

COUNCIL MINUTES

November 15, 1999

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 November 15, 1999 at 5:45 p.m.

COUNCIL PRESENT

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

COUNCIL ABSENT

None

POLICE OFFICER
PRESENT

Marc There

OFFICERS PRESENT

C.K. Luster
Neal Beets
Barbara Jones

The Invocation was given by President Wilford W. Andersen, The Church of Jesus Christ of Latter-day Saints.

The Pledge of Allegiance was led by Krystal Crismon, Troop #2267.

1. Approval of minutes of previous meetings as written.

It was moved by Vice Mayor Giles, seconded by Councilmember Kavanaugh, that the minutes of October 6 and 28, and November 1 and 4, 1999 be approved.

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. Conduct a public hearing concerning the Home Rule adjustment to the State expenditure limitation.

Mayor Brown announced that this is the time and place for a public hearing regarding the Home Rule adjustment to the State expenditure limitation and stated that Budget Director Jamie Warner will provide the audience with a brief explanation of the Home Rule process.

Mr. Warner discussed the history of expenditure limitations which was established by the State in 1979 and noted that the limitation applies to all political subdivisions, including the City of Mesa. Mr. Warner commented that as a result of population growth and associated demands for service in areas such as Public Safety, Parks and Recreation, and general government, it is estimated that the City will exceed the State imposed expenditure limitation within the next two years.

Mr. Warner explained that the current proposal calls for the Council to adopt a resolution that would allow a Home Rule adjustment option to be placed on the ballot of the March 14, 2000 Primary Election to be voted upon by the citizens of Mesa. Mr. Warner noted that the option, if approved by the voters, would establish the City's annual budget as the City's limit, rather than the State imposed limit, and would allow the citizens an opportunity to provide input at various public hearings on an annual basis. Mr. Warner pointed out that this option was previously enacted by the City of Mesa in 1982 and 1986 and said that the option was not renewed in 1990, when the City resumed adherence to the State limit. Mr. Warner noted that Home Rule has not been enacted since that time. Mr. Warner added that the Home Rule option requires the placement of this issue on the ballot every four years to receive authorization approval from the voters.

Mr. Warner expressed the opinion that based on current growth and in view of the half-cent sales tax that was approved by the voters, the City will be required to request Home Rule authorization for a significant number of four-year intervals unless the State limitation is increased and/or eliminated. Mr. Warner said that citizens will be given an additional opportunity to provide input on this issue at the December 6, 1999 public hearing and encouraged members of the audience to attend the meeting and comment on this important measure.

Kirby Allan, 2043 East Hackamore, spoke in opposition to the placement of a Home Rule issue on the upcoming ballot. Mr. Allan stated the opinion that the option provides City government with a "blank check" and cautioned citizens not to approve this measure.

There being no additional citizens wishing to speak on this issue, the Mayor declared the public hearing closed.

4. Conduct a public hearing for the following proposed annexation:

- a. **A99-5** The area south of McKellips Road to McLellan Road, west of Crismon Road to 92nd Street.

Mayor Brown announced that this is the time and place for a public hearing regarding the proposed annexation of the area south of McKellips Road to McLellan Road, west of Crismon Road to 92nd Street.

Carol Owens, a resident of Mesa, addressed the Council relative to this agenda item and spoke in support of the proposed annexation. Ms. Owens commented that a majority of the property is mountainous and urged the Council to protect the area from further grading by developers.

Vincent Melcher, 1650 North 93rd Street, spoke in opposition to the proposed annexation and stressed the importance of maintaining the rural atmosphere of the area.

Ron Saum, 7701 East Culver, concurred with the remarks of the previous speakers and requested that the Council allow the existing lifestyle to remain in effect.

Patrick Sikorski, 9701 East McKellips, presented the Council with petitions signed by a number of residents in the area who are opposed to the proposed annexation.

