



COUNCIL MINUTES

July 8, 2010

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on July 8, 2010 at 5:50 p.m.

COUNCIL PRESENT

Mayor 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

(Councilmember Kavanaugh attended the meeting through the use of telephonic equipment.)

Invocation by Pastor Tony Frazee, Gateway Bible Church.

Pledge of Allegiance was led by Councilmember Somers.

Mayor's Welcome.

Awards, Recognitions and Announcements.

Mayor Smith stated that the inaugural Southwest Ambulance Celebration of Freedom, which was held July 2nd and 3rd in downtown Mesa, proved to be a huge success. He noted that more than 50,000 citizens attended the event and emphasized that it was a community effort rather than a City of Mesa event. Mayor Smith also remarked that in a period of approximately six months, the event was organized and underwritten by a dedicated group of businesses, organizations, sponsors and hundreds of volunteers, all of whom he thanked for their hard work and dedication. He added that he anticipated the celebration would become a signature event in the State. Mayor Smith requested that staff play a short video depicting various activities that occurred at the event.

Mayor Smith also acknowledged the efforts and hard work of the citizens who have served on the City of Mesa's advisory boards and committees. Vice Mayor Jones announced the names of 27 individuals completing terms of service, at which time those citizens who were present in the audience were presented plaques by Mayor Smith.

1. Take action on all consent agenda items.

Councilmember Somers noted that although he considers item 7a (A request to allow the expansion of an existing assisted living facility) a high quality project and does not want to remove it from the consent agenda, he wanted to make a few brief comments.

Councilmember Somers stated that as Mesa's aging population continues to grow, he would hope that more high quality assisted living facilities are developed in the community. He explained that in researching 7a, he learned that the care provided at the facility is of the highest caliber and even includes the services of a Registered Nurse. Councilmember Somers remarked that it was unfortunate that not all assisted living facilities offer the same level of care and noted that some even rely heavily on 911 emergency services for assistance.

Councilmember Somers concluded his remarks by stating that as assisted living facilities are developed in the future, he would encourage staff to perform their due diligence to ensure that the level of care provided at those facilities is of the quality that they would require for a parent or family member.

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

Carried unanimously.

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

Minutes of the April 1, May 20 and July 1, 2010 Council meetings.

3. Take action on the following liquor license applications:

*3a. Dobson Ranch HOA

This is a one-day civic event to be held on Friday, July 16, 2010 from 6:30 p.m. to 9:30 p.m. at 2719 South Reyes. **(District 3)**

*3b. CVS Pharmacy 5814

Person to Person Location to Location Transfer of a Liquor Store License for CVS Pharmacy 5814, 9950 East Guadalupe Road, German Dobson CVS LLC – Jason Barclay Morris, Agent. This location presently has a Beer & Wine Store License held under Crismon Mesa CVS LLC that will revert back to the State. **(District 6)**

4. Take action on the following contracts:

*4a. Term Contract for Graffiti Abatement Services for the Transportation Department. **(Citywide)**

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, Graffiti Protective Coatings, Inc., at \$138,500 annually, based on estimated annual requirements.

- *4b. Purchase of Eight (8) New Portable Radios and Accessories for the Police Department (Fully Funded by 2009 Federal Homeland Security Program, Urban Area Security Initiative Grant). **(Citywide)**

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Motorola at \$48,010.53, including applicable sales tax.

- *4c. Six Month Extension on the Term Contract for Class 250 Gas Meters for the Energy Resources Department. **(Citywide)**

The Purchasing Division recommends authorizing a six month extension with Measurement Control Systems in the amount of \$143,910, based on estimated requirements.

- *4d. Two Month Extension of the Term Contract for Tires for the Warehouse and Fire Maintenance Inventory. **(Citywide)**

The Purchasing Division recommends authorizing a two month extension through the State of Arizona contract with Goodyear Tire & Rubber Company in the amount of \$140,000, including applicable sales tax, based on estimated requirements.

- *4e. Consolidated Canal Multi-Use Path - Phases IIA and IIB, Eighth Street to Lindsay Road. **(District 2)**

City Project 01-272-001. This project will construct a 10-foot wide multi-use concrete pathway with center striping and signage along the east side of the Consolidated Canal, from Eighth Street to Lindsay Road. Electrical conduits and boxes are being installed for future lighting, if desired; installation of a pedestrian bridge over the canal between Eighth Street and Main Street, and a rest stop at Lindsay Road with shade structure, seating, and drinking fountain.

