



COUNCIL MINUTES

June 4, 2009

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on June 4, 2009 at 7:31 a.m.

COUNCIL PRESENT

Mayor Scott Smith
Alex Finter
Dina Higgins
Dennis Kavanaugh
Dave Richins

COUNCIL ABSENT

Kyle Jones
Scott Somers

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Mayor Smith excused Vice Mayor Jones and Councilmember Somers from the entire meeting.

1. Hear a presentation, discuss and provide direction on a proposed ordinance on individual residential rental inspections.

Deputy Director of Development Services Tammy Albright displayed a PowerPoint presentation (A copy is available for review in the City Clerk's Office) and offered a detailed overview of this agenda item. She reported that in November 2008, Proposition 400 was approved by 79% of Mesa voters, which amended Section 408 (B) of the City Charter and permitted the City to adopt an individual residential rental inspection program.

Ms. Albright explained that staff recommends the implementation of an individual residential rental inspection program that duplicates State law (A.R.S. Sections 9-1302 and 9-1303). She stated that the program would be request-based and noted that all interior inspections would require written consent from the property owner or tenant prior to a City Building Inspector or Code Compliance Inspector entering the residence. Ms. Albright added that the program would apply to all residential rental properties in Mesa.

Ms. Albright indicated that per A.R.S. Section 9-1302, the City would be authorized to perform an interior inspection of a rental property if an exterior inspection found that the property had any of the following:

- Conditions that materially affect the health and safety of the occupants.
- Significant level of crime at the property.
- A documented history of building code violations.
- The owner repeatedly fails to comply with the building code.
- There is probable cause that the property is not in compliance with the building code.

- A complaint is received or consent for the inspection is given by the owner, property manager or lawful tenant.

Ms. Albright noted that the above-referenced “tools” would be a means by which City staff could identify and remedy unsafe/unsanitary conditions in Mesa’s housing stock.

Ms. Albright further remarked that in February 2009 when staff presented the proposal to the Housing Advisory Board, they expressed concerns regarding the possible removal of occupants from a property if City inspectors determined that the conditions warranted such action. She noted that it was the opinion of the Boardmembers that the City should not provide temporary housing for the tenants, but suggested that they be given a packet of information that included local agencies that could provide temporary housing. Ms. Albright also stated that the Boardmembers further suggested that the written consent include language reflecting that it would be the tenant’s responsibility to find temporary housing if it was necessary to vacate the property. She added that the Neighborhood Services Department allotted \$1,500 in Emergency Shelter Grant (ESG) funds to be used in those rare cases when a tenant required emergency housing.

Mayor Smith commented that if the structural or health and safety conditions of a residential rental property were so significant that they rose to the level of immediate action by the City, then such a scenario would go beyond the scope of the proposed inspection program.

City Manager Christopher Brady confirmed that Mayor Smith’s scenario would be a rare occurrence. He stated that in the more routine cases, the Building Inspectors would identify items that needed to be repaired or brought up to code.

Ms. Albright continued with her presentation and reported that in April 2009, staff presented the proposal to the Community and Neighborhood Services Committee. She stated that in response to a series of questions posed by the Committee, staff conducted additional research and obtained the following information:

- There are no provisions in State law that specifically authorize the City to assess the cost of temporary housing to a property owner.
- The State Landlord/Tenant Act outlines provisions and legal processes for a tenant to recoup various costs.
- It is possible that the City could recoup the cost of temporary housing by placing a lien against the property. (Additional legal research is necessary to confirm such information.)
- Tenants are protected under the State Landlord/Tenant Act from retaliation by property owners.

Discussion ensued relative to the fact that it would cost approximately \$250 for an inspector from the private sector to perform a two-hour interior residential rental inspection as compared to an estimated \$180 for a similar inspection performed by City staff; that the inspections would be performed by existing staff trained and certified as a Housing Quality Standards (HQS) Inspector or a Certified Building Inspector with standards developed by the International Code Council; that complaints received concerning possible interior housing violations that materially affect the health and safety of the occupants would receive a high priority response and could

delay response to lower priority complaints; and the public outreach efforts that staff would undertake to apprise the community of the program.

Councilmember Finter urged that a series of “checks and balances” be implemented with regard to the administration of the program. He expressed concern regarding an inspector who, with no additional oversight, would have the ability to simply go to a residential rental property, advise the tenant that he would like to inspect the interior of the home, and request that the tenant sign the consent form. He also questioned the prioritization of the interior housing inspections that could impact the investigation of other complaints.

Responding to Councilmember Finter’s concerns, City Attorney Debbie Spinner clarified that it is not staff’s expectation that the inspectors would simply “knock on doors” and ask to inspect a residential rental property. She said that neither the consent form nor the administrative procedures have been drafted, but assured the Council that the inspections would be conducted primarily on a complaint basis.

Mayor Smith directed staff to ensure that the administrative procedures clearly establish what it means to “get consent” and also outline the steps that the City would take to initiate that process.

In response to a question from Councilmember Higgins, Ms. Spinner explained that the ESG funds are intended to be used only in the case of a true emergency housing situation. She said that once the emergency housing issue is addressed, the City would seek reimbursement of those funds by the property owner.

Councilmember Richins expressed support for staff moving forward with the implementation of an individual residential rental inspection program and suggested that the Council evaluate the status of the program in six to twelve months. He added that the voters in his district overwhelmingly supported Proposition 400 and said that the program would be an important tool with which to address Mesa’s deteriorating housing stock.

Councilmember Finter voiced support for staff’s recommendation, but also cautioned that the program should not violate a citizen’s property rights.

Mr. Brady requested clarification from the Councilmembers regarding whether they would prefer that the administrative procedures include the requirement that an inspector cannot enter a home after obtaining written consent unless such consent has been reviewed/approved by someone other than the inspector.

Additional discussion ensued among the Council relative to Mr. Brady’s above-referenced inquiry.

Mayor Smith summarized the Council’s direction as follows: When the City receives a request for an interior inspection of a residential rental property from a property owner, property manager or lawful tenant, the inspector would first be required to obtain written consent prior to entering the residence. He stated that if a complaint is not initiated by one of those three individuals (i.e., a City inspector working on the exterior of a property who becomes aware of possible interior housing violations), it would be necessary for the inspector to obtain an additional level of authority from a supervisor in order for the inspector to initiate the request for

consent to enter the property. Mayor Smith noted that entry into a property is not discretionary and said that the additional administrative oversight would protect not only the City and the inspectors, but also the rights of the property owner, manager and tenant.

Mayor Smith thanked Ms. Albright for the presentation.

2. Hear a presentation, discuss and provide direction on the following proposals:

Development and Sustainability Director Christine Zielonka and Planning Director John Wesley addressed the Council relative to this agenda item. Ms. Zielonka reported that staff was asked to review various processes, and in particular, their interaction with various citizen boards. She explained that staff is proposing a number of options not only to streamline and improve efficiencies, but also to ensure that the City's positive relationship with the development community is not diminished and that the opportunity for public involvement in the land development process is maintained.

Ms. Zielonka advised that staff presented the proposals to the Development Advisory Forum and said that she and Mr. Wesley would share the group's comments with the Council this morning.

- a. Combining the City's Downtown Development Committee and the Planning and Zoning Board.

Mr. Wesley displayed a PowerPoint presentation (A copy is available for review in the City Clerk's Office) and provided a brief historical overview of the Planning & Zoning (P&Z) Board and the Downtown Development Committee (DDC) and the respective functions of each group.

Mr. Wesley explained that staff proposes to eliminate the DDC and have the P&Z Board assume the planning and zoning functions for the downtown area. He stated that in January of this year, the Planning Division assumed the staffing responsibilities for the DDC, which were previously handled by the Economic Development Department. Mr. Wesley added that Planning staff has continued to coordinate downtown projects with Economic Development since that time.

Mr. Wesley also commented that it is the opinion of staff that there is value in one citizen board reviewing the planning and zoning functions for the entire City. He noted that the proposed modifications would result in better utilization of staff resources, more efficient implementation of the Council Strategic Initiatives and continued coordination between Planning, Economic Development and Building Safety Departments.

Mr. Wesley briefly highlighted a series of comments that staff received from the members of the Development Advisory Forum relative to this matter. (See above-referenced PowerPoint presentation.)

Councilmember Kavanaugh expressed concern regarding staff's proposal and stated that the elimination of the DDC would diminish citizen participation in the process. He noted that the DDC, which has been in existence for almost 20 years, has done an outstanding job of fostering a "one stop shop" for developers in the downtown area. Councilmember Kavanaugh also remarked that unlike the P&Z Board, the DDC has served in an advocacy role, undertaken an

economic development focus and understood the historic character of the downtown. He acknowledged staff's challenges, but said that the comments of the Development Advisory Forum "make the case" for maintaining the DDC because of its special focus on the downtown.

Councilmember Finter expressed support for staff's proposal and said that it was necessary to "change the culture" on the P&Z Board similar to what occurred with the DDC.

Councilmember Higgins concurred with Councilmember Kavanaugh's comments and indicated that with the Main Street light rail alignment and other developments coming to the downtown area, she would be hesitant to eliminate the DDC at this time.

Councilmember Richins voiced support for this item moving forward, but said that he would like to ensure that the P&Z Board includes members who have the expertise to review the design elements of a project.

Mayor Smith commented that the City has spent a considerable period of time developing a new approach to land use and planning decisions, of which the downtown is an integral part. He stated that the same philosophy that applies at the Mesa Proving Grounds would hopefully apply in the Fiesta District, along the light rail line and in the downtown area. Mayor Smith also noted that as a former developer, he became aware of the fact that there was a completely separate process for developing a project in the downtown area as opposed to other areas of the community.

Mayor Smith further indicated that it is essential that Mesa implements a Citywide vision with regard to the creation of a regulatory environment that incentivizes development by lessening obstacles and raising standards. He expressed support for staff's proposal, but said he would like to maintain the unique input for the downtown area, whether through a subcommittee or advisory committee.

- b. Modifying the roles and responsibilities of the Design Review Board and renaming the Board to the Architectural Review Committee.

Mr. Wesley reported that the seven-member Design Review Board (DRB), which meets monthly, reviews projects over 20,000 square feet, on arterial roads and City projects. He explained that the DRB also serves as the appeals board for smaller projects currently handled by Planning staff.

Mr. Wesley stated that staff proposes to change the name of the DRB to the Architectural Review Committee (ARC) and noted that the new five-member committee would include three design professionals. He commented that the primary focus of the ARC would be to hear appeals from staff decisions when an applicant and staff are unable to agree on a design proposal. Mr. Wesley also said that the only new cases the ARC would consider would be City projects. He added that staff further proposes that the ARC meet on a quarterly basis to provide direction on major projects.

Discussion ensued relative to the proposed design review process; that the process would take approximately two months; that staff would continue to send a notice to property owners within 300 feet of a project; that staff would encourage developers, whenever possible, to combine applications in order to expedite the review process; that the process would result in a better

utilization of staff resources and faster processing for high quality projects; and that staff also proposes that a registered architect be retained to assist staff on an as-needed basis.

Mr. Wesley requested input from the Council regarding the following questions:

- Who can appeal staff's decision?
- When does an appeal need to be filed?

Mr. Wesley also highlighted various feedback/input from the Development Advisory Forum regarding staff's proposal. (See above-referenced PowerPoint presentation.)

Councilmember Kavanaugh expressed opposition to staff's proposal and explained that design review came from neighborhood leaders and not staff or the City Council. He voiced appreciation for the efforts and hard work of the DRB and said that one only needs to look at the differences between west and east Mesa to see the distinction in terms of the work that the Board has accomplished. Councilmember Kavanaugh further commented that the proposal is a diminution of citizen participation in the process and noted that the process has worked well in the development of projects that are more sustainable and integrated into their surroundings. He added that if this proposal moves forward, he would urge that the citizen participation process be preserved as much as possible.

Councilmember Higgins concurred with Councilmember Kavanaugh's comments and said that she would oppose the elimination of the DRB at this time.

Councilmember Richins commented that design in Mesa has not been driven by the DRB, but rather by the design standards within the City Code. He stated that if the Council wants "better designs," then they should focus their attention on raising those standards, whether the DRB exists or not.

Councilmember Finter stated that he would prefer a streamlined process that would incentivize developers to "build quality projects with quality materials."

Mayor Smith commented that the idea behind staff's proposal is not to eliminate design standards, but rather to elevate them. He stated that he would like to see the implementation of a process that would facilitate builders and developers to achieve higher design standards in the projects that they construct in Mesa. Mayor Smith also expressed support for a registered architect (contracted by the City) working one-on-one with a builder or developer's architect to address the various technical aspects of a project early on in the process. He added that a citizen board could then review the project and determine whether it did or did not meet the City's design standards without becoming involved in the technical aspects of the project.

Discussion ensued relative to the fact that it was the direction of the Council that any citizen should have the ability to appeal a decision by staff; that the ARC would be convened on an as-need basis to hear appeals of staff decisions; and that an appeal of an ARC decision would be heard by the Council.

Mayor Smith thanked everyone for the presentation.

- c. Establishing a Development Advisory Board.

Mayor Smith stated that this item was continued to a future Study Session.

- 3. Discuss and provide direction on the proposed Audit Plan for FY 2009/2010.

Mayor Smith stated that this item was continued to a future Study Session.

- 4. Hear reports on meetings and/or conferences attended.

Councilmember Kavanaugh:	Beverly Park playground construction event
Mayor Smith:	Toby Keith's "I Love This Bar & Grill" Grand Opening

- 5. Scheduling of meetings and general information.

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

Thursday, June 11, 2009 – Study Session – CANCELLED

Thursday, June 18, 2009, 7:30 a.m. – Study Session

Monday, June 22, 2009, TBA – Study Session

Monday, June 22, 2009, 5:45 p.m. – Regular Council Meeting

- 6. Items from citizens present.

There were no items from citizens present.

- 7. Adjournment.

Without objection, the Study Session adjourned at 9:01 a.m.

SCOTT SMITH, MAYOR

ATTEST:

LINDA CROCKER, 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 4th day of June, 2009. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK