

# COUNCIL MINUTES

February 20, 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 1<sup>st</sup> Street, on February 20, 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  
Neal Beets  
Barbara Jones

Invocation by Reverend Steve Weston, St. Mark's Episcopal Church.

Pledge of Allegiance was led by Taylor Corbit, Boy Scout Troop 173.

Presentation by David Udall and John Giles of the Mesa United Way.

David Udall, Mesa United Way Campaign Chairman and John Giles, former City of Mesa Councilman and Mesa United Way Board of Directors Chairman, presented a demonstrative check in the sum of \$3,850,000 to Mayor Hawker for the Mesa Community, representing proceeds from this year's Mesa United Way Campaign. Mr. Udall noted that this year's campaign proceeds exceeded the previous record by \$900,000 and thanked the Council for their support of the Mesa United Way, particularly Councilmembers Kavanaugh, Walters and Vice Mayor Davidson.

Mayor Hawker expressed appreciation to the community and to Mesa United Way and thanked Mr. Udall and Mr. Giles for their community service and leadership.

Mayor Hawker presented a demonstrative check to Mr. Udall and Mr. Giles in the sum of \$282,848.34 representing proceeds from this year's City of Mesa Employees' United Way Campaign. Mayor Hawker expressed appreciation to City of Mesa employees for their generous monetary contributions and their community service contributions throughout the year, including tutoring programs for students, fund raising drives to buy school supplies and the adoption of five families during the holiday season.

Mr. Giles expressed appreciation to City of Mesa employees for their generosity and noted that their annual campaign proceeds have increased \$100,000 over a four year period. Mr. Giles presented Management Assistant Denise Bleyle with a plaque in appreciation of her excellent performance as this year's Community Spirit Campaign Chairperson.

Mayor Hawker acknowledged the presence of State Senator Rusty Bowers in the audience.

1. Approval of minutes of previous meetings as written.

It was moved by Vice Mayor Davidson, seconded by Councilmember Kavanaugh, that the minutes of the January 8, January 22 and January 30, 2001 Council meetings; and the February 1 and February 5, 2001 Council meetings be approved.

Carried unanimously.

2. 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 in these minutes with an asterisk (\*) were approved with one Council action.

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

Carried unanimously.

3. Consider the following liquor license applications:

\*a. VINCENT P. VASQUEZ, MEMBER

Special Event License application for Vincent P. Vasquez, Member, Civil Air Patrol, a one-day event to be held on Saturday, March 17, 2001 and Sunday, March 18, 2001, from 9:00 a.m. to 5:00 p.m. at Williams Gateway Airport, 6001 S. Power Road in Mesa.

\*b. TROY J. LANE, AGENT

New Beer and Wine Store License for Country Club Texaco, 2816 S. Country Club Drive. This is an existing building and business. The Beer and Wine Store License previously held at this location by Parke B. Moyer, Agent, Texaco Food Mart, was closed on December 13, 2000.

4. Consider the following contracts:

\*a. Two-year renewal of the supply contract for automotive air conditioning supplies as requested by the Fleet Support Services Division.

The Purchasing Division recommends exercising the two-year renewal option with the original lowest overall bid by B & K Supply Company, Inc. for annual expenditures estimated at \$17,500.00.

\*b. Two-year renewal of the supply contract for street lighting contractors as requested by the Materials and Supply Division.

The Purchasing Division recommends exercising the two-year renewal option with the original low bid by Arizona Electric Supply at \$35,197.98 based on estimated annual requirements.

\*c. Two-year renewal of the supply contract for automotive lighting, mirrors and safety supplies as requested by the Fleet Support Services Division.

The Purchasing Division recommends exercising the two-year renewal option with the original lowest overall bid by The Lighthouse, Inc. for annual expenditures estimated at \$50,000.00.

- \*d. One set of mobile vehicle lifts as requested by Fleet Support Services.

The Purchasing Division recommends accepting the low bid by Ross Sales at \$21,669.64 including applicable sales tax.

- \*e. Document Management Hardware (Scanner) for the Police Department's Crime Lab as requested by Information Services.

The Purchasing Division recommends authorizing purchase from the State of Arizona contracts with Transource for a total of \$23,036.18, including applicable sales tax.

- \*f. Additional purchase authority with the existing supply contract for portable radio batteries, as requested by the Communications Division.

The Purchasing Division requests Council to authorize additional funds to purchase portable radio batteries, from the existing supply contract, with Battery Zone, Inc. for an additional \$50,000.00 based on estimated annual requirements.

- \*g. One new skid steer loader and trailer as requested by the Parks and Recreation Division.

The Purchasing Division recommends accepting the low bid by Bingham Equipment Company at \$33,316.49 including extended warranties and applicable sales tax.

- \*h. One replacement 1-ton cab chassis for the Parks & Recreation Division.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Ed Moses Dodge at \$19,139.85 including applicable sales tax.

- \*i. Greenfield Park Lake Renovations. City of Mesa Project No. 01-41.

This project will restore Greenfield Park Lake to its intended storage volume for irrigation purposes.

Recommend award to low bidder, Carson Construction, Inc., in the amount of \$109,435.00 plus an additional \$10,943.50 (10% allowance for change orders) for a total award of \$120,378.50.

- j. Public Safety Training Site Auditorium and Office Addition. City of Mesa Project No. 00-15.

This project will provide a new auditorium for class and special program use, and offices needed by facility staff to properly administer and operate the training site.

Recommend award to low bidder, MTV General Contractors, Inc., in the amount of \$2,815,000.00 plus an additional \$281,500.00 (10% allowance for change orders) for a total award of \$3,096,500.00.

Mayor Hawker declared a potential conflict of interest and refrained from discussion/participation in this agenda item. Mayor Hawker yielded the gavel to Vice Mayor Davidson for action on this agenda item.

Assistant Fire Chief Gary Bradbury addressed the Council and said that the proposed project is for improvements to the public safety training facility. Chief Bradbury reported that the project has been master planned since 1987

and was approved as a part of the Quality of Life tax in 1998. Chief Bradbury reported that the project was approved by the neighboring Homeowners' Association and was also presented as part of a public forum at Ishikawa Elementary School on January 25, 2001 with no public opposition to the project. Chief Bradbury further reported that the projected start date is March 2001.

Chief Bradbury discussed the style, layout and placement of the proposed improvements and displayed graphics in the Council Chambers which illustrated the project. Chief Bradbury advised that the project includes an auditorium, a police department office addition and infrastructure improvements including parking, utilities and landscaping. Chief Bradbury added that the auditorium is for police and fire training and will also be available for seminars, ceremonies, meetings and other police and fire events.

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

Councilmember Kavanaugh voiced support for the project and expressed the opinion that the expansion is necessary and will be a welcome enhancement to the quality of public safety in the community.

Councilmember Whalen voiced appreciation for the working relationship between Mesa's Fire and Police Departments and stated that the shared facility has worked well for numerous years.

Vice Mayor Davidson stated the opinion that the project represents a critically necessary expansion of the facility and voiced specific support for the landscaping improvements and expanded classrooms.

Upon tabulation of votes, it showed:

AYES - Davidson-Jaffa-Kavanaugh-Pomeroy-Walters-Whalen  
NAYS - None  
ABSTAIN - Hawker

Vice Mayor Davidson declared the motion carried unanimously by those voting.

With action on this agenda item being completed, Vice Mayor Davidson yielded the gavel to Mayor Hawker.

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

- a. Amending Section 11-6-3 of the Zoning Ordinance pertaining to the regulation of pawnshops, tattoo parlors, and body piercing salons.

Councilmember Jaffa declared a potential conflict of interest and refrained from discussion/participation in this agenda item.

It was moved by Councilmember Walters, seconded by Councilmember Kavanaugh, that the recommendations of staff be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Davidson-Kavanaugh-Pomeroy-Walters-Whalen  
NAYS - None  
ABSTAIN - Jaffa

Mayor Hawker declared the motion carried unanimously by those voting.

- \*b. **Z00-85** 3931 North Higley Road. Rezone from R1-90 to M-1 PAD (8± acres). This case involves the development of a 4 lot industrial subdivision.
- \*c. **Z01-01** 1107 South Center Street. Council Use Permit for a day labor hiring center (.5± acres).
- \*d. **Z01-02** Parkwood Ranch Parcel 16. Rezone from R1-9-DMP (conceptual R-3) to R1-6-PAD-DMP (11± acres). This case involves development of a residential subdivision.
- \*e. **Z01-03** The southeast corner of Val Vista and Enid. Rezone from C-2 to R2-PAD (11± acres). This case involves development of a residential subdivision.
- \*f. **Z01-05** 3815 East Huber. Rezone from AG to R1-35 (4.3± acres). This case involves the development of 2 custom home lots.
- \*g. **Z01-06** Parkwood Ranch Parcels 18, 19, and 22. Modification of a Development Master Plan and rezone from R1-9 & PF (conceptual R-3 and C-2) to R-3-DMP and C-2-DMP & PF (50± acres). This case involves establishment of zoning districts

6. Consider the following resolutions:

- \*a. Authorizing the City Manager to execute an Intergovernmental Agreement between the State of Arizona Department of Transportation and the City of Mesa to provide traffic equipment for the Transportation Management Center – Resolution No. 7619.
- \*b. Extinguishing a portion of the Public Utility Easements in the SILVERWOOD subdivision – Resolution No. 7620.  
  
These easements are in conflict with the construction of a new elementary school.
- \*c. Extinguishing a portion of a Public Utility Easement on lots 20 and 26 of Mulberry Business Park - Resolution No. 7621.  
  
This area is being redeveloped and this portion of the easement is no longer necessary.
- \*d. Extinguishing a portion of a Public Utility Easement on lot 194 of the Continental at Superstition Springs subdivision – Resolution No. 7622.  
  
This portion of the easement is in conflict with the construction of a townhouse project.
- \*e. Extinguishing a portion of a Public Utility Easement across lots 1-7 of the Townes West subdivision – Resolution No. 7623.  
  
This portion of the easement is in conflict with the construction of a townhouse project.
- \*f. Extinguishing a portion of a Public Utility Easement at 236 S. Serrine, Benjamin Franklin Elementary School – Resolution No. 7624.  
  
This portion of the easement is in conflict with renovations being planned for the school.

- \*g. Authorizing the City Manager to execute a Telecommunications Services License issued to COX ARIZONA TELCOM, L.C.C. – Resolution No. 7625.

7. Consider the following ordinance:

- \*a. Prohibiting parking on the west side of 22<sup>nd</sup> Place from Main Street to a point 1,275 feet north of Main Street and on 64<sup>th</sup> Street from a point 265 feet north of Brown Road to a point 265 feet south of Brown Road; and removing the parking prohibition on the east side of 22<sup>nd</sup> Place from a point 50 feet north of Main Street to a point 520 feet north of Main Street; as recommended by the Transportation Advisory Board – Ordinance No. 3860.

8. Consider the following recommendation from the Utility Committee:

- a. Approving Alternative No. 1 (A & B) and receiving public input when developing an ordinance regarding the terms and conditions for the sale of utilities.

Vice Mayor Davidson declared a potential conflict of interest and refrained from discussion/participation in this agenda item.

Councilmember Whalen, as Utility Committee Chairman, provided a brief overview of this agenda item and said that over the past several months City staff has reviewed the City's policy with respect to providing water and wastewater to developments located outside of Mesa's corporate limits.

Development Services Administrator Jeff Welker addressed the Council regarding this agenda item and referred to the Revised City Council Report dated February 14, 2001 (See Attachment). Mr. Welker reported that Mesa currently provides water and wastewater services to properties located outside of its corporate limits and that most properties served are within Mesa's general planning area and considered likely prospects for future annexations. Mr. Welker further reported that previous City Councils established terms and conditions for the sale of Mesa's water and wastewater services which provided that properties benefiting from these valuable services adhere to all City development regulations. Mr. Welker said that special agreements were entered into for properties developing outside of Mesa's corporate limits to ensure compliance with the adopted terms and conditions and City regulations. Mr. Welker added that, historically, a majority of the properties seeking water and wastewater services outside of Mesa's limits have been individual custom homes on parcels ranging from 2 to 5 acres. Mr. Welker stated that within recent years, and due to diminished available large tracts of land within Mesa's corporate limits, there has been increased development of residential subdivisions and commercial properties to support the new residential subdivisions, outside of Mesa's corporate limits but within its general planning area.

Mr. Welker stated that two separate sets of circumstances have recently made it necessary for the City to reevaluate its position with respect to providing water and wastewater services outside of its corporate limits: 1) the City Attorney's office has determined that many of the City's utility service agreement documents are unenforceable, and 2) it has become increasingly difficult to resolve the differences that exist between the City of Mesa and Maricopa County's development regulations. Mr. Welker added that County standards are typically less comprehensive and rigorous and commented that these types of practices may result in controversial and expensive problems for the City to resolve at future annexation time.

Mr. Welker reported that after carefully evaluating the foregoing circumstances, staff concluded that *the greatest assurance the City can receive that its General Plan and development requirements will be met is to not provide water and wastewater services outside of its corporate limits.* Mr. Welker added that after reaching the foregoing conclusion, staff was confronted with whether *land outside Mesa's corporate limits should enjoy and benefit from valuable City water and wastewater services without having to comply with the same development requirements and without paying the same development related fees imposed upon properties within the City limits.*

Mr. Welker stated that after receiving unanimous approval from the Utility Committee, staff is seeking Council's input, comments and approval to move forward with the amendment of the terms and conditions for the sale of utilities ordinance and the amendment of Title 9, Chapters 6 & 8 of the Mesa City Code.

Discussion ensued relative to the fact that staff is presently processing approximately 100 applications for utility service outside of Mesa's corporate limits that were received from June 2000 until November 2000; Recommendation A, which proposes that any new development of property outside of Mesa's corporate limits be prohibited from obtaining City water and wastewater services until the property is annexed into the City of Mesa; the fact that staff also recommends phase-in periods for Recommendation A that will help property owners and developers caught by the proposed changes to complete their projects without undue harm; the fact that staff also recommends that owners/developers make payment to the City in lieu of all applicable development impact fees and also make payment to the City in lieu of causing the installation and construction of certain required public improvements; the fact that the various impact fees proposed to be charged to owners/developers of individual custom residences are equal to impact fees assessed for development within the City's corporate limits, and the fact that staff further recommends that where extraordinary circumstances exist, an individual property owner and/or developer may seek relief from the requirements or prohibitions contained in the proposed ordinance amendments by appealing to the City Council via the Utility Committee.

Mr. Welker also detailed staff's Recommendation B, which proposes that any developer of residential and/or commercial property within Mesa's corporate limits shall make payment to the City in lieu of causing the installation and construction of public improvements when a deferral of said improvements is approved by the Development Services Manager. Mr. Welker added that Recommendation B does not have a phase-in period and that staff has already implemented this practice based upon the direction of the Utility Committee.

In response to a question from Councilmember Kavanaugh, Mr. Welker said that with Council's approval to move forward with this matter, there will be additional opportunities for public comment and Council input, and that the next step in the process will be the introduction of an ordinance.