Jerry Clineman, 1744 North 93rd Street, stated that residents in the area do not support the proposed annexation and asked the Council not to approve the case.

There being no citizens present wishing to speak on this issue, the Mayor declared the public hearing closed and thanked the speakers for their input.

5. Consider the following liquor license applications:

*a. TAMMY J. SLANE, AGENT

Person transfer Bar License for The Hambone, 903 E. Main Street. This is an existing business and building. This transfer is from Rodger D. Walters, Agent, Memories & Dreams, Inc.

*b. MICHAEL J. DONNELLY, AGENT

Person transfer Liquor Store License for Fry's Food & Drug #55, 1915 S. Power Road. This is an existing business and building. This transfer is from Dennis R. Hood, Agent, Fry's Food Stores of Arizona, Inc.

*c. MICHAEL J. DONNELLY, AGENT

Person transfer Liquor Store License for Fry's Food & Drug #41, 825 W. University Drive. This is an existing business and building. This transfer is from Dennis R. Hood, Agent, Fry's Food Stores of Arizona, Inc.

*d. THOMAS F. DIETERLE, AGENT

Person and Location transfer Liquor Store License for Osco Store #2711, 415 S. Higley Road. This is a new location, which is estimated to be completed by March 2000. This transfer is from Alan F. Schiff, Agent, Southwest Supermarkets Partners, LP, 3417 N. 16th Street, Phoenix.

*e. RONALD DUANE LORENZO, AGENT

Person and Location transfer Liquor Store License for Albertson's Store #993, 445 N. Stapley Drive. This is a new location, which is currently under construction. This transfer is from Jerry W. Pearson, Agent, Desert Foothills Cookouts, Inc., 20021 N. Cave Creek, Carefree.

*f. RONALD DUANE LORENZO, AGENT

New Beer and Wine Store License for Albertson's Express #993, Fuel Center, 415 N. Stapley Drive. This is a new location, which is currently under construction, no previous liquor licenses at this location.

*g. AMJAD A. ALKHATIB, AGENT

New Beer and Wine Store License for Number One Mini Mart, 735 E. McKellips Road. This is an existing business and building. The Beer and Wine Store License previously held at this location by Yolanda Bush, Owner, #One Mini Mart, will revert back to the State.

*h. OSAMA S. GARI, INDIVIDUAL

New Beer and Wine Store License for Shop Kwik & Deli, 323 N. Gilbert Road. This is an existing building, no previous liquor licenses at this location.

6. Consider the following Bingo application:

- *a. M Mobile Villa – CLASS A
Marsha A. Cihak, Manager
320 E. McKellips Road
Mesa, Arizona 85201

7. Consider the following contracts:

- *a. Replacement mowing equipment as requested by the Parks, Recreation & Cultural Division.

The Purchasing Division recommends accepting the low bid from Horizon at \$24,455.00 plus 7.0% sales tax of \$1,711.85 for a total of \$26,166.85.

- *b. Repainting of the exterior of thirty-four public housing units in the Escobedo Area as requested by Housing Authority.

The Purchasing Division recommends accepting the low bid by Fabiani Painting & Decorating at \$43,499.00.

- *c. Storm water pump repair and maintenance services as requested by the Transportation Division.

The Purchasing Division recommends awarding a two-year primary contract to the low bid by Duncan Pump at \$47,136.00, based on estimated requirements. In order to assure continuity of services, the Purchasing Division also recommends awarding a secondary contract to Foster Electric Arizona Pump.

- *d. Property and liability insurance coverage for the City to be effective from November 22, 1999 through November 21, 2000 as requested by the Risk Management section of the City Attorney's Office. **CONTINUED FROM THE NOVEMBER 1 COUNCIL MEETING.**

The City Attorney's Office recommends accepting the proposal from Arthur J. Gallagher & Co. as the insurance brokerage firm authorized to market the City's insurance for the next three years and purchase the following property and liability insurance package for the next annual policy period at a total cost of \$257,164.00.

\$58 million in liability insurance, with a \$2,000,000 deductible;

\$250 million in property insurance, with a \$50,000 deductible;

For a combined award of \$257,164.00.

- *e. Fremont and Mesa Junior High School Pool Renovations. City of Mesa Project No. 99-17.

This project consists of the construction of improvements to existing City pools at both Fremont and Mesa Junior High Schools.

Recommend award to low bidder, Low Mountain Construction, Inc., in the amount of \$489,524.00.

8. Introduction of the following ordinances and setting December 6, 1999 as the date of 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. **Z99-82** South of the southeast corner of Greenfield Road and U.S. 60. Site Plan Review (5.7± acres). This case involves the development of a fitness center and retail shops.
- *b. **Z99-92** 2243 East University Drive. Rezone from R1-6 to O-S (0.5 acres). This case involves the conversion of a residence for office use.
- *c. **Z99-93** The 2500 block of South Signal Butte Road - east side. Rezone from AG to R-2-PAD (9± acres). This case involves the development of a 72 unit retirement townhome project.
- *d. **Z99-95** West of the southwest corner of Main Street and Greenfield Road. Rezone from AG to C-2 (1± acres). This case involves rezoning a narrow strip of land that will be incorporated into a larger site for a Walgreen's.
- *e. **Z99-97** The southwest corner of Higley and Broadway Roads. Site Plan Modification (1± acres). This case involves the development of a medical office.
- *f. **Z99-98** The northwest corner of Clearview and Hampton Avenues. Rezone from P.E.P. to M-1 with a Council Use Permit (2.4± acres). This case involves the development of a motorcycle sales facility.
- *g. **Z99-100** The Southeast corner of McKellips Road and Rosemont. Rezone from M-1 to M-1-PAD (7.5 acres). This case involves the development of an industrial subdivision.
- *h. **Z99-101** 4 64 and 504 South LeBaron. Rezone from R-2 to M-2 (1/4 acre). This case involves development of industrial storage lots.
- *i. **Z99-102** The southwest corner of Southern Avenue and Westwood. Rezone from C-2-DMP (Conceptual BIZ) to C-2-BIZ-DMP. This case involves the development of a two-story office building.
- *j. **Z99-103** The 2200 block of South Country Club Drive. Rezone from M-1 to M-1-PAD (8± acres). This case involves development of an office complex.
- *k. **Z99-105** The 100 and 200 blocks of South Quinn (both sides). Rezone from C-2 and R-4 to R-2-PAD (11.32 acres). This case involves the development of a retirement residential subdivision.
- *l. **Z99-106** The 1200 block of Greenfield Road (west side). Site Plan Review (1 acre). This case involves the development of an office building.
- *m. Relating to bathhouses, massage parlors and therapy centers; amending Chapter 12, Title 5 of the Mesa City Code, pertaining to massage therapists, massage establishments and off-premises

massage; amending Section 5-12-1 through 5-12-6, 5-12-8 through 5-12-10, and 5-12-15; repealing 5-12-16; providing for applicability and an effective date; and establishing penalties for violations.

9. Considering the following resolution:

- *a. Authorizing the City Manager to execute a license agreement between the United States of America, Department of Energy, Western Area Power Administration and the City of Mesa which allows Mesa to enter into the right-of-way to construct, operate and maintain the Parkwood Ranch Detention Basin and the Central Arizona Project Detention Basin No. 3 – Resolution No. 7443.

