

POLICE COMMITTEE MINUTES

February 10, 2005

The Police Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on February 10, 2005 at 9:30 a.m.

COMMITTEE PRESENT

Kyle Jones, Chairman
Tom Rawles
Claudia Walters

COMMITTEE ABSENT

None

STAFF PRESENT

Mike Hutchinson

1. Discuss, consider and make recommendations concerning the current regulations pertaining to motorized transportation devices.

Police Chief Dennis Donna reported that at the January 18, 2005 Study Session, staff provided the Council with an overview of the currently available motorized transportation devices. He explained that no recommendations came forward at the conclusion of the presentation regarding the current motorized skateboard ordinance. He added that staff was directed to bring the issue to the Police Committee for further consideration and direction. Chief Donna introduced Police Lieutenant Ben Kulina who was prepared to make a presentation to the Committee.

Lieutenant Kulina referred to graphics displayed in the Council Chambers and provided a brief analysis of various motorized transportation vehicles (scooters, motorized skateboards and motor driven cycles/pocket bikes) and the rules governing their use. (See Attachment 1.)

In response to a question from Chairman Jones, Lieutenant Kulina clarified that per City Ordinance 10-1-18, which governs the operation and use of motorized skateboards, noise generated by the device cannot be "unreasonable," a term that is open to interpretation. He stated, by way of example, if a citizen filed a complaint for excessive noise, or if the officer responding to the complaint actually heard the noise, a citation could be issued per the statute.

Chairman Jones commented that it is unfortunate that ordinances and laws must be created because certain individuals in the community not only refuse to take responsibility for their actions, but also fail to respect the rights of those around them. He stated that the purpose of this agenda item is to discuss the implementation of an ordinance that would allow citizens to use motorized skateboards in a safe and reasonable manner, followed by the enforcement of such a law. Chairman Jones stated the opinion that the parents of the youths who are violating the ordinance governing the operation and use of motorized skateboards must be held accountable for the actions of their children.

Lieutenant Kulina reported that in speaking with the local distributors of motorized skateboards, he has learned that when the devices are shipped from the manufacturer, the noise level of the muffler is designed to be similar to that of a leaf blower. He explained that often times, the individuals who purchase or drive the devices remove the muffler or add some type of pipes in order to create a louder noise when the vehicles are operated. Lieutenant Kulina added that he was also apprised of the fact that when the youths or their parents purchase the motorized skateboards, they are unaware of the existing ordinances and the rules governing their use which have been adopted by the communities in which they reside.

In response to a series of questions from Committeemember Walters, Lieutenant Kulina stated that the noise level of the electric motorized skateboard is fairly quiet, whereas the gas-powered device tends to be very loud; that the design of both skateboards are similar, consisting of small wheels, a short wheelbase and steering problems, which can cause the vehicle to overturn; that the motorized transportation devices are not designed to be road worthy, rather as recreational devices to be used on private property or private racetracks.

Committeemember Walters commented that it has been her experience that parents purchase the motorized skateboards for their children and then "turn their backs," leaving the neighbors to contend with the excessive noise and the unlawful operation of the devices. She noted, however, that there are also adults who use these vehicles to travel to and from work and they may be in violation of the current ordinance if, for example, they are required to travel to work earlier than the device's permitted hours of operation.

Committeemember Rawles stated that from a safety standpoint, City Ordinance 10-1-18 clearly outlines the regulations for the operation and use of motorized skateboards. He noted that he could not envision the implementation of any other safety regulations other than a total ban of the devices. Committeemember Rawles also suggested that it may be appropriate for staff to consider making modifications to the City's noise ordinance so that it is less vague, addresses excessive noise generated by the motorized transportation devices, as well as loud party and noise complaints that will be discussed under agenda item 2.

Discussion ensued relative to the fact that in 2004, the Mesa Police Department received ten weekly calls related to motorized skateboards and that the Traffic Unit received 12 noise and/or general complaints regarding such vehicles; that complaints are often difficult to enforce because the officers are dealing with minors who do not have proper information on the safe operation or requirements for roadway use of the devices; that Phoenix and Tucson have taken a highly restrictive approach and instituted a ban on all motorized skateboards on public rights of way; and the process undertaken by an officer to educate a youth who improperly operated a motorized transportation device (including meeting with the child's parents).

