



# COUNCIL MINUTES

October 5, 2006

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 October 5, 2006 at 7:30 a.m.

## COUNCIL PRESENT

Mayor Keno Hawker  
Rex Griswold  
Kyle Jones  
Tom Rawles  
Scott Somers  
Claudia Walters  
Mike Whalen

## COUNCIL ABSENT

None

## OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Barbara Jones

1. Hear a presentation and discuss an overview on the State's efforts to address illegal immigration.

Mayor Hawker stated that the purpose of today's Study Session is to provide the Council with an opportunity to gather information regarding various efforts undertaken by Federal, State, County and local entities concerning illegal immigration matters. He explained that the Council would not take public comment at this time.

Assistant to the City Manager Jim Huling introduced Suzie Barr, Deputy Director of Legislative Affairs and Policy Advisor for Law Enforcement to Governor Janet Napolitano, and Leesa Morrison, Director of the Arizona Department of Liquor Licenses and Control, who were prepared to address the Council.

Ms. Barr provided an extensive overview of various law enforcement initiatives undertaken by Governor Janet Napolitano with regard to border and immigration security at the State and Federal level. These actions included, but were not limited to: entering into a Memorandum of Agreement (MOA) with the Federal government to bring the National Guard to the Arizona border; attending the United States-Mexico Border Governors' Conference, which resulted in the U.S. Border Governors drafting a letter that urged Congress to pass comprehensive immigration reform; requesting that the Federal government reimburse Arizona for State prisoner costs associated with illegal immigrants; and working with Arizona border sheriffs in an effort to urge the Department of Homeland Security (DHS) to release \$15 million in emergency funding appropriated by Congress for State and local law enforcement to deter illegal immigration and address border-related crimes.

Discussion ensued relative to the significant number of Western Union wire fund transfers coming into Arizona from criminal elements; the creation by the Department of Public Safety (DPS) of the Southern Arizona Vehicle Theft Task Force; the installation of license plate readers (LPRs) on five DPS vehicles and their ability to input 1500 license plates in an eight-hour officer shift; the reinstatement of funding for the Gang Intelligence and Immigration Enforcement Team; the fact that DPS continues to engage in cross-training efforts with Mexico law enforcement officials; and the State's unsuccessful attempt to conduct a cross-training pilot program with eight DPS officers, U.S. Immigration and Customs Enforcement (ICE) and the U.S. Border Patrol.

Ms. Barr further spoke regarding the State's successful cross-training programs in which the Federal government and the State entered into a Memorandum of Understanding (MOU). She explained that the agreement allowed for Arizona Department of Corrections (DOC) personnel to be trained to process the extensive paperwork necessary for the deportation of illegal aliens (after serving 50% of their time for non-violent felony offenses) housed in DOC facilities.

Ms. Morrison displayed a PowerPoint presentation in the Council Chambers and offered a short synopsis of the Governor's Arizona Fraudulent Identification Task Force (AFIT). (The presentation is available for review in the City Clerk's Office.) She reported that the mission of the task force is to identify, investigate and prosecute the manufacturers and sellers of all fraudulent identification in Arizona and, in particular, those created for fraudulent immigration purposes.

Ms. Morrison stated that the Department of Liquor Licenses and Control is the lead agency in the task force and assisted by a variety of Federal, State and local entities. She said that the task force is supported by a strong relationship with the Arizona Counter Terrorism Information Center (ACTIC) for personnel and logistical assistance and noted that all cases are prosecuted by the Arizona Attorney General's Office. Ms. Morrison also displayed a series of photographs depicting actual fraudulent identification confiscated by the task force.

Further discussion ensued relative to the fact that with newly appointed ICE leadership, it is anticipated that the Federal government would be more willing to partner with the State regarding various cross-training programs; the possible implementation of LPR technology at border points of entry; potential liability issues associated with local officers enforcing Federal immigration laws; and the "catch and release" of illegal immigrants due to limited manpower in the ICE office.

Councilmember Whalen commented that law enforcement's major problem with regard to illegal immigration is not the maids, dishwashers and gardeners seeking a better life, but rather the criminal element who are engaged in drug trafficking and human smuggling. He questioned whether it would be more cost effective for a Federal agent, and not a DOC or County jail employee, to be stationed at each Arizona detention facility to process paperwork for illegal aliens who are being released from the facility for purposes of deportation.

Ms. Barr stated that she would be happy to convey Councilmember Whalen's suggestion to the Federal government for consideration.

