



COUNCIL MINUTES

November 15, 2010

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on November 15, 2010 at 5:53 p.m.

COUNCIL PRESENT

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

COUNCIL ABSENT

Scott Somers

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Mayor Smith excused Councilmember Somers from the entire meeting.

Invocation by Dr. Jim Adams, Cornerstone Church.

Pledge of Allegiance was led by Councilmember Kavanaugh.

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 stated that the Mayor's Youth Committee (MYC) is a year-long program in which a select group of junior and senior high school students from Mesa high schools and Charter schools attend monthly meetings and participate in various community service projects in an effort to learn about City government.

Chief of Staff Kathy Macdonald, who facilitates the MYC Program, reported that one of the main projects the students would focus on this year is the Mayor's Assignment. She explained that the students will be broken up into groups and asked to research the pros and cons of current City topics, such as Spring Training, light rail, the Fiesta District and the privatization of City services. Ms. Macdonald stated that the groups would make presentations to a panel of Councilmembers, after which time an overall winner would be selected. She also noted that the students will organize a Youth Summit, which will bring students together from their respective high schools. Ms. Macdonald introduced the members of the 2010/2011 Mayor's Youth Committee who were present in the audience.

Mayor Smith stated that since 2003 when the United States took military action in Iraq and Afghanistan, 15 Mesa residents and more than 130 Arizonans enlisted in the Armed Services have lost their lives. He recognized those individuals for their willingness to defend this country's freedoms and to pay the ultimate price by giving up their lives. Mayor Smith noted that in recent weeks, Army Sergeant Aaron Crittenden and Army Private First Class Barbara Vieyra, both Mesa residents, lost their lives and said that while he was saddened by their loss, he was also very proud of the youth in this community who are willing to serve.

1. Take action on all consent agenda items.

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

Mayor Smith declared the motion carried unanimously by those present.

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

Minutes from the August 23, September 13 and 30, and November 1, 2010 Council meetings.

3. Take action on the following liquor license applications:

*3-a. Arizona Microenterprise Alliance Inc.

This is a one-day civic event to be held on Friday, December 3, 2010 from 6:00 p.m. to 10:00 p.m. at 1 to 270 W. Main Street. **(District 4)**

*3-b. Copper Plate – An American Grill

New Restaurant License for Copper Plate – An American Grill, 6033 S. Sossaman Road, Phoenix Airport Food Services Inc. – Candace Ann Snorgrass, Agent. This is new construction. **(District 6)**

4. Take action on the following contracts:

*4-a. Purchase of One (1) Replacement Medium-Duty Truck with 51-Foot Articulated Material Handling Aerial Device and Utility Body for the Energy Resources Department. **(Citywide)**

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, Utility Crane Equipment, at \$124,797.65, including applicable sales tax.

*4-b. Purchase of 18 New Moving Spot Lighting Fixtures for the Mesa Arts Center (Fully Funded by Alliance Funding). **(Citywide)**

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, Mainstage Theatrical Supply, Inc., at \$31,346.26, including applicable use tax.

- *4-c. Purchase of 100 Additional Water Leak Detection Loggers for the Water Resources Department. **(Sole Source) (Citywide)**

The Purchasing Division recommends authorizing purchase from the sole source vendor, Fluid Conservation Systems, Inc., at \$53,300, including applicable use tax.

- *4-d. Purchase of One (1) Replacement Medium-Duty Truck with 65-Foot Articulated Material Handling Aerial Device and Utility Body for the Energy Resources Department. **(Citywide)**

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, Altec Industries, Inc., at \$176,420.87, including applicable sales tax.

- *4-e. Purchase of 24 Traffic Signal Cabinets and Replacement Components for the Transportation Department (Fully Funded by Transportation Sales Tax). **(Citywide)**

The Purchasing Division recommends awarding the contract to the lowest, responsive and responsible bidder, Phoenix Highway Products, at \$302,188.05, including applicable sales tax.

- *4-f. Gilbert Road Intelligent Transportation System (ITS). **(Districts 1 and 2)**

City Project 02-324-001. This project will install conduit, fiber optic cable, and video traffic detection along approximately five miles of Gilbert Road from Baseline Road to McKellips Road. New closed-circuit television (CCTV) traffic monitoring cameras and video-based traffic detection systems will be installed at major intersections. These enhancements will result in operational improvements for vehicle and pedestrian traffic along the Gilbert Road arterial corridor and provide improved communications to the City's traffic signal system from the Traffic Management Center.

Recommend award to the low bidder, Roadway Electric LLC, in the amount of \$400,297.50, plus an additional \$40,029.75 (10% allowance for change orders) for a total award of \$440,327.25. This project will be funded with General Obligation Bonds passed by Mesa citizens on November 4, 2008.

- *4-g. Thompson Peak Communications Tower. **(Citywide)**

City Project 02-410-001. This project will construct a new 180-foot tower along with a 24-foot x 24-foot communications equipment shelter under the tower. The existing helipad will be relocated to the southeast to make room for the new tower. Communications equipment at this site provides the primary wide-area and disaster backup public safety radio coverage for the TOPAZ Regional Wireless Cooperative (TRWC).

Recommend award to the low bidder, Cal Wadsworth Construction Southwest Inc., in the amount of \$828,686.50, plus an additional \$82,868.65 (10% allowance for change orders) for a total award of \$911,555.15. The City of Mesa's portion of the TRWC's share of \$348,334.00 will be funded from the FY 10/11 Police Capital Bond Program. Other members of the TRWC will pay \$100,000.00, which is part of the TRWC's FY 10/11

Capital Budget. The remaining \$463,221.15 will be paid for by the Arizona Department of Public Safety.

- *4-h. One-Month Contract Extension and Dollar-Limit Increase for Ferrous Chloride for the Water Resources Department. **(Citywide)**

The Purchasing Division recommends extending the contract with Kemira Water Solutions, Inc. for one month and increasing the dollar-limit of the contract by \$26,500. The increase is based on the estimated requirements through the contract extension period.

5. Take action on the following resolutions:

- *5-a. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Department of Homeland Security to accept \$64,800 of reallocated grant funds for the Fire Department's Rapid Response Team equipment – Resolution No. 9779.
- *5-b. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Department of Homeland Security to accept \$17,640 in grant funds for equipment and training for the Fire Department's Citizens Emergency Response Team (CERT) – Resolution No. 9780.
- *5-c. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Department of Homeland Security to accept \$307,897.72 in grant funds for equipment and training for the Fire Department's Metropolitan Medical Response System (MMRS) Program – Resolution No. 9781.
- *5-d. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Department of Homeland Security to accept \$4,000 in grant funds for equipment and training for the Fire Department's Terrorism Liaison Officer (TLO) – Resolution No. 9782.
- *5-e. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Department of Homeland Security to accept \$100,000 in grant funds to compile and complete a resource database for the Phoenix Urban Area Security Initiative region – Resolution No. 9783.
- *5-f. Approving and authorizing the City Manager to execute a Grant Agreement with the Arizona Department of Homeland Security to accept \$320,000 in grant funds for equipment and training for the Fire Department's Rapid Response Team (RRT) – Resolution No. 9784.
- *5-g. Designating the Assistant Fire Chief over Emergency Management, Jim Bloomer, as the Applicant Agent for the City of Mesa to execute and file an application for disaster relief funds – Resolution No. 9785.

6. (Item 6-a is listed under "Items not on the Consent Agenda")

- *7. Assign delinquent accounts to collection services for the three-month period ending September 30, 2010, totaling \$696,735.00.

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

- *8-a. **Z10-27 (District 4)** 638 West Broadway Road, Suite 301. Located west of Country Club Drive on the north side of Broadway Road (2,000+/- 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.)

- *8-b. **Z10-28 (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)

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

- *8-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)

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

Items not on the Consent Agenda

6. 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.

- 6-a. **Z10-26 (District 2)** 2860 East Main Street. Located east of Lindsay Road on the north side of Main Street (8,612+/- sf). 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)

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

Planning Director John Wesley reported that in 2008, MaXit Pawn & Retail applied for a Council Use Permit to operate a pawnshop at this location. He explained that the request was approved by the Council with four stipulations, one of which was that if the pawn operations were transferred to a new entity, the current Council Use Permit at the site would terminate and that a new Council Use Permit must be obtained. Mr. Wesley added that Cash America, the entity purchasing the existing pawnshop and applying for a Council Use Permit at this location, has

agreed to the same stipulations of operation as MaXit Pawn that were of concern to the Council, including a stipulation that states firearms and adult materials would not be pawned, bought or sold at the site.

Mayor Smith stated that Councilmember Richins requested that this item be removed from the consent agenda.

Councilmember Richins commented that pawnshop Council Use Permits were a neighborhood concern prior to him becoming a Councilmember. He stated that any time there was a change of pawn operators for an existing pawnshop, he wanted the opportunity to vote on the matter in a public meeting as opposed to leaving the item on the consent agenda. Councilmember Richins remarked that one of the reasons MaXit Pawn was approved for the Council Use Permit was because of its reputation and the manner in which it operated its businesses. He noted that Cash America, in his opinion, does not have such a reputation and said that for that reason, he would not support the motion.

In response to a question from Mayor Smith, Mr. Wesley clarified that the applicant completed the Citizen Participation process and stated that at a neighborhood meeting, the one neighboring property owner in attendance did not express any concerns regarding the proposal. He added that this matter comes with a recommendation of approval from staff and the Planning & Zoning Board.

Responding to a question from Councilmember Finter, Mr. Wesley explained that the Mesa Police Department has not received any negative feedback with regard to any stolen goods being pawned, bought or sold at the current pawnshop location.

It was moved by Councilmember Finter, seconded by Vice Mayor Jones, that Zoning Case Z10-26 be approved.

Councilmember Finter noted that the site of the current pawnshop is located in his district and stated that because he was unaware of any problems that have occurred at the business, he would support the motion.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

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

City Attorney Debbie Spinner stated that because there was a tie vote, the motion failed.

9. Take action on the following contract:

9-a. Reconsider the July 8, 2010 contract award for Police Towing Services.

Mayor Smith stated that on July 8, 2010 the Council voted to award the Police Towing Services Contract and noted that there have been ongoing discussions and debate regarding the matter since that time. He explained that under item 9a, the Council would reconsider the contract

award and said that if the motion were approved, under item 9b, the Council could either award the contract to different vendor/vendors or reject all proposals from the July RFP and instruct staff to bring back alternative options for Council consideration.

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

Mayor Smith clarified that the motion for reconsideration may be made only by a Councilmember who voted with the majority at the July 8, 2010 Council meeting.

Jeffrey Dunn, General Manager of ACT Towing, doing business as All City Towing, stated that All City Towing currently provides towing services in two of the City of Mesa's four zones. He noted that at the July 8th Council meeting, staff recommended, and the Council approved, a new award to All City Towing and respectfully requested that the Council reaffirm its vote today.

David Schwartz, an attorney with Udall, Shumway and Lyons, representing All City Towing, remarked that Thompson Diversified LLC, doing business as Valley Express Towing, has filed several protests and a lawsuit against the City and "wants to use litigation as a means to threaten the City Council to impose its will." He said that it would set a dangerous precedent for the City and urged the Council not to "cave in" to such demands. Mr. Schwartz also remarked that in July, staff made the correct decision when they recommended that Apache Sands Towing and All City Towing be awarded the towing contracts and added that he respectfully disagreed with the option that the Council reject all proposals from the July RFP.

Kent Nicholas, also an attorney representing All City Towing, advised that the litigation filed by Thompson Diversified was based on a false assumption that when a vendor proceeds through a bidding process and is awarded points, the entity with the most points wins. He cited language from the Request for Proposals (RFP) which would dispute that assumption as follows: "Points and other such evaluation methods are tools the City uses to aid in the evaluation process but are not always definitive." Mr. Nicholas concurred with the comments of the previous speaker and asked that the Council affirm its previous vote and not concede to the pending litigation.

Richard Thompson, owner of Valley Express Towing, a Mesa business, thanked the Council for placing this item on the agenda and said he was confident they wanted to "foster a reputation" for the City of Mesa as a community dedicated to fairness, equity and public service. He commented that in the five months since the Council approved the contract award, his firm has demonstrated several ways that legal and RFP-compliant scoring could be performed and said that by adhering to "the spirit and letter of the RFP," Apache Sands and Valley Express would win the bid.

Brian Fredrickson, representing Apache Sands Service Center, commented that based on the spirit of the RFP, the City of Mesa has done nothing wrong in this case. He also remarked that because Apache Sands has been a provider for five years, has consistently proven itself, and was the top bidder in the recent RFP process, the company deserved to be awarded a two-zone contract.

Brad Stratton, representing Valley Express, remarked that in the previous contract that Valley Express served under for five years, his firm never shirked a contract responsibility with the City of Mesa. He also stated that his company "thought it was logical" that the highest-scoring contractor would be awarded the contract. Mr. Stratton, in responding to the assertion that Valley Express Towing's litigation is "a form of intimidation" said that the company "exhausted

every single remedy available to us" prior to going to Court. He added that if staff followed the RFP, used the proportionate scoring guaranteed by the RFP, then Valley Express was the top scoring contender and deserved to be awarded the contract.

Mayor Smith closed the public hearing.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Finter, that the Council reconsider the award of the Police Towing Services RFP from July 8, 2010.

Upon tabulation of votes, it showed:

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

Mayor Smith declared the motion carried by majority vote of those present and voting.

9-b. Consider awarding to another vendor(s) or rejecting all proposals received in response to the March 20, 2010 Request for Proposals for Police Towing Services.

Responding to a question from Mayor Smith, Ms. Spinner clarified that unlike item 9a, there were no restrictions relative to which Councilmember may make a motion on this item.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Higgins, that the Council reject all proposals from the July RFP and instruct staff to bring back information and options to the Council relative to providing towing services.

Councilmember Richins expressed opposition to the motion. He stated that "staff got it right the first time" and noted that he did not believe the Council should reconsider the Council award in order to avoid litigation. Councilmember Richins further remarked that in his opinion, this issue was about the threat of litigation and added that "there's no guarantee that we can rebid the entire thing and not end up in litigation."

Mayor Smith voiced support for the motion, but commented that this was one of the most frustrating issues he has dealt with during his two and a half years in office. He stated that the towing contract is "a big deal for towing companies, but also a big deal for citizens when towing companies screw up."

Mayor Smith further remarked that the City of Mesa receives no financial gain from the Police Towing Services Contract, but hopefully protects its citizens by providing vendors that charge a fair price and provide good service. He also noted that the current process is, in his opinion, ridiculous and commended staff for their efforts and hard work given a somewhat difficult situation. Mayor Smith further commented that because there have been legitimate questions raised regarding this issue, he believed that the process "could be better the second time around," although it might be a temporary solution.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES - Smith-Finter-Higgins-Kavanaugh

NAYS - Richins

ABSTAIN - Jones

ABSENT - Somers

Mayor Smith declared the motion carried by majority vote of those present and voting.

Mayor Smith advised that the previous proposals from the July RFP have been rejected and stated that he would assume that within the next few weeks, staff would provide the Council specific recommendations as to how best to proceed. He added that in the interim, the current providers would continue to operate on a month-to-month basis.

10. Items from citizens present.

Tamara Jansen requested information regarding the Homeland Security Grants listed on tonight's agenda.

Mayor Smith stated that staff would meet with Ms. Jansen to respond to her questions.

11. 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 15th day of November 2010. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK