



## COUNCIL MINUTES

January 14, 2013

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on January 14, 2013 at 5:45 p.m.

### COUNCIL PRESENT

Scott Smith  
Alex Finter  
Christopher Glover  
Dina Higgins  
Dennis Kavanaugh  
Dave Richins  
Scott Somers

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Dee Ann Mickelsen

Invocation by Councilmember Richins.

Pledge of Allegiance was led by Councilwoman Higgins.

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.

Mayor Smith welcomed State Senator Rich Crandall, who was present in the audience. He stated that Senator Crandall first represented Mesa in District 19 and noted that following the redistricting process, he now represents District 16. He thanked Senator Crandall for his service not only to the community, but also to the State as a whole.

### 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.

Councilmember Glover declared a conflict of interest with respect to agenda item 6-a and asked that the matter be removed from the consent agenda.

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

Carried unanimously.

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

Minutes from the November 15 and December 3, 10 and 20, 2012 Council meetings.

3. Take action on the following liquor license applications:

\*3-a. Cabo Tequila Bar

Person-to-person transfer of a Bar License for Cabo Tequila Bar, 30 South Robson Street, Cabo Tequila Bar LLC – Marco Antonio Martinez, Agent. This location has a Bar License held by Roosters, Inc., that will be transferred to the new applicant. **(District 4)**

\*3-b. Max Mart

Person-to-person transfer of a Liquor Store License for Max Mart, 735 East McKellips Road, Max Mart LLC – Ismail Emad Abushanab, Agent. This location has a Liquor Store License held by Max Mart LLC that will be transferred to the new applicant. **(District 1)**

\*3-c. Sprouts Farmers Market #10

New Series 10S Beer and Wine Store with Sampling Privileges License for Sprouts Farmers Market #10, 5225 East Southern Avenue, SF Markets LLC – Randy D. Nations, Agent. This location has a Beer and Wine Store License that will remain. **(District 2)**

\*3-d. Dollar General Store #6581

New Beer and Wine Store License for Dollar General Store #6581, 6030 East Main Street, DG Retail LLC – Clare Hollie Abel, Agent. This is an existing building without an active liquor license at this location. **(District 2)**

\*3-e. Beaver Choice Restaurant

New Restaurant License for Beaver Choice Restaurant, 745 West Baseline Road, Suite 1, Beaver Choice Scandinavian Comfort Food LLC – Christian J. Gabrielsson, Agent. This is an existing building without an active liquor license at this location. **(District 3)**

\*3-f. Chubby Hubby BBQ & Sports Grille

New Restaurant License for Chubby Hubby BBQ & Sports Grille, 155 South Power Road, Chubby Hubby BBQ LLC – John Joseph Leonard, Agent. This location has a Restaurant License held by Conti Enterprises Inc. that will revert back to the State. **(District 5)**

\*3-g. Il Forno Italian Restaurant

New Restaurant License for Il Forno Italian Restaurant, 6606 East McKellips Road, Suite 104, Il Forno Italian Restaurant LLC – Mathias Nguyen-Tran, Agent. This location has a Restaurant License held by Il Forno LLC that will revert back to the State. **(District 5)**

4. Take action on the following contracts:

\*4-a. Three-Year Term Contract for Leather Work Gloves for Materials and Supply Inventory. **(Citywide)**

This contract will provide leather work gloves and driving gloves for City employees which are stocked at the warehouse and distributed to departments as needed.

Materials and Supply recommends awarding the contract to the lowest, responsive and responsible bidder, Arizona Glove and Safety, dba AGS Safety and Supply, at \$35,000, including applicable sales tax.

\*4-b. One-Year Renewal of the Term Contract for Industrial Supplies for Citywide Use. **(Citywide)**

This contract will supply City departments with industrial supplies such as air circulator fans, sump pumps, drill bits, reflective tape, timers, ball valves, casters, hand trucks, eye wash stations, pressure gauges and hand tools.