Committeemember Walters remarked that a fundamental problem with City Ordinance 10-1-18 is that it is very difficult to enforce. She added that in her estimation, the reason Phoenix and Tucson imposed a ban on all motorized skateboards is because that they can enforce an outright ban.

It was moved by Committeemember Walters to recommend to the Council that the City of Mesa ban the use of gasoline-powered motorized skateboards.

Committeemember Rawles stated that before the City goes to an outright ban on motorized skateboards, he would prefer to see the development of an educational program that would instruct youths in the safe operation of such vehicles.

Chairman Jones expressed opposition to the motion. He suggested that in addition to the educational component discussed by Committeemember Rawles, it may be appropriate to institute a new City policy wherein an officer would be required to contact the parents of a youth who has violated the motorized skateboard ordinance to discuss the violations and inform them that they would be held accountable for the actions of their child.

Committeemember Rawles proposed that staff work on possible modifications to City Ordinance 10-1-18 and bring this item back to the Police Committee for further discussion and consideration. He stated that he would be willing to consider including as a component of the ordinance that after a youth received two warnings for violating the law, on the third time, his parents would be cited as well. Committeemember Rawles added that what he had in mind with regard to the educational program was that it would be conducted by a Police Resource Officer and not by a public school teacher.

Committeemember Walters withdrew her motion for lack of a second. She commented that although the proposed educational component and modifications to the ordinance are well intended, in her opinion, they are not necessarily enforceable. Committeemember Walters also stated that currently, when a child violates City Ordinance 10-1-18, the parents are not held accountable, and until there is some level of accountability, they may not take responsibility for their child's behavior.

Chairman Jones proposed that the distributors of the motorized skateboards be required to provide the purchasers of the vehicles who reside in Mesa literature outlining the current City ordinance that governs the operation and use of the device within the community.

City Manager Mike Hutchinson stated that staff would bring this issue back to the Police Committee for further discussion and consideration in the near future.

2. Hear a report, discuss and consider issues associated with Police Department responses to loud party and noise complaints.

Police Chief Dennis Donna referred to the February 19, 2005 Police Committee Report, which outlines the manner in which the Mesa Police Department currently responds to loud party and noise complaints, how other cities address similar problems and suggested alternative strategies that the Committee may wish to consider. (See Attachment 2.)

Chief Donna reported that one of the difficulties the Mesa Police Department encounters in responding to loud party and noise complaints is the fact that noise emanates from different directions and what one person considers offensive may not be to someone else. He explained that when a call is made to the Police Department in reference to a noise disturbance, most times the reporting party prefers to remain anonymous because of fear of reprisals from the neighbors. Chief Donna stated, however, that when a complainant does provide his or her name to Dispatch, the Department is often able to resolve the issue peacefully without issuing a citation and thereby eliminating any undue tension in the neighborhood. He added that for many years, the Department has taken the stance that if a citizen is not willing to provide their name to Dispatch, by law, an officer cannot cite the offending party.

Chief Donna stated that staff is prepared to respond to any questions the Committeemembers may have regarding this matter.

Chairman Jones commented that he is very familiar with the issue of loud party and noise complaints and has experienced such disturbances on numerous occasions in his own home as a result of inconsiderate neighbors.

Committeemember Walters questioned whether it would be appropriate for Mesa to consider some kind of decibel level policy, whereby if an officer heard noise that was above a certain level, he could simply initiate police action without requiring a complainant to provide his or her name to the Police Department. She explained that she has received inquiries from residents concerning whether Mesa has such a policy, not only in the context of a loud party, but, for instance, in areas that are going to be in close proximity to a future mining operation. Committeemember Walters requested that staff conduct research relative to the following questions: 1.) Have other cities adopted such a policy; and 2.) If Mesa did adopt a similar law, would it be enforced by the Police Department or Code Compliance.

In response to Committeemember Walters' comments, Police Staff Attorney Peter Thompson clarified that if Mesa did implement a policy that defined a specific decibel level, enforcement would become easier for the Police Department because there would be no ambiguity with regard to what is a reasonable or unreasonable noise level. He noted, however, that because such a wide range of noises can emanate from multiple sources, establishing a specific decibel level could become problematic.