Recommend award to the low bidder, HW Johnson Concrete Construction LLC, in the amount of \$565,021.96, plus an additional \$56,502.20 (10% allowance for change orders) for a total award of \$621,524.16. This project will be fully funded with a Federal grant from the American Recovery and Reinvestment Act (ARRA) stimulus monies.

- *4f. Falcon Field Airport Storm Drain Safety Improvements. **(District 5)**

City Project 06-078-001. This project will install new flush-mounted storm drain inlets and outlets on existing pipe culverts that will eliminate protruding, unprotected pipe ends that currently exists on the storm drains that parallel the runways; re-grade and flatten cross slopes on the unpaved areas adjacent to Runway 4L-22R, and install grouted riprap erosion protection on the retention basin side slopes adjacent to the end of Runway 4L. The proposed improvements will reduce the potential for damage to aircraft that leave the runways, taxiways and unpaved areas adjacent to the runways and taxiways.

Recommend award to the low bidder, Norquay Construction, Inc., in the amount of \$379,930.65, plus an additional \$37,993.07 (10% allowance for change orders) for a total award of \$417,923.72. This project will be funded with \$373,569.00 in Federal Administration grant funds and \$44,354.72 available in the adopted FY 2010/11 Falcon

Field Airport Capital Program. An aviation grant application will be submitted to the State of Arizona Department of Transportation which, if approved, will cover 50% of the City's local match for the project.

4g. Term Contract for Police Towing Services for the Police Department. **(Citywide)**

The Purchasing Division recommends awarding contracts to the highest scored proposals, Apache Sands Service Center, Inc., dba Apache Sands Towing for Zones 1 and 3, and ACT Towing LLC, dba All City Towing for Zones 2 and 4.

City Manager Christopher Brady stated that this item was deleted from the July 1, 2010 Regular Council meeting agenda due to a protest that the Purchasing Division received regarding the contract selection process. He explained that staff met with the individuals who filed the protest and reviewed the Request for Proposals (RFP) and the scoring process utilized by the evaluation team. Mr. Brady added that he was unaware whether staff has had further contact with those individuals since that time.

Mr. Brady recommended that the Council move forward with this item and said that staff conducted a thorough evaluation of all the proposals. He noted that staff selected the proposals that would not only best serve Mesa residents and citizens driving through the community that require vehicle towing services, but also provide a critical service for Mesa's public safety officers.

Vice Mayor Jones declared a potential conflict of interest and said he would refrain from discussion/participation of this agenda item.

It was moved by Councilmember Somers, seconded by Councilmember Richins, that the recommendation of staff be approved.

Richard Thompson, owner of Valley Express Towing, a Mesa business, expressed concern that the mathematical formula (as stated in the RFP) that City staff was required to use to score the pricing portion of the proposals was replaced without notice to the vendors. He explained that the formula is mathematically perfect and compares and scores the proposals without bias and determines the proportionate value to each other. Mr. Thompson added that had the City used this formula, Valley Express Towing would have been recommended for two zones as the top scoring bidder.

Mr. Thompson also commented that when the Purchasing Division "jettisoned the required formula," his firm's ranking dropped from first to fourth place. He noted that four of the five contending companies were awarded points they did not deserve under the original formula and said only his proposal failed to benefit from the formula that "Purchasing invented." Mr. Thompson further advised that Valley Express Towing has the fastest average response times in Mesa, submitted the least expensive bid for the City and its taxpayers and has the highest scoring proposal when the City's RFP is followed. He urged the Council to instruct the Purchasing Division to score the proposals using the original formula, publish the correct proposal rankings and facilitate a two zone award for Valley Express Towing.

Responding to a question from Mayor Smith, Mr. Thompson clarified that the RFP does not provide contractors an opportunity to protest the bid until an award has been made. He stated that the RFP contained a non-solicitation clause, which forbids contractors to contact any City

employee other than Senior Buyer Darryl Woodson or Buyer Aide Eileen Williams. Mr. Thompson, in addition, pointed out an error in the City's scoring of the proposals that deprived Valley Express Towing of four additional points.

