



COUNCIL MINUTES

December 6, 2010

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on December 6, 2010 at 5:45 p.m.

COUNCIL PRESENT

Scott Smith
Alex Finter
Dina Higgins
Kyle Jones
Dennis Kavanaugh
Dave Richins
Scott Somers

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Invocation by Councilmember Finter.

Pledge of Allegiance was led by Vice Mayor Jones.

Mayor's Welcome.

Mayor Smith welcomed everyone to the meeting. A videotaped presentation was aired that outlined meeting procedures and provided attendees with instructions relative to addressing the Council.

Awards, Recognitions and Announcements: None

1. Take action on all consent agenda items.

All items listed with an asterisk (*) will be considered as a group by the City Council and will be enacted with one motion. There will be no separate discussion of these items unless a Councilmember or citizen requests, in which event the item will be removed from the consent agenda and considered as a separate item. If a citizen wants an item removed from the consent agenda, a blue card must be completed and given to the City Clerk prior to the Council's vote on the consent agenda.

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

Carried unanimously.

*2. Approval of minutes of previous meetings as written.

Minutes from the June 17 and November 4, 15, and 18, 2010 Council meetings.

3. Take action on the following liquor license application:

*3-a. Bashas 73

Series 9S Sampling Privileges License for Bashas 73, 2864 N. Power Road, Bashas Inc. – Michael Joseph Basha, Agent. This location presently has a Liquor Store License under Bashas Inc. that will revert back to the State for modification. **(District 5)**

*3-b. Bashas 110

Series 9S Sampling Privileges License for Bashas 110, 1133 N. Ellsworth Road, Bashas Inc. – Michael Joseph Basha, Agent. This location presently has a Liquor Store License under Bashas Inc. that will revert back to the State for modification. **(District 5)**

*3-c. Linda's Hoosier Café

New Restaurant License for Linda's Hoosier Café, 5050 E. University Drive, Suite B101, Jehl Hoosier Café LLC – Erlinda D. Jehl, Agent. This is an existing building with no previous liquor license at this location. **(District 5)**

4. Take action on the following contracts:

*4-a. Purchase of Replacement Channel Banks for the Communications Department (Fully Funded by Public Safety Capital Bonds) **(Citywide)**.

The Purchasing Division recommends authorizing purchase from the State contract with Enterprise Network Solutions, Inc., a Mesa business, at \$114,057.03, based on estimated requirements.

*4-b. Term Contract for Automatic Transmission Repairs and Services for the Fire and Fleet Services Departments **(Citywide)**.

The Purchasing Division recommends using the Mesa Public Schools contract with W.W. Williams at \$165,000 annually and with Sun Devil Auto at \$45,000 annually, including applicable sales tax, based on estimated requirements. The combined contract award is \$210,000 annually.

*4-c. Purchase of Replacement Front of House and Monitor Audio Consoles for the Mesa Arts Center (Fully Funded by the Mesa Arts Center Restoration Fund) **(Citywide)**.

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, Clearwater Productions, LLC at \$89,730.93, including applicable sales tax.

- *4-d. Purchase of Three (3) Replacement Pickup Trucks for the Fire Department (**Citywide**).

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Midway Chevrolet at \$94,189.46, including applicable sales tax.

5. Take action on the following resolutions:

- *5-a. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with the Governor's Office of Economic Recovery to accept grant funds in the amount of \$150,000 for an Electronic Citation System for the Police Department's Traffic Unit – Resolution No. 9787.
- *5-b. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with Gilbert Public Schools to secure funds in the amount of \$84,615 for one school resource officer assigned to Desert Ridge High School – Resolution No. 9788.

6. Introduction of the following ordinances and setting December 13, 2010 as the date of the public hearing on these ordinances:

- *6-a. Amending the Mesa Tax Code section 5-10-595(C) "Collection of Taxes When There Is Succession..." as a result of the adoption of changes to the Model City Tax Code and Section 5-10-300.1 "Who Must Apply for a License" to align it with other sections of the Mesa City Tax Code as recommended by the Audit and Finance Committee.
- *6-b. Amending the Mesa City Tax Code section 5-10-447 "...Additional Tax Upon Transient Lodging" updating the Transient Lodging Tax rate from 3% to 5% as approved in the election held on November 2, 2010.
- *6-c. Repealing the existing provisions of the Mesa City Code, Title 1, Chapter 21 and adopting a new chapter regarding City Purchase of Tangible Personal Property as recommended by the Audit and Finance Committee.
- *6-d. Amending various sections of the Mesa City Code regarding the following traffic modifications:

Speed Limits (45 mph): 10-4-3

Establish a speed limit of 45 mph on Power Road from Baseline Road to the south City limits. (Power Road south of Baseline Road) (**District 6**)

6-e and 6-f were removed from the Consent Agenda and considered under "items not on the Consent Agenda."