Committeemember Rawles expressed support for the general procedures that the Police Department has implemented regarding its response to loud party and noise complaints. He commented that it is also reasonable that a complaining party be willing to prosecute and identify him or herself in order for the officer to take police action. He stressed, however, that it is also important for the officer to exercise discretion and whenever possible make contact with the offending party to ask them to keep the noise down in an effort to peacefully resolve the issue. Committeemember Rawles added that if the offending neighbor does not comply with the officer's request to keep the noise down, in his opinion, it would be appropriate for the officer to cite the individual at that time.

Committeemember Rawles commented that as an attorney, if a client came to him and said he had been cited under the City Code for unreasonable noise, he would probably file a Motion to Dismiss on preemption arguments based upon A.R.S. 13-2904 (disturbing the peace statute). He stated that he was unsure whether cities have the ability to legislate in this area because the statute may preempt the City Code. Committeemember Rawles suggested that City Attorney Debbie Spinner provide a legal opinion regarding the preemption argument before staff proceeds forward to address a decibel level ordinance.

Chairman Jones conveyed a series of personal experiences wherein residents in his neighborhood, on multiple occasions, have created noise disturbances at a party, turned down the music when a police officer was called to the residence, and then turned up the volume as soon as the officer left the premises. He commented that individuals are often hesitant to call the police to complain about noise disturbances at a neighbor's residence because they feel that nothing can be done to resolve the problem.

Discussion ensued relative to the fact that the cities of Tempe and Phoenix have their own city ordinances that hold the property owner or the person having a party that disturbs the neighborhood responsible for the police costs of responding to the call; that the owner or responsible person must be given notice that they would be responsible for the costs if the officers are required to respond to that location again within 90 days (Tempe) or 60 days

(Phoenix); and that the cost is a fee charged to the property owner or responsible person and not a fine.

In response to a question from Committeemember Rawles, Chief Donna clarified that if officers were dispatched to a location to shut down a party or make arrests, the above-referenced civil sanction would be an additional mechanism imposed at a later time to recover the Department's costs in that regard.

Committeemember Rawles stated that he would be willing to consider having Mesa implement cost recovery sanctions similar to Phoenix and Tempe's and suggested that staff bring back a draft ordinance for the Committee's review. He reiterated his previous comments that he would prefer that the officers use discretion on the first complaint, in an effort to allow the offending party to voluntarily comply, but on a second complaint, even if it occurs the same day, he would not object to a citation being issued and the party being closed down.

Committeemember Walters commented that she would hope that an officer responding to loud party and noise complaints would use his or her discretion and good judgment with regards to whether it is appropriate to cite the offending party.

Chief Donna commented that not all noise disturbance calls are the same and that sometimes Dispatch may receive multiple calls in regards to a single event. He stated that in those instances, an officer is not precluded from not taking action the first time he responds to the call and added that over the years, the Department has simply followed the practice of warning individuals initially to keep the tension down in a neighborhood.

Chairman Jones suggested that Tempe's ordinance relative to the recovery of costs for police services be used as a model for Mesa's ordinance; that a party, gathering or event could be considered even as few as five or less persons; that the loud party and noise complaints are issues that should be addressed not only by the Police Department, but also Neighborhood Services; and that it may be appropriate for staff to develop an education program addressing noise complaints and being a good neighbor.

City Manager Mike Hutchinson stated that staff would draft an ordinance and bring it back for the Committee's review at a future Police Committee meeting.

Chairman Jones expressed appreciation to staff for the presentation.

3. Hear a report, discuss and consider recommendations concerning the proposed implementation plan for including citizens on the Police Use of Force Review Board.

City Manager Mike Hutchinson reported that per Council direction, staff has prepared the proposed implementation plan to include citizens on the Police Use of Force Review Board (the Board would serve in an advisory capacity to Police Chief Dennis Donna). He explained that the primary component of the plan includes an extensive training process that the civilian members would undergo including completion of the Mesa Citizen Police Academy, a required one-day training session prior to serving on the Board, and periodic refresher training. Mr. Hutchinson added that the citizens would be drawn from a pool created by his office and that he would make a random appointment whenever it was necessary for the Board to convene.

