

## **POLICE COMMITTEE MINUTES**

April 11, 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 April 11, 2005 at 3:30 p.m.

**COMMITTEE PRESENT**

Kyle Jones, Chairman  
Claudia Walters

**COMMITTEE ABSENT**

Tom Rawles

**STAFF PRESENT**

Mike Hutchinson

Chairman Jones excused Committeemember Rawles from the meeting.

1. Hear a report and consider various options to reduce false alarm rates.

Chairman Jones declared a potential conflict of interest regarding this agenda item. He stated that because of his conflict and also Committeemember Rawles' absence from today's meeting, there is not a quorum of Committeemembers to consider this particular issue.

City Manager Mike Hutchinson recommended that the matter be presented to the full Council for discussion and consideration at an upcoming Study Session.

In response to a question from Committeemember Walters, Police Commander Rick Clore clarified that in June 2004, the City implemented comprehensive changes to the Mesa City Code Alarm Ordinance and said that the purpose of this presentation is to update the Committee on the effectiveness of the new law and also to provide an overview of the decreased number of false burglary alarm calls since the ordinance's adoption. He added that staff is prepared to present information regarding the concept of a Verified Response Program (VRP), as well as various alternatives the Committee may wish to consider.

2. Hear a report, discuss and consider a proposed disruptive party ordinance.

Police Chief Dennis Donna reported that at the February 10, 2005 Police Committee meeting, staff was directed to develop a disruptive party ordinance for the City of Mesa that would be similar to ordinances already implemented in Phoenix and Tempe. He explained that those ordinances hold the responsible person/property owner having a party that disturbs the neighborhood liable for the costs associated with the Police Department's response to a second call at the same location within a given time period. Chief Donna introduced Legal Advisor Cathy Bowman and Police Lieutenant Steve Farago, who developed the proposed ordinance, and stated that they are prepared to respond to any questions the Committeemembers may have regarding this item.

Lieutenant Farago explained that because Phoenix enacted its disruptive party ordinance in November of 2004, it currently does not have sufficient data to assess whether or not the program has been a success. He stated that Tempe representatives informed him that their ordinance has been effective and said that 70% of the individuals issued civil sanctions to recover police costs have not become repeat offenders. Lieutenant Farago referred to the proposed ordinance and also an educational flyer that would be distributed to the public. (See Attachment 1.)

Lieutenant Farago briefly highlighted the following alternatives for the Committee's consideration:

1. Do not enact the new ordinance. Staff could continue to rely on the City noise code or the State's disturbing the peace statute, wherein a victim is required to take police action.
2. Develop an education program. In lieu of criminal citations or in addition to, staff could address noise complaints with an education program, including pamphlets explaining the City ordinance, expectations of behavior (of both complainants and offenders), public service announcements, and neighborhood contacts.
3. Adopt a zero tolerance enforcement policy. Officers would cite an offender on the first visit if a known person is willing to prosecute.

Committeemember Walters referred to the following language contained in the flyer:

**“ What does a disruptive party include?**

**A ‘disruptive party, gathering or event’ means a group of five or more persons who have assembled or are assembling in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to underage persons, fights, disturbances of the peace, and litter.”**

Committeemember Walters expressed a series of concerns regarding how, as a homeowner, she would be able to define the term “excessive traffic.” She cited, as an example, that on various occasions her family has hosted large parties at their home, which has resulted in many vehicles being parked on her street as well as nearby streets in the neighborhood. She questioned whether, under the ordinance, that would constitute “excessive traffic.”

Responding to Committeemember Walters' concerns, Ms. Bowman clarified that her example of hosting a large gathering at her home that is not disruptive and involves many vehicles parked along the street is not what the ordinance is designed to address. She suggested that it may be appropriate for staff to include the legal definition of “excessive traffic” in the ordinance or, in the alternative, simply rely on the language regarding the “obstruction of public streets by crowds or vehicles.” Ms. Bowman further indicated that “excessive traffic” is merely one element, as noted in the above-referenced paragraph, that constitutes a substantial disturbance of the quiet enjoyment of private or public property.

Committeemember Walters commented that the “disruptive party” language she referenced is contained in the flyer and not the ordinance.

Ms. Bowman clarified that such language utilized in the flyer was taken directly from the ordinance.

Committeemember Walters stated that she would prefer to delete the reference to “excessive traffic” from the flyer because it is addressed under the “obstruction of public streets by crowds or vehicles” language. She added that although she may be “nitpicking” the content of the flyer, she is very supportive of the development of the disruptive party ordinance.

Discussion ensued relative to the fact that although the proposed ordinance does not address the gathering of less than five persons, Mesa police officers have the ability to cite individuals under the disorderly conduct statute for unreasonable noise; the fact that noise ordinances traditionally have been difficult to enforce because the courts often require the establishment of specific decibel levels; and that per the noise ordinance, “unreasonable noise” is considered noise that can be heard at 50 feet and disturbs the quiet enjoyment of public or private property.

Chief Donna commented that when the Committee previously addressed this matter, it was his understanding that staff was given direction that a police officer should continue to mitigate noise complaints by issuing a warning for the first complaint, but for subsequent complaints, issue a disorderly conduct or noise ordinance citation. He added that the development of the disruptive party ordinance is an effort by staff to “up the ante” regarding the gatherings of five or more persons.

Chairman Jones expressed support for moving this issue forward to the full Council and noted that he is anxious to “get the teeth in the ordinance” in order to assist those neighborhoods that are confronted by noise disturbances caused by large gatherings.

It was moved by Chairman Jones, seconded by Committeemember Walters, to recommend to the full Council that the disruptive party ordinance be approved.

