



COUNCIL MINUTES

November 5, 2001

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 5, 2001, at 5:45 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Jim Davidson
Bill Jaffa
Dennis Kavanaugh
Pat Pomeroy
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Barbara Jones

Invocation by Reverend Chris Carpenter, Pastor, Christ The King Catholic Church.

Pledge of Allegiance was led by Daniel Schweichler and Andrew Chow of Boy Scout Troop 656.

Mayor Hawker welcomed everyone to the meeting.

1. 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 with an asterisk (*) were approved with one Council action.

Mayor Hawker stated that item 7b would be removed from the consent agenda and item 5b would be added to the consent agenda.

It was moved by Vice Mayor Davidson, seconded by Councilmember Jaffa, that the consent agenda items be approved.

Carried unanimously.

*2. Approval of minutes of previous meetings as written.

Minutes from the September 6, October 4, 9, 11, 18, 22, and November 1, 2001 Council meetings.

3. Consider the following liquor license applications:

*a. EDWARD D. POLE, AGENT

Person transfer Liquor Store License for Broadway Liquors, 405 E. Broadway Road. This is an existing business and building. This transfer is from Antonio B. Ferreira, Agent, A&J Ferreira Company.

*b. RANDY D. NATIONS, AGENT

New Restaurant License for W's Place, 1356 W. Southern Avenue. This is an existing business and building. The Restaurant License previously held at this location by Kim C. Harris, Agent, Mesa Robinhood Inc., will revert back to the State.

4. Consider the following contracts:

*a. One new inserter/collator/sealer as requested by the City Clerk's Office.

The Purchasing Division recommends accepting the bid by PFE Ascom at \$38,232.80 including applicable sales tax. **(Sole Response)**

b. One-year supply contract for "Ruggedized" Notebook Computers and Related Software, as requested by the Information Services Division (ISD).

The Purchasing Division recommends exercising the second and final one-year renewal option with the original low bidder meeting specification, CLH International, for a total of \$1,422,545.19, based on estimated requirements for the next twelve months. The Purchasing Division further recommends authorizing purchase from the State of Arizona contract with ASAP Software Express for Visio software licenses used in these notebook PCs for a total of \$68,728.70. The combined total award is then \$1,491,273.89, including applicable tax and based on estimated annual requirements.

It was moved by Councilmember Pomeroy, seconded by Councilmember Whalen, that the recommendations of staff be approved.

Carried unanimously.

*c. Ammunition for the Police Department

The Purchasing Division recommends accepting the low bid meeting specification for training ammunition by San Diego Police Equipment at \$59,638.76. It is further recommended that all bids for duty ammunition be rejected in order to allow for testing of additional brands of duty ammunition.

*d. Landscape maintenance services for parks and retention basins, in areas designated as Zones 1, 7 and 8, as requested by the Parks & Recreation Division.

The Purchasing Division recommends accepting the overall low bids as follows:

Zones 1 and 7 to Petrini's Landscaping, Inc. at \$429,576.00; and Zone 8 to Bowen's Horticulture Services, Inc. at \$281,174.00.

The combined award is then \$710,750.00 based on estimated annual requirements.

- e. Skyline Park. City of Mesa Project No. 99-28.

This project will construct a community park in the area of Skyline High School. This park project includes sports facilities (softball, basketball and volleyball) as well as a children's playground, open play areas, and space for a future swimming pool.

Recommend award to low bidder, Valley Rain Construction Corporation, in the amount of \$2,933,591.82 plus an additional \$293,359.18 (10% allowance for change orders) for a total award of \$3,226,951.00.

It was moved by Councilmember Pomeroy, seconded by Councilmember Whalen, that the recommendations of staff be approved.

In response to comments and questions voiced by Councilmember Jaffa regarding the Council's previously voiced concerns relative to landscaping maintenance costs, City Manager Mike Hutchinson commented on the projected costs associated with maintaining the park and said that staff would continue efforts to minimize costs associated with maintaining landscaped areas.

Vice Mayor Davidson stated the opinion that the proposed park is perfectly located to fill a void that exists in the southeast Mesa area and will be highly used.

Councilmember Walters concurred with Vice Mayor Davidson's remarks and also commented on the rapid residential growth of the area surrounding the proposed park location. She also noted that costs associated with construction of the proposed park were previously approved by the voters.

Carried unanimously.

- *f. Water Meter Vault Reconstruction. City of Mesa Project No. 00-115.

This project will reconstruct five water meter vaults (35 W. Brown Road, 720 S. and 830 S. Dobson Rd., 1011 W. Holmes Ave., 5402 E. McKellips Rd. and 420 S. 96th St.) It will also install new isolation valves at services that currently cannot be isolated from the main (310 W. McKellips Rd., 2165 W. University Dr., and 9252 E. Broadway Rd.).

Recommend award to low bidder, KR Swerdfeger Construction, Inc., in the amount of \$68,490.00 plus an additional \$6,849.00 (10% allowance for change orders) for a total award of \$75,339.00.

- g. Consider authorizing the City Manager to sign a change order to the 800 MHz radio infrastructure contract with Motorola in the amount of \$2 million.

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Davidson, that the City Manager be authorized to sign a change order to the 800 MHz radio infrastructure contract with Motorola in the amount of \$2 million.

Councilmember Kavanaugh stated the opinion that the increased expense is justified and stressed the importance of maintaining a high level of communications, interoperability and public safety, especially in view of the tragic events of September 11, 2001.

Councilmember Pomeroy noted that a substantial portion of the proposed, increased expense will be borne by the Town of Gilbert pursuant to the proposed Intergovernmental Agreement between the City of Mesa and the Town of Gilbert (Agenda Item 6.a).

Mayor Hawker stated the opinion that the proposed Intergovernmental Agreement will benefit both the City of Mesa and the Town of Gilbert.

Carried unanimously.

5. Introduction of the following ordinances and setting November 19, 2001 as the date of public hearing on these ordinances:

- *a. Prohibiting parking on the west side of 22nd Place from a point 1,275 feet north of Main Street to a point 1,450 feet north of Main Street and on Warner Road from the west City limits to the east City limits; prohibiting parking from 10:00 p.m. to 4:00 a.m. on the east side of Morris Circle from a point 130 feet north of Eighth Avenue to a point 500 feet north of Eighth Avenue and on the west side of Morris Circle from Eighth Avenue to a point 425 feet north of Eighth Avenue; prohibit parking from 7:00 a.m. to 4:00 p.m. on school days on the south side of Diamond Avenue from a point 125 feet east of Delta Avenue to a point 370 feet east of Delta Avenue; establishing a speed limit of 45 mph on Warner Road from Mountain Road to Meridian Road; and including Warner Road from the west City limits to the east City limits in section 10-3-17 "Special Stops Required" of the City Code; as recommended by the Transportation Advisory Board.
- *b. Repealing Chapter 19, Title 2 of the Mesa City Code relating to the Crime Prevention Advisory Board.

6. Consider the following resolutions:

- a. Authorizing the City Manager to execute an Intergovernmental Agreement between the City of Mesa and the Town of Gilbert to provide communications services to the Town of Gilbert – Resolution No. 7746.

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Davidson, that Resolution No. 7746 be adopted.

Carried unanimously.

- *b. Designating election dates and purposes of each election; designating the deadline for voter registration; designating the place and the last date for candidates to file nomination papers; and establishing the times that polls will be open – Resolution No. 7744.

7. Consider the following ordinances:

- *a. Amending various sections of the Mesa City Code relating to the City of Mesa Personnel Rules as recommended by the Merit System Board – Ordinance No. 3938.

- b. Amending Section 11-1-5 of the Zoning Ordinance pertaining to enforcement. (This change will cause the Zoning Ordinance to be enforced through a civil process rather than a criminal process) – Ordinance No. 3943.

Marilynn Wennerstrom, 1112 N. Center Street, addressed the Council regarding this agenda item and referred to her letter to the Mayor and Councilmembers dated November 2, 2001 (See Attachment).

Ms. Wennerstrom stated opposition to several elements of the proposed ordinance, including the assessment of an increased penalty/fee when a citation is appealed and lost, the fact that citations would be served upon alleged violators via U.S. Mail, and the fact that unpaid civil fines or judgments may result in a recorded lien against the real property of the responsible party.

Discussion ensued regarding the proposed assessment of an increased penalty/fee when an alleged violator appeals a citation and is found *responsible* at the civil hearing.

Zoning Administrator John Gendron stated that the proposed gradient penalty/fee system was designed to offset the costs associated with the appeal process and conducting a civil hearing. He added that no fees are assessed when a hearing results in a finding of *not responsible*.

Discussion ensued regarding the proposed gradient penalty/fee system vs. a flat penalty/fee, the appropriate amount of a flat fee, and the similarities and differences between this proposed violation process and the photo red light violation process.

Councilmember Kavanaugh stated that the proposed gradient penalty/fee system is consistent with civil legal philosophy and he commented on the costs and penalties assessed in connection with other types of appeals. He stated support for the proposed ordinance and voiced the opinion that the proposed civil process is a substantial improvement over the existing criminal process.

Councilmember Pomeroy stated the opinion that a flat fee system would result in a substantial increase in the number of appeals and hearings because there is no disincentive for filing unsubstantiated appeals.

Vice Mayor Davidson stated support regarding the gradient fee system and voiced concerns regarding staff's ability to manage a substantial increase in the number of appeals and hearings.