Additional extensive discussion ensued relative to a comparative analysis of Federal and State law with regard to illegal immigration violations.

Mayor Hawker thanked Ms. Barr and Ms. Morrison for their presentation.

2. Hear a presentation, discuss and provide possible direction on illegal immigration reform issues.

Mayor Hawker commented that in January 2001, he raised the issue of cross training Mesa police officers with Immigration and Naturalization Service (INS) staff in order to enhance the officers' capabilities. He noted that the matter was met with "lively discussion" throughout the community. He explained that although there was enabling legislation passed in 1996, no cross-training program existed at that time.

Mayor Hawker reported that Section 287 (g) of the Immigration and Nationality Act permits the Department of Homeland Security (DHS) to enter into a Memorandum of Understanding (MOU) with, for instance, the City of Mesa so that various City law enforcement officers could be cross trained with the U.S. Immigration and Customs Enforcement (ICE) personnel to perform certain immigration enforcement functions. He said that Florida, Alabama, North Carolina and California have entered into such MOUs and expressed support for a similar program being implemented in Arizona.

City Attorney Debbie Spinner introduced City Prosecutor John Pombier, Police Advisor Pete Thompson and Assistant to the City Manager Jim Huling, who were prepared to address the Council.

Ms. Spinner reported that per Council direction, staff prepared a comprehensive report to address various actions taken by Federal, State and local governments to address the issue of illegal immigration. (The report is available for review in the City Clerk's Office.) She stated that because the report was presented to the Council for their review, she does not have a formal presentation to make, but would respond to any questions the Council may have regarding this item.

Mayor Hawker thanked staff for the detailed and informative report. He indicated that he would prefer to avoid any legal challenges that could impact a municipality enforcing Federal immigration law and stated the opinion that the 287(g) program is a possible solution. Mayor Hawker advised that he received information from representatives of the Alabama State Troopers who have engaged in cross training with ICE and whose officers are successfully performing various Federal immigration functions. He noted that he learned, for instance, that during a traffic stop, the troopers have the ability to access the National Crime Information Center (NCIC) database and receive information in a timely manner.

Ms. Spinner clarified that an MOU would provide the City with the legal authority to enforce Federal immigration law to the extent that ICE agrees to the terms of the MOU. She explained that in the case of the DOC or jail facilities, the local entities are allowed to process an illegal alien's paperwork for deportation, but are not "in the street" enforcing Federal immigration law. Ms. Spinner added that examples of MOUs she has reviewed generally indemnify an officer for acts performed in furtherance of the MOU, but exclude coverage for intentional acts performed by that individual.

In response to Mayor Hawker's comments regarding the NCIC database, Mr. Thompson clarified that the NCIC database is currently available to the Mesa Police Department. He stated, however, that in speaking with ISD staff this morning, he learned that the Police

Department would be required to reconfigure its car-mounted computers in order to access the database in the field.

Mr. Thompson provided the Council with an extensive analysis of his research relative to MOUs. His comments included, but were not limited to, the following: MOUs have been executed between DHS and State and local law enforcement in Florida and Alabama which, under Section 287 (g), are directed toward counterterrorism purposes; that Florida has distributed its trained State Troopers at five different counterterrorist units around the state and has been successful in identifying individuals who are in the country fraudulently; that unlike any other MOU, Alabama's State Troopers are "out in the field" and enforcing the MOU; that in Alabama, once an individual has been identified, per the NCIC database, as being in violation of immigration law and is incarcerated, paperwork is sent to the Federal government and ICE representatives respond to the case; and that all MOUs require cross-trained officers to act directly under the supervision of ICE.

Discussion ensued relative to the "cite and release" of an illegal alien who has been stopped for a misdemeanor crime (i.e., routine traffic stop, broken taillight); the fact that ICE would not pick up a prisoner for that kind of violation; and the process under which an individual could be arrested under an NCIC warrant and either picked up by ICE or released by the arresting agency.

Vice Mayor Walters commented that she was unaware that the Police Department did not have access to the NCIC database in the field and suggested that Council direct staff to remedy that situation.

Chief Gascon responded to a series of questions posed by the Council regarding legal scenarios related to illegal immigrants re-entering the country after previous deportation and the potential of utilizing wireless fingerprint technology in the field.

Further discussion ensued relative to staff's efforts to research anti-solicitation and anti-loitering laws with regard to day labor centers in Mesa; that staff has researched a Hazelton, Pennsylvania ordinance that would require any individual seeking to rent a dwelling to apply to the city for a residency license and submit to an investigation of citizenship status; that the ordinance has been challenged and the outcome is pending; the fact that the Mexican Consular card has been utilized by the Police and Utility Departments and with lesser usage by the Library; that the Police Department would like to conduct a pilot program to test the LPRs not only in City intersections, but also at major thoroughfares; and that contracts issued by the City contain clauses which require the contractors to ensure the citizenship of their employees.

An extensive discussion ensued among the Council regarding various illegal immigration issues and the following contains a series of comments/opinions from each member:

Councilmember Whalen:

- Expressed concern regarding a housing ordinance for Mesa similar to the Hazelton, Pennsylvania ordinance.
- Voiced interest in a City ordinance that would address day labor issues and asked staff to conduct further research relative to the Herndon, Virginia model. (Note: This ordinance has been implemented and not challenged in court to date.)

- Opposed the City entering into an MOU with the DHS to enforce immigration law. He stated he would consider the establishment of a strike force or a combined task force with the State or County.
- Supported the continued use of the Consular card.
- Would entertain the possible utilization of surveillance cameras to assist law enforcement with criminal activities in certain areas of the community.

Mayor Hawker:

- Would consider an ordinance addressing day labor issues and would like to review the pros and cons of the matter at a future Study Session.
- Stressed the importance of an enhanced ICE presence in the community.
- Supported the drafting of an MOU so that Mesa can partner with the Federal government to enforce immigration laws.
- Would also seek input from the Governor and the local law enforcement community to create a collaborative effort of enforcement throughout Arizona and not necessarily on a local level.
- Requested that staff research the 287 (g) program to assess with whom the City should collaborate to make it a more effective program and one that would be accepted throughout the State.

Councilmember Rawles:

- Preferred that the City not enter into an MOU on its own with the Federal government and does not want to divert police resources from crimes such as DUIs, burglaries and murders into the enforcement of Federal law.
- Would not oppose the City pursuing an opportunity for a regional or Statewide MOU.
- Would oppose the City doing "anything unconstitutional" or a violation of civil liberties.
- Would oppose the Hazelton, Pennsylvania ordinance.
- Would oppose repealing the use of the Consular cards and does not want to restrict their use to Mexican Consular cards only.
- Does not object to LPRs as long as they are used for identifying stolen vehicles and partial plates associated with a current crime. Would oppose the creation of a database for a citizen's legitimate travels around the community.
- Would oppose any type of anti-loitering statute or an impeding business statute. Would consider an impeding access statute.
- Concurred that the Police Department's car-mounted computers need to be reconfigured to access the NCIC subset.
- Would consider an anti-solicitation ordinance from the standpoint of an employer, but not an employee.

Vice Mayor Walters:

- Would consider an anti-solicitation ordinance and suggested that the issue of illegal-solicitation that occurs on West Main Street could be addressed at the same time.
- Supports Police staff receiving training in the identification of false documents, LPRs being utilized to detect stolen vehicles traveling through intersections, and the reconfiguration of the Police Department's computers to provide accessibility to the NCIC database in the field.

- Requested that staff provide additional information relative to the Herndon, Virginia ordinance, red curb issues, driving without insurance and driving without a license.
- Requested that staff work on a 287 (g) MOU (Alabama model) with DPS staff receiving the cross training. Would also support a member of the Mesa Police Department being a member of a regional team.
- Would prefer that the community of Hazelton, Pennsylvania litigate their ordinance and that Mesa delay the drafting of a similar ordinance until such time as a Court ruling has been reached in that case.
- Requested additional information from staff regarding whether there has been a change in the use of the Consular card. She stated that the card, like any other form of ID, is used as a tool by City staff to perform their job and does not provide an individual with a particular status.

Councilmember Griswold:

- Would support providing the Police Department with wireless fingerprint technology, LPRs, and reconfiguring the Police computers to the NCIC.
- Would support a 287 (g) regional program, especially if the Maricopa County Sheriff's Office participated in the program.
- Would consider an anti-solicitation ordinance. Would also like to address the issues of slum landlords and drop houses and how other communities deal with such matters.
- Stated that the Consular card is "a non-issue" and simply one form of identification.