10. Consider the following ordinances:

- a. Annexing the following Maricopa County right-of-ways.
 - *1. **A99-6** Maricopa County right-of-way for Signal Butte Road from Southern Avenue to south of the Superstition Freeway.
 - *2. **A99-7** Maricopa County right-of-way for Ray Road from Power Road to east right-of-way line of the RWCD Canal.
- *b. Amending Ordinance 2671, Fair Housing Policy, further defining the "housing for older persons" exemption to more closely reflect language of current Federal law – Ordinance No. 3712.
- *c. Establishing a dual speed limit of 35 mph on school days from 7:30 a.m. to 4:00 p.m. and 45 mph at all other times on Guadalupe Road from Power Road to a point 2,400 feet east of Power Road, prohibiting parking between 8:00 a.m. and 4:00 p.m. on school days on Golden Street from Glencove Street to a point 1,015 feet north of Glencove Street, and prohibiting parking on 64th Street from a point 275 feet south of McKellips Road to a point 235 feet north of McKellips Road, all as recommended by the Transportation Advisory Board – Ordinance No. 3713.
- *d. Amending Section 1-7-2 of the Mesa City Code relating to terms of office for City Magistrates – Ordinance No. 3714.
- *e. Relating to public safety and sexually oriented businesses; amending Sections 6-1-16, 6-16-1, 6-16-2 and 6-16-15 of the Mesa City Code and providing penalties for the violation thereof. **CONTINUED TO THE DECEMBER 20, 1999 COUNCIL MEETING.**
- f. Relating to public health; repealing Ordinance 3649; amending Section 6-11-2 of the Mesa City Code and providing for a savings clause and penalties for the violation thereof. **CONTINUED FROM THE NOVEMBER 1, 1999 COUNCIL MEETING.**

This ordinance repeals the prior ordinance which modified the smoking regulation to allow a mechanical ventilation system in lieu of doors to separate bars in restaurants from the restaurant areas – Ordinance No. 3715.

Mayor Brown stated that a number of speakers both in support of and in opposition to the proposed ordinance have submitted requests to speak and said that he will allow a total of twenty minutes for each side to provide input.

The following speakers (in order of appearance) spoke in opposition to repealing Ordinance 3649 and stated the opinion that the mechanical ventilation systems previously approved by the Council are more effective in controlling smoke than closed doors separating bar and restaurant areas; noted that City staff encouraged restaurant owners to pursue this expensive alternative; expressed the opinion that businesses which have already installed the equipment should be "grandfathered-in" and allowed to continue to use the alternative systems; stated the opinion that repealing the ordinance will discourage high-end restaurants from locating in Mesa, and urged the Council not to repeal Ordinance 3649 and to allow the use of mechanical ventilation systems:

Joseph Yuhas	200 North Central, Phoenix
George Benda	One Pierce Place, Itasca, Illinois
Stanley Nicpan	6821 East Superstition Springs Blvd., Mesa
Don Ellis	809 West Main Street, Mesa
Michael Shotzbarger	5050 North 40th Street, Phoenix
Heath McKinney	1849 South Power Road, Mesa
Steve Duffy	3101 North Central, Phoenix

The following speakers submitted written opposition to repealing Ordinance 3649 but did not wish to speak:

Dana Cyphert	1720 South Power Road
Kevin Burnett	4528 East Dale Avenue, Cave Creek
Roland Hull	1401 East Erie Street, Chandler

The following speakers (in order of appearance) spoke in support of repealing Ordinance 3649 and provided input relative to the number of health organizations that support the repeal, stated the opinion that mechanical ventilation systems are ineffective in controlling second hand smoke, noted that most of the chemicals in cigarettes are odorless and tasteless and is often undetected, expressed the opinion that businesses will continue to prosper and customers will come to Mesa to escape restaurants in other cities that allow smoking, discussed the extensive health hazards associated with second hand smoke, noted that female restaurant workers in bars/restaurants where smoking is allowed suffer five times the normal incidents of cancer, the importance of providing bar/restaurant workers with a safe environment in which to work, and urged the Council to protect the citizens of Mesa and bar/restaurant workers and patrons by voting to repeal Ordinance 3649:

Clifford Harris	512 East Mesa Vista, Mesa
Bernard Donato, Sr.	2136 East Broadway, Mesa
Lee Fairbanks	1111 South Stapley Drive, Mesa
Donald Morris	P.O. Box 13355, Scottsdale

Mayor Brown thanked the speakers for providing input relative to this issue.

In response to a request from Mayor Brown, City Attorney Neal Beets provided the audience with a brief overview of the history surrounding this issue. Mr. Beets explained that should the Council vote to repeal Ordinance No. 3649, their action would have the effect of repealing the use of mechanical ventilation systems in lieu of tight fitting doors to separate bars in restaurants from the restaurant areas. Mr. Beets added that this action would "grandfather-in" those businesses which have already expended funds to install the ventilation systems.

Discussion ensued among the members of the Council relative to the importance of respecting the wishes of the voters who approved the smoking ordinance which required a physical separation and staff's

decision to test the mechanical ventilation systems based on their belief that the systems are highly effective.

Councilmember Hawker clarified that the Council's responsibility is to determine the best method of controlling second hand smoke, by use of the mechanical ventilation systems or closed doors. Councilmember Hawker stated the opinion that the mechanical technology is a more effective and efficient method of accomplishing this goal.

Councilmember Davidson expressed the opinion that the doors provide an additional protection against smoke entering the non-smoking areas.

Councilmember Jaffa stated the opinion that despite the fact that he would personally support an initiative calling for a total ban on smoking in Mesa, he believes that the Council should not repeal the ordinance.

Councilmember Pomeroy spoke in support of adhering to the wishes of the voters and said that he will vote in support of repealing the ordinance.

Mayor Brown commented that he believes the citizens of Mesa should have the right to patronize restaurants without breathing in second-hand smoke. Mayor Brown said that he personally witnessed the effectiveness of the mechanical systems and noted that he did not at any time detect the odor of smoke in the restaurant. Mayor Brown also commented that he supports Dr. Harris and others relative to a total ban on smoking but said that action such as that should be generated on a State-wide rather than on a City-wide basis.

Vice Mayor Giles expressed the opinion that the amendment that was adopted by the Council allowing the use of mechanical ventilation systems in lieu of doors represented a step backwards and does not follow the will of the voters. Vice Mayor Giles indicated his strong support for repealing the ordinance.

Councilmember Kavanaugh stated the opinion that elected officials are morally required to carry out the will of the people and added that changes to voter direction, even if deemed appropriate, should be pursued in an extremely cautious manner. Councilmember Kavanaugh pointed out that his vote in July of this year to allow the mechanical systems was strongly based on Dr. Harris' comments that he supported this alternative. Councilmember Kavanaugh advised that in view of the fact that a consensus does not exist regarding this issue, he will vote in support of repealing the ordinance.

In response to a request for input from Mayor Brown, Mr. Don Ellis, the owner of The Landmark Restaurant in Mesa, stated the opinion that the proposed "grandfathering-in" of those businesses which have already installed the mechanical systems is unfair.

It was moved by Councilmember Davidson, seconded by Councilmember Pomeroy, that Ordinance 3649, which allowed the use of mechanical ventilation systems be repealed and that Ordinance 3715 be adopted.

Mayor Brown indicated that he would not support the motion and stated the opinion that the mechanical ventilation systems are no less effective than doors in controlling smoke and should be allowed to remain in use. Mayor Brown added that he believes he is supporting the will of the voters.

Councilmember Jaffa concurred with Mayor Brown's comments and added the opinion that mechanical separation is probably more effective than doors in controlling the flow of smoke. Councilmember Jaffa indicated that he values the opinion of Building Inspection Superintendent Tom Mattingly and will not support the motion to repeal the ordinance.

Councilmember Hawker expressed the opinion that those businesses which were advised by the City that mechanical ventilation systems would be an acceptable alternative method of controlling smoke should be "grandfathered-in."

Upon tabulation of votes, it showed:

AYES - Davidson-Giles-Kavanaugh-Pomeroy
NAYS- Brown-Hawker-Jaffa

Mayor Brown declared the motion carried by majority vote and Ordinance No. 3715 adopted.