Purchasing recommends authorizing a one-year renewal contract through the cooperative National Intergovernmental Purchasing Alliance (IPA) contract awarded by the City of Tucson with W.W. Grainger in the amount of \$300,000 annually, including applicable sales tax, based on estimated requirements.

\*4-c. One-Year Copier Maintenance Agreement for the Print Shop. **(Citywide)**

This annual maintenance agreement will provide maintenance and repair services for one color and two black and white production-sized copiers used in the Central Print Shop, supporting Citywide operations.

Print Services recommends authorizing the purchase from the Mohave Educational Services Cooperative contract with Konica Minolta Business Solutions USA, Inc., at \$88,000, based on estimated requirements.

\*4-d. Purchase of Thirty (30) New Handheld Mobile Fingerprint Identification Devices for the Police Department. **(Citywide)**

This purchase will provide 30 MorphoDent units, state-of-the-art handheld mobile fingerprint identification devices. The units electronically capture fingerprints that can be searched through State and national fingerprint databases by the Arizona Automated Fingerprint Identification System (AZAFIS). These units have been tested by the Mesa Police Department (PD), Tempe PD, Phoenix PD and Glendale PD. The handheld units use the same technology as the LiveScan systems currently used in Mesa PD and throughout Arizona.

Police recommends authorizing purchase from the State of Arizona Department of Public Safety contract with MorphoTrak Inc. (sole source) at \$53,169.00, including applicable use tax. This purchase is funded by the 2009 American Recovery and Reinvestment Act, Justice Assistance Grant.

- \*4-e. Purchase of Five Replacement Fingerprint Workstations for the Police Department. **(Citywide)**

Mesa Police Department (MPD) currently uses five LiveScan workstations that were purchased in 2004 to collect fingerprints for entry into the Arizona Automated Fingerprint Identification System for bookings, Court-ordered fingerprint collection and other investigative purposes. These machines have been consistently experiencing maintenance problems and are well past their useful life and new parts are no longer available. An additional unit is on order through a separate authorization to replace a sixth unit in use by MPD.

Police recommends authorizing purchase utilizing the State of Arizona Department of Public Safety contract with MorphoTrak Inc., (sole source) at \$123,930.57, including applicable sales tax.

- \*4-f. Purchase of a Replacement Dry Lab Photo Processor for Police Department, Forensic Services. **(Citywide)**

This purchase will provide a Dry Mini Lab Photo Processor for Police Department, Forensic Services Photo Unit, to be used to print photographs for officers, detectives, prosecutors and the public. Forensic is currently using a Noritsu wet lab photo processor purchased in 2003, which has reached the end of its useful life.

Police recommends awarding the contract to the single bidder, Noritsu America Corp. (single bid) at \$54,018.27, including applicable sales tax. Pricing reflects a credit of \$4,500.00 for trade-in of our existing wet lab system. Funding by the Arizona Criminal Justice Commission.

- \*4-g. One-Year Renewal of the Term Contract for Directed and Non-Directed Medical Care Services for Safety Services. **(Citywide)**

This contract supports the Workers' Compensation program by providing work-related injury treatment (directed medical care) services for City employees who are injured arising out of and in the course of his/her employment and pre-employment medical exams and testing, alcohol and drug testing and annual certificate exams (non-directed care services).

The initial term was one-year. This is the second one-year renewal.

Human Resources recommends authorizing a one-year renewal with Banner Health, dba Banner Occupational Health Services, (located in Mesa, Arizona) at \$202,000.

- \*4-h. One-Year Renewal of the Term Contract for LED Modules for Pedestrian and Traffic Control Signals for the Materials and Supply Warehouse (for Transportation). **(Citywide)**

This contract will provide LED modules for pedestrian signals and traffic signal lights for the Transportation Department, Traffic Signals group, to perform ongoing traffic signal maintenance.

Materials and Supply recommends authorizing a one-year renewal with Leotek Electronics USA Corp. at \$180,000 annually, based on estimated requirements, including applicable use tax.

- \*4-i. Purchase of Replacement Solar Powered Batteries and LED Lighting for City Bus Shelters for the Transportation Department. **(Citywide)**

This contract will provide Solar Powered Batteries and LED Lighting for the City's existing 68 solar lighted bus shelters that were installed in 2006 and 2007. The storage batteries no longer maintain a charge and need to be replaced. The units will also need to be tested to determine whether the charging circuits are functioning and that all lighting is in working order.

Transportation recommends authorizing purchase with Laurent Electrical Lighting and Solar at \$62,044.15, including applicable sales tax.

- \*4-j. Three-Year Term Contract for Bus Shelter Maintenance and Repair Services as requested by the Transportation Department. **(Citywide)**

This contract will provide annual bus shelter maintenance and repair services at various bus shelters, Bus Rapid Transit (BRT) stations, and Park-and-Ride locations throughout the City. Services to be provided include weekly routine cleaning and maintenance. The work under this contract includes, but is not limited to, cleaning, trash service, pressure washing and occasional as-needed, where-needed repairs. Services for landscaping and lighting are not included in this contract.

Transportation recommends authorizing purchase with A Mind for Detail (a Mesa business), at \$264,285 annually.

- \*4-k. Three-year Term Contract for Glass Beads for the Material and Supply Warehouse (for Transportation, Traffic Operations). **(Citywide)**

This contract will provide glass beads used by Transportation's Traffic Operations Striping group in the application of pavement markings to enhance the reflectivity of pavement markings.

Materials and Supply recommends authorizing purchase from the State of Arizona contract with Potters Industries, Inc., at \$55,000.00 annually, based on estimated requirements.

- \*4-l. Three-year Term Contract for Traffic Signal Loop Replacement Services for the Transportation Department. **(Citywide)**

This contract provides a qualified contractor to furnish all labor, tools, equipment, parts and supplies to perform the installation of loop detectors in various sizes on an on-call, as-needed basis for Transportation, Intelligent Transportation System Operations.

Transportation participated in the bid specification development with Maricopa County Department of Transportation (MCDOT), the lead agency. Other Valley agencies include: Maricopa County; Cities of Phoenix, Glendale and Tempe; Towns of Paradise Valley and Gilbert; and Arizona Department of Transportation (ADOT).

Transportation recommends utilizing the Maricopa County Department of Transportation contract with CPC Construction, Inc., at \$60,000 annually, based on estimated requirements.

- \*4-m. Three-Year Term Contract for Guardrail Installation and Repair Services for the Transportation Department. **(Citywide)**

The Transportation Department maintains numerous guardrails throughout the City. This contract will provide for the installation and/or repair of guardrails including excavating, placing guardrails and compaction of backfill material in a timely, safe, and efficient manner.

Transportation recommends awarding the contract to the lowest, responsive and responsible bidder, Hunter Guard Rail and Fence, Inc., at \$100,000 annually, based on estimated requirements.

- \*4-n. Two-Year Renewal of the contract for Debris Collection and Disposal as requested by the Transportation Department. **(Citywide)**

This contract will provide for the pick-up, hauling and disposal of debris to protect City of Mesa property and to ensure public safety. Work will be performed at a variety of locations including City-owned property (alleys, vacant lots, drainage channels, retention basins, City streets, City facilities, and a variety of City properties), privately owned property, commercial property for which permission to enter has been obtained, and property owned by other government agencies.

The initial term was one year. This is the first two-year renewal.

Transportation recommends authorizing a two-year renewal with the Garbage Guy Inc., at \$185,000 annually, based on estimated requirements.

- \*4-o. One-Year Renewal of the Term Contract for Aluminum Electric Cable for the Materials and Supply Warehouse (for Energy Resources, Electric Utility Division). **(Citywide)**

This contract provides various sizes of 15kV aluminum electrical cable for new and replacement underground electric distribution facilities for the Energy Resources Department, Electric Utility Division.

Materials and Supply recommends authorizing a one-year renewal with Wesco Distribution at \$160,000, based on estimated requirements.

- \*4-p. One-Year Renewal of the Term Contract for Pad Mounted Three Phase Switchgear for the Materials and Supply Warehouse (for Energy Resources, Electric Utility). **(Citywide)**

This contract provides switchgear devices to be used to upgrade the underground electrical system. The electrical devices will be used for the operation, maintenance and restoration of electric services at various substations and on the underground distribution circuits.

Materials and Supply recommends authorizing a one-year renewal with G&W Electric Co., at \$125,000 annually, based on estimated requirements, including applicable use tax.

\*4-q. Northwest Water Reclamation Plant Facility Upgrades. **(District 1)**

This project will upgrade the Northwest Water Reclamation Plant (NWWRP) to address operational issues, add needed redundancy, rehabilitate or replace deteriorating or outdated equipment, and improve the reliability and efficiency of plant operations.

Recommended award to the lowest responsible bidder, Hunter Contracting, in the amount of \$3,321,900.00, plus an additional \$332,190.00 (10% allowance for change orders) for a total award of \$3,654,090.00. Funding is available in the FY 12/13 Wastewater Bond Capital Program.

\*4-r. Brown Road Water Treatment Plant Filter Press, 7750 East Brown Road. **(District 5)**

This project will install a new belt filter press and supporting infrastructure at the City's Brown Road Water Treatment Plant.

Recommend award to the lowest responsible bidder, MGC Contractors, Inc., in the amount of \$1,164,000 plus an additional \$116,400 (10% allowance for change orders) for a total award of \$1,280,400. Funding is available in the FY 12/13 Water Bond Capital Program.

\*4-s. Improvements to County Line Pump Station #2. **(District 5)**

The County Line Pump Station #2 is one of three pump stations that receives water from the Brown Road Treatment Plant and distributes it within the County Line Water Zone and upper water zones located east of the Brown Road Treatment Plant.

The County Line Pump Station #2, with its associated half-million gallon reservoir (Desert Wells Reservoir #4), was originally constructed in 1968. Two pumps were added to the pump station in 1986, and the original reservoir remains in service today. The pump station includes four (4) existing pumps. The existing pump station is past its useful life and needs to be replaced. The reservoir is also at the end of its service life and is no longer needed. Demolition of the existing reservoir and pump station (as part of this project) will occur after the new pump station is built. The new pump station will be built adjacent to the existing pump station and will increase pumping capacity to help meet future water needs.

Recommend award to the lowest responsible bidder, PCL Construction Inc., in the amount of \$1,626,100.00 plus an additional \$162,610.00 (10% allowance for change orders) for a total award of \$1,788,710.00. Funding is available in the FY 12/13 Water Bond Capital Program.

- \*4-t. Dollar-Limit Increase for the Term Contract for Generator Maintenance for the Water Resources and Facilities Maintenance Departments. **(Citywide)**

Water Resources requests a one-time increase of \$95,000 for their generators, critical backup components to their Utility water and wastewater systems. Facilities Maintenance requests a dollar-limit increase of \$50,000 for outstanding invoices and anticipated work for the next six months. The requested increases are needed to perform necessary maintenance and repairs through the end of the initial term contract.

Water Resources and Facilities Maintenance recommend increasing the contract with S. R. Bray LLC, dba Power Plus, by \$145,000 for a new total contract amount of \$393,022.

- \*4-u. Well 11 Electric Transformer Replacement for Engineering, Energy Resources and Water Resources Departments. **(District 4)**

This is a purchase of a replacement transformer to re-energize electric service to City Well 11 located next to the Rendezvous Center at the Mesa Convention Center. There is a current project in which the well is being connected to the Pasadena Reservoir. Due to contractor damage that recently occurred to the existing and back-up transformers, staff is requesting the City Council approve an emergency purchase to acquire a transformer from Salt River Project so that the well can be operational by March, 2013 to meet City water demand. The City is pursuing reimbursement for all costs related to the two damaged transformers.

Energy Resources, Water Resources and Engineering recommend authorizing this purchase with Salt River Project at \$41,796.32, including sales tax.

5. Take action on the following resolutions:

- \*5-a. Approving and authorizing the City Manager to execute a Development Agreement for City Share Reimbursement with Morrison Ranch, Inc., an Arizona corporation, for the reimbursement of \$112,000.00 for regional street and street lighting improvements that are being required by Mesa in conjunction with a proposed residential subdivision known as Desert Place at Morrison Ranch Phase 1A located at 7531 East Guadalupe Road. Mesa's Share of funding for the improvements is budgeted in the FY 2012/2013 Transportation budget – Resolution No. 10173.
- \*5-b. Approving and authorizing the City Manager to accept funding made available through a contract with AZ POST. This contract provides \$37,200 for the purpose of Firearms Range Equipment for the Mesa Police Department **(Citywide)** – Resolution No. 10174.
- \*5-c. Approving the Assessment Diagram Map for the Crismon Road Improvements Street Assessment Project **(District 6)** – Resolution No. 10175.
- \*5-d. Setting February 4, 2013 as the public hearing date for the review and approval of the proposed final assessments for the Crismon Road Improvements Street Assessment Project **(District 6)** – Resolution No. 10176.

**Items not on the Consent Agenda**

**6. Take action on the following Memorandum of Understanding:**

- 6-a. Approving and authorizing the City Manager to execute a Memorandum of Understanding with Barry and Peggy Goldwater Library and Archives for lease and development of City-owned property at the southeast corner of Macdonald and 1<sup>st</sup> Avenue. **(District 4)**

Councilmember Glover declared a potential conflict of interest with respect to this item and said he would refrain from discussion/consideration of this matter.

It was moved by Councilmember Kavanaugh, seconded by Councilwoman Higgins, that the above-listed Memorandum of Understanding be approved.

Responding to a question from Councilmember Richins, City Manager Christopher Brady clarified that this non-binding Memorandum of Understanding (MOU) establishes the framework of the “deal points” that were previously presented to the Council. He explained that those items will now be incorporated into the larger formal document that will then be brought to Council. Mr. Brady stated that the issue of utility incentives was not included in the MOU and will be brought back to the Council in the final agreement.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES – Smith-Finter-Higgins-Kavanaugh-Richins-Somers  
ABSTAIN – Glover

Mayor Smith declared the motion carried unanimously by those present and voting.

**7. Take action on the following liquor license application:**

- 7-a. Pigglys at the Fair

New Restaurant License for Pigglys at the Fair, 1633 South Stapley Drive, Pigglys at the Fair LLC – Gerald Craig Sawyers, Agent. This location has a Restaurant License held by Craig Sawyers Enterprises LLC that will revert back to the State. **(District 3)**

Vice Mayor Somers stated that he asked that this item be removed from the consent agenda when it was revealed to the Council that one of the applicants is currently in the process of completing a sentence for Driving Under the Influence (DUI). He expressed concern regarding the Council’s approval of a permanent liquor license while an individual is currently undergoing treatment as part of his/her judicial requirements. He noted, however, that he also believes in giving people second chances.

Vice Mayor Somers remarked that in speaking with Alan Everett, Director of the Arizona Department of Liquor Licenses and Control (DLLC), Mr. Everett indicated that an individual applying for a new liquor license is required to bear the burden of demonstrating his/her capability, qualifications and reliability and also that the granting of such license is in the best interest of the community.

Vice Mayor Somers commented that in his opinion, what would be in the best interest of the community would be to recommend denial of this claim until such time as the applicant completes his/her DUI sentence which, to the best of his understanding, should be the first or second week of February.

Vice Mayor Somers further remarked that the Liquor Board issued the applicant a temporary liquor license for the business establishment, which expires at the end of March 2013. He pointed out that if the Council denies this claim today, the business would still be able to operate and the person who was charged with the DUI violation would be able to complete the necessary treatment.

Vice Mayor Somers noted that for the above-stated reasons, he would make a motion as follows: That the Council recommend denial of the liquor license; that staff be given the authority to withdraw the protest upon completion of the applicant's sentence, including the removal of the interlock device from the individual's vehicle; and at such time, staff would send a letter to the Director of the DLLC and the Chairman of the Liquor Board indicating that the Council has removed their protest. He added that in speaking with Mr. Everett, he was informed that pending receipt of such letter, Mr. Everett would have the authority to issue the liquor license to the establishment.

Councilmember Kavanaugh stated that he would oppose the motion, although it was well intended as offered. He noted that under State law, he was unsure whether it was a valid reason for a city to use in order to recommend denial of a liquor license.

Councilmember Finter seconded the motion.

Mayor Smith commented that typically, the Council will make a recommendation to either approve or deny a liquor license and said that such action is forwarded on to the Liquor Board. He noted, however, that regarding the pending motion, the Council would recommend denial and also include additional instructions for staff.

Mayor Smith inquired of Vice Mayor Somers whether his motion would include communication to the Liquor Board reflecting that the denial is conditional and would be removed when the applicant completed his/her sentence.

Vice Mayor Somers responded that in speaking with Mr. Everett, he was informed that the Liquor Board does not accept conditions with respect to an application and that the Council can only vote yes or no. He noted, however, that Mr. Everett offered an option that would not require the Council to take further action beyond tonight. The option is as follows: Once the interlock device is removed from the applicant's vehicle, which would be done at the conclusion of the sentence, the applicant could notify staff of that fact; that staff, in turn, could notify the Liquor Board that because the interlock is removed from the vehicle and the sentence is terminated, that the Council would no longer object to a liquor license being issued to the applicant.

Mayor Smith stated that he was somewhat confused in that the Council would deny the liquor license and then approve it at a later date.

City Attorney Debbie Spinner clarified that the Council's action would basically be considered a conditional denial. She explained that in the past, the City has done something similar to this in that the Council objected to a certain issue that an applicant had not resolved. She noted that the

Council made a recommendation for denial unless and until the applicant "fixed" the issue, at which point they recommended approval of the liquor license. She added that many years ago, the City went through this process, but explained that it was with regard to the applicant's failure to pay a fee as opposed to a DUI conviction.

Responding to a series of questions from Mayor Smith, Ms. Spinner advised that if the Council approved the denial, the minutes from this Council meeting would be submitted to the Liquor Board. She said that on the date when a hearing is set in this case, an attorney representing the City would address the Board and express the concerns of the Council. Ms. Spinner added that she was uncertain how soon the Board would schedule the hearing once it received the Council's denial of the liquor license.

Mayor Smith said that it was conceivable that a hearing might take place after the applicant's sentence was completed, at which time the City's attorney would convey to the Liquor Board that the Council no longer denies the request and recommends approval.

Ms. Spinner confirmed Mayor Smith's statement.

Vice Mayor Somers pointed out that the hearing would be conducted on March 7, 2013, which is the next scheduled meeting of the Liquor Board. He reiterated that once the Council removes their denial and submits the letter to the Liquor Board, the Director has the authority to issue the liquor license and dispense with conducting a hearing.

Councilmember Richins commented that since State Senator Crandall was present in the audience this evening, he inquired why the Liquor Board offers temporary liquor licenses to people who have been convicted of DUI. He stated that is a policy question the Council would forward to the State Legislature for exploration and also the fact that in a temporary liquor license application process, the matter of whether a person has a DUI should be considered.

Mayor Smith acknowledged that this was "a strange situation" with respect to a temporary license being issued to an applicant who has a DUI misdemeanor conviction. He concurred with Councilmember Kavanaugh, however, that he does not believe this is the way in which to handle the matter. Mayor Smith stated that he did not have a problem with the denial, but commented that from what he is hearing, there is no other reason why the Council would deny the liquor license. He added that the Council recognizes that the applicant will complete the DUI sentence prior to the Liquor Board hearing and therefore, the Council would approve the request.

Mayor Smith suggested that the Council could approve the liquor license and send a strongly worded letter to the State Legislature and the Liquor Board stating that they "had a problem" with this issue as a policy matter since it seems to "work against what a good liquor policy would be." He said that the letter could further reflect that the Council recognizes the "parameters of the liquor law" and that under such law, the applicant will ultimately receive a liquor license.

Mayor Smith further remarked that although he appreciates Vice Mayor Somers bringing the matter forward and acknowledged that it is a valid issue, he will oppose the motion since it is "a little outside the process."

Mayor Smith restated that the pending motion is for denial of the liquor license and includes notification to the Liquor Board that once the applicant's sentence is served and the City receives confirmation from the Court, that the Council would change the denial to an approval.

Vice Mayor Somers clarified that staff would send the letter to the Liquor Board.

Ms. Spinner requested that the applicant notify the City when the sentence has been completed.

Vice Mayor Somers added that removal of the interlock device from the vehicle would terminate the sentence.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES – Finter-Richins-Somers

NAYS – Smith-Glover-Higgins-Kavanaugh

Mayor Smith declared the motion failed for lack of a majority vote.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Glover, to recommend approval of the liquor license.

Mayor Smith inquired if Councilmember Kavanaugh would be willing include an amendment to his motion to instruct staff to send a letter to the Liquor Board stating the Council's concerns.

It was moved by Councilmember Kavanaugh, to recommend approval of the liquor license; that staff be directed to send a letter to the Liquor Board to comment that in reviewing this case, the Council believes there is a concern with State law, particularly in terms of granting interim permits to people who have been convicted of a DUI; and that the Council suggests that this policy be reviewed to ensure that it is consistent with the whole idea of serving alcohol.

Councilmember Glover concurred with the amended motion.

Vice Mayor Somers stated that he would oppose the motion, but fully supports the Council sending a letter to the Liquor Board.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES – Smith-Glover-Higgins-Kavanaugh

NAYS – Finter-Richins-Somers

Mayor Smith declared the motion carried by majority vote.

#### 8. Items from citizens present.

Mayor Smith advised that State law does not allow the Council to respond to a citizen's comments, although staff will be happy to discuss any issues with the speaker after the meeting.

Charles Crismon, a Mesa resident and owner of Crismon's Baby Boutique, expressed concern regarding the City of Mesa's policy to collect sales tax on what he would term "an imaginary assessment of unpaid, unrealized rental income" on a building that he and his wife own and

occupy. He noted that he has a lawyer's opinion which states as follows: "Government may not tax rent when rent is not actually collected from a tenant, even if you are both the landlord and the tenant. Taxation of rent depends on the collection of that rent. Until the profit of rents are realized, they cannot be taxed."

Mr. Crismon pointed out that not only is this "a poor policy" that should be resolved, but it is also "a death blow to many small businesses." He added that he and his wife have sent correspondence to the Council and Mr. Brady in this regard, but have not been contacted by anyone.

Mayor Smith clarified that he attempted to speak with Mr. Crismon's wife, Lesa, after she addressed the Council at the December 3, 2012 Council meeting, but noted that she left the Council Chambers before he had an opportunity to do so. He assured Mr. Crismon that staff would be happy to speak with him after the meeting.

9. Adjournment.

Without objection, the meeting adjourned at 6:15 p.m.

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SCOTT SMITH, MAYOR

ATTEST:

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DEE ANN MICKELSEN, INTERIM 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 14<sup>th</sup> day of January, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

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DEE ANN MICKELSEN, INTERIM CITY CLERK

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