Upon tabulation of votes, it showed:

AYES - Jones-Walters  
NAYS - None  
ABSENT - Rawles

Chairman Jones declared the motion carried unanimously by those present.

Chairman Jones thanked staff for the presentation.

(A discussion occurred relative to agenda item 3.)

Further discussion ensued relative to the fact that a business generating significant traffic congestion in and out of the establishment may be subject to possible fire code or parking violations, but not the disruptive party ordinance.

3. Hear an update on Police ballistic vest issues.

Police Chief Dennis Donna reported that it recently came to the attention of the Mesa Police Department that certain ballistic vest manufacturers were producing less than adequate body armor which is used to protect the lives of officers. He explained that in some instances, the faulty equipment resulted in the injury or death of some individuals. Chief Donna stated that in an effort to address such concerns at the City of Mesa, he formed a Department committee (including staff members and representatives of the Mesa Police Association and the Fraternal Order of Police) to review issues related to body armor and make recommendations regarding

related Department policies and practices. He introduced Police Commander Gil Otanez and Legal Advisor Cathy Bowman who were prepared to make a presentation to the Committee.

Commander Otanez explained that after conducting extensive research regarding problems occurring in the ballistic vest industry, the Department committee has proposed the implementation of the following strategies for the Mesa Police Department:

- Establishing a list of approved body armor for members to wear.
- Replacing body armor for members who are currently wearing vests identified as expired, defective or prone to failure.
- Changing Department policy to purchase body armor for officers and selected civilians from an approved list only.
- Developing an education program for all body armor wearers regarding care and maintenance.

Commander Otanez provided the Committee with a short historical synopsis of the Police Department's policy with regards to the acquisition of body armor. He stated, among other things, that in the mid 1980s, the Department established a reimbursement program for officers and selected civilians to purchase body armor and there were no restrictions on the brand, model, or composition of the equipment; that in 2003, an officer in Pennsylvania wearing body armor containing zylon was shot with a handgun and the bullet penetrated the vest and wounded the individual; that subsequent testing was conducted on vests containing zylon, which indicated a 50% failure rate; and that regardless of the body armor manufacturer, zylon was found to degrade with high temperatures, humidity and exposure to sunlight.

Commander Otanez informed the Committeemembers that the National Institute of Justice (NIJ) has traditionally only tested the integrity of new ballistic vests, but stated that as a result of the recent findings with regard to the manufacture of defective body armor, the organization has initiated a study of all such equipment to assess its degradation and failure over time. He added that the results of the study would not be available for approximately two years.

Commander Otanez further discussed a survey conducted of Mesa Police Department members who possessed body armor that contained zylon or were found to have failure concerns and reported that the results indicated that approximately 280 vests contained zylon; 282 had failed the backface signature (indentation deep enough into the vest to cause injury or death) or penetration tests; there were 121 expired vests from various manufacturers; and it would be necessary to replace approximately 673 vests at a total cost of between \$350,000 and \$420,000.

Discussion ensued relative to the fact that a 16-state consortium, led by the state of Colorado, began to conduct enhanced testing of actual vests rather than just samples of material; that several manufacturers submitted products, and that out of the initial round of testing, two manufacturers and a total of five models met the NIJ standards; that it is the recommendation of the Department committee that the approved body armor list for the Department be consistent with the vests on the consortium list (none containing zylon); that subsequent to another round of testing that will be completed in late May, it is anticipated that three to five more vests may meet the NIJ standards; that Department members would be approved and required to exchange their current vests for one from the approved list; that the manufacturers whose products are on the approved list have agreed to sell the body armor at the State contract price; and that following the replacement of the vests, the Department intends to implement an education program for all members with regard to the care and maintenance of the vests.

Ms. Bowman displayed a sample of an American Body Armor vest for the benefit of the Committee. She explained that not only does zylon degrade as a material because of heat, sunlight and perspiration, but also some of the defective body armor was made so lightweight that it would crease and bend and not have the same ballistic capacity as a vest in a flattened condition.

In response to a question from Chairman Jones regarding the fact that the Police Department's fiscal year 05/06 budget reflects the body armor replacement costs, Chief Donna commented that the Department brought this issue to the attention of the City Manager about a month ago and has been aggressively pursuing a solution. He acknowledged that because the studies are still ongoing, he believes the proposal is the best interim solution and said that the Department is anxious to move forward in this regard. Chief Donna added that although it is an unanticipated expense, he is more concerned with the safety of his officers than the cost of the vests.

Committeemember Walters expressed support for staff's recommendations to proceed with the replacement of the body armor. She suggested, however, that because the City is purchasing all new vests at this time and will need to repeat the process in five years, that the Police Department begin to set aside monies in their budgets for the next few years in order to fund such purchases.

Committeemember Walters commented that the City did not purchase the vests for the Department members, but established a reimbursement program. She questioned whether there would be an opportunity for the City to recover some of the costs that might come back for replacement or partial replacement of the defective vests.

Responding to Committeemember Walters' inquiries, Ms. Bowman clarified that the City does, in fact, maintain ownership of the vests even though there is a reimbursement program. She stated that should litigation take place with regards to the defective vests, the City is a damaged party and could therefore recover costs. She added that it is also her understanding that the NIJ is interested in purchasing some of the City's defective body armor in an effort to conduct testing on the products and said that such purchases could potentially offset some of the City's costs for the vest replacement program.

Chairman Jones expressed appreciation to staff for the informative presentation.

#### 4. Adjournment.

Without objection, the Police Committee meeting adjourned at 4:13 p.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 11<sup>th</sup> day of April 2005. I further certify that the meeting was duly called and held and that a quorum was present.

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BARBARA JONES, CITY CLERK

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Attachment