

COUNCIL MINUTES

March 17, 2003

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 March 17, 2003 at 4:30 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Dennis Kavanaugh
Rex Griswold
Kyle Jones
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Paul Wenbert
Joe Padilla
Barbara Jones

1. Review items on the agenda for the March 17, 2003 Regular Council Meeting.

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

Items removed from the consent agenda: 5g

2. Hear, discuss and consider a legislative update.

Assistant to the City Manager Jim Huling provided the Council with a summary update of the 2003 State legislative session with an emphasis on legislation impacting the City of Mesa. (See Attachment)

Mr. Huling reported that the Legislature is considering numerous funding cuts in conjunction with the State's \$300 million budget deficit for fiscal year 2003. He noted that although cuts in State-shared revenues are not proposed at this time, it is expected that there will be an estimated \$165 million in fund transfers from various State agencies.

Mr. Huling provided a brief overview of HB 2292 (Transportation; Excise Tax; County). He explained that the City supported the amended bill in the House with the understanding that additional amendments would be needed in the Senate (safeguard provisions such as material cost changes and enhancement policy, and the ability to spend revenue from the sales tax on transit and streets). Mr. Huling noted that a coalition representing a variety of business interests

is not supportive of further changes to the bill at this time, and added that without the amendments, staff cannot recommend continued support of the bill. Mr. Huling requested Council direction regarding this issue.

Discussion ensued among the Council relative to the fact that staff should continue to work with Mesa's legislative delegation to ensure that the above-referenced amendments are included in the language of the bill.

Mr. Huling commented on the status of HB 2316 (Identification; Secure and Verifiable). He advised that it is the recommendation of staff to oppose the bill and added that the bill is inconsistent with the Council's recent action to affirm the continued use of Consular ID cards as proper identification in the City of Mesa.

Discussion ensued among the Council relative to this issue.

Mayor Hawker stated that a majority of the Council (excluding Councilmember Thom) concur with staff's recommendation.

Mr. Huling provided a brief overview of HB 2308 (Eminent Domain). He reported that the bill is virtually identical to the eminent domain proposal from the previous legislative session and noted that it replaces statutory references to "Redevelopment Area" with "Slum or Blighted Area." Mr. Huling added that it is the recommendation of staff to oppose the bill, but requested further direction from the Council.

Discussion ensued among the Council relative to the fact that the bill's language must be more clearly defined regarding the "taking" of property; the percentage of properties in an area that must meet the definition of slum or blighted, and the ten year time frame relative to the prohibition of property acquired through eminent domain from being sold, leased or transferred by the municipality.

Mr. Huling commented on the status of HB 2383 (County Islands; Annexation) and explained that a new section has been added to the code governing cities and towns to provide an alternative means for annexation of territory located within County Islands. He noted that although staff's previous recommendation was to support the bill, because Council requested further discussion, the City has not pursued the bill.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Whalen, that the City of Mesa support HB 2383, as amended.

In response to a question from Councilmember Thom, Mr. Huling clarified that all of Mesa's legislators voted against the bill on the third read in the House on March 12, 2003, although a successful motion was made to reconsider the bill next Tuesday.

Upon tabulation of votes, it showed:

AYES - Kavanaugh-Whalen
NAYS - Hawker-Griswold-Jones-Thom-Walters

Mayor Hawker declared the motion failed.

Further discussion ensued regarding HB2360 (Chemical Fire Response Coordination) and staff's recommendation that the bill be opposed.

3. Acknowledge receipt of minutes of boards and committees.

- a. Utility Committee meeting held March 3, 2003.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that receipt of the above-listed minutes be acknowledged.

Carried unanimously.

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

The following members of the Council provided brief updates on various meetings/conferences they attended as follows:

Vice Mayor Kavanaugh	Mesa Southwest Museum Volunteers Appreciation Luncheon
Councilmember Jones	Library Volunteers Appreciation Dinner;
Councilmember Griswold	Mesa Historical Museum Fundraising BBQ Police Volunteers Appreciation Dinner

5. Scheduling of meetings and general information.

Deputy City Manager Paul Wenbert stated that the meeting schedule is as follows:

Thursday, March 20, 2003, 7:30 a.m. – Study Session

Thursday, March 27, 2003, 7:30 a.m. – Study Session

Thursday, April 3, 2003, 7:30 a.m. – Study Session

Monday, April 7, 2003, TBA – Study Session

Monday, April 7, 2003, 5:45 p.m. – Regular Council Meeting

Thursday, April 10, 2003, 7:30 a.m. – Study Session

Mayor Hawker reported that on Thursday, March 20, 2003, Sister Cities delegations from Guaymas, Sonora, Mexico and Burnaby, British Columbia, Canada will visit Mesa for a four-day conference to discuss a variety of issues including the CANAMEX Corridor, a geographically designed north-south trade route to facilitate the movement of goods, services and people across national and international borders.

6. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

7. Adjournment.

Without objection, the Study Session adjourned at 5:35 p.m.

KENO HAWKER, MAYOR

ATTEST:

BARBARA JONES, 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 17th day of March 2003. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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Attachment

March 14, 2003

TO: Mayor and City Council

THROUGH: Mike Hutchinson, City Manager

FROM: Jim Huling, Assistant to the City Manager

SUBJ: Legislation of Significant Municipal Interest
Citywide

Purpose and Recommendation

The purpose of this report is to provide information and seek Council guidance regarding legislation of significance to the City of Mesa. The following report includes recommendations on whether the City of Mesa should support or oppose each proposed bill, based on staff opinion, prior Council discussions and the position of the League of Arizona Cities and Towns:

Background

March 14th is the 61st day of the 2003 Regular Session. A total of 885 bills were introduced. The deadline for committee consideration of bills in their house of origin has passed, causing many bills to die. Summarized in the report are potential significant issues for the City of Mesa. Some of the bills listed were summarized in prior reports to Council and are repeated here with an update as to their status.

ISSUES FOR COUNCIL CONSIDERATION

H2292: TRANSPORTATION; EXCISE TAX; COUNTY

This bill as amended, requires MAG to establish a Transportation Policy Committee (as it already has done) consisting of the members of MAG and representatives of the business community. The Transportation Policy Committee (TPC) would develop a 20-year comprehensive multi-modal Regional Transportation Plan in order to allocate funds from the extension of the half-cent sales tax. The TPC would develop the plan in consultation with the Arizona Department of Transportation (ADOT), the Regional Public Transportation Authority (RPTA), the Native American Communities, and the County Board of Supervisors. The plan would have to meet air quality standards as well as a number of other criteria, and be reviewed by RPTA, ADOT Board, and the

County Board of Supervisors. The MAG Regional Council will receive and approve the plan from the Transportation Policy Committee and must send it to the Governor and State Legislature by November 30, 2003 in order for them to refer it to the ballot.

Sponsor: Rep. Pierce

Position: **Council direction is requested.** The City supported the amended bill in the House with the understanding that additional amendments would be needed in the Senate, including safeguard provisions, such as material cost change and enhancement policy, and the ability to spend revenue from the sales tax on transit and streets. Unfortunately, a coalition representing a variety of business interests, are not supporting any further changes to the bill at this time. Without these amendments, staff cannot recommend continued support of the bill.

Status: The bill passed the House on a 60-0 vote. It received a do pass recommendation from the Senate Transportation Committee and is next scheduled for a hearing before the Senate Finance Committee.

H2316: IDENTIFICATION; SECURE AND VERIFIABLE

For disbursement of public services, excluding law enforcement, that require recipients to produce identification, only identification documents issued by a state or federal authority, verifiable by a law enforcement or homeland security agency, are to be recognized. A political subdivision is not to authorize acceptance of, nor may any public official acting in the capacity of a public official accept, acknowledge or recognize anything other than a verifiable identification document. Actions taken knowingly inconsistent with this requirement are deemed outside the official capacity of the person and are not protected by governmental immunity.

Sponsor: Rep. Graf

Position: **Staff recommendation is to oppose.** HB2316 is not consistent with the Council's recent action to recognize the use of Counselor ID cards as proper identification. HB2316 would nullify the aforementioned action by the Council.

Status: HB2316 passed third reading in the House on February 17, 2003, and was forwarded to the Senate. In the Senate, HB 2316 was assigned to the Judiciary Committee where the bill was held on March 5, 2003.

H 2308: EMINENT DOMAIN

This bill is virtually identical to the eminent domain proposal from last session, HB 2487. Replaces the statutory references to "Redevelopment Area" with "Slum or Blighted Area". Requires that for a slum or blighted area to be declared, at least 85% of the properties in the area must meet the definition of slum or blighted. Removes crime as a consideration in determining whether a problem area exists. To use eminent domain, the municipality must make a determination that the slum or blight conditions cannot be removed without a transfer of ownership. Also prohibits property acquired through eminent domain from being

sold, leased or transferred by the municipality for at least 10 years. The designation of a slum or blighted area terminates after five years. Establishes that the designation of a slum or blighted area is subject to judicial review.

Sponsor: Rep. Farnsworth

Position: **Further Council direction is requested.** Staff recommendation was to oppose but clear direction from the Council was not provided. Staff did not lobby for or against the bill in the House. Staff will review with the Council some proposed suggestions from other cities and the League of Cities and Towns that may make the bill acceptable.

Status: HB2308 passed the House on third read March 6, 2003, and was assigned to the Senate Government and Rules Committees on March 12, 2003.

