



COUNCIL MINUTES

November 19, 2012

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on November 19, 2012 at 5:15 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

1. Review items on the agenda for the November 19, 2012 Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflict of interest: None.

Items removed from the consent agenda: None.

Councilmember Finter expressed concern regarding item 9-a (Term Contract for Legal Process Service for the Photo Safety Program for the Police Department) and said that in the past, there have been complaints regarding process service. He requested that a representative from Hot Shot Delivery provide a description of the services their company provides.

Deputy City Manager John Pombier introduced Jon Fillerup, President of Hot Shot Delivery, Inc., who was prepared to address the Council. Mr. Fillerup provided brief background information regarding process service procedures and said that there are rules that process servers must follow. He added that Hot Shot Delivery completes approximately 1,000 to 1,200 legal serves each month.

Councilmember Finter described a situation in which an individual received a citation in the mail and decided to not respond to the Court. He explained that the next notice the person received was from the Court indicating that the individual had a judgment against them and could possibly lose his or her license.

Councilmember Finter stated that the information he has received indicates that Hot Shot Delivery is working well with the Mesa Police Department. He added that he hopes the company will continue to be fair and honest with the citizens of Mesa.

In response to the comments made by Councilmember Finter, Mr. Fillerup advised that he personally reviews each document served to ensure that the details are correct before it is submitted to the City.

Responding to a question from Councilmember Richins, Mr. Fillerup explained that complaints are personally served upon the person named in the complaint or sub-served to someone living at the same residence.

Extensive discussion ensued relative to whether a minor can accept service of a legal document.

Councilmember Richins voiced concerns regarding a minor accepting service of a legal document.

In response to a question from Mayor Smith, Mr. Fillerup clarified that the law states that a person must be of a reasonable age in order to accept service of a legal document.

Further discussion ensued relative to what would constitute a "good serve," and whether the City can set an age limit outside of what is recommend by State law.

In response to a question from Mayor Smith, City Attorney Debbie Spinner explained that State law defines who may or may not accept service of a legal document.

Deputy Court Administrator Leonard Montanaro stated that the Supreme Court Rules indicate that service must be made upon a person of a suitable age and discretion. He said that there have been cases in which service upon an individual 13 years of age or older was determined to be acceptable.

Councilmember Finter inquired as to whether the City could require Hot Shot Delivery to set its standards higher than what State law recommends.

Responding to a question from Councilmember Finter, Ms. Spinner advised that staff would research and determine if the City can stipulate an age limit in the contract for when a person is considered old enough to be served with a legal document. She said that it would be her recommendation that the City follow State law.

Councilmember Finter commented that recently there have not been many complaints regarding process service. He noted that he would continue to monitor legal process issues and added that if it is determined that the City is not satisfied with the services provided by Hot Shot Delivery, the contract can be terminated.

In response to a question from Mayor Smith, Mr. Montanaro explained that citations are mailed to individuals and noted that if they do not respond within 30 days, they become eligible for process service.

Mayor Smith commented that he has seen problems caused by unscrupulous process servers. He reiterated that photo radar citations are initially mailed to the individual's home address and if he or she does not respond, the citation will be served by a process server. He said that if an individual argued that they did not receive notice of the citation, it could indicate that they either did not receive the citation in the mail, or the citation was served upon someone else residing in the household.

Additional discussion ensued relative to the State law that indicates that an individual accepting service of a document should be at least 13 years of age, as well as the criteria for a "good serve."

Responding to a question from Councilmember Richins, Ms. Spinner explained that the City may be able to stipulate a different age requirement within the contract. She pointed out, however, that it would be out of the ordinary to do so and would require that the contract be renegotiated. She added that she would research and determine if a stipulation is possible.

Councilmember Richins commented that the expiration dates for the Photo Radar Contract and the Legal Process Service Contract do not coincide. He added that it would probably take three or four months after the conclusion of the Photo Radar Program to process the remaining citations.

In response to a question from Councilmember Richins, Mr. Fillerup explained that the Process Service Contract is an "at will" contract and the company is only paid for the tickets that it serves.

Additional discussion ensued relative to the number of complaints received and how those complaints are tracked.

Mr. Montanaro reported that in FY 2011/12, 14,874 Affidavits of Service were filed. He noted that an average of 120 challenges are received each year. He also stated that a judge could find that service is ineffective if the citation is served at an address where the defendant no longer resides.

Mayor Smith noted that the law requires individuals to change their address within ten days of moving. He stressed the importance of having a system in place that will track the number of challenges filed and ensure that the citizens of Mesa are treated fairly.

Councilmember Richins remarked that he was still uncomfortable with the idea of a minor accepting service of a legal document.

Vice Mayor Somers pointed out that changing the contract would not have any effect on court cases. He added that if Hot Shot Delivery were to serve a legal document on a minor child, it would not be illegal, but it could be a breach of contract.

Councilmember Finter requested that item 9-a be moved back to the Consent Agenda.

Mayor Smith stated that it was the consensus of the Council that item 9-a be moved to the Consent Agenda.

2. Hear reports on meetings and/or conferences attended.

There were no reports on meetings and/or conferences attended.

3. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Monday, November 26, 2012, 4:30 p.m. – Special Council Meeting (Tentative)

Monday, December 3, 2012, 5:00 p.m. – Study Session

Monday, December 3, 2012, 5:45 p.m. – Regular Council Meeting

4. Adjournment.

Without objection, the Study Session adjourned at 5:42 p.m.

SCOTT SMITH, MAYOR

ATTEST:

DEE ANN MICKELSEN, INTERIM CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 19th day of November, 2012. I further certify that the meeting was duly called and held and that a quorum was present.

DEE ANN MICKELSEN, INTERIM CITY CLERK

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