Councilmember Somers:

- Requested that the City Attorney's Office provide a legal opinion regarding what options are available to the City with regard to ensuring that the employees working for vendors who have contracted with the City are abiding by U.S. laws.
- Expressed concern that there are more obstacles than tools available to local government to address illegal immigration issues.
- Would prefer a 287 (g) regional program, but Mesa should still pursue other options that may be available for the community.
- Supports providing the Police Department with wireless fingerprint technology and the subset connection to NCIC.
- Voiced caution regarding the City implementing surveillance cameras or license plate readers.
- Requested that staff conduct further research on the Vista, California ordinance that would require employers to register with the city before using day laborers. Would also consider an ordinance based on the Herndon, Virginia model.
- Expressed support for the continued use of the Consular card.

Councilmember Jones:

- Commented that municipalities want to address immigration issues, but are preempted by Federal law.
- Would consider the Police Department utilizing fingerprint technology.
- Stressed the importance of the City addressing anti-solicitation concerns.
- Would oppose the City entering into an MOU with the Federal government, but would support a regional or Statewide program.

- Would support the City retaining the Consular card as a form of identification.
- Would oppose a housing ordinance similar to the Hazelton, Pennsylvania ordinance.

Ms. Spinner briefly summarized the Council's input and direction to staff.

Mayor Hawker thanked staff for the informative presentation.

(Mayor Hawker excused Councilmember Whalen from the meeting at 10:05 a.m.)

3. Discuss and provide direction on a draft letter to Arizona's Congressional delegation regarding the need for Federal immigration reform.

Vice Mayor Walters referred to the draft of a September 19, 2006 letter that she authored and requested input from her fellow Councilmembers regarding the document. She explained that during a recent National League of Cities' Community and Economic Development Steering Committee meeting, the Committee discussed the frustration experienced by many communities with regard to the lack of Federal immigration reform. Vice Mayor Walters advised that at that time, she proposed to her fellow committeemembers that when they returned home, they send letters to their Congressional delegations urging that the matter be addressed and that local governments receive assistance in that regard.

Vice Mayor Walters further commented that she wrote the letter several weeks ago which, unfortunately, was obtained by the press before any of her fellow Councilmembers had the opportunity to review it, with the exception of Mayor Hawker. She apologized to those who were offended by the letter, but noted that its harsh tone speaks to her six years of frustration concerning the lack of Federal immigration reform.

The Council provided Vice Mayor Walters with various suggestions and feedback regarding the letter.

Vice Mayor Walters expressed appreciation to her fellow Councilmembers for their input and said she would incorporate their suggestions and comments into a newly drafted letter.

Councilmember Rawles requested that if the revised letter is released to the press before the Council has an opportunity to read it, that any press release be written in an accurate manner. He also expressed appreciation to Mayor Hawker for the thoughtful and concise manner in which today's Study Session has been conducted.

4. Appointments to boards and committees.

Mayor Hawker recommended the following appointments to Boards and Committees:

DOWNTOWN DEVELOPMENT COMMITTEE

Linda Flick – Term Expires June 30, 2008

HUMAN SERVICES ADVISORY BOARD

William McDaniel – Term Expires June 30, 2008

It was moved by Vice Mayor Walters, seconded by Councilmember Rawles, that the Council concur with the Mayor's recommendations and the appointments be confirmed.

Mayor Hawker declared the motion carried unanimously by those present.

(Mayor Hawker excused Councilmember Griswold from the meeting at 10:50 a.m.)

5. Hear reports on meetings and/or conferences attended.

There were no reports on meetings and/or conferences attended.

6. Scheduling of meetings and general information.

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

Thursday, October 5, 2006 – Fire Committee Meeting – Cancelled

Thursday, October 12, 2006, 7:30 a.m. – Study Session

Thursday, October 12, 2006, 8:30 a.m. – Audit/Finance Committee Meeting

Monday, October 16, 2006, TBA – Study Session

Monday, October 16, 2006, 5:45 p.m. – Regular Council Meeting

Wednesday, October 18, 2006, 7:30 a.m. – Joint Meeting with Mesa Public School Board

7. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

8. Items from citizens present.

Dana Jordan, 1641 E. Jarvis, expressed appreciation to the Council for their willingness to discuss the need for Federal immigration reform.

9. Adjournment.

Without objection, the Study Session adjourned at 10:55 a.m.

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KENO HAWKER, MAYOR

ATTEST:

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BARBARA JONES, 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 5<sup>th</sup> day of October 2006. 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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