In response to a question from Councilmember Pomeroy, Mr. Welker explained that under the proposed ordinance amendments, owners/developers who wish to develop property outside of Mesa's corporate limits and who cannot meet the phase-in deadlines, will not receive water or wastewater service from the City of Mesa and, therefore, must seek alternative services including drilling a well, hauling water and installing a septic system. Mr. Welker added that it is unlikely that commercial, industrial and residential subdivision developers will be able to develop without City water and wastewater services.

The following citizens spoke in opposition to this agenda item:

D. Neil Lannuier	3022 N. 80 <sup>th</sup> Street, Mesa
Brian Boles	4220 N. Tabor Street, Mesa
Larry Johnson	1702 N. Acacia, Mesa
Donald Millet	Unknown
Jared Huish	632 N. Hosier Circle, Mesa
Harvey Grill	2621 N. 71 <sup>st</sup> Place, Scottsdale
Steve Pruitt	8632 E. Apache Trail, Mesa
Russell Bowers	8831 E. Quill, Mesa
David K. Udall	30 W. First Street, Mesa
Lane Spencer	371 W. Cullumber, Gilbert

The foregoing citizens spoke in opposition to this agenda item for the following reasons:

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- County landowners purchased property with the understanding that water and/or wastewater services would be available from the City of Mesa with the execution of a development agreement;
- Opposed to payment of in-lieu fees for improvements that may never occur;
- Opposed to payment of in-lieu fees for improvements that existing homeowners/neighbors have not had to pay;
- Opposed to excessive impact fees relative to lots with extensive frontage (corner lots);
- Objected to delay of development in progress caused by this review/amendment process;
- Disagreed with premise that County residents using City services do not pay their fair share of impact fees;
- Opposed to being subject to regulations that are not harmonious with the Desert Uplands area;
- Believe it is unreasonable for the City to deny water and wastewater service for a parcel that is an island with no possibility of future annexation when there is City water and wastewater services to adjacent parcels;
- Developers of commercial, industrial and residential subdivisions are restricted with respect to alternative water and wastewater services and must rely on City services.

Councilmember Jaffa discussed Growing Smarter legislation and the fact that counties are exempt from certain growth rules and regulations that cities must abide by which places an unfair burden on cities. Councilmember Jaffa voiced the opinion that the disparity between county and city growth regulations results in increased county development versus city development. Councilmember Jaffa added that he supports State legislative action addressing this disparity.

In response to a question from Councilmember Jaffa, City Attorney Neal Beets advised that the City is responsible for maintaining its infrastructure, including utility lines up to the customer's meter, which contributes to the need for development fees. Mr. Beets added that increased water and wastewater lines increase demands on the City's water treatment plants and wastewater reclamation plants, representing significant capital costs and maintenance expense for the City.

Councilmember Jaffa commented on the connection of this issue to rapid growth of the Desert Uplands Area. Councilmember Jaffa stated that staff was instructed by Council to be reasonable in the application of rules associated with this issue, due to the number of County owners/developers placed in a dilemma as a result of the pending ordinance amendments. Councilmember Jaffa voiced support for staff's consideration of exceptions to the new rules and requirements, when drafting the ordinance.

Councilmember Walters said that her primary goal with respect to this issue is the encouragement of development consistent with Mesa's General Plan and it is not her goal to encourage City annexation.

In response to a question from Councilmember Walters, Mr. Welker advised that the proposed ordinance amendments are not intended to circumvent any contractual or other legal obligations the City has to provide services outside its corporate limits. Mr. Welker added that it is staff's intent that the City fulfill all existing legal obligations to provide services.

In response to a question from Councilmember Walters regarding the imposition of impact fees, Mr. Welker explained that it is not staff's intent to impose fees to County owners/developers for services that do not apply to the specific situation (imposing fees for water service or wastewater service where not available). Mr. Welker added that fire and police impact fees may be assessed in cases where an owner/developer is paying for similar services, due to the anticipated expansion of City police and fire facilities to these areas. Mr. Welker also clarified that although the City Attorney does not recommend that the City continue to execute agreements with County owners/developers with respect to City services, it is staff's intent that the City attempt to enforce all existing agreements.

Mayor Hawker voiced concerns regarding providing water to areas with unpaved roads and discussed impending dust control regulations that may require the City to provide dust control to areas with City water services and unpaved roads. Mayor Hawker voiced reluctant support for the proposed changes based on the fact that county owners/developers have historically relied on the available option of obtaining City water services. Mayor Hawker also voiced concerns regarding whether the proposed "phase-in" time limits will be adequate to accommodate developers in a reasonable manner. Mayor Hawker also stated support for modification of State annexation legislation to address the issue of property desiring annexation that is nearby but not contiguous to Mesa's corporate limits. Mayor Hawker indicated support of a revised ordinance for Council consideration and possible introduction that addresses the Council's stated concerns.

In response to a question from Councilmember Pomeroy, Mr. Welker explained that it is not staff's intent to require that large front footage impact fees be paid by owners/developers due to the circumstance of being adjacent to two or more county roads. Mr. Welker added that when annexation occurs, it is staff's recommendation that those fees will not be assessed for road alignments the City intends to abandon.

Councilmember Whalen expressed empathy for the numerous owners/developers who presented legitimate concerns before the Council and before the Utility Committee and added that it has been difficult to set policy in this matter due to the realistic and legitimate arguments presented.

It was moved by Councilmember Whalen, seconded by Councilmember Jaffa, that Council approve Recommendation 1 (A & B) and direct staff to prepare an ordinance regarding the terms and conditions for the sale of utilities in the County.

Mayor Hawker noted that a public hearing will take place before final adoption of the ordinance.

Councilmember Walters commented on the difficult, individual issues presented and discussed the dilemma of representing the interests of the citizens of Mesa while being sympathetic to circumstances of County residents. Councilmember Walters voiced support for moving forward with staff's recommendations with consideration given to providing exceptions for unique circumstances.

Councilmember Jaffa voiced support for moving forward with staff's recommendations and added that the City also needs to be responsive to the individual, unique circumstances of owners/developers who purchased County property based on the City's policy of providing water and wastewater services outside its corporate limits.

Councilmember Whalen clarified his motion by stating that he supports Alternatives 1A and 1B and the ordinance drafted by staff, and added that the difficult cases presented can be addressed by staff through policy, as determined by the Council.

Mayor Hawker stated that some exceptions that need to be addressed may require further amendment of the proposed Ordinance.

Councilmember Whalen reiterated his support and the Utility Committee's unanimous support of the Ordinance drafted by staff.

Councilmember Pomeroy stated that he has concerns regarding potential inequities and said that unless staff addresses the various inequities and exceptions in the revised ordinance, he will not vote in support of its adoption.

Upon tabulation of votes, it showed:

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

NAYS - None  
ABSTAIN - Davidson

Mayor Hawker declared the motion carried unanimously by those voting.

9. Consider the following subdivision plats:

- \*a. "MAP OF DEDICATION FOR PIERPONT COMMERCE CENTER" (Council District 6) The 4700-4800 blocks of East Baseline Road (north side) Pierpont Commerce Group L.L.C. and Ditta L.L.C., developer; Brooks, Hersey and Associates, engineer.
- \*b. "MCPOWER CORNER" (Council District 5) The 2000-2200 blocks of North Power Road (east side) 7 C-2 commercial lots (20.18 ac.) McKellips Main Street L.L.C., developer; O'Neill Engineering, Inc., engineer.

10. Items from citizens present.

Rick DeStephens, 4326 W. Mariposa Circle, Glendale, addressed the Council and voiced concerns and opinions with respect to the February 20, 2001 Study Session Agenda Item 2 regarding three gun related issues (Guns in City Buildings, Guns in City Parks and Gun Shows at the Mesa Convention Center). Mr. DeStephens voiced concern regarding the proposed prohibition of conspicuously carrying a firearm in City Parks and stated the opinion that this prohibition will embolden criminals. Mr. DeStephens also stated the opinions that carrying a firearm in City buildings that have no security personnel present, such as libraries, should not be prohibited, and that the "Brady Law" (requiring gun dealers to do background checks) is ineffective at reducing crime.

11. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:35 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 Regular Council Meeting of the City Council of Mesa, Arizona, held on the 20<sup>th</sup> day of February 2001. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2001

\_\_\_\_\_  
BARBARA JONES, CITY CLERK

pjt  
Attachment

**REVISED**  
**CITY COUNCIL REPORT**

**DATE:** February 14, 2001

**TO:** City Council

**THROUGH:** Mike Hutchinson  
Paul Wenbert

**FROM:** Jack Friedline

**SUBJECT:** UTILITY COMMITTEE RECOMMENDATIONS REGARDING  
TERMS & CONDITIONS FOR THE SALE OF UTILITIES  
CITYWIDE ISSUE

**PURPOSE**

This report presents a recommendation for amending the Terms & Conditions for the Sale of Utilities. It also contains recommendations for amending Title Nine, Chapters Six and Eight of the Mesa City Code.

The Utility Committee unanimously approved these recommendations on 01/09/01.

**BACKGROUND**

Via Ordinance, previous City Councils established terms and conditions for the sale of Mesa's water and wastewater services. Said terms and conditions attempt to ensure (among other things) that land, which develops under the jurisdiction of either Mesa or Maricopa County, shall not connect to Mesa's water and wastewater services without adhering to all City development regulations. In addition, City Code presently authorizes developers and property owners to request deferment of certain development requirements (i.e. street improvements) when "an individualized assessment reveals the existence of extraordinary conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the proposed development". The current method of deferring these requirements is via formal agreements.

Developments seeking Mesa's water and wastewater services and deferrals of development requirements range from individual custom residences to commercial projects and large subdivisions. Mesa's agreements identify utility service obligations, development criteria and authorized deferral of certain requirements. Many agreements contain substantial long-range economic responsibilities (i.e. financial participation in future street improvements). When a particular development is outside Mesa's corporate limits, these agreements typically specified the following obligations:

- A. Developer pays applicable utility fees and charges.
- B. Developer consents to future annexation by Mesa.
- C. Developer dedicates, or causes the dedication of, required public rights-of-ways and easements.
- D. Developer extends any public utility mainlines needed to serve its property.
- E. Developer accepts financial responsibility for future construction of public street(s) improvements.

During the last four years, the City has executed approximately 400 agreements for projects both within and outside Mesa's corporate limits.

**DISCUSSION**

Periodically, staff requests that the City Attorney's office evaluate the legal defensibility of Mesa's development related agreement documents. Staff recently received commentary and opinion from the City Attorney regarding the "utility service and deferral" type agreements as follows:

1. The original developer and/or owner cannot deny subsequent owners their legal right to protest future annexations and/or participation in a Special Improvement District ("SID") via an agreement.
2. Defensibility of the existing "utility service and deferral" agreement documents is rated at 20%.
3. Recommend that existing agreement documents be revised to rectify some exiting legal issues (i.e. removal of language pertaining to annexation & SID's).
4. Monitor all "utility service and deferral" agreements for property owner long-range compliance.
5. There is still a concern that the suggested and/or directed improvements to the existing document do not improve the City's ability to enforce the obligations of the agreement. Legal staff believes that the defensibility of a revised agreement only improves from 20% to 65%.

The City's ability to require developers and subsequent property owners to comply with many of the obligations contained in these "utility service and deferral" agreements is clearly in doubt. Of utmost concern are those developments that occur outside Mesa's corporate limits. **The greatest assurance the City can receive that its General Plan and development requirements will be met is to not provide water and wastewater services outside our corporate limits until a property annexes into the City.** Once annexed, state law and City Code (not disputable agreements) defines development obligations and Mesa's duties as a municipality. The Code also provides consequences for non-compliance. There are mechanisms in place (i.e. use permits, building permits, field inspections, etc.) that give the City direct control over a development to assure that the City's General Plan and development standards are indeed met.

Furthermore, it is becoming increasingly difficult to resolve differences that exist between the City of Mesa and Maricopa County Development regulations. Typically, County standards are less rigorous and comprehensive than those enforced by Mesa. In addition, the County may be willing to grant zoning for a property that is contrary to Mesa's General Plan. Potentially, this can result in a controversial and expensive problem for the City to solve upon future annexation (i.e. incompatible land uses, upgrading street improvements, drainage structures, etc). In addition, the County influence on these developments creates an uneven playing field between developments within Mesa's corporate limits and those outside said limits. Staff questions the fairness of this disparity in development requirements. **Should land outside Mesa's corporate limits enjoy and benefit from Mesa's water and wastewater services without having to comply with the same development requirements imposed upon sites within its corporate limits?**

Staff is also concerned that "deferral" type agreements executed for properties within the City limits are similarly indefensible. These agreements typically defer some aspect of Mesa's public street improvement requirements as contained in Title 9, Chapters 6 and 8 of the City Code. The developers and subsequent property owners are obligated to remit their prorata share of the unknown costs for future public street design and construction. Said costs are assessed when the obligee's public street improvements are installed by an adjacent development, by a City Capital Improvement Project, or by a City Special Improvement District at some future date. Because the exact amount and future date for assessing these costs is not reasonably definable in these agreements, it is likely that the City will have difficulty collecting these costs from subsequent property owners that may not have been a party to the original agreement. **Staff recommends the elimination of the "deferral" option thus removing a future unknown burden from the owner as well as ensuring that the City has received a reasonable payment for the future improvements.**

## RECOMMENDATIONS

- A. Amend the terms & Conditions for the Sale of Utilities (see Exhibit A) such that any new development of property occurring outside Mesa's corporate limits shall be prohibited from obtaining City water and wastewater services until said property is annexed into the City of Mesa. ***This alternative gives the City maximum legal control over an individual development to ensure compliance with Mesa's General Plan and all its development regulations.***

To enable a reasonable transition to this new policy, staff recommends a "phase-in" period as follows:

- Owners and/or developers of **individual custom residences** that have obtained a valid Maricopa County Building Permit prior to July 1, 2001, and received authorization to occupy said individual custom residence by July 1, 2002, will be authorized to receive City water and wastewater services outside Mesa's corporate limits.

As a condition of receiving City water and wastewater services, said owners and/or developers shall be required to remit to the City of Mesa a payment in lieu of applicable Development Impact Fees in conjunction with their payment for water meter(s).

In addition, said owners and/or developers shall be required to make payment to the City in lieu of causing the design, installation and/or construction of certain required public improvements when a deferral of said improvements is approved by the Development Services Manager.

***This helps the City ensure that properties authorized to receive City water and wastewater service(s) outside Mesa's corporate limits pay for the demand they create on Mesa's facilities/services and for the authorized deferral of public improvements.***

- Owners and/or developers of **commercial/industrial developments and residential subdivisions** that have received Maricopa County Technical Advisory Committee ("TAC") approval prior to July 1, 2001; and obtained full development approval and construction permits from Mesa and Maricopa County on or before December 31, 2001; and obtained full acceptance of all development improvements from Mesa and Maricopa County on or before December 31, 2002; will be authorized to receive City water and wastewater services outside Mesa's corporate limits.

As a condition of receiving City water and wastewater services, said owners and/or developers shall be required to remit to the City of Mesa a payment in lieu of applicable Development Impact Fees in conjunction with their payment for water meter(s).

In addition, said owners and/or developers shall be required to make payment to the City in lieu of causing the design, installation and/or construction of certain required public improvements when a deferral of said improvements is approved by the Development Services Manager.

***This helps the City ensure that properties authorized to receive City water and wastewater service(s) outside Mesa's corporate limits pay for the demand they create on Mesa's facilities/services and for the authorized deferral of public improvements.***

- B.** Amend Title Nine, Chapters Six and Eight of the Mesa City Code (see Exhibits B & C) such that any developer of residential and/or commercial property occurring within Mesa's corporate limits shall make payment to the City in lieu of causing the design, installation and/or construction of required public improvements when a deferral of said improvements is approved by the Development Services Manager. ***This alternative will help the City ensure that properties authorized to receive City utility service(s) within Mesa's corporate limits shall pay for the deferral of public improvements as a condition of permit issuance and/or utility connection. Thus avoiding the legal problems associated with attempting to collect such monies at some future date following initial development.***

#### **Additional Information**

- **WHAT ARE OTHER MUNICIPALITIES DOING?** *A survey was conducted by staff and a matrix developed (see Exhibit D) that compares the official position of other municipalities and Tucson.*
- **CAN MESA LEGALLY REFUSE UTILITY SERVICE TO PROPERTIES LOCATED OUTSIDE ITS CORPORATE LIMITS?** *The City Attorney has affirmed that Mesa has no legal obligation to water and/or wastewater services to new developments or land uses outside its corporate limits (see Exhibit E).*
- **HOW DO THESE RECOMMENDATIONS AFFECT EXISTING CITY UTILITY CUSTOMERS?** *These recommendations are not intended to apply to existing City utility customers within or outside Mesa's corporate limits, as long as their current land use remains unchanged.*
- **HOW DO THESE RECOMMENDATIONS AFFECT EXISTING CITY UTILITY SERVICE OBLIGATIONS OUTSIDE ITS CORPORATE LIMITS?** *These recommendations notwithstanding, the City intends to honor all legally binding contractual obligations to provide water and/or wastewater services outside its corporate limits (i.e. old utility companies previously purchased by Mesa, etc).*
- **COULD LAND CONTINUE TO DEVELOP WITHOUT CITY WATER AND WASTEWATER SERVICES?** *It is unlikely that commercial, industrial or residential subdivision developments would be viable without the City's water and wastewater services. However, unsubdivided single residences could potentially develop by hauling water and making use of septic systems. Drilling wells for water is typically cost prohibitive.*
- **WILL THESE RECOMMENDATIONS INCREASE REQUESTS FOR ANNEXATIONS?** *Staff anticipates a rise in annexation requests for properties contiguous to the City's corporate limits. However, due to State law prohibiting "strip" annexations, many properties will not be eligible for annexation because they are not contiguous to City boundaries.*
- **HOW WILL LANDOWNERS AND DEVELOPERS BE NOTIFIED OF THIS CHANGE?** *Staff proposes to notify Maricopa County's Planning & Development Department, the Homebuilders Association of Central Arizona, the Arizona Multihousing Association, the Valley Partnership and the Arizona Association of Realtors.*

#### **FISCAL IMPACT**

**RECOMMENDATION A** represents a negligible decrease in potential water and wastewater revenues from future developments that may occur outside Mesa's corporate limits. In addition, this recommendation represents a potential reduction in the City's future capital costs for expansion of key public facilities (one or more elements of the City's water and wastewater systems, parks, cultural facilities, libraries, fire facilities, and police facilities) to accommodate the demand created by new development outside Mesa's corporate limits. An accurate estimate of the potential revenue loss is not achievable. However, the Utilities Manager surmises that any potential revenue loss would be insignificant when compared to the City's future capital improvement costs for the installation of deferred public improvements (i.e. upgrading street improvements, drainage structures, etc). **RECOMMENDATION B** represents a potential reduction in the City's future capital improvement costs for the installation of public improvements previously deferred via unenforceable development agreements (i.e. upgrading street improvements, drainage structures, etc).

**CONCURRENCE**

The Development Services and Utilities Departments are directly affected by these recommendations. The appropriate department managers and division directors have reviewed this report and support staff's recommendation.

Staff Originator - Jeff D. Welker  
DEVELOPMENT SERVICES ADMINISTRATOR

Jack Friedline  
DEVELOPMENT SERVICES MANAGER

Paul Wenbert  
Deputy City Manager

Mike Hutchinson  
CITY MANAGER

## EXHIBIT A

### ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING THE TERMS AND CONDITIONS FOR THE SALE OF UTILITIES, RELATING TO THE PROHIBITION OF CITY WATER AND WASTEWATER SERVICES FOR PROPERTIES OUTSIDE MESA'S CORPORATE LIMITS; AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1: THE TERMS AND CONDITIONS FOR THE SALE OF UTILITIES JS AMENDED BY REVISING SECTION 3 TO READ:

#### TERMS AND CONDITIONS FOR THE SALE OF UTILITIES

The following terms and conditions shall be considered a part of all of the City's rate schedule for the sale of utilities, except here specifically changed by written agreement.

1. Service Rendered Under Special Agreement:

Utility services will be supplied in accordance with these terms and conditions and such applicable rates as may from time to time be authorized by the City Council. However, in the case of Customers whose service requirements are of unusual size or characteristics, special rate agreements may be required and authorized by the City Council.

2. Continuity of Service:

The City will use reasonable diligence to supply steady and continuous service, but does not guarantee the service against fluctuations or interruptions. The City will not be liable to the Customer for any damages occasioned by fluctuations or interruptions, or by failure to begin supplying service from causes beyond the City's reasonable control. The City may, without incurring any liability therefore, suspend service for periods reasonably necessary to accomplish repairs to or changes in any of the City's facilities.

3. Service and Main Connections and Charges:

Each parcel of land will be served from a **PUBLIC** main line and separate **SERVICE** connection directly adjacent to the property receiving service. Each such parcel shall have frontage on a dedicated public or private street meeting the requirements of the ~~Agency having jurisdiction~~ **CITY OF MESA**. The minimum width of such frontage shall be the minimum required by the applicable zoning classification. **ALL PARCELS OF LAND AUTHORIZED TO RECEIVE SERVICE SHALL DEVELOP IN COMPLIANCE WILL ALL CURRENT AND APPLICABLE REGULATIONS, STANDARDS AND REQUIREMENTS ESTABLISHED BY THE CITY OF MESA**. No group of structures may be served by one (1)

## EXHIBIT A

meter unless situated on the same parcel, under one (1) ownership, **OR** unless approved by the City. When the City requires a **PUBLIC** main line extension to make the utility adjacent to a parcel requesting connection, the owner or developer will extend the **PUBLIC** main line(S) across ~~the~~ **ALL APPROPRIATE** frontageS of the parcel, **OR** unless otherwise approved. No sale of transfer of service from one property ownership to another shall be permitted. In the event that any parcel with utility service is subdivided and any portion of that land is subsequently sold to another party, a **PUBLIC** main extension and/or meter relocation will be-required as necessary to make service directly adjacent to each parcel of land.

All meters will be supplied by the City of Mesa. Charges for installing new services and/or meters will be in accordance with the current schedule of Charges for Utility Related Services.

Buy-ins for the right to use certain utility main lines will be in accordance with the private line agreement on file with the City or as determined by the City for a specific utility main.

All monies must normally be paid at the time service is requested.

