

COUNCIL MINUTES

November 19, 1996

The City Council and Ad Hoc Committee on Smoking Issues of the City of Mesa met in a forum in the Palo Verde Rooms, Community and Conference Center, 201 North Center Street, on November 19, 1996 at 7:00 p.m.

COUNCIL PRESENT

Mayor Wayne Brown
Vice Mayor Pat Gilbert
John Giles
Dennis Kavanaugh
Joan Payne
Wayne Pomeroy
Jim Stapley

COMMITTEE PRESENT

Wilford Andersen
Robert Brinton
Manny Cortez
John DeShetler
Margie Frost

COMMITTEE PRESENT (CONT.)

Kat Gallant
Dr. Nicholas Hagen
Dr. Cliff Harris
Keno Hawker
ChamBria Henderson
Jan Hibbert
Leo Mahoney
Tom McGilvra
Dave Muth
Dr. David Nielsen
Jerry Petrie
Marty Whalen
Dave Wier
Lillian Wilkinson

COMMITTEE ABSENT

Joe Farnsworth
Jessica Russell
Bill Udall
Rev. Rudy Perrault

STAFF PRESENT

Neal Beets
Linda Crocker
Glenn Gorke
Mike Hutchinson
Barbara Jones
Tom Mattingly
Kevin Snow
Others

1. Introductions.

Vice Mayor Gilbert requested that Committee introductions occur as part of the second agenda item to allow maximum time for participation by all of the members of the Committee. Vice Mayor Gilbert stated the opinion that the agenda topics will provide the Council with insight into the Committeemembers' position on this crucial issue. Vice Mayor Gilbert also encouraged the members of the Committee to submit written comments and materials to the Council for their review and consideration.

2. Discussion among members of the Committee.

Wilford Anderson stated that as an individual, he supports the current ordinance and expressed the opinion that the economics of the issue cannot be fairly evaluated unless both sides of the

matter are considered. Mr. Anderson added that costs associated with second-hand smoke related issues have not been analyzed as part of the overall economic issue. Mr. Anderson indicated his willingness to arrive at an agreeable compromise.

Robert Brinton, representing the Mesa Convention and Visitors Bureau, advised that the organization's goal is to develop a compromise which will allow the spirit of the initiative to remain in place while providing variances for the benefit of those businesses negatively impacted by the smoking ban.

Manny Cortez expressed the opinion that the City Council should not repeal the ordinance which was approved by the citizens of Mesa. Mr. Cortez encouraged the Council to seek a compromise solution to the problems and added that possible exceptions to the ordinance should include: bowling alleys (with smoking prohibited between certain hours or possibly on certain days); pool halls; Elks Lodge, American Legion, Moose Lodge, VFW, etc. (or allow the members to decide); sports bars, and restaurants with separate dining for smokers or outdoor dining areas. Mr. Cortez provided the Council with a copy of his remarks. (See Attachment 1.)

John DeShetler, owner of Main Street Billiards, reported that business revenues year to date are \$28,000 below the 1996 levels and added that his business reported an increase of \$14,000 for the same period in 1996 over 1995. Mr. DeShetler stated opposition to the fact that 'mom and pop' establishments are not represented on the Committee.

Margie Frost informed those present that although she voted in support of Proposition 200, she did not clearly understand the ramifications or extent of the initiative. Ms. Frost stressed the importance of reaching a compromise relative to this issue.

Kat Gallant advised that she is the author of an initiative to repeal Proposition 200 and indicated that although a compromise solution to concerns would be the most amenable solution to the problem, such a solution would not be acceptable unless it contains provisions to protect the 'mom and pop' businesses in Mesa.

Dr. Nicholas Hagen discussed concerns relative to the medical aspects of the issue and stated the opinion that patrons of the affected business should share responsibility with the owners of the establishments.

Dr. Clifford Harris stated that he is the initiator of Proposition 200 and stressed that the ordinance is a health measure. Dr. Harris discussed the negative impacts of second-hand smoke on Mesa's citizens and indicated that although he supports efforts to reach a compromise, he will adamantly oppose any proposal which does not stipulate that establishments which serve food remain smoke free.