H2383: COUNTY ISLANDS; ANNEXATION

A new section is added to the code governing cities and towns to provide an alternative means for annexation of territory located within county islands. The alternative method only applies to an annexation that is bordered on three sides by the city or town and is 80 acres or less in size, or part of a county island surrounded on all sides by a city or town. The city is to file an accurate map with the recorder, provide notice and a copy of the filing to each property owner, and publish notice. Owners of more than 1/2 of the property may file a protest.

Sponsor: Rep. Hanson

Position: **Direction from the Council is requested.** Previous staff recommendation was to support; Council requested further discussion and therefore the City has not engaged on the bill.

Status: HB2383 failed 26-31 on third read in the House on March 12, 2003, but a successful motion was made to reconsider the bill next Tuesday.

H2360: CHEMICAL FIRE RESPONSE COORDINATION

Cities or towns with more than 75K persons, in conjunction with the state fire marshall must establish a permitting process to identify and track commercial and industrial buildings that have or use hazardous materials on-site. In addition, the City would be responsible for collecting the State Fire Marshal's permitting fees. The Arizona Emergency Response Commission is to coordinate with the State Fire Marshall to provide training for command personnel regarding notification procedures, coordination of services and comprehensive management for protection of the public health during and after a chemical fire or other toxic fire event.

Sponsor: Rep. Landrum Taylor

Position: **Staff recommendation is to oppose.** HB2360 would require Mesa to hire additional staff to manage the information exchange, institute an annual hazardous materials permit fee, and develop new computer programs to track hazardous material data.

Status: HB2360 received a do pass recommendation from both the House Health and Appropriations Committees. Its next committee is House Rules, where a hearing date has not been scheduled.

UPDATE ON ISSUES PREVIOUSLY REPORTED TO COUNCIL

Land Use

H2119: COUNTY ISLANDS; ANNEXATION

A county board of supervisors may require annexation, of any area of the county that consists of 10 acres or less and is completely surrounded by a city or town, to the city or town, according to procedures specified, which include written notice, and a public hearing. If a majority of the real property owners in the proposed annexation file timely written objection, the annexation does not proceed. The bill was amended to allow the city to veto the annexation request by resolution.

Sponsor: Rep. Carruthers

Position: **Neutral.**

Status: HB2119 passed third read in the House by a vote of 44-15-1 on February 24, 2003. The bill received a do pass recommendation from the Senate Government Committee on March 6, 2003, and goes next to the Senate Rules Committee.

H2411: GOVERNMENTAL TAKING; PRIVATE PROPERTY

A new chapter is added to the property code regulating governmental action that affects private property and requiring that in some cases, starting May 1, 2003, if a governmental entity takes private land or buildings, the owner has a right to recover damages by following a prescribed procedure of arbitration. Applies to government requirements and policies, actions that require dedication or exaction of private property, city or town action that has an effect in extraterritorial jurisdiction (excluding annexation). Not applicable to lawful seizure, actions in response to federal or state mandates, eminent domain, floodplain regulation and similar actions.

Sponsor: Rep. McClure

Position: **Oppose**

Status: HB2411 failed 21-36-3 on a House vote on March 10, 2003, but Rep. Hart made a motion to reconsider. The reconsideration vote also failed 18-39-3 on March 12, 2003. The issue is likely dead for this session.

Finance and Tax

S1209: POPULATION; CITY & COUNTY REVENUE SHARING

Allows local jurisdictions the option of conducting a census survey or use Department of Economic Security estimates instead of an extremely expensive

special census to establish population numbers for determining the distribution of revenue sharing. Would apply to the 2005 population estimates.

Sponsor: Sen. Tibshraeny
Position: **Support.** This bill was initiated by the City of Mesa.
Status: SB1209 passed third read 29-0-1 in the Senate on March 12, 2003.
The bill has been transmitted to the House for further action.

Administration and Regulation

S1236: PUBLIC CONSTRUCTION PROJECTS

In determining the lowest responsible bidder for a horizontal construction project using the design-bid-build project delivery method, an agent may consider the time of completion proposed by the bidder; for each project for horizontal construction under a design-build contract or manager-at-risk construction services contract, the licensed contractor must perform, with the contractor's own organization, construction work that amounts to at least half of the total contract price for construction.

Sponsor: Sen. Tibshraeny
Position: **Support.** Chandler, Mesa and the League of Cities and Towns initiated this proposal.
Status: SB1236 passed 30-0 in the Senate on February 25, 2003, and received a do pass recommendation with an amendment from the House Government and Retirement Committee on March 5, 2003. The amendment reduces the amount of work a contractor must complete with his own organization under design-build and construction-manager-at-risk contracts from 50% to 45%. The bill next goes to the House Commerce & Military Affairs Committee on Wednesday.

