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OFFICE OF THE CITY CLERK

COUNCIL MINUTES

December 1, 2011

The City Council of the City of Mesa met in a Special Council Meeting in the lower level meeting room of the Council Chambers, 57 East 1st Street, on December 1, 2011 at 8:27 a.m.

COUNCIL PRESENT	COUNCIL ABSENT	OFFICERS PRESENT
Scott Smith	None	Christopher Brady
Alex Finter		Debbie Spinner
Christopher Glover		Linda Crocker
Dina Higgins		
Dennis Kavanaugh		
Dave Richins		
Scott Somers		

1-a. Authorizing the City Attorney to prepare and file an appeal in Coleman v. City of Mesa, 1 CA-CV 10-0808.

City Attorney Debbie Spinner introduced Scott Holcomb, an attorney with the law firm of Mariscal, Weeks, the City's outside counsel on the above-referenced case. She stated that Mr. Holcomb was prepared to make a recommendation to the Council.

Mr. Holcomb came forward and reported that as the Council was aware, the Colemans filed a Complaint against the City of Mesa dealing with land use issues. He explained that the Complaint was dismissed by the Maricopa County Superior Court and stated that the Colemans appealed to the Arizona Court of Appeals. Mr. Holcomb noted that the Court of Appeals issued a decision reversing and remanding the case back to the Superior Court.

Mr. Holcomb stated the opinion that the decision of the Court of Appeals was overly broad and inconsistent not only with Arizona law, but also the law throughout the United States dealing with those land use issues. He recommended, therefore, that the City of Mesa file a Petition for Review with the Arizona Supreme Court to seek a review of the decision.

It was moved by Vice Mayor Somers, seconded by Councilwoman Higgins, that the City Attorney be authorized to file a Petition for Review with the Arizona Supreme Court in Coleman v. City of Mesa, 1 CA-CV 10-0808.

Mayor Smith remarked that because he was the only Councilmember that voted against denying Mr. Coleman's request for a Council Use Permit, he has received numerous inquiries concerning his position with respect to the pending motion. He commented that he carefully

considered this matter not only as a member of the Council, but also as a lawyer. He stated that although he had "issues" with the manner in which the Coleman's request was handled, this matter is no longer about the Colemans. Mayor Smith added that the decision of the Court of Appeals, in his estimation, has Statewide ramifications that extend far beyond the matter with the Colemans and the City of Mesa.

Mayor Smith also pointed out that the Court of Appeals "threw out 30 years of precedence, chose a very convenient case that came out of the Ninth Circuit Court of Appeals, which was a minority decision, that the decision went against every other case sitting out there, and it applied to a fact situation that isn't even close to the City of Mesa's."

Mayor Smith further cited the first sentence in the decision of the Appeals Court as follows: "This appeal presents our first opportunity to consider the First Amendment rights of tattoo artists to ply their trade in Arizona." He stated that such language could be perceived as "almost a giddiness" that the Court would address such an issue and remarked that "it started the Appeals Court down a road that took them to places they should not have been going and they had no right to go, but they went." Mayor Smith added that for the above-stated reasons, he would support the motion.

Mayor Smith called for the vote.

Carried unanimously.

2. Items from citizens present.

There were no items from citizens present.

3. Adjournment.

Without objection, the Special Council Meeting adjourned at 8:31 a.m.

SCOTT SMITH, MAYOR

ATTEST:

LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Council Meeting of the City Council of Mesa, Arizona held on the 1st day of December, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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