- *6-g. **Z10-34 (District 1)** 1903 North Country Club Drive. Located south of McKellips Road and on the east side of Country Club Drive (7.47± acres). Rezone from C-2 to R-4 BIZ and Site Plan Review. This request will bring the zoning of the site into conformance with the existing land use. Ryan Lynch, owner/applicant. (PLN2010-317)

P&Z Recommendation: Approval with Conditions. (Vote: 7-0)

7. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting. Any citizen that wants to provide comment should submit a blue card to the City Clerk before the item is voted on. If a citizen wants to comment on an item listed with an asterisk (*), a blue card must be given to the City Clerk before Council votes on the Consent Agenda.

7-a was removed from the Consent Agenda and considered under "Items not on the Consent Agenda."

*7-b. **Z10-30 (District 6)** 6912 East Guadalupe Road. Located east of Power Road on the north side of Guadalupe Road (5+/- acres). Rezone from R1-7 (conceptual C-2) to C-2-PAD and site plan review. This request will allow the development of medical office buildings. Dr. Ali Nia, P&G Land Development, owner; Rauf Moosavi Design Group, applicant. (PLN2008-00133) – Ordinance No. 5010.

P&Z Recommendation: Approval with Conditions. (Vote: 6-0, Boardmember Hudson absent)

*7-c. **Z10-30 (District 1)** 1455 North Shill Drive. Located north of Brown Road and west of Mesa Drive (22,000 +/- sq. ft.) Rezone from R-2 to R1-6 and site plan review. This request will establish a single residence zoning district. Deborah Gilbert, owner; Cameron Carter, Rose Law Group, applicant. (PLN2010-00254) – Ordinance No. 5011.

P&Z Recommendation: Approval with Conditions. (Vote: 5-1-0, Boardmember DiBellanay and Boardmember Hudson absent)

8. Take action on the following subdivision plats:

*8-a. "Lehi Crossing Phases 1-3" – **(District 5)** – 3009 East Lehi Road (south side) located south and west of Thomas Road and Val Vista Drive. 292 R1-9 DMP PAD lots. (97.9 +/- acres). William Lyon Homes, Inc., owner; Kirk J. Pangus, Atwell Group, surveyor.

*8-b. "Lehi Crossing Phases 4-5" – **(District 5)** - 3009 East Lehi Road (south side) located south and west of Thomas Road and Val Vista Drive. 273 R1-9 DMP PAD lots. (68.1 +/- acres). William Lyon Homes, Inc., owner; Kirk J. Pangus, Atwell Group, surveyor.

Items not on the Consent Agenda

6. Introduction of the following ordinances and setting December 13, 2010 as the date of the public hearing on these ordinances:

6-e. **Z10-31 (District 6)** 1958 South Greenfield Road. Located north of Baseline Road and west of Greenfield Road (10,000± sq. ft.). Council Use Permit. This request will allow a commercial recreation/entertainment land use within a C-2 zoning district. WWW AHF Partners, LLC., owner; Lori Rutten, Dos Gringos, applicant. (PLN2010-00310)

P&Z Recommendation: Approval with Conditions. (Vote: 7-0)

Planning Director John Wesley advised that the request for a Council Use Permit is for an existing restaurant holding a Restaurant License whose food sales have fallen below the level required by the State to operate as a restaurant. He stated that in order to transfer to a Bar

License in a C-2 zoning district, the applicant must obtain a Council Use Permit. Mr. Wesley noted that the discussion during the Study Session indicated that the ordinance would be amended to include a stipulation that the Council Use Permit would be attached to the business owner rather than to the property.

It was moved by Councilmember Somers, seconded by Councilmember Kavanaugh, that the subject ordinance, amended to include the stipulation that the Council Use Permit is attached to the owner, be introduced and that December 13, 2010, be established as the date for the public hearing.

City Attorney Debbie Spinner requested that Mr. Wesley read into the record the proper language to be included in the amended ordinance.

Mr. Wesley read the following language into the record: "In the event the bar operations are transferred to a business person or entity other than the (name of the business owner), the Council Use Permit to conduct the bar operations at this site would terminate."

In response to a request by Mayor Smith, the applicant, Lori Rutten, who was present in the audience, stated that she understood and accepted the amendment to the ordinance.

Mayor Smith called for the vote.

Carried unanimously.

6-f. **Z10-33 (District 5)** 1709 North Greenfield Road. Located South of McKellips Road on the east side of Greenfield Road (3.32± acres). Council Use Permit. This request will allow the expansion of an existing Charter School in an M-1 zoning district. Anjum Majeed, owner/applicant. (PLN2010-00316)

P&Z Recommendation: Approval with Conditions. (Vote: 7-0)

It was moved by Councilmember Richins, seconded by Councilmember Kavanaugh, that the subject ordinance, amended to include the stipulation that the Council Use Permit is attached to the owner, be introduced and that December 13, 2010, be established as the date for the public hearing.

Councilwoman Higgins expressed concern that all Council Use Permits are being placed in the same classification. She noted that the Charter School has been in existence for many years and that the current application is for an expansion of the existing facility.

Councilmember Somers said he looked forward to a future Council discussion of Council Use Permits. He explained that although he generally supports Councilmember Richins' position, he would support Councilwoman Higgins on this issue because the Charter School is in her district.

Mayor Smith concurred with Councilmember Richins' position that the Council should consider the operator when granting many of the Council Use Permits, but he expressed concern that policy changes could be implemented without having a full Council discussion of the issue and therefore, he would support Councilwoman Higgins with regard to this application.

Councilmember Richins said that although he understood the positions taken by Mayor Smith and Councilmember Somers, he continued to have concerns regarding the concept of allowing Charter Schools in one of the City's very few industrial zones.

Councilwoman Higgins said that she would concur with that position except for the fact that the Charter School has been located in the industrial zone for many years and probably employs more people than most manufacturing facilities in Mesa.

In response to a question from Mayor Smith, Ms. Spinner confirmed that the vote before the Council is on the amended ordinance.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES – Finter-Kavanaugh-Richins
NAYS – Smith-Higgins-Jones-Somers

Mayor Smith declared the motion failed by a majority vote.

It was moved by Councilwoman Higgins, seconded by Councilmember Somers, that the subject ordinance be introduced and that December 13, 2010, be established as the date for the public hearing.

Upon tabulation of votes, it showed:

AYES – Smith-Higgins-Finter-Jones-Kavanaugh-Somers
NAYS – Richins

Mayor Smith declared the motion passed by a majority vote.

7. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting

7-a. **Z10-27 (District 4)** 638 West Broadway Road, Suite 301. Located west of Country Club Drive on the north side of Broadway Road (2000+/- sq. ft.) Council Use Permit. This request will allow the operation of a recycling center in an M-2 zoning district. BMC Properties LLC, owner; Michelle Dahlke, Arizona Planning Solutions, applicant. (PLN2010-00296)

P&Z Recommendation: Approval with Conditions. (Vote: 6-0, Boardmember Hudson absent)

Mr. Wesley advised that this application is for an indoor recycling center. He noted that concern expressed regarding this case relates to the possibility of stolen metals being processed at the site. Mr. Wesley reported that the applicant has agreed to comply with all State requirements in addition to working with the Mesa Police Department relative to verifying that items have not been stolen. He explained that because the subject ordinance was introduced at a prior meeting, the change to attach the Council Use Permit to the owner/operator requires the amended ordinance to be reintroduced on December 13th for adoption at the first meeting in January.

Mayor Smith invited the applicant to come forward to address the Council.

Michelle Dahlke, the applicant on behalf of BMC Properties, confirmed that the owner/operator would comply with all of the reporting requirements outlined by Mr. Wesley. She noted that because the owner has similar operations in the cities of Phoenix and Goodyear, he understands the regulations that govern the business. Ms. Dahlke also confirmed that BMC Properties has no concerns relative to attaching the Council Use Permit to the owner/operator.

Mayor Smith apologized to Ms. Dahlke for delaying Council approval of the application until January.

Ms. Spinner confirmed that the amended ordinance would be reintroduced on December 13th for Council approval at the first meeting in January and therefore, no Council action is required at this meeting.

9. Take action on the following ordinance:

9-a. Reconsider action taken on November 15, 2010 on Z10-26 (District 2) 2860 East Main Street.

Mayor Smith advised that the Council vote on November 15, 2010 of three (3) ayes (Smith-Finter-Jones) and three (3) nays (Higgins-Kavanaugh-Richins) resulted in denial of Case Z10-26, a request by the applicant for a change of ownership for an existing pawn shop. He explained that reconsideration of a denial occurs when one of the Councilmembers who originally voted nay makes the motion to reconsider the action, the motion is seconded by any member of the Council, and a majority of the Councilmembers vote in support of the motion. Mayor Smith said that following a successful vote to reconsider, any member of the Council may make a motion to approve or deny the case. He requested that Planning Director John Wesley provide an overview of the case.

Mr. Wesley stated that this case is a request for a Council Use Permit for a pawn shop at 2860 East Main Street that has been in operation for a year or more. He said that the original Council Use Permit included a stipulation that connected the permit to the owner and therefore, a new Council Use Permit was required when ownership transferred to Cash America. Mr. Wesley advised that the plan of operation remains unchanged.

In response to a question from Councilmember Richins, Mr. Wesley confirmed that the new Council Use Permit would be connected to the owner/operator.

Paul Gilbert, an attorney representing the applicant, encouraged the Council to vote in favor of reconsideration of the issue. He advised that Cash America has purchased all of the Max It locations, including the operation at 2860 East Main Street in Mesa. Mr. Gilbert noted that the Council Use Permit issued to Max It was connected to the owner and therefore, Cash America is seeking a new Council Use Permit for this location. He said that there would be no changes in the method of operation and that all conditions and restrictions would remain the same. Mr. Gilbert stated that both staff and the Planning and Zoning Board have expressed support for the application, and he added that no opposition to the application surfaced at neighborhood meetings.

Mr. Gilbert advised that Cash America, a reputable company in business since 1984, is listed on the New York Stock Exchange, which means that they are publicly regulated. He said that Cash America plans to operate 21 pawn shops in the immediate area and, subject to approval of the Council Use Permit, four of the locations would be in the City of Mesa operating under the name Super Pawn. Mr. Gilbert said that Cash America employs more than 185 people in the greater Phoenix area and that the City of Mesa tax revenues generated by the Mesa locations exceeds \$175,000 annually.

Mr. Gilbert reported that Cash America has been and continues to be involved in the community, participating in organizations such as the Juvenile Diabetes Research Foundation, UMOM homeless services and the Big Brother/Big Sisters organization. He said that Cash America will also be meeting with the United Way regarding future participation.

Mr. Gilbert stated that Cash America has a good working relationship with law enforcement agencies and each location reports all transactions to the Police Department on a daily basis. He added that their organization has never been involved in check cashing operations.

In response to a series of questions from Councilmember Somers, Mr. Gilbert confirmed that Cash America's business practices are in good standing with the Mesa Police Department, that they are participating with the Mesa Police Department Recovered Property Unit, and that they will adhere to State laws and regulations governing transactions regarding firearms and adult materials. Mr. Gilbert also confirmed that Cash America is a member of the Chamber of Commerce.

It was moved by Councilmember Richins, seconded by Councilmember Kavanaugh, that the Council reconsider the action taken on November 15, 2010 regarding Case Z10-26.

Carried unanimously.

9-b. **Z10-26 (District 2)** 2860 East Main Street. Located east of Lindsay Road on the north side of Main Street (8,612+/- sq. ft.). Council Use Permit. This request will allow the change of ownership of an existing pawn shop. Red Mountain Asset Fund, owner; Susan Demmitt, Beus Gilbert, applicant. (PLN2010-00285) – Ordinance No. 5012.

P&Z Recommendation: Approval with Conditions. (Vote: 6-0, Boardmember Hudson absent)

It was moved by Councilmember Kavanaugh, seconded by Councilmember Finter, that Ordinance No. 5012 be approved.

Carried unanimously.

10. Introduce, discuss, receive public comment, and take action on the following ordinance:

10-a. Amending Mesa City Code Title 7, Chapter 2 "Fire Code" and adopting a new Title 6, Chapter 21 "Fireworks" providing for the sale and use of fireworks. This ordinance includes an emergency provision and will be effective immediately, if adopted. **(3/4 vote required, 6 votes) DELETED.**

11. Items from citizens present.

Lee Kitts addressed the Council regarding a large number of stray cats that populate her neighborhood. She stated that the cats pose problems to the health and safety of the residents, and she requested that the City address the issue.

Mayor Smith requested that staff follow up with Ms. Kitts regarding the issue.

Daniel Martinez, one of the leaders of a newly formed group of citizens called the East Valley Patriots for American Values, said they were present to introduce themselves, make the Council aware of the purpose of their organization, and to present an alternative vision for the East Valley. Mr. Martinez said his organization, which places a high value on freedom, liberty, democracy and justice for all, is in opposition to State Senate President Russell Pearce's vision for Arizona.

Brian Barabe, a retired Mesa high school instructor and a member of the East Valley Patriots for American Values, stated the opinion that the Council was more representative of the views of East Valley citizens than the policies endorsed by Senator Russell Pearce. He outlined various positions held by Senator Pearce that the Patriots for American Values believe to be extreme and not in accordance with traditional American values.

12. Adjournment.

Without objection, the meeting adjourned at 6:40 p.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 Regular Council Meeting of the City Council of Mesa, Arizona, held on the 6th day of December 2010. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

baa