Councilmember Jaffa stated that although he supports changing the process to a civil process, he has concerns regarding the reporting, verification and enforcement process surrounding alleged violations and the recording of liens in connection with minor violations.

In response to Councilmember Jaffa's stated concerns, Mr. Gendron advised that all reports of violations are verified through personal inspections by Code Compliance officers; that a minimum of two notification letters are sent to the alleged violator to encourage compliance prior to the issuance of a citation, and that a small percentage of violations result in citations. Mr. Gendron also stated that staff is in the process of preparing an annual report regarding the civil hearing office for Council's review in the near future and noted that the report will include information on costs associated with conducting civil hearings. He added that implementing a flat penalty/fee would result in a significant increase in the number of appeals and hearings.

It was moved by Vice Mayor Davidson, seconded by Councilmember Pomeroy, that Ordinance No. 3943 be adopted.

Councilmember Whalen indicated support for a flat penalty/fee system and stated conditional support for the motion based on the Council's future reevaluation of the flat penalty vs. gradient penalty issue.

Mayor Hawker voiced opposition to the motion and stated that although he is in favor of changing the enforcement process to a civil process, he is opposed to the gradient penalty/fee structure contained in the ordinance.

Councilmember Walters said that she supports changing the enforcement process to a civil process however, she also agrees with the Mayor's concerns relative to the proposed fee structure contained in the ordinance. Councilmember Walters added the opinion that the penalty/fee amount should be consistent whether or not the cases are appealed.

Upon tabulation of votes, it showed:

AYES - Davidson-Kavanaugh-Pomeroy-Whalen
NAYS - Hawker-Jaffa-Walters

Mayor Hawker declared the motion carried by majority vote and Ordinance No. 3943 adopted.

8. Consider the following resolution and ordinance:

- *a. Amending Title 11 of the Zoning Ordinance, by adopting a new Chapter 19, pertaining to Sign Regulations – Resolution No. 7745 and Ordinance No. 3939.

9. Deleted.

9.1 Consider authorizing the purchase of an office building located at 225 East 1st Street in the amount of \$3,130,000.00.

This is the current location of the Center Against Family Violence.

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Davidson, that the purchase of an office building located at 225 East 1st Street in the amount of \$3,130,000.00 be approved.

Carried unanimously.

10. Consider the following cases from the Planning and Zoning Board and possible adoption of the corresponding Ordinances:

- *a. **Z01-46** The southwest corner of McKellips and Lindsay Roads. Site Plan Modification (9± acres). This case involves the development of a retail center. Glenwood Development Company, owner; Pew & Lake, P.L.C., applicant – Ordinance No. 3940.

Staff Recommendation: Approval with conditions. (Vote 6-0)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with all City development codes and regulations.

3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
5. Compliance with all requirements of the Design Review Board.

- *b. **Z01-49** The northwest corner of Baseline Road and Val Vista Drive. Modification of the Dana Park Village Square DMP site plan, and deletion of a Council Use Permit (55 acres). This case involves a request to allow development of a shopping center with pad sites. First Regent of Arizona, LLC, owner, represented by: Stacy Rush; Paul E. Gilbert, Esq., applicant. **THIS ITEM WAS PLACED ON THE CONSENT AGENDA FOR CONTINUANCE TO THE NOVEMBER 19, 2001 COUNCIL MEETING.**

Staff Recommendation: Approval with conditions. (Vote 6-0)

1. Compliance with the basic development as described in the project narrative.
2. Compliance with the basic development as shown on the revised site plan, preliminary plat and elevations submitted to the Planning and Zoning Board, including the pavement patterns shown on the site plan.
3. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans for Phase 3.
4. Compliance with all City development codes and regulations.
5. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
6. Compliance with all requirements of the Design Review Board.
7. Review and approval of a Special Use Permit by the Board of Adjustment for a comprehensive sign plan.
8. Any minor relocation or adjustment in Pads Q, R, S, or T to be considered by City staff in accordance with procedures provided in the Mesa Zoning Ordinance.

- *c. **Z01-50** The southeast corner of 88th Street and Decatur. Rezone from R1-43 to R1-6-PAD (4.5 acres). This case involves development of a residential subdivision. Sam Bulych et.al., owner; Creative Links, Inc., applicant, represented by: Sean Lake/Pew & Lake, P.L.C – Ordinance No. 3941.

Staff Recommendation: Approval with conditions. (Vote 6-0)

1. Compliance with the basic development as described in the project narrative and as shown on the preliminary plat, landscape plan and elevations submitted (without guarantee of lot yield), except as noted below.
2. Compliance with the Residential Development Guidelines as defined in the staff report and project narrative.
3. Compliance with the standard Zoning Ordinance requirement related to attached open porches and open patios, excluding lots 11 through 14, which shall have minimum ten (10) foot setback, including any overhang, between the patio cover and rear property line.
4. Review and approval by the Planning and Zoning Board and City Council of future development plans.
5. Compliance with all City development codes and regulations.

6. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.) with special attention paid to screened storage for 2 refuse barrels on each lot.
7. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
8. All street improvements and perimeter landscaping to be installed in the first phase of construction.
9. Compliance with all requirements of the Subdivision Technical Review Committee.
10. View fences on residential lots shall comply with City of Mesa pool fence barrier regulations.
11. Compliance with letter dated August 30, 2001, from Sean Lake, applicant's representative, to the City of Mesa, related to the architectural detailing of the building product. This letter is included in the zoning case file.
12. A noise impact study shall be required and submitted to Building Safety Division with the subdivision improvement plans and to the Planning Division with the first submittal of the final plat.
13. Written notice be provided to future residents, and acknowledgment received that the project is within one mile of future Red Mountain Freeway.
14. Noise attenuation measures be incorporated into the design and construction of the homes to achieve a noise level reduction of 25 db.
15. Retention basins to be 6:1 slopes maximum where adjacent to public rights-of-way, pedestrian areas and/or walkways.

- *d. **Z01-54** The northwest corner of Baseline Road and 32nd Street. Rezoning from C-2 to C-2 PAD and Site Plan Review (11.7 acres). This case involves development of retail and/or restaurant uses and office condominiums. Gerald Morgan, owner; UTAZ, applicant, represented by: Steven Beck – Ordinance No. 3942.

Staff Recommendation: Approval with conditions. (Vote 6-0)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with all City development codes and regulations including Design Guidelines and required landscaping easements.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, Fire, etc.).
4. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
5. All street improvements and perimeter landscaping (along right of way and common property lines) to be installed in the first phase of construction.
6. Compliance with all requirements of the Subdivision Technical Review Committee.
7. Record cross-access and reciprocal parking easements between offices and pads.
8. Compliance with all requirements of the Design Review Board.

9. Review and approval of a Special Use Permit by the Board of Adjustment or a comprehensive sign plan.

11. Items from citizens present.

There were no items from citizens present.

12. Adjournment.

Without objection, the Regular Council Meeting adjourned at 6:37 p.m.

KENO HAWKER, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

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 5th day of November 2001. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

Attachment
pjt

"Attachment"

TO: Mayor Keno Hawker and Mesa City Council
FROM: Marilyn Wennerstrom
DATE: November 2, 2001

RE: Agenda item 7.b on 11/05/01 Regular Council Meeting agenda

Dear Mayor Hawker and Councilmembers,

Please read and review the actual wording of this proposed ordinance carefully.

There is NO requirement by the City to first seek "voluntary compliance."

Also, "The citation SHALL direct the responsible party to pay a fine of \$50 within ten (10) days after issuance of the citation, or to appear before the Civil Hearing Officer within ten (10) days after issuance of the citation."

Whether or not a "responsible party" receives a citation via first class mail (out of town for a month, a child or secretary in receipt of mail didn't give it to responsible party, etc.), if the responsible party "fails to pay the fine and to appear on or before the time directed to appear or at the time set for hearing by the civil hearing officer, the allegations in the complaint SHALL be deemed admitted and the Civil Hearing Officer SHALL enter a finding of responsible and a judgment for the city and impose a civil sanction."

Then note, "Upon finding that a person is responsible for a civil violation of this chapter, the civil hearing officer SHALL impose a civil sanction of NOT LESS THAN \$100 NOR MORE THAN \$500 for each violation." (more than double the initial \$50 demand, legitimate or not.)

Contrary to remarks by Frank Mizner on Thursday about property liens, the proposed ordinance states, "Any civil fine or judgment for civil sanctions taken pursuant to this article SHALL constitute a LIEN against the real property of the responsible party that may be perfected by recording a copy of the judgment with the Maricopa County Recorder."

The only stated qualification for the "Civil Hearing Officer" is found in Title 8 of the City Code (not Title 11). And that "qualification" is that he/she is the City "Zoning Administrator." No training in law or an understanding of the Rules of Civil Procedure necessary for this judicial post. Just that he/she is the Zoning Administrator. Yet, almost every paragraph of this proposed ordinance grants unbelievable decision making judicial powers to the Civil Hearing Officer.

Likewise, there is no reference to the qualifications needed to be employed as a Code Compliance "Officer" -- which is effectively the city's civilian "police department" for enforcement. Yet at present there are 17 of these "officers" authorized to actually write citations: designating an imposed fine which "SHALL constitute a lien against the real property of the responsible party."

There is no provision in this ordinance for the contracted lawyers that the City did hire in January to act as civil hearing officers. Neither of them is the "Zoning Administrator."

As worded, this proposed ordinance leaves much to be desired and is ripe for abuse if enacted in its present form.