**ALL PROPERTIES LOCATED OUTSIDE MESA'S CORPORATE LIMITS SHALL BE PROHIBITED FROM RECEIVING CITY WATER AND WASTEWATER SERVICES UNTIL SUCH TIME THAT SAID PROPERTY IS FORMALLY ANNEXED BY MESA AND COMPLIES WITH ALL OTHER TERMS AND CONDITIONS CONTAINED IN THIS ORDINANCE.**

~~As a prerequisite to receiving potable water and/or sanitary sewer utility service, any single parcel/unsubdivided N.S.F.R. (new single family residence) that *does* have existing and adequate public utility mainline(s) directly adjacent to its *entire* frontage shall be required to execute a formal Development Agreement identifying the terms and conditions of receiving utility service. As a prerequisite to receiving potable water and/or sanitary sewer utility service, any single parcel/unsubdivided N.S.F.R. (new single family residence) that *does not* have an existing and adequate public mainline(s) directly adjacent to its *entire* frontage shall be required to execute a formal Development Agreement identifying the terms and conditions of receiving said utility service, extend the appropriately sized public utility mainline(s) across its *entire* frontage in a dedicated public or private street, and *may* be required to receive Utility Committee approval.~~

#### 4. Access To Customer Premises:

Authorized representatives of the City are to have access at all reasonable hours to the Customer's premises for the purpose of meter reading or operating and maintaining the City's facilities up to the point of delivery.

The Customer, at his expense, will give permission or an easement, when necessary, to the City for the purpose of constructing and maintaining the City's service facilities required on the Customer's premises up to the point of delivery.

5. Authority to Connect or Disconnect Service:

The City will not install and maintain any lines and equipment on the Customer's side of the point of delivery. For the mutual protection of the Customer and the City, only authorized employees of the City are permitted to make or turn on the connection between the City's service and the Customer's service. Where new services are to be connected, a satisfactory final inspection by the City Building ~~Inspection Office~~ **SAFETY DIVISION, OR OTHER AUTHORIZED JURISDICTION**, will normally be required prior to turning on the gas or electrical service.

6. Termination of Service:

The City may disconnect service to any customer when necessary for the Utility to comply with an order of any Governmental Agency having such jurisdiction.

7. Metering Provisions:

The Customer will provide, in accordance with the City's current service standards and free of expense to the City, a sufficient and proper space in an approved location for the installation of the meter. The readings of the City's meter will be conclusive as to the amount of consumption used by the Customer, unless upon test, the City's meter is found to be in error by more than 3%. If a meter is found in error by more than 3%, the City will compute the consumption based on the error percentage and/or applicable history. If the Customer requests an accuracy test and the meter proves to be not more than 3% in error, a service charge to cover the vehicle expense, driving time and labor expense for meter exchange and testing will be made as follows:

Water:	3/4"	\$35.00	Gas:	200 and 300 Class	\$25.00
	1 " & 1 1/2	\$40.00		400 Class	\$30.00
	2"	\$60.00		800 Class or larger	Actual Cost
	3" or larger	Actual Cost			
Electric:	All meters	\$15.00			

8. Cooling Tower/Subtractive Metering:

For a commercial customer with cooling towers, the City may allow the Customer to have influent and effluent meters installed to properly meter the amount of water discharged to the wastewater system. The Customer shall be responsible for all costs associated with the purchase and installation of City approved meters and must provide City approved ground level meter readout devices in an approved location.

9. Customer Account Deposit:

Residential homeowners will not be required to make a deposit as security for payment of service bills unless the customer has established a history of delinquency with the City of Mesa or has an unpaid City of Mesa utility closing bill. All homeowners must provide the City with their escrow number and name of the title company or the docket and page number of the deed to their property. All other Customers may be required to make a deposit. For dwelling units with individual service meters, the deposits are as follows:

Electric with evaporative cooling only                      \$ 85.00

The deposit amount also includes security for wastewater, solid waste, and irrigation charges, when applicable. Except for commercial solid waste customers, all new commercial customers may be required to make a deposit or establish a trust fund with an approved institution in an amount equal to the estimated total of utility bills covering a two and one-half month high billing period. Commercial solid waste customers will be required to make a deposit equal to the cost of one month of service. Commercial and/or multi-unit customers may have their deposits waived with pre-approved low risk credit rating verification from DUN AND BRADSTREET or EQUIFAX or similar credit rating service deemed acceptable by City of Mesa.

Residential Customers may, upon request, have their account's deposit refunded after a period of one year, providing they have no more than one delinquent utility bill during the period. Commercial customers may have their account's deposit released after a period of three years, providing they have no more than one delinquent utility payment per year. Subsequently, if an account shows a history of delinquency, either a new deposit or an additional deposit amount may be required. The City has the right to suspend utility services to enforce payment of utility bills, collection charges, service charges, meter test charges, or deposit amounts.

10. Utility Service, Collection, and/or Late Fee Charges:

A utility administrative service charge of \$17.00 will be assessed to establish a utility service account. If it is necessary to establish gas, water, or electric service after 5:00 P.M., Monday through Friday, or weekend and holiday service, \$35.00 will be assessed.

A late fee equal to 1.5 percent of the unpaid balance will be assessed to all accounts with an amount owing in arrears at the time of billing. There is a minimum late fee of \$0.25; calculated amounts under \$0.25 will not be billed a late fee.

If a non-payment disconnection notice must subsequently be produced and mailed, an additional \$3.00 charge will be billed to defray the cost of producing and mailing this notice. In the event that a utility field representative must be dispatched to a service address to either collect a delinquent bill and/or disconnect service, or re-establish service which has been disconnected, a \$15.00 charge will be assessed to defray the cost of each field trip. Service after 5:00 P.M., Monday through Friday, plus weekend and holiday service, will be assessed a collection charge of \$35.00.

Should it become necessary to remove a meter or regulator, or to disconnect service wires to enforce payment, additional service charges will be made, including charges for damages to utility meters or meter locking devices according to the City's current schedule of Fees and Charges.

City and State Privilege tax will be assessed on all charges as applicable.

11. Change To Optional Rate Schedule:

Where optional rate schedules are available to a Customer, only one change will be allowed in any 12-month period.

12. Payment of Utility Bills:

Utility bills shall be rendered monthly, and are due and payable upon presentation and are past due 30 calendar days after reading date. The City reserves the right to suspend or terminate any or all of the Customer's services for non-payment of bills past due or for utility payment checks returned by a financial institution unpaid. Payment is effective upon receipt in hand of the full balance due at a City of Mesa Utility Payment Center

property, lot or tract of land to which service was rendered.

An unpaid utility account balance may be transferred to another City of Mesa utility account with the same customer.

13. Unauthorized Use of Utilities:

Unauthorized use of utilities shall mean: The taking of a utility service by, (1) by turning the service on without authority, or (2) by bypassing the meter, connecting directly into the service or a hydrant without a meter, or (3) willfully modifying the meter or service apparatus so as to cause loss or reduction of registration.

If unauthorized use of a utility occurs, the City shall charge:

Single family residential customers for an estimated usage according to the applicable rate plus a service charge of \$1000.00 for each occurrence.

Commercial, multi-family and construction customers/accounts for an estimated usage according to applicable rates plus a service charge of \$1000.00 for each occurrence. Subsequent fees paid for the appropriate required meters may be subtracted from the \$1000.00 service charge. Upon request, a protest of the assessed service charge may be scheduled with a designated City of Mesa Hearing Officer.

14. High Pressure Gas Service:

Gas is normally supplied by the City at low pressure from a main or service regulator normally operating at a pressure equivalent to six inches of water pressure. Where, in the City's opinion, gas is available at high pressure, it will be supplied subject to the following provisions:

A. Gas will be delivered at a higher than normal pressure to non-residential Customers only. Such higher delivery pressure shall be agreed upon by the City and the Customer, and supplied within the range of accuracy provided by a standard service regulator.