Keno Hawker commented that all businesses in the City of Mesa should have the right to operate their establishments without intervention; nonsmokers should retain the right to live and be mobile in non-smoking environments; and that in view of the ban's negative economic impact on a large number of City businesses, the Committee should strive to reach a reasonable compromise or initiate a lengthy phase-in period prior to enforcement to allow the businesses and their patrons an opportunity to adjust to the smoking ban.

ChamBria Henderson commented that she voted in opposition to Proposition 200. Ms. Henderson expressed the opinion that a compromise should be reached and that the voters of Mesa should have an opportunity to decide on the final outcome of the issue.

Jan Hibbert informed the Committee that she is currently involved in a lawsuit challenging Proposition 200. Ms. Hibbert referred to materials distributed by Valley Business Owners (And Concerned Citizens), Inc. pertinent to Mesa's Smoking Ban/Proposition 200, and stated that additional time is required to provide members of the Committee and the Council with sufficient time to thoroughly review the documents provided. Ms. Hibbert stated the opinion that an election should be called to allow the voters an opportunity to express their views relative to the issue.

Leo Mahoney stated that eleven of the thirty-one people who spoke in support of Proposition 200 at the November 7, 1996 Committee meeting are not Mesa citizens and do not own businesses in Mesa. Mr. Mahoney spoke in opposition to non-resident interference for the purpose of influencing the decision-making process of Mesa's election officials. Mr. Mahoney stated the opinion that the Council should not over-rule the voters and added that a compromise solution, although difficult to attain, would be an appropriate resolution. Mr. Mahoney commented that a moratorium should be placed on enforcement pending the outcome of the issue. Mr. Mahoney added that he supports Ms. Gallant's initiative but would not support expending funds for a special election. Mr. Mahoney noted that Mayor Brown has received a copy of his remarks relative to this issue. (See Attachment 2.)

Tom McGilvra, owner of McKellips Bay Restaurant, expressed the opinion that the voters who approved Proposition 200 did not clearly understand the initiative. Mr. McGilvra informed the Council that a State-wide smoking ban would be more equitable to businesses than the current ordinance which forces citizens who smoke to patronize restaurants and bars outside of the City of Mesa. Mr. McGilvra stressed the importance of arriving at a compromise solution to the businesses' concerns.

Dr. David Nielsen, Co-Chairman of the Mesa Citizens for Clean Air Committee, provided those in attendance with recent data relative to projected Mesa smoking-related youth fatalities and related diseases. Dr. Nielsen stated that he supports the development of a compromise to assist businesses which are suffering economic losses but stressed the importance of not losing sight of smoking-related negative health impacts on the community.

Jerry Petrie expressed the opinion that the smoking ban in Mesa should be enforced and added that Proposition 200 should have undergone extensive scrutiny prior to placement on the ballot. Mr. Petrie indicated that he supports efforts to attain an acceptable compromise relative to this issue.

Marty Whalen commented that although the Council must exercise caution in amending a voter-approved initiative, the negative impacts of Proposition 200 on various segments of the business community necessitate amending the ordinance by the Council.

Dave Wier informed the Council that a majority of the Mesa Town Center Corporation Board of Director's supports variances for hardship cases. Mr. Wier added that an agreeable, negotiated proposal would also be favored by the organization.

Lillian Wilkinson commented that she voted in opposition to the passage of Proposition 200 and added that many Mesa citizens agree that a compromise must be reached relative to this issue. Ms. Wilkinson indicated a desire to receive and review additional information relative to all aspects of the smoking ban in order to assist in arriving at conclusions based on facts.

3. Poll of Committee on specific problem areas.

Vice Mayor Gilbert expressed appreciation to all of the members of the Committee for their input and added that Committeemembers will now be provided an opportunity to present specific recommendations to the Council for consideration.

Mr. Anderson stated that he had no specific recommendations for the Council at this time.

Mr. Brinton expressed the opinion that private meetings, wedding receptions and other private functions should be provided the ability to request and be granted variances to allow smoking at those functions and that a variance procedure be implemented to ensure that all liquor license holders in the City of Mesa are treated in an equitable manner.

Mr. Cortez recommended that smoking be allowed in establishments during certain hours or on certain days and that ordinance exemptions be granted to membership organizations such as the Elks Lodge, American Legion, Moose Lodge, VFW, etc. (or allow the members of the organizations to determine whether the facility will allow smoking). Mr. Cortez added that exemptions should also be granted to restaurants containing separate dining areas for smokers or outdoor waiting/dining areas.

Mr. DeShetler stated the opinion that businesses should be allowed to determine whether their establishments are smoking or non-smoking and signs relative to this fact should be posted by the owners. Mr. DeShetler added that citizens would then have the ability to determine whether to patronize the smoking or non-smoking establishments.

Ms. Frost expressed the opinion that a compromise would be the best solution to the problem and added that bars and facilities which prohibit children on the premises should be exempted.

Ms. Gallant stressed the importance of placing the issue on a ballot to allow Mesa's citizens to decide the outcome. Ms. Gallant concurred with Mr. Mahoney's comments relative to enacting a moratorium on enforcement pending settlement of the issue.

Dr. Hagen also favored arriving at a compromise relative to this matter and recommended that businesses be required to declare themselves either a non-smoking, smoking, or a mixed establishment with separate facilities for each group. Dr. Hagen added that a notice to this effect should be prominently displayed at each entrance to the establishment. Dr. Hagen expressed the opinion that this process allows each owner to exercise a choice as to which clientele they wish to attract. Dr. Hagen added that customers should then exercise their choice

as to whether they wish to patronize the business. Dr. Hagen provided the Council with a written copy of his remarks. (See Attachment 3.)

Dr. Harris indicated his opposition to allowing smoking in any facility where food is served. Dr. Harris added that bars which are properly vented should be provided the ability to determine whether to be smoking or non-smoking establishments. Dr. Harris discussed negative impacts on health and the possibility of future litigation relative to the effects of smoking on employees.

Mr. Hawker recommended that the City initiate a long-term phase-in program for the smoking ban and added that in the interim, businesses should be allowed to designate whether they will be smoking or non-smoking establishments and signs should be prominently displayed at the entrances to the businesses announcing their chosen smoking designation.

Ms. Henderson expressed the opinion that this issue should be placed on the ballot and the citizens of Mesa should determine the final outcome.

Ms. Hibbert stated the opinion that additional time is required to address this issue. Ms. Hibbert added that she supports freedom of choice and concurred with previous speakers' remarks relative to allowing establishments to post whether they are smoking, non-smoking or mixed with walls and adequate ventilation. Ms. Hibbert also agreed that an enforcement moratorium should be enacted pending settlement of this issue.

Mr. Mahoney spoke in opposition to input received from non-resident individuals at the previous Committee meeting and reiterated previous comments relative to enacting a moratorium on the implementation or enforcement of Proposition 200 until the next scheduled election and continued efforts to arrive at a compromise with the proponents of Proposition 200 and the business community in case the outcome of the election does not produce the anticipated outcome.

Mr. McGilvra expressed the opinion that the issue should be placed on the ballot of an election for final resolution. Mr. McGilvra added that until such time as the issue is voted upon by the citizens of Mesa, an enforcement moratorium or another measure of relief should be granted the businesses impacted by Proposition 200.

Mr. Muth discussed the City's attempt to link smoking with liquor sales from an enforcement point of view and expressed the opinion that hotels should be exempted from this process. Mr. Muth added that customers who retain private meeting rooms should maintain the right to smoke in their rented, personal areas.

Dr. Nielsen agreed that efforts should be undertaken to ensure that certain bars are not provided definite economic advantages over another. Dr. Nielsen stated the opinion that allowing establishments to determine whether they are smoking or non-smoking, and posting signage to that effect, constitutes an adequate solution to the problem. Dr. Nielsen discussed the negative impacts of smoking on the community and stressed the importance of educating the public relative to this issue. Dr. Nielsen indicated his willingness to further discuss measures to assist financial impacted business in obtaining relief.

Mr. Petrie expressed the opinion that sufficient input has been received to allow an informed decision to be reached relative to this issue. Mr. Petrie stated that he would prefer that an additional meeting be scheduled to allow specific action recommendations such as license discrimination to be discussed. Mr. Petrie added that businesses cannot continue to comply with the law and said that accommodations must be made in certain instances to assist the business community.

