

COUNCIL MINUTES

September 20, 2004

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 September 20, 2004 at 4:05 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Tom Rawles
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

1. Review items on the agenda for the September 20, 2004 Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflicts of interest declared: 7c, 7f (Hawker); 9h (Walters)

Items added to the consent agenda: 7d

Items removed from the consent agenda: 7b

2. Further discussion and consideration of the recommendations of the Ad Hoc Committee to Study Police Oversight.

- a. Discussion with members of the Board of Freeholders regarding Mesa City Charter issues related to Police Civilian Reviews.

Mayor Hawker stated that Henry Haws, a member of the Freeholders who was unable to attend the meeting, sent a note expressing opposition to civilian review of the Police Department. He addressed the Freeholders who were present and requested they come forward, introduce themselves, and comment on the reasons that a prohibition to civilian review of the Police Department was included in the City Charter. Mayor Hawker also requested that the Freeholders indicate if the same prohibition would be included if they were rewriting the Charter today.

The following Freeholders were present and came forward to address the Council:

David Udall	Pat Pomeroy
James Gardner	Louis Stradling
Lawrence Packard	Maury Jones

Mr. Udall stated that at the time the Charter was written, a majority of the Freeholders were opposed to civilian review of the Police Department. He reported that at the time the Director of the Federal Bureau of Investigation (FBI), J. Edgar Hoover, issued warnings advising that citizen oversight boards posed a threat to law enforcement agencies. Mr. Udall explained that the Freeholders believed that the Police Department, a paramilitary organization, should not be subject to political influence or interference from non-elected persons. He stated that the Mayor and Council have complete authority to operate the City, and that the City Manager has authority delegated by the Council. Mr. Udall expressed opposition to a Charter change, and stated the opinion that including civilians on a Use of Force Board was not advisable. He concurred with City Attorney Debbie Spinner's legal opinion that any type of civilian oversight of the Police Department would require a Charter amendment.

Mr. Pomeroy agreed with Mr. Udall's account of the Freeholders' discussion regarding civilian oversight of the Police Department. He advised that having served as a member of the Ad Hoc Committee, he views the situation somewhat differently today. Mr. Pomeroy noted that other communities in the Valley have successfully implemented various forms of civilian input regarding use of force situations. He expressed support for the Ad Hoc Committee's proposal to include two citizens as a minority representation on the Use of Force Board, the majority of which is comprised of police officers. Mr. Pomeroy agreed with the City Attorney that the action would require a Charter change, and he stated that the Charter amendment language should clearly maintain the authority of the Police Department.

Mr. Gardner recalled that the Freeholders voted unanimously in opposition to any type of civilian police board. He expressed the opinion that sufficient authority is vested in the Mayor, Council and City Manager to manage police-related issues. Mr. Gardner further stated the opinion that civilian review would require a Charter amendment, and he is opposed to amending the Charter.

Mr. Stradling stated that the elected City Council is responsible for the "life and liberty" of Mesa's citizens, and that relinquishing the responsibility to non-elected civilians would be improper. He noted that numerous procedures are in place to investigate a police officer's conduct. Mr. Stradling objected to amending the Charter "a little bit" due to the fact that he believed that even small Charter amendments would create an opportunity for other changes. He further stated the opinion that subversive influences are continually advocating for civilian review of law enforcement agencies. Mr. Stradling noted that previous Mesa City Councils refused to consider similar proposals. He expressed the opinion that the Ad Hoc Committee had good intentions, but he noted that the report does not include evidence from the Freeholders or the FBI. Mr. Stradling further stated the opinion that the appointment of two civilians to the Use of Force Board would result in litigation to change the Charter.

Mr. Packard stated the opinion that citizen boards have become quite political, and that a police board would be the most political. He also expressed the opinion that adding two civilians to the Use of Force Board to serve with three police representatives would probably be referred to as a "police white wash committee," and he believes the wrong message would be sent to the citizens of Mesa. Mr. Packard expressed support for establishing a citizen board that would act in an advisory capacity to the Council. He further stated the opinion that "to do nothing" could result in a ballot referendum, and that an advisory board to the Council could satisfy the public's concerns.

Mr. Jones (Councilmember Jones' father) compared the Ad Hoc Committee's proposal to that of establishing a citizen's committee to review the medical practice of a physician or a hospital. He explained that the training and the actions of police officers are the responsibility of the Chief, and he stated that civilians without the same specialized education, training, and experience are not qualified to judge police actions. Mr. Jones expressed the opinion that two non-voting civilians appointed to the Police Use of Force Board would satisfy the public's concern. He said his concerns are similar to those expressed by Mr. Packard, which is that the City's failure to take action would result in the subject being placed on a future ballot. Mr. Jones said that he initially thought the Committee's proposal was a good compromise, but he does not support a Charter amendment for the reasons previously expressed by the other Freeholders. He also expressed concern that civilian review could influence police officers not to take appropriate action for fear of a Use of Force Board reprimand. He indicated support for the appointment of two non-voting civilian members to serve on the Use of Force Board provided that action does not require a Charter amendment.

Mr. Packard concurred with Mr. Stradling's comments relative to the fact that the Council is the elected body empowered to make decisions regarding the Police Department, and that police actions would be politicized by being held accountable to a civilian board.

Mr. Gardner commended the Ad Hoc Committee for their time and effort in preparing the report, but stated that he opposed amending the Charter.

Mr. Stradling stated that the City should not be intimidated by subversives who threaten to place the issue of civilian review on a future ballot. He added that the City should not compromise with the enemy.

Mayor Hawker opened the discussion to the Councilmembers for questions.

Councilmember Jones stated that he encouraged the Council to obtain input from the Freeholders, and he further stated that he did not support a Charter amendment. He added that the existing procedures are effective, and that the Council has the proper ultimate authority. Councilmember Jones expressed support for Mr. Jones' recommendation to include non-voting civilian representation on the Use of Force Board if that action requires no amendment to the Charter. He stated that he disagrees with the opinion of the City Attorney that a Charter amendment is required.

Vice Mayor Walters noted that the concept proposed by Mr. Jones was not addressed by the Ad Hoc Committee or considered by the City Attorney's Office. She stated the opinion that the members of the community who have expressed concern regarding this issue should not be characterized as subversive. Vice Mayor Walters explained that many Mesa citizens who support the Committee's recommendation are also very supportive of the Police Department.

She noted that when events occur “behind closed doors” a degree of suspicion remains regarding the outcome. Vice Mayor Walters asked Ms. Spinner if her legal opinion would change regarding a Charter amendment if the senior Mr. Jones’ recommendation were adopted that would allow non-voting civilian representation on the Use of Force Board.

Ms. Spinner replied that her decision would have to consider the role of non-voting members in the discussion and the questioning process as well as the confidentiality of the case information.

Vice Mayor Walters requested that Ms. Spinner provide a legal opinion. She noted that the purpose of civilian participation was to “shed light” on the process. Vice Mayor Walters added that the reports from other communities indicated that the police members of the board were much harsher on their fellow officers than were the civilian members.

Ms. Spinner advised that she would consult with Police Chief Donna regarding the process and provide a legal opinion to the Council regarding non-voting civilian participation on a Use of Force Board.

Councilmember Griswold complimented the Freeholders for writing a Charter that has successfully served the City for almost 40 years. He stated that a part of the legal opinion is based on the Freeholders’ intent and the definition of civilian oversight. Councilmember Griswold suggested that the public considered information on a Police Use of Force case to be more straightforward and believable when provided by civilian representatives than if the same information were provided by the police or elected officials. He asked if non-voting civilian representation violated the intent of the Freeholders.

Mr. Stradling repeated his opposition to civilian review of the police department. He expressed the opinion that public viewpoints have been inflamed to believe that Mesa Police Officers are abusive, that officers have not been properly supervised, and that the City Council is not performing their duties. Mr. Stradling stated that no need existed for an Ad Hoc Committee or a report because the Charter provides the necessary tools to the Chief of Police and the City Council. He questioned the manner in which the City would determine if the civilian candidates selected for the Board had subversive political ideas. Mr. Stradling also questioned whether two citizens could accomplish anything if the Police Use of Force Board, the Attorney General, the FBI in case of death, and the Courts are unable to properly judge a case. He stated that if the civilian members agree with the decision of the Police Use of Force Board, they’ve wasted their time; if they disagree, the entire system could be rotten.

Mr. Jones expressed the opinion that non-voting civilians would not violate the Charter prohibition of civilian oversight, and he added that he does not consider the concerned citizens to be “the enemy.” He believes that the people expressing concerns are well-meaning citizens who would like to have insight into the process.

Mr. Stradling repeated his concerns that adding civilian members to the Use of Force Board would result in attorneys initiating litigation and people being placed in positions to enable them to attack, misuse and amend the Charter. He stated the opinion that no reason exists to appoint two civilians as members of a Use of Force board due to the fact that the Chief of Police and the City Council have the authority to conduct an investigation.

Mr. Udall stated that one interpretation of "civilian police review board" is that civilians would be permitted to supervise police officers and impose disciplinary action. He expressed concern that non-voting civilian members could provide information to the media. Mr. Udall explained that the Charter provides the City Council the authority and responsibility for police oversight and discipline.

Mr. Packard noted that the City continues to have a problem with the public perception of police use of force investigations, and he stated that providing information to the public is extremely important. He suggested a "citizen study" approach to resolving communication problems.

Mr. Stradling said the President and the Congress provide civilian oversight of the Army and Navy, the Governor controls state agencies, and the City Council is responsible for civilian review and control of the Police Department. He stated that no other board or committee can be delegated the power to oversee the Police Department. Mr. Stradling cautioned the Council not to respond to the pressure of a few people who are reacting to exaggerated media coverage. He suggested that the Police Department improve their public relations efforts.

Councilmember Thom stated that the discussion indicates to her that the Freeholders did not receive a copy of the report.

In response to a question from Mayor Hawker, the Freeholders confirmed that each did receive a copy of the Committee's report.

Councilmember Thom read the Ad Hoc Committee's report recommendations as follows: 1) The Mesa Police Department should create a Use of Force Review Board, and 2) that the Police Department should strengthen public relations and implement a communications plan to create more interaction between the police and citizens.

Mr. Udall stated that he disapproved of the first recommendation, and he approved of the second.

In response to questions from Councilmember Rawles, Mr. Udall stated his belief that two civilian members of the Use of Force Board, voting or non-voting, would be prohibited by the Charter, but he would need time to fully consider the non-voting aspect of the proposal.

Mr. Pomeroy concluded that the Charter would prohibit voting members, but he stated the opinion that the Charter would permit non-voting members.

Responding to an inquiry from Councilmember Rawles, the consensus of the Freeholders was that voting civilian members of a Use of Force Board would be prohibited by the Charter, but there was disagreement regarding the participation of non-voting civilians with three Freeholders (Udall, Stradling and Gardner) stating the opinion that the Charter prohibits non-voting civilian members and three Freeholders (Packard, Pomeroy and Jones) stating the opinion that the Charter would permit non-voting civilian participation.

In response to a question from Councilmember Rawles, Ms. Spinner stated that the final report of a Police Use of Force Board would be discoverable in civil litigation, but she would investigate as to whether the proceedings, specific interviews and/or background information were also discoverable.

Mayor Hawker, responding to a question from Councilmember Rawles, stated that his past involvement regarding police investigations was limited to providing direction to the City Manager to retain outside counsel or to request oversight from the County Attorney's Office. He added that to his knowledge the Council as a body has never conducted an investigation regarding police use of force.

Mr. Stradling said that Mesa's Police Department serves as an example for other communities, and that other communities could benefit by having a Charter prohibition to civilian review.

Mr. Jones expressed concern that a continued prohibition to civilian input could prompt an initiative movement for a Charter change.

Mr. Packard also expressed concern regarding a possible initiative, and he recommended that the City be proactive regarding this issue.

Councilmember Thom noted that the discussion of police oversight began following an unfortunate incident involving the shooting of a teenager. She advised that she has not received any type of communication from a member of the public in over a year regarding use of force incidents, and she expressed the opinion that the issue of police oversight was no longer a matter of public concern. Councilmember Thom also stated that the only references she heard regarding the possibility of an initiative were comments made at this meeting.

Mayor Hawker thanked the Freeholders for their participation in the process.

- b. Consider direction for staff regarding the committee's recommendation to create a Use of Force Review Board.

Councilmember Rawles noted that the Council's decision would be very difficult until a legal opinion is received that addresses the issue of whether the appointment of two civilian non-voting members to a Use of Force Board would require a Charter amendment. He stated the opinion that the appointment of civilian voting members would require a Charter amendment.

Discussion ensued relative to the option that the citizen board could consist of approximately twenty people; that two or three would be randomly selected to serve on a Use of Force Board; and that these members would be non-voting the ability to ask questions.

Responding to Mayor Hawker's question regarding the process utilized by a Use of Force Board, Ms. Spinner advised that her understanding is that the Board arrives at a consensus and then makes a recommendation to the Police Chief. She stated that two legal opinions could be provided: the first based on the civilian members participating in the deliberations without voting, and the second based on the civilian members being able to ask questions without participating in the deliberations or voting.

Councilmember Griswold advised that he served as the Police Committee Chairman during the time several use of force incidents occurred. He noted that the Police Department could not comment regarding ongoing investigations while at the same the media outlets were addressing one side of the story. Councilmember Griswold stated that when the Charter was written, citizens were acquainted with the local police officers, but that is not the case today because Mesa's population totals approximately 450,000. He expressed the hope that a process could be devised that increases the citizens' trust level and reduces public anger.

City Manager Mike Hutchinson noted that a use of force investigation must also be reviewed by the County Attorney, which adds to the time required to reach a conclusion.

Councilmember Whalen noted that former Vice Mayor Dennis Kavanaugh, Chairman of the Ad Hoc Committee, was in the audience and requested that he come forward. He asked the Committee's opinion regarding the appointment of non-voting civilian members to a Use of Force Board. Councilmember Whalen expressed the opinion that there is a perceived lack of public trust in the Mesa Police Department. He also asked Mr. Kavanaugh if the proposed process would dilute the efforts of Committee.

Mr. Kavanaugh reported that the Committee held extensive discussions regarding this issue, and he stated the opinion that including non-voting civilian members without the ability to participate in reaching a consensus diminishes the credibility and integrity of the process. He stated that the Committee hoped that full, fair and open discussions among law enforcement professionals and civilian members would result in a consensus recommendation, which would be advisory to the Police Chief. Mr. Kavanaugh expressed the opinion that creating a "caste system" of board members would minimize the role of the civilian contribution, and he added that the Ad Hoc Committee was not likely to support the approach. He noted that the "non-voting" civilian participation could avoid the requirement for a Charter amendment, but a legal challenge could still be made relative to a possible Charter violation. Mr. Kavanaugh noted that police chiefs across the country have successfully utilized citizen participation in the review process, and he emphasized that the process provides advice and input rather than control.

Councilmember Whalen suggested that the proposal for non-voting civilian participation was an attempt to "massage the issue." He suggested that either the Council could choose to place the issue on a future ballot or a citizens' group would initiate the action. Councilmember Whalen noted that the City of Mesa is much larger and more diverse than in 1967. He complimented the Police Chief and the Department for their efforts to be inclusive within the community. Councilmember Whalen also praised the efforts of the Committee, and he noted that the Council has been criticized for failing to accept recommendations of citizen committees. He stated that the Ad Hoc Committee has made a recommendation, and he expressed the opinion that the City Council should now make a decision.

Councilmember Thom noted that the Council did not solicit public comment during this meeting. She also added that there are many examples of citizen boards that act only in an advisory capacity.

Mayor Hawker advised that the proper time for public comment would be when the item is placed on a regular Council agenda.

Vice Mayor Walters disagreed with Councilmember Whalen's suggestion that non-voting civilian participation was an attempt to "massage the issue." She also noted that the Ad Hoc Committee proposed a board that would be "advisory" to the Police Chief with the stated purpose of assisting the Police Department in building community trust. Vice Mayor Walters noted that the Council is comprised of civilians, and she believes that the solution should not cross the line into creating a civilian review board. She requested a legal opinion from Ms. Spinner as to whether this type of civilian advisory board would be prohibited by the Charter.

Mayor Hawker also requested a legal opinion from the City Attorney's Office relative to "where the line is crossed" between civilian "advisory" and civilian "review" boards. He noted that the Council is the elected body and has the authority to convene investigations. Mayor Hawker questioned the rationale that an appointed group of twenty citizens would have more credibility than the seven elected City officials. He noted the difficulty of providing fair representation from a pool of twenty appointees that would reflect the changing diversity and demographics of the community. Mayor Hawker expressed the opinion that a City official should be able speak publicly and address questions during an on-going Use of Force investigation. He advised that further discussion of utilizing two non-voting citizens should continue, but he stated the opinion that the body responsible for oversight of the Police Department should continue to be the elected City Council.

Councilmember Rawles stated the opinion that a lack of public trust exists regarding the current methods available for conducting investigations due to the fact that in 37 years under the Charter, the Council has never been involved in an investigation of the Police Department. He also expressed concern that involvement in an investigation would politicize the process. Councilmember Rawles also stated the opinion that the Council should maintain the present system or support the recommendation of the Ad Hoc Committee for voting members, but that a legal opinion should be obtained prior to making a final decision.

Mayor Hawker summarized the discussion by stating that the Council will wait for a legal opinion regarding the voting and non-voting aspect of civilian participation in an advisory or a review board. He added that the consensus of the opinions expressed at this meeting indicate that a Charter amendment is required.

Ms. Spinner noted that previous Council discussions reflected the fact that the proposed Charter language should include the stipulation that civilians constitute a minority of the board members.

Mayor Hawker requested that staff also prepare drafts of possible Charter language for Council consideration.

Councilmember Rawles noted that several formats of the Charter language could be proposed. He concurred with Mayor Hawker's recommendation that staff should prepare drafts for future Council consideration.

Vice Mayor Walters, noting that the next Citywide election is scheduled for the year 2008, suggested that the City Attorney's Office be given sufficient time to consider the various options. She also wanted to clarify that the discussion of this item should not indicate to the public that the Council believes the Police Department is performing poorly or improperly. Vice Mayor Walters expressed the opinion that the Police Department and Chief Donna continue to perform in an outstanding manner.

3. Acknowledge receipt of minutes of boards and committees.

- a. Ad Hoc Redevelopment Advisory Committee meeting held August 10, 2004.
- b. Design Review Board meeting held September 1, 2004
- c. General Development Committee meeting held August 26, 2004.

It was moved by Councilmember Griswold, seconded by Vice Mayor Walters, that receipt of the above-listed minutes be acknowledged.

Carried unanimously.

4. Appointment to boards and committees.

Mayor Hawker recommended the following appointments to Boards and Committees:

HOUSING AND HUMAN SERVICES ADVISORY BOARD

Jon Burroughs Expiration of Term: June 30, 2008

LaShawn Jenkins Expiration of Term: June 30, 2008

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

Carried unanimously.

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 Mike Hutchinson stated that the meeting schedule is as follows:

Thursday, September 23, 2004, 7:30 a.m. – Study Session

Thursday, September 30, 2004, 7:30 a.m. – Study Session

Monday, October 4, 2004, TBA – Study Session

Monday, October 4, 2004, 5:45 p.m. – Regular Council Meeting

Thursday, October 28, 2004 – Council Retreat

7. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

8. Adjournment.

Without objection, the Study Session adjourned at 5:35 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 Study Session of the City Council of Mesa, Arizona, held on the 20th day of September 2004. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

baa