B. For billing purposes, the volume of gas registered in cubic feet by the meter at a pressure in excess of six inches of water pressure shall be corrected to a basis of four ounces (0.25 pounds) per square inch above an assumed atmospheric pressure of 14.12 pounds per square inch, or 14.37 pounds per square inch absolute pressure; the City reserves the right to correct gas deliveries to a temperature standard of 600° F., and to apply deviation factors for super-compressibility.

15. Unauthorized Use of Gas:

Unauthorized use of gas shall mean:

A. The taking of gas by any Customer by bypassing the meter or willfully modifying the gas meter so as to cause loss or reduction of registration.

B. For an Interruptible Gas Service Customer, the taking of gas on any day in excess of the maximum daily contract quantity specified in the gas service contract between the City and the Customer.

C. For any Customer subjected to curtailment during a curtailment period, the taking of gas in excess of a daily variable entitlement specified by the City and based upon the Customer's priority class (see the City of Mesa's Curtailment Ordinance) and the curtailment imposed upon the City by its general gas supplier, El Paso Natural Gas Company.

If unauthorized use of gas occurs, the City shall charge the Customer, and the Customer shall pay in addition to the regular charges of the rate, \$1.00 for each therm of unauthorized use of gas. Payment of the additional charge for unauthorized use of gas shall not, under any circumstances, give the Customer the right to use gas in excess of the maximum quantity nor shall such payment exclude the City's right to discontinue service to the Customer for failure to stay within the authorized quantity.

Except as specified above, all other provisions of the rate shall apply.

#### 16. Landlord Agreements

A landlord agreement is defined herein as an agreement between the City of Mesa and a qualified landlord which allows for the automatic continuation of service in the landlord's name when a tenant requests disconnection of service. A qualified landlord is a rental property owner that has established a satisfactory credit status of no more than one delinquent utility payment per year or has a utility deposit on-hand with the City of Mesa Utility Customer Accounts Section.

- A. The landlord agreement shall not apply when a tenant is disconnected for nonpayment of utilities.
- B. Disputes regarding effective dates of service shall be resolved between the tenant and the landlord.
- C. The utility administrative service charge may be waived for landlord agreement customers in which the City of Mesa is the retail supplier of the account's electric, gas or water service, whichever service is applicable to the account being activated, when that service under the landlord agreement automatically reverts to the landlord's account, but shall apply when a new tenant requests service at that location.
- D. The landlord agreement may be terminated by the landlord or the City of Mesa at any time with 30 days' written notice.

#### 17. Violation- Penalty:

Among other penalties that may apply, any person, firm, or corporation that violates any provision of this Ordinance shall be guilty of a misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed \$2,500, or by imprisonment for a period not to exceed six (6) months, or by such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed \$20,000. Each instance of violation continued shall be a separate offense, punishable as described above.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING TITLE 9, CHAPTER 6, SECTION 7 OF THE MESA CITY CODE, RELATING TO DEVELOPER PAYMENTS IN LIEU OF CAUSING THE INSTALLATION OR CONSTRUCTION OF CERTAIN REQUIRED PUBLIC IMPROVEMENTS; AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1: SECTION 7, CHAPTER 6, TITLE 9, MESA CITY CODE, IS AMENDED BY ADDING A NEW SUBSECTION B(1) TO READ:

**9-6-7B(1):** WHEN THE DEFERRAL OF CERTAIN PUBLIC IMPROVEMENT REQUIREMENTS IS AUTHORIZED BY THE DEVELOPMENT SERVICES MANAGER FOR A SPECIFIC DEVELOPMENT PROJECT, THE OWNER AND/OR DEVELOPER SHALL REMIT TO THE CITY OF MESA A PAYMENT IN LIEU OF CAUSING THE ACTUAL DESIGN, INSTALLATION AND/OR CONSTRUCTION OF SAID REQUIRED PUBLIC IMPROVEMENTS. THIS IN LIEU PAYMENT SHALL BE BASED UPON A COST ESTIMATE PREPARED BY A PROFESSIONALLY REGISTERED CIVIL ENGINEER AND APPROVED BY THE CITY OF MESA. THE IN LIEU PAYMENT COST ESTIMATE SHALL INCLUDE ALL DESIGN COSTS, LABOR AND MATERIALS COSTS, PLUS 20% FOR FUTURE CONTINGENCY COSTS. ALL IN LIEU PAYMENTS SHALL BE REMITTED TO THE CITY OF MESA AS A CONDITION OF AND IN CONJUNCTION WITH THE ISSUANCE OF ANY ONSITE CONSTRUCTION PERMITS AND/OR OFFSITE RIGHTS-OF-WAY PERMITS ASSOCIATED WITH THE DEVELOPMENT PROJECT.

SECTION 2: DELAYED EFFECTIVE DATE:

THIS ORDINANCE SHALL BE EFFECTIVE FROM AND AFTER \_\_\_\_\_.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING TITLE 9, CHAPTER 8, SECTION 4 OF THE MESA CITY CODE, RELATING TO DEVELOPER PAYMENTS IN LIEU OF CAUSING THE INSTALLATION OR CONSTRUCTION OF CERTAIN REQUIRED PUBLIC IMPROVEMENTS; AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1: SECTION 4, CHAPTER 8, TITLE 9, MESA CITY CODE, IS AMENDED BY ADDING A NEW SUBSECTION B(1) TO READ:

**9-8-4B(1):** WHEN THE DEFERRAL OF CERTAIN STREET AND UTILITY IMPROVEMENT REQUIREMENTS IS AUTHORIZED BY THE DEVELOPMENT SERVICES MANAGER FOR A SPECIFIC DEVELOPMENT PROJECT, THE OWNER AND/OR DEVELOPER SHALL REMIT TO THE CITY OF MESA A PAYMENT IN LIEU OF CAUSING THE ACTUAL DESIGN, INSTALLATION AND/OR CONSTRUCTION OF SAID REQUIRED PUBLIC IMPROVEMENTS. THIS IN LIEU PAYMENT SHALL BE BASED UPON A COST ESTIMATE PREPARED BY A PROFESSIONALLY REGISTERED CIVIL ENGINEER AND APPROVED BY THE CITY OF MESA. THE IN LIEU PAYMENT COST ESTIMATE SHALL INCLUDE ALL DESIGN COSTS, LABOR AND MATERIALS COSTS, PLUS 20% FOR FUTURE CONTINGENCY COSTS. ALL IN LIEU PAYMENTS SHALL BE REMITTED TO THE CITY OF MESA AS A CONDITION OF AND IN CONJUNCTION WITH THE ISSUANCE OF ANY ONSITE CONSTRUCTION PERMITS AND/OR OFFSITE RIGHTS-OF-WAY PERMITS ASSOCIATED WITH THE DEVELOPMENT PROJECT.

SECTION 2: DELAYED EFFECTIVE DATE:

THIS ORDINANCE SHALL BE EFFECTIVE FROM AND AFTER

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, THE            DAY OF            , 2000.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

**EXHIBIT D**

**VALLEY-WIDE COMPARISON**

<b>MUNICIPALITY</b>	<b>OWN/OPERATE A PUBLIC WATER OR WASTEWATER SYSTEM?</b>	<b>SERVE WATER OR WASTEWATER OUTSIDE CORPORATE LIMITS</b>	<b>CHALLENGES WITH CURRENT POLICY</b>
<u>MESA</u>	Yes	Yes	Extremely difficult to enforce General Plan & Development Regulations. Conflicts between City & County Regulations.
<u>PHOENIX</u>	Yes: Both Water & Wastewater	Yes, if developer either agrees to future annexation or annexes with development of property.	Experiencing similar challenges as Mesa.
<u>SCOTTSDALE</u>	Yes: Both Water & Wastewater	Yes	Non-conformance with City development regulations. Construction commences before utility service is requested.
<u>TEMPE</u>	Yes: Both Water & Wastewater	Only serve customers they acquired with purchase of existing utility system(s). No new customers.	Experiencing similar challenges as Mesa.
<u>CHANDLER</u>	Yes: Both Water & Wastewater	No to subdivisions and commercial retail developments. Yes to single lot custom residential and industrial.	Experiencing similar challenges as Mesa with respect to the single lot custom residential & industrial.
<u>GILBERT</u>	Yes: Water Only	Yes, however, requires a "Out of Town Water Service Agreement" with development related stipulations.	Experiencing similar challenges as Mesa.
<u>GLENDALE</u>	Yes: Water & Wastewater	N/A – City does not have contiguous boundaries with Maricopa County.	N/A
<u>GOODYEAR</u>	Yes: Both Water & Wastewater	No	None Stated.

## **Memorandum**

To: Neal Beets  
From: Steve Burg  
Date: September 14, 1998  
Re: City Obligation to Provide Utility Services Outside the City

You asked me to research the current status of the law concerning a city's obligation to provide utility service outside of the city boundaries. My conclusion is that in Arizona no legal obligation exists to provide such service.

1. The Arizona Legislature has adopted no law that requires utility service outside city boundaries. In one specific instance, the Legislature has mandated such service-when a municipality acquires a private utility, it must continue to provide service to the utility's customers, whether inside or outside city boundaries (unless, in an area outside the boundaries, the city chooses to sell a part of its operation "to another utility which operates under regulations prescribed by law"). §9-516(C). In addition to this one specific mandate of service, the Legislature has adopted a number of restrictions on municipal utility service:

- A municipality may engage in any business that it grants franchises for "within or without its corporate limits," A.R.S. § 9-511(A), and may exercise the right of eminent domain when doing so, § 9-511(C).
- If a municipality provides water to another municipality, the water rates it charges to the other municipality must satisfy one of four listed restrictions. §9-511(A)
- If "adequate public utility service under authority of law" is being provided either inside or outside a municipality's boundaries, the municipality may not provide a competing service in that area unless it purchases the assets that are providing the service, § 9-516(A), and if the service is being provided by a public service corporation, the municipality may acquire the facilities using eminent domain, § 9-516(B).
- When a city or town has purchased the property or plant of a public utility serving in an area within or without the boundaries of the city or town, the Corporation Commission may not grant a new certificate of convenience and necessity or franchise to provide the same kind of public utility service within the area previously authorized, unless the city or town refuses to provide utility service to a part of the area. § 9-516(D)
- A municipality has the specific power and authority to purchase and operate a sewer system outside its geographical limits. § 9-522

Office of the City Attorney - P.O. Box 1466, Mesa, AZ 85211-1466  
Phone: 644-4333 - Fax: 644-2498 - Email: Steve\_burg2ci.mesa.az.us

## EXHIBIT E

2. As a companion to my statement in #1, the Arizona Legislature likewise has adopted no law that specifically states that municipalities generally are not required to provide utility service outside of their corporate boundaries. Due to this lack of specificity, we must look to Arizona's courts to determine if the courts have imposed such a requirement.

3. According to my research, no appellate court in Arizona has addressed the precise factual situation of a municipality that chooses not to provide utility service to an interested person outside of the municipality's boundaries. However, in a number of cases dating back to 1939, Arizona's state and federal courts have made statements interpreting the law as not requiring utility service outside city boundaries (the judges do not define "boundaries" but usually refer to a city's "corporate boundaries," no court has discussed the differences between corporate boundaries and municipal planning areas). The central issue in each of these cases was a dispute over the rates charged to the nonresidents:

- Jung v. City of Phoenix, 160 Ariz. 38 (1989):

The Arizona Supreme Court noted that "[t]he city, in providing water service to nonresidents, is acting in its proprietary capacity and absent a statute, has no duty to provide water to the nonresidents." In response to a suggestion that a city charging different water rates to customers outside the city is a denial of equal protection and a violation of federal civil rights law, the Court concluded that the nonresidents had no constitutional right to receive water at a particular rate. The Court observed that under State law the obligation of a city to continue utility service to nonresidents as required by A.R.S. § 9-516(C) necessarily implies that the charges for such services would be at "reasonable rates."

- Copper Country Mobile Home Park v. City of Globe, 131 Ariz. 329 (CtApp 1981):

Observing that establishing rates to be charged for sewage disposal for customers within the corporate limits of a city is a governmental function and the operation and maintenance of a sewer system by a municipality is an exception to the rule that in the operation of a public utility the city acts in a proprietary capacity, the Arizona Court of Appeals considered that the contract in question called for sewer service to nonresidents of a city. The court stated that the city was "under no duty, except contractual, to furnish any service" to a mobile home park outside the city. Then the court concluded that the "crux of the matter" was the contract that made the city's operation of the sewer system proprietary as opposed to governmental and thus required the city to provide the service.

- City of Phoenix v. Kasun, 54 Ariz. 470 (1939):

The Arizona Supreme Court stated: "We have previously laid down certain rules governing municipal corporations operating public utilities, both within and without their corporate limits. They may be stated as follows: (a) a municipal corporation has a right to furnish water through its municipal water plant to consumers without, as well as within, its corporate limits; (b) while furnishing water in this manner the state corporation commission has no jurisdiction to regulate its actions towards consumers, whether inside or outside of such limits; (c) the legislature is the only body which has the right to regulate the rates charged by a municipal corporation operating a public utility, and it has plenary power in that respect except as limited by the Constitution; (d) a municipality may not compel consumers outside of its corporate limits to purchase water from it, nor can it be compelled to furnish such water to non-residents; (e) a municipality can only dispose of its surplus water outside of its corporate limits subject to the prior right of its inhabitants in case of shortage."

Then the Court concluded that in the case before it "the city was under no obligation, as a matter of law, to furnish any service" to the nonresidents, the relationship between them was purely contractual in its nature, and the reasonableness or unreasonableness of the rates fixed by the contract were not subject to review by the Court. The Court observed that "the remedy of the outside consumer, in the case like this, is an appeal to the political authority, such as the legislature or the voters of the state, or a refusal to accept the service on the terms offered by the city."

This decision by the Arizona Supreme Court not only has been followed by Arizona courts in the years since 1939, but two federal courts having jurisdiction over Arizona have abided by the decision's interpretation of Arizona law:

- Kingman Water Co. v. United States, 253 F.2d 588 (9th Cir. 1958):

The U.S. Court of Appeals noted: "[Kasun] involved a municipality which operated a water system for its own inhabitants and in addition furnished water on contract to certain users outside the city limits, one of these outsiders being Kasun. The city proposed to increase the rates for these services, and Kasun sought an injunction enjoining such increase on the ground that the proposed rates were unreasonable. The Arizona court held that the municipality had no legal duty to supply one in Kasun's situation."

- Kollar & Kreigh v. City of Tucson, 319 F.Supp. 482 (D.Ariz. 1970):

The U.S. District Court observed: "Under Arizona law the municipality has no obligation to provide nonresidents with water service nor can the nonresident compel such service. But the municipality must provide equal and adequate service for its residents. If there were a water shortage, the residents have a priority over the nonresident contract purchasers."

In summary, the courts have enforced various provisions of State law applicable to municipal utility service outside corporate boundaries as well as contracts entered into between municipalities and nonresident utility customers. The courts will not impose a mandatory service obligation upon municipalities outside corporate boundaries, except for the limited circumstance addressed by A.R.S. § 9-516 (C). Also, the courts will not review the reasonableness of utility rates when they arise from a voluntary contractual relationship, but they will examine whether a rate is reasonable if the utility service is mandated by law. In this analysis the courts use corporate boundaries and have not addressed planning areas.

Please let me know if you have any questions or further areas of research.