Mr. Whalen spoke in opposition to enacting a 'blanket moratorium' on enforcement within the City of Mesa and urged the Committee and the Council to expend every effort to reach a compromise relative to this issue. Mr. Whalen recommended that two specific issues be discussed: 1) a disconnect between liquor licenses and smoking regulations and 2) the development of an extremely broad variance provision which would allow businesses to request and be granted variances on a case-by-case basis.

Mr. Wier recommended that the ordinance remain in its current format and that a variance policy be implemented as soon as possible. Mr. Wier discussed the economic hardships suffered by businesses as a result of Proposition 200 and expressed the opinion that the businesses cannot wait until the next election for assistance. Mr. Wier indicated that he supports a moratorium on enforcement and noted that several businesses have decided not to relocate to Mesa as a result of the smoking ban.

Lillian Wilkinson stated the opinion that the filing of petitions by Citizens to Repeal Proposition 200 should have curtailed efforts to arrive at a compromise relative to this issue. Ms. Wilkinson added that a moratorium on enforcement should be enacted pending final determination by the voters at the next City election.

Vice Mayor Gilbert thanked the members of the Committee for their input and recommendations.

Vice Mayor Gilbert stated the opinion that sufficient input and materials have been provided to allow the Council to arrive at a decision relative to this issue. Vice Mayor Gilbert added that Committeemembers are encouraged to forward additional input and data to the Council for their review.

Mr. DeShetler spoke in favor of scheduling additional meetings to review and discuss materials provided by the Committee relative to this issue.

Mr. Anderson concurred with Vice Mayor Gilbert's remarks and stated the opinion that additional meetings would not be productive.

Mr. McGilvra stressed the importance of proceeding with this issue as soon as possible and noted that real estate businesses are no longer interested in listing restaurants located in Mesa.

Ms. Wilkinson stated the opinion that additional time is required to discuss this issue and review pertinent materials.

Mr. Hawker cautioned the Council relative to the enactment of a moratorium on enforcement and commented that an ordinance becomes law thirty days after passage.

Ms. Gallant stated that members of the Committee were not provided notice relative to the items that would be on the agenda and added that Committeemembers were not allowed to provide input at the previous meeting.

Dr. Nielsen expressed the opinion that the voters who approved Proposition 200 understood the initiative and voted in favor of the measure in order to send a clear message that smoking is a health concern and should be controlled. Dr. Nielsen added that the Committee and the Council should adhere to the wishes of the voters and allow Proposition 200 to remain in effect.

Mr. Cortez pointed out that should the issue be placed on the ballot of the City's next election, no guarantee exists that the repeal of Proposition 200 will be successful.

Mr. Whalen stated the opinion that although the election process must be respected, 20,000 votes and 7,000 signatures do not represent mandates from the citizens.

Mr. Muth complimented the Council on soliciting a large amount of input to assist their efforts in resolving this issue. Mr. Muth added that it is now the responsibility of the Council to render a decision on Proposition 200.

Mayor Brown expressed the opinion that an additional meeting is not necessary and noted that Council deliberations relative to this matter will be open to the public. Mayor Brown stressed the importance of proceeding on this issue and encouraged members of the Committee to continue to provide the Council with materials and recommendations to assist in the process.

Councilmember Kavanaugh commented that he spoke in opposition to Proposition 200 during his recent campaign but added that public health is a legitimate concern. Councilmember Kavanaugh stated that should the initiative be placed on a future ballot and not be approved by the voters, Mesa businesses will suffer even greater losses. Councilmember Kavanaugh indicated that he supports the development of a compromise proposal to assist local businesses.

Councilmember Payne expressed concern relative to the fact that members of the Committee may not have reviewed sufficient material and/or may not understand all of the intricacies of the issue and its effect on businesses in Mesa. Councilmember Payne stated the opinion that the initiative to repeal Proposition 200 should be placed on the ballot of a future election for citizens to decide and added that the cost of a special election is insignificant in view of the importance of this issue.