Thomas O'Brien, General Manager of Auto Citi Towing, a Mesa business, stated that Auto Citi Towing is the second oldest incorporated towing service company in the Valley. He explained that the company's main office is situated at Alma School and Broadway Roads, which is centrally located between Zones 1 and 2. Mr. O'Brien also remarked that currently, Auto Citi Towing, Apache Sands and All City Towing are the vehicle tow providers for the City of Tempe Police Department and said that in the previous two years, Auto Citi Towing had the fastest response times.

Mr. O'Brien indicated that during Mesa's RFP process, Auto Citi Towing scored second overall in the pricing category. He said that Apache Sands, which currently provides towing service for Zone 4 in Mesa, averages 4.11 tows/day and noted that if the recommended contracts are awarded, that number would increase to 15 tows/day (a 250% increase). Mr. O'Brien further commented that Apache Sands' storage facility is located approximately 13 miles away from the furthest point of the Mesa/Tempe border in west Mesa and explained that the drive time is estimated to be 23 minutes (per MapQuest) with no traffic, which could be an issue with regard to the 25 minute response time as required in the RFP.

Mr. O'Brien concluded his remarks by suggesting that it would be in the best public interest, safety and price for the citizens of Mesa if the Police Towing Services contract was awarded as follows: Apache Sands for Zones 3 and 4 (due to the company's proximity to those zones); All City Towing for Zone 2; and Auto Citi Towing for Zone 1.

Brian Hatch, an attorney representing Auto Citi Towing, advised that Auto Citi Towing filed a protest to the Purchasing Division's award recommendation, received a response from City staff and filed an appeal yesterday. He stated that the RFP process "does not get the City what it wants or needs." He explained that the scoring process appears somewhat scientific from the outside and yet on closer examination, it takes relatively small differences between the various bids and "turns them on their head." Mr. Hatch cited, for instance, that in the category of equipment and personnel, Auto Citi Towing's score was lower than that of another company that had fewer personnel, less trucks and an older fleet.

Mr. Hatch commented that staff's recommendation would result in a two zone process spread laterally across the City and split north and south by Broadway Road. He stated that portions of the zones to be awarded, as alluded to by Mr. O'Brien, would be over 20 miles from the tow company's yard and office (i.e. Apache Sands). Mr. Hatch further remarked that it was apparent to him that the anticipated number of tows in each zone had been correlated so that the two incumbent tow providers in the City have each been awarded half without regard to the fact that their offices are the furthest away from where the tows are anticipated to occur.

Mr. Hatch concluded his remarks by stating that as part of its protest, Auto Citi Towing recommends that the City of Mesa implement a rotation contract using multiple qualifying tow providers in either two or four zones within the City. He said that the City of Tempe went to a modified version of this system and has seen average towing response times decrease by more than 10 minutes.

Responding to a question from Mayor Smith, Mr. Hatch explained that if the City of Mesa implemented a rotational system, it would be necessary for the tow providers to meet certain minimum standards in order to be considered for such service.

Mayor Smith noted that he made a mistake earlier when he asked for a motion and a second on this item prior to the speakers addressing the Council.

Councilmember Somers stated that he and Councilmember Richins would withdraw their original motion.

It was moved by Councilmember Somers, seconded by Councilmember Richins, that the recommendation of staff be approved.

Councilmember Finter commented that due to a number of questions that were raised today and at an earlier Study Session (i.e., sole provider vs. rotation contract) for which he is still seeking clarification, he would oppose the motion at this time.

Councilmember Higgins echoed Councilmember Finter's comments and said she was uncomfortable moving ahead with the matter at the present time.

In response to an inquiry from City Attorney Debbie Spinner, Mayor Smith clarified that the pending motion is to approve staff's recommendation.

Councilmember Somers voiced support for staff's recommendation. He commented that it was more important to him that the Mesa Police Department (MPD) had a vehicle towing service available to it than which vendors were awarded the contract. Councilmember Somers stated that staff compiled a series of measures which, in his opinion, were without prejudice and applied equally throughout the RFP process. He also remarked that the Audit & Finance Committee would continue to monitor the Police Towing Services contracts to ensure that the contractors meet the required response time per the RFP.

Councilmember Somers further noted that as an employee of the Phoenix Fire Department, the implementation of an ambulance rotation system in that community has proven to be "an utter disaster," resulting in long response times. He questioned how any community could implement a rotational system and expect to have increased service.

