO exclusions are comparable to those throughout the state. (See Page 4 of Attachment 1)

Ms. Alicoate outlined the implementation and resolution process, stating the program will be administered by the Diversity Administrator in the City Manager's office and complaints will have to be filed within 90 days of the alleged violation. She added other Arizona cities have reported a low volume of complaints which have been resolved through referrals, education, or mediation. (See Pages 5 and 6 of Attachment 1)

Ms. Alicoate explained citations will be handled by the Civil Hearing Officer and highlighted the civil penalties. (See Page 7 of Attachment 1)

Ms. Alicoate commented the effective date of the ordinance will be delayed to 120 days following adoption to allow for public outreach and education. (See Page 8 of Attachment 1)

In response to a question from Councilmember Freeman related to exemptions based on the number of employees and complaints from other jurisdictions, Ms. Alicoate stated the ordinance would apply to employers with one or more employees. She commented other Arizona cities have reported a very low volume of complaints, and all were able to be addressed through education or an informal mediation process. She confirmed Flagstaff is the only Arizona city that has the exemption at 15, all others have one or more.

In response to a question from Councilmember Spilsbury related to the employee exemption in California and Utah, Ms. Alicoate explained California has their exemption at five or more; however, that is a statewide act that is very proactive in affirmative action in which they require employee training and notices, requiring more of employees which is why the employee threshold is at five. She commented Salt Lake City, as well as other cities across the nation, have a 15-employee threshold.

In response to inquiries from Councilmember Spilsbury regarding home-based businesses and areas designated male/female, Ms. Alicoate confirmed businesses will still be able to have single sex designated areas, such as restrooms, dressing rooms, or fitting rooms; however, what this ordinance will allow is a person identifying as that single sex would be able to use that facility.

In response to a question from Mayor Giles related to the definition of sex in federal law in the workplace and housing, Ms. Ganier highlighted a Supreme Court case that determined sex includes gender identity or sexual orientation, and recently an executive order was issued directing federal agencies to recognize gender identity and sexual orientation as protected classes.

In response to additional questions from Mayor Giles regarding freedom of expression and religion, Ms. Ganier commented on the *Brush & Nib Studio v. City of Phoenix* case, which came out in 2019, that centered around an art studio that makes wedding products. She stated in that case the art studio business was not exempt from the Phoenix NDO; however, the custom wedding invitations produced were done using their creativity to convey a message. She explained the court determined the company could not be required to comply since their art is used to express a message, which was determined to be protected under the First Amendment.

In response to a question from Mayor Giles related to exclusions and criminal behavior, Ms. Ganier commented that criminal behavior in a place of public accommodation is not allowed now and will still not be allowed under this ordinance. She stressed the ordinance is not a free pass to engage in criminal or inappropriate conduct.

In response to a question from Councilmember Heredia regarding the cost for a business to comply, Ms. Alicoate stated businesses will not need to spend money or make any physical adjustments to their business other than to comply with the intention of the ordinance, which is to provide equal services and promote inclusivity.

Councilmember Luna provided information from the Maricopa Association of Governments on how many businesses are in the City of Mesa. He stated there are approximately 13,000 businesses with close to 160,000 employees, and 11,000 businesses have less than 15 employees. He expressed the opinion that he does not want to change the exemption on the number of employees by increasing to 15, because what that does is remove the protections for those 15 employees. He remarked that staff started working on this ordinance in 2014 and it is his desire to keep the number of employees at one.

Vice Mayor Duff agreed with Councilmember Luna and said discrimination is wrong for one person and is supportive of keeping the number at one person.

Mayor Giles reported the federal threshold for Equal Employment Opportunity Commission (EEOC) complaints on labor disputes is 15 employees and if Mesa has a threshold below that number, Mesa could be a forum for people to bring labor disputes. He expressed the opinion that he would entertain increasing the number of employees to acknowledge unique situations of very small businesses and allow some discretion in those settings.

Councilmember Freeman stated government should have a limited role in business applications which is why he supports a higher number of employees. He commented if businesses are not complying, Council can adjust the ordinance.

Councilmember Thompson provided a statement and indicated that a NDO is not necessary and is a solution looking for a problem. He stated that he is sympathetic to those in the LGBTQ community that feel there may be discrimination in our community, and he is supportive of eliminating all types of discrimination. He said while he has reservations, he is open to compromise that strikes a balance between protecting religious liberties and organizations while prohibiting discrimination in employment and housing.

Councilmember Thompson outlined his concerns with the current draft, the first of which is to eliminate the employment provisions. He commented the Supreme Court extended Title VII of the Civil Rights Act that includes gay and transgender persons, making this enforceable for the State and making this provision unnecessary. He expressed the opinion that if Council moves forward with this provision, then it should mirror the EEOC laws and only apply to businesses with more than 15 employees and remove all prosecutorial responsibilities from the City.

Councilmember Thompson continued by expressing concerns that taxpayer dollars will be utilized in the prosecution of businesses for minimal fines and the time and resources expended by staff to review, investigate, and potentially prosecute a business will far exceed the proposed amounts to be levied against a business. He indicated support in bringing the parties together to address the issue. He added that if Council wants to move this provision forward, then the process should

be fair and hold any false allegations to the same level of prosecutorial responsibility and levy the same fines that would be placed upon the businesses.

Councilmember Thompson concluded by saying Council should receive an update on the education and outreach to Mesa businesses regarding the NDO. He stated it would be irresponsible of the City to enact legislation without a clear and concise plan to notify and educate every business. He requested this be assigned to a committee and allow citizens, businesses, and the LGBTQ community to help shape legislation that is unique to Mesa.

Councilmember Heredia expressed support for keeping the employee threshold at one and stated that he understands the concerns as a small business owner; however, there is no money that a business must spend to do the right thing and treat people fairly.

Councilmember Spilsbury commented this ordinance is not about government trying to find people doing something wrong; however, there are people who have been marginalized, intimidated, and excluded; and if we are welcoming and inclusive, then this ordinance is just a statement of those values.

Mayor Giles stated the consensus is to keep this item on the agenda for Monday; however, Council needs to provide staff direction on the issue of the employee threshold. He expressed support for keeping the employee exemption at the federal level of 15 employees.

Vice Mayor Duff and Councilmembers Luna and Heredia indicated that they stand at one employee.

Discussion ensued relative to the number of employees that should be included in the ordinance exclusion and the deadline for providing direction for the ordinance.

Councilmember Thompson expressed a preference for 15 employees in his comments, and Mayor Giles and Councilmembers Freeman and Spilsbury also expressed approval for 15 employees.

Mayor Giles stated the consensus is to prepare the ordinance with 15 employees and to continue the conversation during Monday's meeting.

In response to a question from Vice Mayor Duff, Ms. Alicoate explained Phoenix, Tucson, Tempe, and Winslow have their employee threshold at one or more and were all enacted after Flagstaff, which is at 15 employees. She stated Mesa consulted with other cities and implemented one or more to be comparable with most of the state.

Mayor Giles thanked staff for the presentation.

2-b. Hear a presentation, discuss, and provide direction on the City's efforts to create and maintain an environmentally sustainable community.

Environment Management & Sustainability Department Director Scott Bouchie displayed a PowerPoint presentation. **(See Attachment 2)**

Mr. Bouchie provided a history of environmental and sustainability within Mesa and commented one of the first things staff did was to get the Tree City USA designation which shows Mesa places importance on trees as they clean the air, provide shade, cool cities, make a more walkable

community, and support wildlife. He highlighted the opening of the Household Hazardous Waste Facility in 2018, and the increase in solar over the last 12 years which amounts to approximately 6.5 megawatts of power. (See Page 2 of Attachment 2)

Mr. Bouchie discussed the Salt River Project (SRP) Champions of Energy Efficiency award, which the City of Mesa has won the last two years and shows Mesa's commitment to energy efficiency. He commented on the use of the \$4.2 million in 2009 stimulus funds that were used to implement sustainable practices which were spread across several departments to use as seed money for implementing solutions such as LED streetlight replacements, created the Central Main Plan, first solar project at Red Mountain softball fields, and investment grade audits which laid the groundwork for the energy efficiency program. (See Page 3 of Attachment 2)

Mr. Bouchie highlighted the City Greenhouse Gas Inventory that is emitted on an annual basis. He explained the water energy nexus, which includes the energy Water Resources needs to pump, treat, and distribute water, then collect and treat wastewater, then redistribute as effluent water. He stressed that as water conservation is discussed, Council should understand that every gallon of water saved is also saving energy. (See Page 4 of Attachment 2)

Mr. Bouchie reviewed what other cities are doing related to a climate action plan, aspirational goals, metrics, city operations plan, and a communitywide plan. (See Page 5 of Attachment 2)

Mr. Bouchie discussed the six areas that are typically found within a climate action plan or sustainability plan: Energy; Urban Heat; Air Quality; Water Stewardship; Recycling and Material Management; and Local, Sustainable Food Systems. (See Pages 6 through 11 of Attachment 2)

Mr. Bouchie explained that even though Mesa does not have a formal climate action plan, there is a project-based program that has been moving the City forward. He stated since Mesa owns so many utilities, the City is typically the best and largest customer, which is a great opportunity to save energy. (See Page 12 of Attachment 2)

In response to a question from Councilmember Freeman regarding an increase to the 12% renewable energy supply, Mr. Bouchie remarked there will be solar on the ASU City Center project and the City is approaching a megawatt of solar within the electric utility.