11. Consider the following subdivision plats:

- *a. "MOUNTAIN RANCH UNIT 1" – The 11200-11400 blocks of East Elliot Road (south side) 165 R1-6 PAD single residence lots (39.11 acres) Mountain Ranch - Phoenix Lot Option, L.L.C., developer; DEI Professional Services, L.L.C., engineer.
- *b. "MOUNTAIN RANCH UNIT 2" – The 11400-11600 blocks of East Elliot Road (south side) 119 R1-7 PAD single residence lots (34.15 acres) Mountain Ranch - Phoenix Lot Option, L.L.C., developer; DEI Professional Services, L.L.C., engineer.
- *c. "MOUNTAIN RANCH UNIT 3" – The 11200-11400 blocks of East Mesquite Road (north side) 134 R1-7 PAD single residence lots (41.71 acres) Mountain Ranch - Phoenix Lot Option, L.L.C., developer; DEI Professional Services, L.L.C., engineer.
- *d. "MOUNTAIN RANCH UNIT 4" – The 11400-11600 blocks of East Mesquite Road (north side) 139 R1-7 PAD single residence lots (44.47 acres) Mountain Ranch - Phoenix Lot Option, L.L.C., developer; DEI Professional Services, L.L.C., engineer.
- *e. "SUPERSTITION SPRINGS PARCEL 8 UNIT 3" – The 6500 block of East Superstition Springs Boulevard (north side) 5 C-2 commercial lots (12.68 acres) Superstition Springs Investors Limited Partnership, developer; Wood, Patel and Associates, engineer.
- *f. "LOTS 266 AND 267 AT EAGLEFEATHER" – The 3700 block of North Canyon Wash (west side) 2 R1-9 PAD DMP single residence lots (0.52 acre) Sonoran Desert Holdings, L.L.C., developer; Wood, Patel and Associates, engineer.
- g. "THE ESTATES AT DESERT SHADOWS" – The 7800-8200 blocks of East McKellips Road (north side) 124 R1-15 PAD single residence lots (120.01 acres) Maracay Homes Arizona I, L.L.C., developer; Stantec Consulting, Inc., engineer.

Councilmember Jaffa 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 "Estates at Desert Shadows" subdivision plat be approved.

Upon tabulation of votes, it showed:

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

Mayor Brown declared the motion carried by majority vote.

12. Items from citizens present. (Maximum of three speakers for three minutes per speaker).

Carol Spangler, 2920 North 82nd Street, Mesa, a member of the Spook Hill Homeowners' Association, addressed the Council relative to the recent eradication of a wash at the Mesa Highlands subdivision, located at Signal Butte and Mountain Roads. Ms. Spangler noted that the stipulations approved by the Council clearly stated that the wash was to be protected. Ms. Spangler commented that it is impossible to ever return the wash to its original state and urged the Council to initiate action against the developer and/or any other parties involved in this destructive action.

Annette Jansen, 8135 East Culver, Mesa, speaking on behalf of the Spook Hill Homeowners' Association, informed the Council that the organization strongly opposes any development that would include mass grading and the construction of more than one home per acre in the Desert Uplands areas. Ms. Jansen also displayed and distributed aerial photographs of the Desert Uplands to the Council and asked for the Council's support to preserve and protect this area.

Carol Owens, a resident of Mesa, also commented on the recent destruction of the wash at the Mesa Highlands subdivision and said that she had provided input on that case and was impressed with the efforts of the neighbors in that area. Ms. Owens informed the Council that she is horrified by the destruction that has taken place and noted that the damage is un-repairable. Ms. Owens urged the Council to initiate steps to ensure that violations of this type are not repeated.

Mayor Brown thanked the speakers for their input.

13. Adjournment.

Without objection, the Regular Council Meeting adjourned at 8:03 p.m.

WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

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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 15th day of November 1999. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 1999

BARBARA JONES, CITY CLERK