Mayor Brown reiterated that the role of the Council is to gather information and initiate efforts to arrive at a compromise solution to meet the various needs of the City.

Councilmember Stapley spoke in opposition to the implementation of an enforcement moratorium and stressed the importance of upholding the vote of the citizens who supported

Proposition 200. Councilmember Stapley added that specific revisions to the initiative should be analyzed and possibly implemented in an effort to provide assistance to local businesses. Councilmember Stapley added that all ordinance revisions should be approved by the original authors of Proposition 200 and expressed the opinion that a 'common ground' compromise will appease many of the concerns expressed by all involved. Councilmember Stapley commented that the agreed upon revisions will provide assistance until such time as the issue is once again voted upon by the citizens of Mesa.

Councilmember Giles stressed the importance of proceeding with this issue and stated the opinion that methods of enforcing the ordinance while still remaining responsive to businesses and alleviating hardships, can be accomplished. Councilmember Giles spoke in support of modifying Proposition 200 while maintaining the intent of the ordinance and indicated that he does not support a moratorium on enforcement.

Councilmember Pomeroy stated the opinion that Proposition 200 has negatively impacted businesses in Mesa, particularly 'mom and pop' businesses, and added that a compromise would be in the best interest of all concerned.

Vice Mayor Gilbert thanked the members of the Council for their comments and expressed appreciation to the members of the Committee for their input and efforts relative to this issue. Vice Mayor Gilbert encouraged the members of the Committee to forward additional input and materials to the Council for review and consideration.

4. Adjournment.

Without objection, the forum of the City Council and the Ad Hoc Committee on Smoking Issues was adjourned at 8:37 p.m.

Carried unanimously.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the forum of the City Council and Ad Hoc Committee on Smoking Issues of the City of Mesa, Arizona, held on the 19th day of November 1996. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 21st day of November, 1996

BARBARA JONES, CITY CLERK

Attachments

ATTACHMENT 1

Mayor Brown, Members of the Council, and to all other interested parties in attendance:

As you may or may not know, I was one of the majority of Mesa voters that voted in favor of Prop 200. Therefore, I feel it is not for the Council to repeal this new ordinance. But after following it closely in the newspaper, in both editorials and letters to the editor, and listening to all those who participated in our last meeting, I do believe you should look into a way to reach a compromise that is agreeable to both parties. I think possible exceptions should be considered for the following:

- Bowling alleys (with nonsmoking between certain hours, or possibly only on certain days),
- Pool halls,
- Elks Lodge, American Legion, Moose Lodge, VFW, etc. (or allowing members to decide),
- Sports Bars, and
- Restaurants with separate dining for smokers, or outdoor waiting and dining areas.

I sincerely hope after having listened to those in favor and those opposed that the City Council can come up with a solution favorable to all concerned. Both parties may need to bend a little.

Manny Cortez

ATTACHMENT 2

Leo E. Mahoney
1115 West Emerald Avenue
Mesa, Arizona 85210-3412

AD HOC COMMITTEE ON SMOKING ISSUES

1. OBSERVATIONS

- a. Sixty-seven people spoke at the November 7 meeting: thirty-one supporting Prop. 200 and thirty-six opposing. Eleven of the thirty-one supporters were not Mesa citizens and did not own a business in Mesa. I personally resent outsiders being brought in to try to influence the decision-making process of our elected officials.
- b. Sarah Murley's presentation on the Economic Impact Study was of little or no benefit to this committee member. Possibly the city wasted money for that study.

2. COMMENTS:

- a. The council should not over-rule the voters.
- b. Sufficient compromises making the proposition palatable to all are not likely to happen.
- c. Exceptions for one and not for all will possibly cause a plethora of expensive legal challenges.
- d. The petition filed by Kat Gallant and others could result in a much more sensible approach to both the health and the economic issues.
- e. A special election for this petition proposition realistically would be an expensive precedent to set, unless the proponents were willing to pay the total election cost.
- f. Enforcement of the Proposition 200 as written most likely will be next to impossible and definitely not cost effective.

3. RECOMMENDATIONS:

- a. Declare a moratorium on any implementation or enforcement of Proposition 200 until the next scheduled election.
- b. Continue working with the proponents of Proposition 200 and the business community in case the next election does not change anything.