In response to additional questions from Councilmember Freeman regarding recharging water in other areas of the City, Water Resources Department Director Jake West pointed out the Northwest Water Reclamation Plant (NWWRP) does a lot of cleaning up the wastewater which then goes to the Granite Reef Underground Storage Project (GRUSP). He added future projects include building a pipeline to get the effluent water to where it needs to be sustainable with regards to the expansion of the Signal Butte Water Treatment Plant and to be able to fulfill the agreement with the Gila River Indian Community (GRIC).

Mr. West continued by saying for the last 18 months GRUSP has been out of service because it is too full and when the water gets too heavy it flows out to the Salt River and the City does not get any credit. He added that is considered stranded capacity and that is the genesis of the reuse pipeline.

In response to a question from Councilmember Freeman regarding renovating buildings into smart buildings, Mr. Bouchie indicated LEED is a rating system to ensure a third party has verified a building is built to the LEED standard and some of Mesa's buildings are completed to that standard.

Mayor Giles commented that he would like to see the City adopt a formal climate action plan. He observed that some cities are adopting goals to achieve carbon neutrality by 2050 and need an interim goal with plans on how to achieve that goal. He expressed the desire to begin discussions on what the City can do now to be a responsible organization and get on the path to carbon neutrality. He requested information on how to quantify a baseline so the City will have a way to measure progress.

Mr. Bouchie explained Maricopa County has a countywide inventory that the City can use as a baseline. He clarified that there are certain standards in a carbon emissions inventory, and the two can be combined into a climate action plan. He added staff can then have conversations with Council about what standards to follow and make sure that as the baseline is set the metrics are also put into place. He stressed the importance of consistent methodology in order to have a comparison for future years. He stated that once staff begins measuring total emissions they would report to Council on a regular basis.

In response to a question from Mayor Giles regarding a sustainable recycling program and whether it would be part of this plan, Mr. Bouchie explained the solid waste plan would be incorporated into the climate action plan. He commented the climate action plan would include areas on energy, transportation, solid waste materials, recycling materials, and management.

Mr. Brady clarified that every department would have a component of the plan and what needs to be developed is the broader perspective for the organization that highlights the departments and activities that outlines projects and initiatives for each.

Vice Mayor Duff asked that baseline goals be established in each sector as mentioned. She also requested the Planning Department develop standards for tree coverage; and that if the City can achieve 30% shade, it would reduce temperatures by five degrees.

Councilmembers Heredia and Spilsbury expressed their support for a climate action plan.

Mayor Giles declared a consensus for staff to proceed with developing a climate action plan and requested staff return to the Sustainability and Transportation Committee to proceed.

Mayor Giles thanked staff for the presentation.

3. Acknowledge receipt of minutes of various boards and committees.

3-a. Museum & Cultural Advisory Board meeting held on November 19, 2020.

It was moved by Vice Mayor Duff, seconded by Councilmember Freeman, that receipt of the above-listed minutes be acknowledged.

Upon tabulation of votes, it showed:

AYES – Giles-Duff-Freeman-Heredia-Luna-Spilsbury

NAYS – None

ABSENT – Thompson

Mayor Giles declared the motion carried unanimously by those present.

4. Current events summary including meetings and conferences attended.

Mayor Giles – Acknowledged passing of Councilmember Warren Steffey

Vice Mayor Duff – Downtown Mesa Association with local NBC news to promote AI Fresco off Main
Gateway Airport Bridger Aerospace Super Scooper

Vice Mayor Duff and Councilmember Freeman visited the Grove On Main

5. Scheduling of meetings.

City Manager Christopher Brady stated that the schedule of meetings is as follows:

Monday, February 22, 2021, 5:15 p.m. – Study Session

Monday, February 22, 2021, 5:45 p.m. – Regular Council meeting

6. Adjournment.

Without objection, the Study Session adjourned at 9:30 a.m.

JOHN GILES, MAYOR

ATTEST:

DEE ANN MICKELSEN, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 18th day of February 2021. I further certify that the meeting was duly called and held and that a quorum was present.

DEE ANN MICKELSEN, CITY CLERK

la/dm
(Attachments – 2)