Responding to a series of questions from Mayor Smith, Business Services Director Ed Quedens clarified that when the evaluation team attempted to use the City's standard pricing formula that was in the RFP, it became apparent that the formula would not work because there were amounts of \$0 proposed. He stated that a "0" in either the numerator or the denominator would not result in a usable score. Mr. Quedens explained that when the evaluation team recognized the issue, it developed a breakdown of points across the four categories. He cited, for instance, that \$0 to \$5 earned "X" number of points and \$6 to \$10 earned another value of points. Mr. Quedens added that this system was applied across the board to all the respondents and said that Thompson Diversified LLC scored the highest on price.

In response to a series of questions from Councilmember Higgins, Mr. Quedens explained that the formula takes the lowest scored proposal and divides it by the proposal being evaluated, and is then multiplied by the number of points possible. He stated that this was an unusual contract because there were amounts of \$0 proposed.

Mr. Brady remarked that certain proposers were willing to offer "0" cost for a service and said it was necessary for staff to find a means by which that offer could be recognized.

In response to a question from Mayor Smith, Mr. Quedens stated that in the scoring table that the evaluation team developed, if a vendor proposed to perform a service for "0" cost, that entity would receive the maximum number of points.

Discussion ensued relative to the fact that the evaluation team reviewed the hourly rate, daily storage, open lot after hours and cost per mile in order to compute the total price points; and that each component had a maximum of 20 points available, for a total of 80 price points.

Mr. Brady emphasized that under the City's current Police Towing Services contract, individuals are charged disparate rates across the City depending on where their car is being towed from. He stated that this has occurred as a result of the tow companies charging more or less for the initial tow, but making up the difference with the storage costs. Mr. Brady explained that staff has attempted to create a more equitable formula in order to address such cost discrepancies.

In response to a question from Councilmember Finter, Police Sergeant Andy Nesbit clarified that the City of Phoenix established various bid zones for Police towing services and awarded the contract to a primary and secondary vendor. He stated that if the primary vendor is unable to respond to a call, the secondary vendor picks up the vehicle. Sergeant Nesbit added that a financial arrangement has been established between the two entities to offset the actual fees charged and said that the citizen is only charged the fee of the primary vendor within that zone.

Mr. Quedens provided the Council additional information regarding the scoring table that was established by the evaluation team.

In response to comments by Councilmember Higgins, Mr. Brady reiterated that for each of the four elements of pricing, every proposer who bid "0" cost received the maximum number of points. He stated that there was no proposal that bid "0" for all four components because if that had occurred, the proposer would have received 80 points.

Responding to a question from Mayor Smith, Mr. Quedens clarified that the protest period could occur at any point up to seven days after the award is made by the Council. He stated that if a tow company files a protest and disagrees with staff's response, the entity may appeal to the City Manager.

Mayor Smith commented that he was somewhat confused as to why certain tow companies that submitted proposals protested this item and others did not. He stated that the City receives no financial gain associated with the Police Towing Services contract and yet must evaluate the proposals in a fair and equitable manner. Mayor Smith further commented that he was not sure that he would agree that the revised price scoring system really affected staff's final decision since it was only one of several components considered by the evaluation team. He added that if any of the tow companies that submitted proposals disagrees with the Council's action in this regard, he would encourage them to file a protest.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Smith declared the motion carried by majority vote.

5. Take action on the following resolutions:

- *5a Extinguishing a portion of a Public Utilities and Facilities Easement at 1714 South Rialto Street – Resolution No. 9741. **(District 6)**

The extinguishment of a portion of this easement is necessary for the construction of a backyard swimming pool.
- *5b. Vacating a portion of Right-of-Way at 2012 West Southern Avenue – Resolution No. 9742. **(District 3)**

A portion of right-of-way at this location is being vacated along Dobson Road to allow a monument sign for a Circle K Store. A Public Utilities and Facilities Easement is being retained for future street improvements at no cost to the City.
- *5c. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Criminal Justice Commission (Crime Victim Assistance) to secure grant funds in the amount of \$24,500 for salaries and fringe benefits for the City Prosecutor’s Office Victim Services Program – Resolution No. 9743.
- *5d. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Department of Public Safety Victims of Crime Act (VOCA) to secure grant funds in the amount of \$89,486 for salaries and fringe benefits for the City Prosecutor’s Office Victim Services Program – Resolution No. 9744.
- *5e. Designating the City of Mesa to be a recovery zone for purposes of the American Recovery and Reinvestment Act – Resolution No. 9745.
- *5f. Levying the amount to be raised by a Secondary Property Tax Levy and the rate upon each one hundred dollars (\$100.00) of the assessed valuation of property subject to taxation within the City of Mesa for Fiscal Year ending June 30, 2011. The total dollar amount collected from this proposed levy is consistent with the FY 09/10 levy – Resolution No. 9746.
- *5g. Approving and authorizing the City Manager to execute a Deed of Release and Reconveyance on the Marc Center of Mesa’s property located at 756 South Mesa Drive and release the lien the City has on the property – Resolution No. 9747.
- *5h. Approving and authorizing the City Manager to execute a Deed of Release and Reconveyance on the Marc Center of Mesa’s property located at 422 West Ivyglen and release the lien the City has on the property – Resolution No. 9748.

- *5i. **Deleted.**
- *5j. **Deleted.**
- *5k. Adopting the Desert Uplands Design Guidelines – Resolution No. 9749.
- *5l. Supporting the continued negotiations between the City of Mesa and the Chicago Cubs for a City-owned stadium, training and administration facility for Cactus League Spring Training – Resolution No. 9750.

6. Take action on the following resolution and ordinances:

- *6a. Take action on resolution approving and authorizing the City Manager to execute a Pre-Annexation Agreement with Rancho Reata LLC for the timely construction of sewer line installation and required on and off-site improvements as a condition of annexation – Resolution No. 9751. **(District 6) (CONTINUED FROM THE JUNE 21, 2010 COUNCIL MEETING.)**
- *6b. Take action on ordinance regarding **A07-36 (District 6)** Annexing land located on Pueblo Avenue just west of Crismon Road (19.3± acres). Initiated by the property owner, Jeffrey Tang/Rancho Reata LLC– Ordinance No. 4993. **(CONTINUED FROM THE JUNE 21, 2010 COUNCIL MEETING.)**
- *6c. Take action on ordinance regarding **Z10-13 (District 6)** 9828 East Pueblo Avenue. Located west of Crismon Road and south of Broadway Road (19.3± acres). Rezone from Maricopa County R1-43 to City of Mesa R1-43. This request will establish City of Mesa zoning on recently annexed property. Rancho Reata, owner; City of Mesa applicant – Ordinance No. 4994. **(CONTINUED FROM THE JUNE 21, 2010 COUNCIL MEETING.)**

P&Z Recommendation: Approval with Conditions. (Vote 4 – 0, Boardmembers Mizner and Coons absent.)

- *6d. Take action on ordinance regarding **Z10-14 (District 6)** 9828 East Pueblo Avenue. Located west of Crismon Road and south of Broadway Road (19.3± acres). Rezone from R1-43 to R-4 for a Manufactured Home Park. This request will bring the zoning of the property into conformance with the existing land use. Rancho Reata, owner; David Cisiewski, applicant – Ordinance No. 4995. **(CONTINUED FROM THE JUNE 21, 2010 COUNCIL MEETING.)**

P&Z Recommendation: Approval with Conditions. (Vote 4 – 0, Boardmembers Mizner and Coons absent.)

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 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 Clerk before Council votes on the consent agenda.

- *7a. **Z10-16 (District 5)** 6003 East Arbor Avenue. Located north of Broadway Road and east of Recker Road (1.36± acres). Rezone from C-3 to R-4 and Site Plan Review. This request will allow the expansion of an existing Assisted Living facility – Ordinance No. 4996.

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

- *7b. **Z10-18 (District 6)** The northwest corner and southwest corner of Hawes and Ray Roads. (16± acres). Rezone from AG to C-2 PAD and approval of Design Guidelines for Gateway Park. This request will allow for the development of a mixed use project within the Phoenix Mesa Gateway Airport/Campus – Ordinance No. 4997.

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

8. Items from citizens present.

Saul Solis, a Mesa resident and a member of the East Valley Coalition for Immigration Reform, expressed a series of concerns regarding Senate Bill 1070 (SB 1070). He stated that the law would have a negative effect not only on undocumented immigrants, but also on legal residents. Mr. Solis further commented that SB 1070 would impact the City of Mesa economically through the loss of sales tax revenues and the closure of Hispanic businesses. He urged that citizens engage in “constructive conversations” regarding immigration for the greater good of the community.

9. Adjournment.

Without objection, the meeting adjourned at 6:58 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 8th day of July 2010. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK