



COUNCIL MINUTES

July 14, 2011

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on July 14, 2011 at 5:46 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
Linda Crocker

Invocation by Priest in Charge Scott Jones, St. Mark's Episcopal Church.

Pledge of Allegiance was led by Brigs Savage, Scout Troup 534.

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 Apache Junction Mayor John Insalaco and Vice Mayor Rick Dietz.

Mayor Smith stated that drownings are one of the most tragic situations that public safety officers deal with and most of the time they are preventable. He said that the Fire Department has done an outstanding job in educating the community. He added that as a community we need to do whatever we can to prevent drowning and read the Proclamation declaring the month of August Drowning Impact Awareness Month.

Mayor Smith introduced Fire and Life Safety Education Specialist Michele Long who thanked the Mayor and Council for recognizing the importance of drowning prevention. She explained that the Purple Ribbon Campaign is a statewide campaign and that banners and ribbons will be available at each of the fire stations. She said that over 100,000 ribbons will be donated for citizens to wear in observance of drowning prevention.

Ms. Long reported that the majority of drownings occur between the hours of 4:00 p.m. and 7:00 p.m. when there are activities that cause people to become distracted such as, trying to get dinner on the table. She stated that weekends and holidays are also times when drowning occurs as many people may be gathered together and not have a designated water watcher. She stressed the importance of educating parents on the layers of protection.

Mayor Smith commented that one way to help prevent drowning is to teach children to swim.

Ms. Long advised that there are several programs around the City as well as private swim schools that offer swimming lessons. She said that the American Academy of Pediatrics has recommended that children as young as 1 year of age should begin to learn how to swim. She added that swimming lessons do not prevent drowning but they are an additional layer of protection. She noted that supervision at all times is the key to drowning prevention.

Mayor Smith thanked Ms. Long and Fire Department staff for their efforts.

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 Somers, that the consent agenda items be approved.

Carried unanimously.

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

Minutes from the May 5, 12 and June 2, 16, 23, 27 and 30 and July 7, 2011 Council meetings.

3. Take action on the following liquor license applications:

*3-a. Ultimate Imaginations Inc

This is a one day charitable event to be held on Friday, August 5, 2011 from 6:00 p.m. to 10:00 p.m. at 1 to 270 W. Main Street. **(District 4)**

3-b. Road House Café/Double Deuces – **was removed from the Consent Agenda and considered under “Items not on the Consent Agenda.”**

4. Take action on the following bingo application:

4-a. BINGO LICENSE APPLICATION – CLASS A

Mesa East (**District 6**)
Florence Quaintance, Manager & Proceeds Coordinator
225 S. 74th Street
Mesa, AZ 85208

5. Take action on the following contracts:

*5-a. Purchase of an Upgrade to Support Software for the City's Customer Information System
(Sole Source)

The Purchasing Division recommends authorizing purchase from the sole source vendor, Ventyx Inc. at \$43,892.59, including applicable sales tax.

*5-b. Purchase of Thermal imaging Equipment for the Fire Department **(Single Bidder) (80% funded by Department of Homeland Security Grant)**

The Purchasing Division recommends awarding the contract to the single bidder, LN Curtis & Sons at \$99,594.16, including applicable sales tax.

*5-c. **DELETED**

*5-d. Purchase of 6" Coated Steel Pipe for CIP Project 10-611-001, High Pressure Gas to Waste Management CNG **(Citywide)**

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, JD Fields & Company, Inc. at \$168,547.39, including applicable use tax, based on estimated requirements.

*5-e. Fiesta District Police Station, Construction Manager at Risk Design Services Contract **(District 3)**

City Project 02-224-001. The proposed replacement building will include approximately 34,000 square feet for current and future police personnel.

Recommend award of the Design Phase Services Contract to the Construction Manager at Risk (CMAR), D.L. Withers, in the amount of \$83,565.00. This project will be funded with the Approved FY 11/12 Police Capital Bond Program.

*5-f. Police Technical Services Building – New Compressor System **(Citywide)**

City Project 10-902-001. The new compressor system will meet the facility demands and the existing compressors will be retained as backup system to provide needed redundancy.

Recommend award to the low bidder, RKS Plumbing and Mechanical Inc. in the amount of \$149,000.00 plus an additional 14,900.00 (10% allowance for change orders) for a total award of \$163,900.00. This project is funded from the Approved FY 11/12 Police Department Operating Budget.

*5-g. Communications Building Generator Exhaust Replacement (**District 4**)

City Project 10-912-001. This project will replace the two 8-inch deteriorated steel exhaust pipes with new double wall pipes; a 14-inch boiler exhaust pipe will also be replaced. The new generator exhaust pipes will be connected to a 25 horsepower, roof-mounted exhaust fan to keep exhaust from entering the roof top air handler equipment.

Recommend award to the low bidder, J.E. Bowen Construction in the amount of \$169,000.00 plus an additional \$16,900.00 (10% allowance for change orders) for a total award of \$185,900.00. This project is funded from the Approved FY 11/12 Facilities Maintenance Operating Budget.

*5-h. Brown Road Water Treatment Plant Security and Drainage Improvements (**District 5**)

City Project 07-011-003. This project includes the installation of a new automatic gate and vehicle turn around area, cameras to allow plant personnel to monitor activity at the access road turnout, and additional grading and roadway improvements to minimize flooding in the area and to improve access to the Plant.

Recommend award to the low bidder, Norquay Construction, Inc. in the amount of \$169,915.00 plus an additional \$16,991.50 (10% allowance for change orders) for a total award of \$186,906.50. This project is funded from the Approved FY 11/12 Water Bond Capital Program.

6. Take action on the following resolution:

- *6-a. Levying the amount to be raised by a Secondary Property Tax and the rate upon each one hundred dollars (\$100) of the assessed valuation of property subject to taxation within the City of Mesa for Fiscal Year ending June 30, 2012 – Resolution No. 9893.
- *6-b. Approving and authorizing the City Manager to execute amended Airport Sponsor Grant Assurances for federally funded capital improvement projects at Falcon Field Airport which state that the City will not permit the owner or tenant of a residential property, or property zoned for residential use, to taxi aircraft from the property to any location on the airport. (**District 5**) – Resolution No. 9894.
- *6-c. Approving and authorizing the City Manager to execute an Airport Improvement Program Grant Agreement for construction of Taxiway B Reconfiguration and Installation of Runway Guard Light System at Falcon Field Airport in an amount not to exceed \$2,000,000.00. Total estimated cost of the project is \$2,105,263. City portion is \$105,263, 50% of which is eligible for reimbursement by ADOT. (**District 5**) – Resolution No. 9895.

- *6-d. Approving and authorizing the City Manager to execute a Memorandum of Understanding to accept grant funds in the amount of \$181,003 to purchase replacement network equipment for the Police Department. Grant funds are made available through the Edward Byrne Memorial Justice Assistance Grant Program – Resolution No. 9896.
 - *6-e. Approving and authorizing the City Manger to execute a High Intensity Drug Area (HIDTA) Grant Agreement with the City of Tucson. This Agreement provides \$40,000 to the Police Department’s Violent Offender Unit for overtime – Resolution No. 9897.
 - *6-f. Approving and authorizing the City Manager to execute an agreement to sell Desert Well No. 5 at 830 S. 75th Street to the Arizona Golf Resort, for the value of the land which would be \$3.33 per square foot for 1,500 square feet, total sale price is \$5,000. **(District 6)** – Resolution No. 9898.
 - *6-g. Extinguishing a 20-foot natural gas pipeline easement in Pinal County. The line was abandoned and removed and it is not anticipated that this easement will be required in the future – Resolution No. 9899.
 - 6-h. Approving and authorizing the use of eminent domain to acquire property necessary for the Mesa Drive and Southern Avenue Intersection Improvement Project (District 4) – was removed from the Consent Agenda and considered under “Items not on the Consent Agenda.”
 - *6-i. Approving and supporting the submittal of a grant application by the Gene Lewis Boxing Club to the Tohono O’odham Nation in the amount of \$25,000 for educating, promoting and developing health and wellness programs for youth – Resolution No. 9900.
 - *6-j. Approving and supporting the submittal of a grant application by the Gene Lewis Boxing Club to the Pascua Yaqui Tribe in the amount of \$25,000 for educating, promoting and developing health and wellness program for youth – Resolution No. 9901.
 - *6-k. Supporting the application by the City of Glendale, Arizona to be the host for Super Bowl XLIX – Resolution No. 9902
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. Amending Title 3, Chapter 8 and amending Title 6, Chapter 10 of the Mesa City Code relating to the Parks, Recreation and Commercial Facilities Department – Ordinance No. 5054.
 - *7-b. Amending Title 4 of the Mesa City Code (Building Regulations) to incorporate energy efficiency provisions of the Energy Code – Ordinance No. 5055.
 - *7-c. Adopting a new Title 6, Chapter 22 of the Mesa City Code relating to Convenience Stores implementing crime prevention designs as a means to prevent and reduce crime. **(Revised option)** – Ordinance No. 5056.

- *7-d. **A10-05 (District 6)** Annexing land located at the northeast corner of Broadway and Crismon Roads, the 10000 block of East Broadway Road (north side). 2.89± ac. Initiated by the property owner, Thomas E. Aspel – Ordinance No. 5057.
- *7-e. **Z11-18 (District 5)** 5761 East Brown Road. Located west of Recker Road on the south side of Brown Road (3+ acres). Council Use Permit and Site Plan Modification. This request will allow the expansion of an existing charter school. (PLN2011-00098) Alta Mesa Plaza Investors, owner; George Ramirez, applicant – Ordinance No. 5058.

8. Introduction of the following ordinance and setting August 22, 2011 as the date of the public hearing on this ordinance:

- *8-a. Amending sections of the Mesa Privilege and Excise Tax Code Title 5 Chapter 10.

9. Take action on the following subdivision plats:

- *9-a. “3635 E Inverness Avenue Office Condominium” – **(District 6)** – 3635 East Inverness Avenue. Located north of Baseline Road and east of Val Vista Drive. 9 C-2 PAD condominium units. (1.13 ± ac.) DFFM Yukon LLC, owner; Jason Segneri, Survey Innovation Group, surveyor.

Items not on the Consent Agenda

3-b. Road House Café / Double Duece

New Restaurant License for Road House Café / Double Duece, 7000 E. Main Street, BS Inc – Joseph Glenn Severs, Agent. The previous restaurant license at this location was terminated by the State on April 21, 2009 and was held by the Fishin’ Hole. **(District 5)**

It was moved by Councilmember Glover, that the above-referenced liquor license application be denied.

Councilmember Glover stated that his request for denial is based on pending litigation that alleges that the applicant owes taxes. He said if the applicant can show that he is current on all tax obligations the request for denial will be withdrawn.

Vice Mayor Somers seconded the motion.

Joseph Severs, the Liquor License Applicant, advised the Council that there was an issue in Apache Junction regarding a place that he built as a contractor. He stated that he has since paid all the taxes, penalties and interest that were due on monies received. He said that the City of Apache Junction believes that because he had a lien for \$150,000 on the property that he had to pay taxes on \$150,000. He also said that an agreement had been reached yesterday and on August 29th this matter will be settled in Court.

In response to a question from Mayor Smith, Mr. Severs explained that an agreement has been reached between the special prosecutor and his attorney.

Responding to a question from Mayor Smith, City Attorney Debbie Spinner explained that the City will need to make a recommendation to the Liquor Board within 60 days. She advised that the

Liquor Board will issue a hearing date and if the hearing date is before the August 29 court date, the Applicant could motion to have the Liquor Board hearing continued until after the August 29th court date. She added that an agreement should resolve the Council's issue with the application and the request for denial could be withdrawn.

In response to a question from Mr. Severs, Mayor Smith explained that if there is an agreement with the City of Apache Junction, the attorneys should be able to draft a document to present to the Liquor Board showing that the issue has been resolved at which time any objection from the City of Mesa would be a moot point.

Responding to a question from Mr. Severs, Ms. Spinner advised that the City Attorney's office could accept a documented agreement signed by all parties. She said that if the agreement is provided next week then a City Attorney could respond and appear at the Liquor Board hearing.

Mayor Smith advised Mr. Severs to have his attorney contact the City Attorney's Office and provide a signed agreement. He said the City would then advise the Liquor Board that the request for denial is withdrawn.

Mayor Smith called for the vote.

Carried unanimously.

6-h. Approving and authorizing the use of eminent domain to acquire property necessary for the Mesa Drive and Southern Avenue Intersection Improvement project. **(District 4)** – Resolution No. 9903.

Assistant City Engineer Kelly Jensen requested that Council approve and authorize the use of eminent domain for the Mesa Drive and Southern Avenue Intersection Improvement Project. He advised that acquiring the properties will be a year long process and that currently appraisals are in progress and offers are being made on some of the properties for the necessary right-of-way needed for the street improvements.

City Manager Chris Brady explained that there are no "full takes" of property and that easement acquisitions have also been included for utilities. He stated that some agreements have been made with a few of the property owners based on the first notices. He indicated that depending on the ownership or trust ownerships, eminent domain helps to facilitate the process. He said that obtaining the approval from Council does not suggest that the City will not work diligently to minimize the impact to property owners.

In response to a question from Mayor Smith, Mr. Jensen explained that most of the "takes" are slivers of right-of-way needed to widen the driveway. He said that new driveways are required to have some additional concrete to meet American Disabilities Act (ADA) standards and access type issues. He said that one property south of 10th Street has been boarded up for years and discussions will be taking place with the owner regarding the purchase of that property for use as a retention basin.

Mayor Smith commented that there will not be any widening of the street and no one will lose their house. He said that most of the time people cannot agree on the value of the slivers of property and therefore, eminent domain is a tool. He said eminent domain is used when a property owner is out of State and cannot be reached or the property is in a trust.

Mr. Brady explained that one of the things the City is trying to do is increase the landscaping and streetscaping on Mesa Drive. He said in order to move forward with the project the Council is being asked to approve eminent domain across the entire project and the City will continue to work with all the property owners.

Councilmember Kavanaugh commented that this process is similar to the improvements that were made at Dobson and Guadalupe Roads. He advised that there had been issues where some of the properties were tied up in foreclosure or owners were in the process of a divorce and it had to be determined who owned the property. He said that having eminent domain available helps to move the process along.

Mr. Jensen concurred with Councilmember Kavanaugh and said that this project is similar to the Dobson and Guadalupe Road project. He advised that some corporations and businesses have stated up front that they would prefer that the City proceed with eminent domain for tax purposes. He said if this request is made up front the process can begin immediately instead of months from now when project plans are being finalized.

Vice Mayor Somers commented that the widening of the road is important for transit and public safety issues. He said that the property is being acquired for public uses and for that reason he is in support of the request. He stated that the Council would not be supportive of the City working toward eminent domain in an attempt to try and drive down the price. He added that eminent domain is simply a tool for owners who have requested eminent domain for tax purposes and to help identify property owners.

It was moved by Vice Mayor Somers to approve and authorize the use of eminent domain to acquire property necessary for the Mesa Drive and Southern Avenue Intersection Improvement project.

Mr. Brady stated that this is a significant issue that will not be taken lightly. He said that the City is sensitive to the property owners and does not want to do anything that would jeopardize the City's ability to use this tool in the future. He added that the City will continue to work with and minimize the impact to the property owners.

Mayor Smith remarked that he hoped that the City does not forget the responsibility it has to the property owners.

Mariano Olvera, a Mesa resident who resides at 953 S. Mesa Drive, addressed the Council and said that he has made significant improvements to his property. He explained that currently his front door is 50 feet from the sidewalk and on numerous occasions the police have been called when individuals have knocked on his door in the middle of the night causing trouble. He expressed his concern regarding potential problems with moving the sidewalk closer to his front door. He also said that the \$6,170 that the City offered him for the 4 feet section of property is not a fair price and that his improvements were not considered in the offer.

Mr. Brady requested that Mr. Olvera's property be removed from the request so that it can be determined if the property is critical in regards to the driving area of the street. He said that he would sit down with Mr. Olvera to discuss the improvements he has made. He advised that the City was proposing to put up some landscaping in the 4 foot section that was requested from Mr. Olvera. He noted that Mr. Olvera's property is not near the major intersection that is to be tapered out. He added that a motion can be made to withdraw this piece of property to continue discussions and if necessary it can be brought back to the Council.

It was moved by Vice Mayor Somers, seconded by Councilmember Kavanaugh, to amend the motion to approve and authorize the use of eminent domain to acquire property necessary for the Mesa Drive and Southern Avenue Intersection Improvement project, excluding the property located at 953 South Mesa Drive.

Mayor Smith expressed his appreciation for Mr. Olvera's comments and said that the overall objective is a long term plan that will improve Mesa Drive. He said that Mesa Drive is an entry way into the City and it is Council's desire that it be a point of pride. He added that it would be counter-productive to try and undo what Mr. Olvera has already accomplished.

Mr. Brady advised that staff will sit down with Mr. Olvera and explain the changes that are proposed. He said that Mr. Olvera has made a lot of improvements to the property and the City does not want to do anything detrimental. He added that Mr. Olvera's property is the kind of redevelopment and reinvestment that should be encouraged.

Carmen Martinez, a Mesa resident who resides at 949 S. Mesa Drive, addressed the Council in regards to the improvements she has made to her property. She expressed concerns regarding the \$2,000 that she was offered for her property as she feels it is not a fair price.

Mayor Smith advised that Ms. Martinez's property could also be studied. He stated that Council wants to do right the thing and sometimes in government that is difficult to do. He said that staff is committed to being fair and that the objective is to pay a fair price to improve the area for all citizens.

It was moved by Vice Mayor Somers, seconded by Councilmember Kavanaugh to further amend the motion to approve and authorize the use of eminent domain to acquire property necessary for the Mesa Drive and Southern Avenue Intersection Improvement Project, excluding the property located at 953 South Mesa Drive and 949 South Mesa Drive.

Mayor Smith called for the vote.

Carried unanimously.

10. Conduct a public hearing prior to the release of the petition for signature for the following proposed annexation:

- 10-a. **A11-01 (District 5)** Annexing land located on the south side of the 9600 block of East Brown Road. 1.25 ± ac. Initiated by the property owners, Christopher and Kelly Carmichael.

Mayor Smith announced that this was the time and place for a public hearing regarding the annexing of land located on the south side of the 9600 block of East Brown Road. (1.25 ± ac.)

There being no citizens wishing to speak on this issue, the Mayor declared the public hearing closed.

11. Items from citizens present.

Otis Vaughn, an 85 year old World War II veteran and Mesa resident, expressed his concerns regarding a problem with the noise from pickle ball courts near his residence. He said that Councilwoman Higgins has been to his residence and spoke to him and his neighbors and declared the noise to be unacceptable. He indicated that the police have also been to his residence on several occasions in regards to the noise.

Mr. Vaughn stated that his house is 28 feet from the pickle ball courts and the City's Ordinance states that an acceptable space is 50 feet from a residence. He reported that in the community of Saddlebrook, three pickle ball courts were built 100 feet from a residence. He said that the City of Tucson stepped in and shut the courts down due to the noise. He advised that a permit is now being sought to rebuild the courts 428 feet from the closest residence in Saddlebrook. He noted again that his home is 28 feet from the pickle ball courts.

Mr. Vaughn stated that the police have informed him that they cannot do anything about the noise because the law is ambiguous. He also stated that he has called the City Manager and City Prosecutor's office and has not received a call back.

Mayor Smith thanked Mr. Vaughn for his comments and apologized for any bad experience he may have had. He advised Mr. Vaughn that the City Prosecutor John Pombier will follow up with him to determine if there is anything that be done.

12. Adjournment.

Without objection, the meeting adjourned at 6:35 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 14th day of July 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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