Mr. Hutchinson advised that it may take time for staff to implement the plan and suggested that the first step in the process would be to inquire of Mesa Citizen Police Academy graduates

whether they would be interested in serving on the Board as civilian members of the pool. He noted that if there is a limited response, the Police Department might conduct a Citizen Police Academy this summer in an effort to generate greater interest. Mr. Hutchinson added that it would be important to advise the civilian participants of the significant time commitment they would be required to make not only to serve on the Board, but also to complete the various training and educational components.

Committeemember Walters suggested that from a time perspective, it may be more effective if staff first compiled a list of applicants who would be willing to participate on the Police Use of Force Review Board and then had them complete the necessary training.

Discussion ensued relative to the fact that in the past three years, there have been an estimated 750 individuals who have graduated from the Mesa Citizen Police Academy; that Police records are retained for a period of three years regarding the number of Academy graduates; and that if an individual attended the Academy more than three years ago, he/she would be required to present proof that they had received such training in order to qualify as an applicant for the Police Use of Force Review Board.

Committeemember Walters, who served as a member of the Ad Hoc Committee to Study Police Oversight, commented that the Committee felt it was crucial that the citizen members of the Police Use of Force Review Board receive the requisite training and education in order to function as an effective member of the Board. She questioned whether an individual could, for example, substitute completing a Police Academy program in another city or previous public service as a Mesa Councilmember, for attending the Mesa Citizen Police Academy.

In response to Committeemember Walters' question, Police Chief Dennis Donna clarified that although there are similarities in police practices across the nation, what he discerned from the Ad Hoc Committee to Study Police Oversight was that the citizen participants be familiar with the specific operations, policies and procedures of the Mesa Police Department. He noted that many of those topics are addressed during the Mesa Citizen Police Academy.

In response to a question from Chairman Jones, Mr. Hutchinson explained that it is the opinion of staff that if the Police Use of Force Review Board included two non-voting civilian members, it would not be necessary to amend the City Charter.

Chairman Jones voiced concerns that he does not want Chief Donna to feel as though he is being directed by the Council to include civilian members on the Use of Force Review Board just to "pacify" certain Mesa residents. He stated that he would like Chief Donna's full assurance that the implementation of this process would be beneficial not only to him, but also to the entire Police Department.

Chief Donna responded to a series of questions from Chairman Jones and stated that there are many civilian review models that currently exist, some of which are not very effective; that staff has elected to parallel the Phoenix model, even though Mesa would have non-voting civilian members to avoid Charter changes; that he is open to outside review and that the Police Department "treasures" input from the community regarding its operations; and that the officers who serve on the Police Use of Force Review Board tend to be very critical of their fellow officers due to their familiarity with the Department's policies, procedures and training methods, and that in his opinion, the addition of two non-voting civilian members would not change that mentality.

Committeemember Rawles expressed support for staff's recommendation that the Council approve the proposed implementation plan. He also stated that it is imperative that the citizens who are selected to serve on the Police Use of Force Review Board receive the necessary education and training to assist them in that regard.

Chairman Jones commented that if the proposed Police Use of Force Review Board does not proceed forward with the inclusion of civilian participants, certain members of the community who are supportive of the implementation of a citizen review board might advocate a Charter change that could result in a model that "may not be as friendly to the Department." He stated the opinion that the role of the Police Use of Force Review Board is merely to make recommendations to Chief Donna as to whether an officer followed Police policy during an incident and it is not to recommend punishment or sanctions.

It was moved by Committeemember Rawles, seconded by Committeemember Walters, to recommend to the full Council that staff be directed to implement the training and qualification criteria as set forth in the February 7, 2005 Council Report and also that staff compile a list of individuals who may wish to participate as civilian members of the Police Use of Force Review Board and who would be willing to enroll in an upcoming Mesa Citizen Police Academy in order to complete certain criteria to become eligible for placement in the citizen pool.

Chairman Jones stated that he would be in favor of the motion to move the matter forward to the full Council for discussion and consideration, but not necessarily because he is supportive of the item.

Carried unanimously.

4. Adjournment.

Without objection, the Police Committee meeting adjourned at 10:43 a.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Police Committee meeting of the City of Mesa, Arizona, held on the 10th day of February 2005. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK