

COUNCIL MINUTES

November 14, 2002

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 November 14, 2002 at 7:30 a.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Dennis Kavanaugh
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

Kyle Jones

OFFICERS PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

Mayor Hawker excused Councilmember Jones from the meeting.

1. Review items on the agenda for the November 18, 2002 Regular Council Meeting.

All the items on the agenda were reviewed among Council and staff with no formal action taken. There was discussion among the members of the Council relative to the following:

Mayor Hawker indicated that he had a potential conflict of interest on Agenda Item 4I (Val Vista Drive Demolition and Wall Construction) and said that he would refrain from any and all discussion/action regarding this item. He asked that the item be removed from the Consent Agenda.

Councilmember Thom requested that Agenda Item 5a (Amending Title 9, Chapter 6, Section 5: Subdivision Regulations) be removed from the Consent Agenda. Councilmember Griswold stated that progress is continuing on this matter and requested that it be postponed at this time and reintroduced at the next Regular Council Meeting. Mayor Hawker directed staff to reintroduce this issue at the next meeting as requested.

In response to a request from the Mayor, City Attorney Debbie Spinner provided a brief overview of Agenda Item 4m (Property and liability insurance coverage for the City to be effective from November 22, 2002 through November 21, 2003, as requested by the City Attorney's Office). Ms. Spinner discussed significant cost increases that continue to occur and proposed recommendations/options prepared by staff for the Council's review and consideration.

Councilmember Thom also requested that Agenda Item 7c (Amending Sections of the City Code relating to the waiver of fees and vicious dogs; repealing a section relating to appointment of Hearing Officers; and adding a new Section relating to the appointment of Civil Traffic Hearing Officers, be removed from the Consent Agenda.

Mayor Hawker announced that Agenda Item 9a (Approving Staff's recommendation to modify the current ordinance regarding construction start times for the months of May through September from 4:00 a.m. to 5:00 a.m.) will be placed on the agenda of Monday's Regular Council Meeting in the form of an introduced ordinance.

2. Hear and consider a request from Dr. Cliff Harris concerning changes to the City's smoking ordinance.

Dr. Cliff Harris introduced Tempe City Councilmember Dennis Cahill to the members of the Council and said that Mr. Cahill has knowledge of the effects of that City's recent adoption of anti-smoking legislation on businesses in that community that he would like to share with the Council.

Dr. Harris stated that the tobacco companies, working through their surrogates, have changed how they operate in anti-smoking situations and now rather than expend funds and time to reverse negative medical statistics, they instead focus their efforts on reporting negative economic impacts on businesses as a result of anti-smoking regulations in cities and towns. He added that recent tobacco company statistics falsely reported that businesses suffer a 30% economic loss when smoking regulations are implemented.

Councilmember Cahill discussed impacts on businesses in the City of Tempe since the adoption of smoking regulations in that community and noted that he has not seen any difference in the number of customers who frequent an establishment he visits on a regular basis. He added that although he has been identified as a key proponent of the legislation and his phone number was given out in an attempt to have him deluged by calls from pro-smoking citizens, he has only received one negative telephone call and many positive ones from young people who are thrilled that they can now frequent and enjoy smoke-free establishments in Tempe. He noted that one business owner has informed him that business has actually improved since the laws went into effect.

Councilmember Cahill stated the opinion that in the not too distant future, political jurisdictions such as the City of Mesa, which has smoking regulations in place but which has not protected the rights and safeguarded the health of the employees working in those establishments, will be held liable and subject to extensive legal suits. He thanked the members of the Council for allowing him to present his remarks on this important issue.

Mayor Hawker thanked Councilmember Cahill for his input and appearance at the meeting.

Dr. Harris requested that the Council place an item on an upcoming agenda in the near future to adopt a smoking ordinance similar to the one that has been adopted in the Town of Guadalupe. He explained that although the City of Tempe's ordinance is very similar, upon close examination he and others familiar with this issue believe that the Town of Guadalupe's ordinance is slightly better and provides the best protection.

Dr. Harris referred to materials contained in the Council packets and stated the opinion that the adoption of Guadalupe's ordinance, in place of Mesa's, will bring a "level playing field to Mesa, Tempe and hopefully Chandler, when that City passes its regulations." He added the opinion that adoption of Guadalupe's ordinance is the correct action to take. He discussed his extensive career as an Oncologist and the years he has dedicated to studying and treating the devastating effects of smoking, not only on people who chose to smoke, but on innocent people who suffer and die as a result of second hand smoke. He also commented on his involvement in this issue and noted that he was an active participant in the adoption of anti-smoking regulations in Mesa, which were later "softened" and expressed the opinion that it is now time to take the next step and protect citizens as well as employees who are forced to make their living in establishments where smoking is allowed.

Dr. Harris stated the opinion that in the six and a half years since Mesa adopted its ordinance, businesses have experienced significant economic improvements rather than the economic ruin that had been forecasted. He agreed with Councilmember Cahill's statement regarding future liability issues associated with smoking that will seriously impact municipalities such as Mesa that fail to protect the health of employees working in establishments where smoking occurs.

Discussion ensued relative to studies that have been conducted and Dr. Harris' opinion that conclusions were based on interviews rather than actual in-depth studies; a new analysis that is being conducted by Stanford University that analyzes sales tax data five years prior to and five years after the enactment of smoking ordinances and the importance of analyzing that data once the study has been completed; and the importance of ensuring that the City of Mesa's focus remains protecting the public's health.

Mayor Hawker thanked Dr. Harris for his comments.

In response to a question from Councilmember Thom, Dr. Harris stated that he resides in the City of Mesa. He indicated his willingness to provide Councilmember Thom with copies of documents attesting to the accuracy of his statement that second hand smoke causes lung cancer but commented on the voluminous quantity of documents that exist on this matter.

Councilmember Thom stated the opinion that the adoption of an ordinance similar in content to the Town of Guadalupe's would negatively impact Mesa's business community. She reported that when the original ordinance was adopted, businesses experienced a 20% decrease in sales and many were forced out of business as a result of the City's actions. She added that the newspapers continually publish stories about businesses in Tempe that are suffering as a result of the ordinance adopted in that City and indicated that she would not vote in support of Dr. Harris' request.

Committeemember Whalen thanked Dr. Harris and Councilmember Cahill for their attendance at the meeting. He noted that the City of Mesa was a pioneer in this area when the Council adopted the City's first smoking ordinance and said that Dr. Harris' efforts has resulted in making the City of Mesa a better place for many people to go and enjoy dinner. Committeemember Whalen noted that only 70 of the 700 businesses in Mesa were granted exemptions from the ordinance. He added the opinion that in view of the current economy now is not the time to take on an issue of this magnitude, particularly when it involves 70 out of 700 businesses. He noted that he is an advocate of State law and said that he believes this issue should be governed on a State level rather than on a city-by-city basis. Committeemember

Whalen said that he believes many citizens in the community will rise up and fight this issue if it goes forward and added that although he believes that the message and the idea are right, the timing is not, and he will not support moving forward. He reiterated his support for pursuing control on a State level and said he would be supportive of proceeding in that manner.

Councilmember Griswold agreed with Councilmember Whalen's comments and added that he too would be willing to work towards regulation on a State level.

Dr. Harris stated the opinion that a delay will result in additional deaths that could be avoided and urged the Council to take action at this time to adopt an ordinance similar to the one in effect within the Town of Guadalupe.

Mayor Hawker commented that he agrees with Councilmembers Whalen, Thom and Griswold and said that he supports providing citizens "choices." He added that if a level playing field existed and this was a State-wide issue, he would offer his support. He added the opinion that the ordinance currently in effect in Mesa is working and encouraged Dr. Harris to pursue this matter further on a State level.

Mayor Hawker called for a roll call vote on this issue and the vote was two in support of Dr. Harris' request (Vice Mayor Kavanaugh and Councilmember Walters) and four in opposition to Dr. Dr. Harris' request, (Mayor Hawker, Councilmembers Griswold, Thom and Whalen), with Councilmember Jones absent and excused from the meeting.

The Mayor thanked Dr. Harris and Councilmember Cahill for their input.

3. Discuss and consider providing direction concerning changes to the methods currently used to dispose of firearms acquired by the Police Department.

City Manager Mike Hutchinson said that the Council has been provided background information relative to this agenda item and Police Department staff are present to respond to any questions from the members at this time.

Police Chief Jan Strauss and Evidence Supervisor Lane Darling came forward to respond to any questions the Council might have regarding this agenda item.

Councilmember Walters stated the opinion that many people view this as a "Second Amendment" issue, but said that she does not see it that way. She commented that she views the issue as being whether it is a good business decision and good for the City of Mesa. She expressed the opinion that this issue is one that should be discussed with the new Police Chief when that person comes on board and said that she would propose that action on this agenda item be delayed pending the appointment of a new Police Chief so that the pros and cons of the new proposal that is before the Council regarding the exchange of weapons can be thoroughly explored.

It was moved by Councilmember Walters, seconded by Councilmember Griswold, that discussion and action on this agenda item be postponed pending the appointment of a new Police Chief for the City of Mesa.

Councilmember Griswold, who serves as Chairman of the Police Committee, said that this issue is one that deserves close and careful review. He added that although policy will be set by the members of the Council, Police Department staff will be charged with the responsibility of carrying out that policy, and said for this reason he would like to receive input from the new Police Chief and staff regarding this issue.

Committeemember Whalen stated the opinion that this burden should not be placed on the shoulders of a newly appointed Police Chief but added that he would support the consensus of the Council regarding this matter.

Mayor Hawker noted that it is the responsibility of the City Council to set policy and the responsibility of Staff to implement that policy. He said that in this case, however, some merit may exist regarding the suggestion to solicit input from the new Police Chief.

Councilmember Thom stated that she does not believe any reason exists to delay a decision on this matter and noted that the City Charter clearly states that it is the duty of the Council to set this policy. She pointed out that the legal opinion prepared by the City Attorney does not indicate that the City would be subject to any liability but added that staff's memorandum contradicts that premise. Councilmember Thom said that she supports the sale and/or return of the weapons to their rightful owners and commented on the fact that many of the guns that were stolen from peoples' homes are in fact valuable and irreplaceable antique heirlooms.

Vice Mayor Kavanaugh stated that he will support the motion to defer a decision on this matter pending the appointment of a new Police Chief. He thanked Chief Strauss and staff for all of their hard work on this issue and said that the information obtained is very thorough and interesting. He added that although he respects the opinion prepared by the City Attorney, lawyers exist "to disagree" and said that he believes that input from the new Police Chief will be extremely valuable.

Discussion ensued relative to City Attorney Debbie Spinner's opinion regarding the absence of any liability on the part of the City; the fact that potential for liability would definitely exist if the City of Mesa failed to follow laws that are in place governing this issue; and Ms. Spinner's opinion that when the City was selling confiscated firearms to licensed dealers, no law suits were filed against the City.

Mayor Hawker asked for a roll call vote on the motion and second and the vote was as follows: One nay (Councilmember Thom) and five ayes (Mayor Hawker, Vice Mayor Kavanaugh, Councilmembers Griswold, Whalen, and Walters), with Councilmember Jones absent and excused from the meeting.

4. Hear a presentation on the debut of the City's new Web site: www.cityofmesa.org.

Marketing and Communications Director Jamie Brennen and Website Specialist Jessica Weiss, addressed the members of the Council relative to this agenda item. Ms. Weiss highlighted a brief presentation on the City's new Web site and commented on the extensive cooperative efforts that went into developing the new, improved, easy-to-access site.

Discussion ensued relative to the wide range of information that can be accessed, including news releases and a complete City calendar, the composition of the internal team who worked

relentlessly on this project; the fact that the easy to find information is also available in Spanish; the fact that a media event to publicize the new web site has been scheduled for today from 10 to 11 a.m. and the Council and staff are invited to attend; and staff's efforts to change the way the City does business and to make citizens lives better and happier.

Councilmember Griswold commended staff for bringing City government to the citizens of Mesa. He said that he is very pleased with the results of their hard work and congratulated them on their achievement.

Vice Mayor Kavanaugh concurred with Councilmember Griswold's comments and said that years ago the Council said that electronic government is a priority and he is extremely pleased with the changes that have taken place.

Councilmember Thom also congratulated staff on their accomplishments and noted her unfamiliarity with computer technology. She requested that staff respond to her requests that her home telephone number be listed on the City's web page for citizens to call rather than an e-mail address and explained that she will be able to respond to citizens' calls in a more efficient, timely manner if this request is carried out as soon as possible.

Ms. Brennen indicated staff's intention to meet with Councilmember Thom regarding her request and said that they would be happy to accommodate her needs in this area.

City Manager Mike Hutchinson also congratulated staff and commented on the extensive work and dedication that has gone into this successful project.

5. Acknowledge receipt of minutes of boards and committees.

- a. Downtown Development Committee meeting held October 17, 2002
- b. Finance Committee meeting held October 17, 2002
- c. Transportation Committee meeting held October 24, 2002
- d. Utility Committee meeting held October 10, 2002

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

Mayor Hawker declared the motion carried unanimously by those present.

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

Councilmember Thom announced that she has received word that the Mesa Town Center Board of Directors has voted in favor of office space development on floors 2, 3 4 and 5 of the Bank One Building rather than residential development.

Councilmember Thom also discussed her attendance at the opening of new Desert Ridge High School.

Vice Mayor Kavanaugh said that he attended a dedication ceremony for the new rose garden honoring the five branches of the service at Mesa Community College.

Councilmember Whalen discussed his attendance at a breakfast held at the Child Crisis Center of the East Valley and commented on the level of support that is provided that agency. He said that he also met with the Director of the State Land Department regarding flood control issues.

Councilmember Griswold said that he and Vice Mayor Kavanaugh attended a Royal Air Force memorial service on Veteran's Day.

Councilmember Walters stated that she and Councilmember Griswold met with representatives from ADOT to discuss a number of negative noise impacts that the recent opening of the new section of freeway is having on some of the neighborhoods. She noted that measures are being undertaken and that one neighbor has already been approved for additional noise mitigation efforts.

Mayor Hawker discussed his attendance at a MAG meeting to discuss the possibility of a ½ cent sales tax extension by 2005. He also commented on a variety of transportation issues and explained that many of the topics will be reviewed by the members of the Transportation Planning Committee.

7. Scheduling of meetings and general information.

City Manager Mike Hutchinson stated that the meeting schedule is as follows:

Thursday, November 14, 2002, 5:30 p.m. – Joint meeting with City of Phoenix

Monday, November 18, 2002, TBA – Study Session

Monday, November 18, 2002, 5:45 p.m. – Regular Council Meeting

Thursday, November 21, 2002, 7:30 a.m. – Study Session

Thursday, November 21, 2002, 9:30 a.m. – Transportation Committee

Tuesday, November 26, 2002, 8:30 a.m. – General Development Committee

8. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

9. Items from citizens present.

Eugene Thomas addressed the Council relative to Dr. Harris' previous request that the City of Mesa adopt a stricter smoking ordinance. He said that as a business owner, he believes that if he wants to smoke in his establishment he should have the right and added the people who do not wish to frequent businesses that allow smoking can patronize facilities where smoking is not allowed. He added that if employees working in smoking establishments do not wish to be around smoke, they too have the option of finding employment elsewhere. He commented that he personally has chosen not to smoke but that is his decision. He added that it has also been determined that ice cream causes or adds to coronary heart disease but said that no one is saying that the sale of ice cream should be regulated or eliminated. Mr. Thomas stated the

opinion that studies can be conducted to reflect whatever results people want and said that he prefers “dangerous freedom” over “safe slavery.” He said he appreciates the opportunity to address the Council and looks forward to getting to know Councilmember Walters who is his district representative.

10. Adjournment.

Without objection, the Study Session adjourned at 9:16 a.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 14th day of November 2002. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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