

COUNCIL MINUTES

October 5, 1998

The City Council of the City of Mesa met in a Regular Council Meeting in the upper level meeting room of the Council Chambers, 57 East 1st Street, on October 5, 1998 at 5:45 p.m.

COUNCIL PRESENT

Mayor Wayne Brown
Jim Davidson
John Giles
Keno Hawker
Bill Jaffa
Dennis Kavanaugh
Pat Pomeroy

COUNCIL ABSENT

None

POLICE OFFICER
PRESENT

Marc Therre

OFFICERS PRESENT

C.K. Luster
Neal Beets
Barbara Jones

Invocation by President Wilford Andersen, The Church of Jesus Christ of Latter-Day Saints.

Pledge of Allegiance led by Mayor Brown.

Recognition of the 1998 scholarship awardees from the Mayor's Disability Awareness Committee.

Mayor Brown advised that October is Disability Awareness Month and in relation to that event, a sign language interpreter is present at the meeting. Mayor Brown introduced Brent Beals, Chairman of the Mayor's Disability Awareness Committee, and Judy Taussig, Chairman of the Scholarship Subcommittee.

Ms. Taussig stated that the scholarship program is a project conducted each year in conjunction with the celebrity wheelchair basketball game. Ms. Taussig announced that 12 individuals have been recognized as 1998 scholarship awardees. Ms. Taussig introduced the awardees present at the meeting.

Mayor Brown congratulated the Committee and the recipients.

Ms. Taussig extended an invitation to everyone to attend this year's celebrity wheelchair basketball game to be held at 7:30 p.m. on October 21, 1998 at Mesa High School.

1. Approval of minutes of previous meetings as written.

Councilmember Pomeroy noted a correction to the list of attendees at the September 10, 1998 Study Session.

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Giles, that the minutes of September 10 and 22, 1998 be approved as amended.

Carried unanimously.

2. Consider all consent agenda items.

At this time, all matters on the consent agenda were considered or were removed at the request of a member of the Council. All items identified in these minutes with an asterisk (*) were approved with one Council action.

It was moved by Vice Mayor Giles, seconded by Councilmember Kavanaugh, that the consent agenda items be approved.

Carried unanimously.

3. Consider the following liquor license applications.

*a. JEAN M. KAMINSKI, PARISH ADMINISTRATOR

Special Event License application of Jean M. Kaminski, Parish Administrator, St. Bridget Catholic Church, a one-day religious event to be held on Thursday, December 31, 1998, from 7:00 p.m. to 1:00 a.m. at 2213 North Lindsay Road, St. Bridget Catholic Church.

*b. STEPHEN R. CLARK, DIRECTOR

Special Event License application of Stephen R. Clark, Director, Fraternal Order of Police #9, a one-day fraternal event to be held on Saturday, October 10, 1998, from 5:00 p.m. to 12:00 Midnight at 1551 East Dana, Christ the King Church.

*c. JOSEPH M. SERENO, AGENT

New Beer and Wine Store License for Foodini's, 1956 East Southern Avenue. This is a new business; no previous liquor licenses at this location.

4. Consider the following bingo application - Class A.

*a. MV Happy Kachina Bingo
Jean Fleming, Assistant
8865 East Baseline Road
Mesa, Arizona 85208

5. Consider the following contracts.

a. Four-inch high-pressure gas main, East University Drive between Sossaman Road and 80th Street. City of Mesa Project No. 98-66.

This project involves the installation of a new gas line along East University Drive between Sossaman Road and 80th Street.

Recommend award to low bidder, Northern Pipeline, in the amount of \$63,912.15.

Councilmember Hawker indicated that he had a potential conflict of interest in connection with the matter now under discussion which he wanted recorded in the minutes of the meeting, and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

It was moved by Councilmember Pomeroy, seconded by Councilmember Davidson, that the recommendation of staff be approved.

Upon a tabulation of votes, it showed:

AYES - Brown-Davidson-Giles-Jaffa-Kavanaugh-Pomeroy
NAYS - None
ABSTAIN - Hawker

Mayor Brown declared the motion carried unanimously by those voting.

- b. Water line replacements - 72nd Street, Broadway to Edgewood and 40th Street, Broadway to Main Street. City of Mesa Project No. 97-88.

Recommend award to low bidder, Telecor, Inc., in the amount of \$361,814.00.

Councilmember Hawker indicated that he had a potential conflict of interest in connection with the matter now under discussion which he wanted recorded in the minutes of the meeting, and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

It was moved by Vice Mayor Giles, seconded by Councilmember Kavanaugh, that the recommendation of staff be approved.

Upon a tabulation of votes, it showed:

AYES - Brown-Davidson-Giles-Jaffa-Kavanaugh-Pomeroy
NAYS - None
ABSTAIN - Hawker

Mayor Brown declared the motion carried unanimously by those voting.

- c. New Utilities building and Materials/Supply warehouse addition at the 6th Street Service Center. City of Mesa Project No. 97-04.

This project involves the addition of new facilities at the City's 6th Street Service Center.

Councilmember Hawker indicated that he had a potential conflict of interest in connection with the matter now under discussion which he wanted recorded in the minutes of the meeting, and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

City Attorney Neal Beets provided background information concerning a bid protest received relative to Project No. 97-04. Mr. Beets explained that as a component of the original bid package, a form (required) was provided to bidders for use in submitting a surety bond. Mr. Beets stated that at the bid opening, the bid submitted by ForeSite Design and Construction was not read openly because the bidder had not utilized the City's form, and Target General was therefore selected as the low bidder. Mr. Beets stated that the bid submitted by ForeSite was approximately \$30,000 less than that of Target General, Inc. and that ForeSite has protested the bid, claiming to be the low bidder. Mr. Beets said that it is the opinion of Target General, Inc. that Target General is the low bidder meeting bid specifications.

James Sienicki, Snell & Wilmer, One Arizona Center, Phoenix, representing Target General, Inc., noted that the use of the City's surety bond form was mandated and emphasized as a material requirement in the Request for Bid. Mr. Sienicki commented that by creating its own surety bond form, the City has alleviated an obligation for the City Attorney to attend bid openings and review all bids for conformance. Mr. Sienicki stated that ForeSite's failure to submit the required bid bond afforded a competitive advantage. Mr. Sienicki said that ForeSite had the opportunity following the bid opening to review all bids submitted and present a bid protest if determined that their bid was reasonable and within their ability to perform at bid price.

Mr. Sienicki spoke concerning the importance of the integrity of the statutes governing the bidding process. Mr. Sienicki reiterated that the use of the City's form was mandated in three locations in the bidding documentation and that ForeSite has admitted that they did not utilize the City's form.

D. Kim Lough, Jennings, Haug & Cunningham, 2800 North Central Avenue, Phoenix, representing ForeSite Design and Construction, noted that the bid submitted by ForeSite was approximately \$30,000 less than that submitted by Target General, Inc. Mr. Lough stated that the bid was opened and available for review but was not considered because the City's bid bond form was not utilized. Mr. Lough commented that the form submitted, however, was a virtually identical bond, with the major difference consisting of the use of the term "oblige" rather than "the City of Mesa."

Mr. Lough stated that bid bond forms are governed by State statute and that according to Title 34, once a bid bond is submitted in accordance with the terms of the statute, the language shall be deemed at law to be the statutory language regardless of what is stated on the bid bond form. Mr. Lough said that there is no material difference between the City's form and the form used by ForeSite and that no competitive advantage was achieved. Mr. Lough encouraged the Council to consider substance rather than form and award the contract to ForeSite Design and Construction.

Scott Breeding, co-owner of ForeSite Design and Construction, 124 West Orion, Tempe, spoke concerning the extensive time and effort applied in developing a competitive bid to present to the City. Mr. Breeding stated that ForeSite focused on substance rather than form but that the form utilized complies with statutory requirements. Mr. Breeding expressed the opinion that the events that have transpired relative to the bid have not provided an advantage to ForeSite and do not interfere with the City's procurement process. Mr. Breeding noted ForeSite's commitment to constructing a quality project and expressed appreciation for Council's consideration.

City Attorney Neal Beets said that Council has two options available relative to the bid: a) reject all bids or b) award the contract to ForeSite, who, in his opinion, is the low bidder in accordance with State law, having submitted a bid bond form differing from the City's form in merely a cosmetic manner. Mr. Beets stated that the contractor is required to abide by state law and that the City should award the contract to ForeSite, the low bidder.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Pomeroy, that Project No. 97-04 be awarded to ForeSite Design and Construction.

Upon a tabulation of votes, it showed:

AYES - Brown-Davidson-Giles-Jaffa-Kavanaugh-Pomeroy
NAYS - None
ABSTAIN - Hawker

Mayor Brown declared the motion carried unanimously by those voting.

- *d. One-year renewal of the annual supply contract for automotive/truck parts as requested by Fleet Support Services.

The Purchasing Division recommends exercising the second and final one-year renewal option with the original lowest overall bid by B & K Fleet Supply for annual purchases estimated at \$100,000.00.

- *e. One-year renewal of the annual supply contract for stormwater pump repair and maintenance at 42 various sites in Mesa as requested by the Transportation Division.

The Purchasing Division recommends exercising the second and final one-year renewal option with the original low bid by Layne Western at \$67,590.00 based on estimated requirements.

- *f. One-year renewal of the annual supply contract for helicopter engine parts and repair as requested by the Police Department.

The Purchasing Division recommends exercising the first of two 1-year renewal options with the original low bid by UNC Airwork Corp. for annual purchases estimated at \$250,000.00.

- *g. One-year renewal of the annual supply contract for plastic refuse container lids as requested by the Solid Waste Division. These lids are used on 3, 6, and 8 cubic yard refuse containers.

The Purchasing Division recommends exercising the only one-year renewal option with the original low bid by Rotonics Mfg., Inc. at \$22,500.00 plus 5 percent use tax of \$1,125.00 for a total of \$23,625.00 based on estimated requirements.

- *h. One-year renewal of the annual supply contract for repair parts for Motorola brand radios and communications equipment as requested by the Communications Division.

The Purchasing Division recommends exercising the second and final one-year renewal option with the original low bid by Joriga Electronics, Inc. for annual purchases estimated at \$20,000.00.

- *i. Five pumper trucks as requested by the Fire Department. Three trucks are replacements; two are additions to the fleet.

The Purchasing Division recommends accepting the proposal with the highest evaluated score from First In Inc. at \$1,430,220.00 plus 6.85 percent sales tax of \$97,450.99, for a total of \$1,527,474.96.

- *j. One replacement copier for the City Prosecutor's Office.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Danka Corporation at \$13,717.00 plus 6.8 percent sales tax of \$932.75, for a total of \$14,649.75.

- *k. One replacement copier for the Police/Fire Training Facility.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Ikon Office Solutions at \$18,899.00 plus 6.8 percent sales tax of \$1,285.13 for a total of \$20,184.13.

6. Consider the following ordinance.

- a. Relating to the Transaction Privilege and Use Tax Code; grandfathering certain transactions; and providing for retroactivity - Ordinance No. 3537.

Mr. Beets advised that a 1/2 percent increase in sales tax was approved by voters at the May 1998 General Election and became effective August 1, 1998. Mr. Beets stated that concern was subsequently expressed that contracts entered into prior to August 1 bearing a 1 percent rate should not be increased to 1-1/2 percent, and as a result, the ordinance before Council was prepared to provide grandfathering provisions to enable such contracts to remain at 1 percent.

It was moved by Vice Mayor Giles, seconded by Councilmember Kavanaugh, that Ordinance No. 3537 be approved.

Councilmember Jaffa noted the extensive benefit provided by the ordinance, given the fact that contracts will be honored at the rate of 1 percent regardless of the contract term.

Carried unanimously.

7. Consider the following resolutions.

- *a. Authorizing the City Manager to execute an agreement with the Town of Gilbert for the widening of Baseline Road from Stapley Drive (Cooper Road) to approximately 2,000 feet east of Stapley Drive - Resolution No. 7258.

- *b. Vacating a portion of public roadway located in the 10000 block of East Sunland Avenue - Resolution No. 7259.

This excess right-of-way is not needed for Sunland Avenue improvements.

- c. Extinguishing a portion of a public utilities and facilities easement at the northwest corner of Country Club Drive and Fairway - Resolution No. 7267.

This easement is in conflict with the construction of a building.

Mayor Brown commented that the resolution relates to a technical modification and that it is his understanding that neighbors have reviewed the proposal and are in agreement.

It was moved by Councilmember Pomeroy, seconded by Councilmember Jaffa, that Resolution No. 7267 be approved.

Carried unanimously.

- *d. Extinguishing an easement for highway purposes for the Hawes Road right-of-way between the Superstition Freeway and Baseline Road - Resolution No. 7260.

This right-of-way will not be needed in this location.

- *e. Authorizing the City Manager to execute an intergovernmental agreement between the City of Phoenix and the City of Mesa for operating and capital assistance under Federal Transit Administration Project AZ-90-X049 - Resolution No. 7261.

- *f. Vacating a portion of public roadway known as Crescent Alley between Extension Road and Date Street - Resolution No. 7262.

This right-of-way is no longer needed as a public alley.

- *g. Vacating a portion of North 88th Street right-of-way, north of Downing Street - Resolution No. 7263.

This area is being subdivided and this portion of 88th Street is no longer needed.

- *h. Vacating a portion of the 2800 block of North Usery Pass Road.

Usery Pass Road is being realigned and this portion is no longer needed.

(This item was approved as part of the consent agenda for the purpose of continuance to the November 2, 1998 Regular Council Meeting.)

- *i. Encouraging citizen participation during the zoning and development review process.

(This item was approved as part of the consent agenda for the purpose of continuance to the November 2, 1998 Regular Council Meeting.)

- j. Approving issuance of \$99,285,000 Refunding Revenue Bonds (Lutheran Health Systems), Series 1998A-1 of the Industrial Development Authority of the City of Mesa, Arizona, under Section §35-701, et seq., Arizona Revised Statutes - Resolution No. 7268.

At the request of Councilmember Hawker, Finance Director Don Ayers explained that the Industrial Development Authority (IDA) is a board appointed by the Mayor and Council whose primary purpose is to assist in the financing of new industrial development that will generate employment opportunities within Mesa. Mr. Ayers reported that bonds may additionally be issued for 501C nonprofit corporations to build/expand facilities or purchase equipment for such facilities. Mr. Ayers spoke concerning bond availability and the recent approval by the IDA of the issuance of IDA bonds for Lutheran Health Systems. Mr. Ayers noted that federal law requires that the issuance of tax-exempt bonds be approved by the elected body that appointed the IDA Boardmembers and emphasized that in no event is the City liable for payment on the bonds.

It was moved by Councilmember Hawker, seconded by Councilmember Jaffa, that Resolution No. 7268 be adopted.

Carried unanimously.

- *k. Authorizing the City Manager to enter into an agreement between the City of Mesa, the Arizona Water Company, and Providence Development, Inc. for transfer of water treatment capacity to Arizona Water Company - Resolution No. 7264.

- *l. Authorizing the City Manager to enter into an agreement between the Subregional Operating Group, Arizona Public Service Company, and Salt River Project for resolving conflicting claims to treated effluent from the 91st Avenue Wastewater Treatment Plant - Resolution No. 7265.

- *m. Authorizing the City Manager to enter into an agreement between the City of Mesa, the City of Phoenix, and Salt River Project for removal of treatment plant residuals from the South Canal downstream of the Val Vista Water Treatment Plant - Resolution No. 7266.

8. Consider the following recommendation from the Parks and Recreation Board.

- *a. Adopting proposed fee adjustments for the elementary after-school sports/recreation program.

9. Introduction of the following ordinances and setting October 19, 1998 as the date for the public hearing on these ordinances.

(Note: City Council introduction of ordinances does not necessarily reflect City Council approval of these ordinances. Introduction of ordinances sets in motion the public posting and advertising process for ordinances so that the City Council can hear from concerned citizens at the public hearing.)

- *a. Reducing the speed limit from 45 mph to 35 mph on Greenfield Road from a point 600 feet south of Virginia Street to the north City limits; increasing the speed limit from 30 mph to 35 mph on Superstition Springs Boulevard from Southern Avenue to Sossaman Road; and prohibiting parking on the north side of Pepper Place from Center to a point 215 feet east of Center and on Garnet Avenue from Sossaman Road to 76th Place; as recommended by the Traffic Safety Committee.
- *b. **Z98-45** The southwest corner of Greenfield Road and the Superstition Freeway. Site plan modification (46+/- acres). This case is a request to remove the automotive stipulation for a portion of the "East Valley Auto Mall" to allow development of an office building.
- *c. **Z98-53** The northwest corner of Power and Thomas Roads. Rezone from R1-9-DMP to C-2-DMP (8.7 acres). This case involves the development of a commercial strip center.
- *d. **Z98-73** The northeast corner of University and Extension. Rezone from R-2 to C-2 and site plan review (1+/- acres). This case involves the development of a Walgreen's.
- *e. **Z98-74** The southwest corner of Broadway and Sossaman. Rezone from O-S and R1-6 to C-2 (4.21 acres). This case involves the development of a Walgreen's store, a drive-through restaurant, and two retail buildings.
- *f. **Z98-79** The northwest corner of Baseline and Val Vista Drive. Rezone from R1-7-DMP to C-2-BIZ-DMP (Conceptual R-4) (66+/- acres). This case involves the development of a retail center with residences and a hotel.
- *g. **Z98-80** The northwest corner of Val Vista and Hermosa Vista Drives. Rezone from R1-35 to R1-35-PAD (60+/- acres). This case involves the development of a gated single-residence subdivision.
- *h. **Z98-81** The northwest corner of McKellips and Hawes Roads. Rezone from R1-35 to R1-35-PAD (36.8 acres). This case involves the development of a gated single-residence subdivision.
- *i. **Z98-83** The southwest corner of McKellips Road and Alta Mesa Drive. Rezone from C-2 to O-S (4+/- acres). This case involves the development of an assisted living facility.

- *j. **Z98-85** North and east of the northeast corner of Baseline Road and Val Vista Drive. Rezone from O-S to C-2 and site plan modification (11+/- acres). This case involves the development of an office and retail complex.
- *k. **Z98-86** East of the southeast corner of Higley Road and the Superstition Freeway. Rezone from AG (conceptual PEP) to R-3, C-1, and PEP with DMP overlay (110+/- acres). This case involves the development of a multi-use employment center.

10. Consider the following subdivision plats.

- *a. "STONE RIDGE" - The 8800 block of East Brown Road (south side); 63 *Maricopa County R1-6-RUPD* single-residence lots (15.37 acres). C. Curtis Construction, developer; Kimley-Horn and Associates, Inc., engineer.
- *b. "THE CASITAS" - The 1200 block of South Lindsay Road (west side); 43 R-2-PAD townhome lots (5.26 acres). Creative Properties, Inc., developer; David Evans and Associates, Inc., engineer.

11. Adjournment.

It was moved by Councilmember Jaffa, seconded by Vice Mayor Giles, that the Regular Council Meeting adjourn at 6:33 p.m.

Carried unanimously.

WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 5th day of October 1998. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 1998

BARBARA JONES, CITY CLERK