Leo E. Mahoney
November 19, 1996

ATTACHMENT 3

Nicholas S. Hagen, M.D.
2251 North 32nd Street, No. 20
Mesa, Arizona 85213

TESTIMONY GIVEN NOVEMBER 19, 1996

Mayor Brown, Vice-Mayor Gilbert, Members of the City Council and Members of the Ad Hoc Committee:

I appreciate the opportunity to sit as a member of this committee.

First, let me say that as a physician I am very concerned about the effects of smoking on health. Both of my parents died from smoking-related illnesses, and my older brother and sister have medical problems related to their long history of smoking. I never smoked. Why, I don't know, since all my family members did.

Secondly, I won't take a back seat to anyone on this issue. As vice-president of medical research for one of the largest pharmaceutical companies in the world, I was responsible for a department which consisted of over 200 physicians, clinical researchers, and statisticians. When we moved into new facilities I instituted a no-smoking policy for our work place. For the smokers among us we provided a separate smoking lounge and lunch room. For when the weather permitted, we built an outside park area with tables, umbrellas and benches for them to use. We instituted a free aggressive stop-smoking campaign which included professional counseling, support groups, and we even paid overtime to those who would attend these sessions and we gave bonuses to those who were able to stop smoking. Two years later our program was adopted company-wide

In addition, over the years I estimate that my department was responsible for over 100 clinical studies which were submitted to the Food and Drug ministration for approval of new drugs to treat pulmonary and heart disease.

In short, I am no lackey of the tobacco industry.

Last Tuesday we had the opportunity to hear from 68 people on both sides of this issue. Another 40 submitted written comments which I read carefully. Some were business owners who are seeing their life savings disappear. Some suffered from medical problems either caused by or exacerbated by smoke. Others demanded that they should be able to go into any store, restaurant, or bar they pleased and not be subjected to smoke.

We even learned that people are actually leaving their homes in colder climes to live here in Mesa, not because of our beautiful weather, but because of our non-smoking regulations. Still others, none of whom actually lived in Mesa, were paid representatives of various non-smoking special interest groups. One of these professionals even made the statement that "we are already seeing improved health in Mesa as a result of this ordinance." As a medical scientist with experience in epidemiology, I was intrigued by this statement so I called this person last Friday and left a message on his answering machine that I would like the source of his data. I have not heard from him yet.

After considering the information at hand I have concluded that I oppose this ordinance as written because it is extreme and just plain bad law. I believe it was passed because the proponents were able to frame the issue as a referendum on the tobacco industry. However I have no doubt that it would fail if it were ever put to a vote again, because people now realize how extreme it really is.

I believe the existing ordinance has two critical flaws. First, it is patently unfair and second, it violates the very important principle of choice.

Providing a smoke-free environment is a noble goal, but this law requires that business owners must bear all the burden to achieve that goal. And conversely, it requires absolutely no responsibility from non-smoking shoppers or diners.

I believe that in order to be equitable a smoking ordinance should require a measure of responsibility from both parties.

I would suggest what I believe is a reasonable compromise: 1) require all public businesses to declare themselves either a non-smoking, a smoking, or a mixed establishment with separate facilities for each group. A notice to this effect would be prominently displayed at each entrance. This allows each owner to exercise a choice as to what clientele they wish to cater.

2) Customers could then exercise their choice as to whether they wish to patronize the business. Anyone who feels strongly one way or another can vote with their wallets or their feet, without any government intrusion.

To the extremists in the anti-smoking lobby, this compromise will of course not be acceptable, because their ultimate goals go far beyond even this ordinance, but to the vast majority of citizens of Mesa I believe that this would be acceptable. I marvel at how some people are willing to sacrifice their personal freedom for perceived safety and security. Once we as a community start down that slippery slope, where will it end? But I also have confidence that the citizens of Mesa, when fully informed, can make up their own minds about matters like this without government telling them what they can or cannot do.

That is the real difference between the two philosophies. Can citizens decide for themselves or must government decide for them?

Thank you.

Respectfully submitted,

Nicholas S. Hagen, M.D.