S1333: EDUCATION PROPERTY LIABILITY (PARKS)

Changes are made to a property code section on the duty of an owner, lessee or occupant to recreational or educational users is changed expanding the definition of premises to include playground, swimming pool, athletic field, greenbelt wherever located including urban areas. Definition of "recreational user" includes persons on the premises to picnic, climb, skate, ski, sled, or participate in team or individual sports activity.

Sponsor: Sen. Tibshraeny
Position: **Support.** This is a priority for the City of Mesa and the League of Cities and Towns.
Status: SB1331 failed in the Senate Judiciary Committee on February 26, 2003. The issue is dead for this session.

Law Enforcement

S1059: TRESPASS: CRITICAL PUBLIC SERVICE FACILITIES

"Critical public service facility" is defined, in statutes governing criminal trespass, as a structure or fenced yard used either by a mass transit provider, a utility, phone company, law enforcement agency, fire dept., or emergency medical service provider to manufacture, transport, distribute, or store, gas, oil, electricity, water or hazardous materials, unless it is a retail only facility. It is criminal trespass in the first degree to enter or remain unlawfully in a critical public service facility. A violation is a class 5 felony. Other criminal trespass violations are classified as either class 6 felony or class 1 misdemeanor.

Sponsor: Sen. Tibshraeny

Position: Staff recommendation is to support. This is a League priority.

Status: SB1059 passed the Senate 29-0-1 on February 13, 2003, and received a do pass recommendation from the House Judiciary Committee on March 13, 2003. The bill next goes to the House Utilities & Municipalities Committee.

S1287: EMERGENCY VEHICLES; POLICE PURSUITS

Based on the Mesa Police Department Pursuit Policy. A section of the transportation code defining authorized emergency vehicles is repealed and rewritten to include a provision relating to police pursuits, including to define "pursuit" as the operation of a law enforcement vehicle by an officer in a manner that would otherwise be in violation, in an attempt to apprehend a person in a fleeing vehicle if the officer reasonably believes the person has violated the law and appears to be resisting apprehension. A pursuit is prohibited unless the pursuit is necessary to apprehend a person who poses an immediate threat to human life and the benefit of apprehension outweighs the risk of serious injury or death. The danger created by unlawful flight is not in itself justification for a pursuit.

Sponsor: Sen. Aguirre

Position: **Oppose.** This bill utilizes the Mesa Police Pursuit Policy as the statewide standard. However, it is important that law enforcement policies not be placed into statute, as the agencies need the flexibility to modify policy to address case law and respond to lessons learned through the use of policies.

Status: SB1287 received a do pass recommendation on February 19, 2003, from Senate Judiciary Committee. No other action has taken on this bill and it is likely dead for this session.

Firearms

H2318: FIREARM REGULATION

A political subdivision may not regulate the sale or transfer of firearms on property it owns, leases, operates or controls in a manner that is different than or

inconsistent with state law. A use permit or other contract that provides for use of property owned, operated, controlled, etc. by the political subdivision must not be considered a sale, conveyance or disposition of property.

Sponsor: Rep. Graf

Position: Oppose.

Status: HB2318 passed the full House 36-21-3 on March 10, 2003, and has been referred to the Senate Government and Judiciary Committees. A hearing has been scheduled in the Senate Government Committee on March 18, 2003.

H2321: CONCEALED WEAPONS

Carrying a concealed weapon without a permit is a petty offense punishable by a maximum fine of \$50.

Sponsor: Rep. Graf

Position: Oppose.

Status: HB2321 passed the House on third read by vote of 32-17-1 on February 17, 2003. The bill failed in the Senate Judiciary Committee on March 5, 2003.

ISSUES OF GENERAL PUBLIC POLICY INTEREST For Information Only

SCR1003: STATE SPENDING LIMIT; BUDGET STABILIZATION

The 2004 general election ballot is to carry the question of amending the state constitution to replace the current spending limit (7% of total personal income as estimated by the economic estimates commission) with a new limit: the previous year's spending plus (or minus) the percentage change in population and cost of living. If state revenue exceeds the allowed amount of spending, the money may be put in a budget stabilization fund until the fund reaches 7% of the allowed spending total. The rest must be refunded to taxpayers. Money in the stabilization fund may be spent only when revenue fails to keep up with population and inflation growth or only for declared emergencies and by 3/4 vote in each legislative house. City and county revenue-sharing are prescribed; unfunded state mandates are limited.

Sponsor: Sen. Martin

Status: SCR1003 narrowly passed the Senate Appropriations Finance Committees several weeks ago. It is awaiting action by the Senate Committee of the Whole.

HCR2009: TAX INCREASE; BALLOT SUPERMAJORITY

The 2004 general election ballot is to carry the question of amending the state constitution to provide that an initiative or referendum measure providing for a net increase in state revenue can take effect only if it is approved by two-thirds of the voters casting ballots on the measure.

Sponsor: Rep. Biggs

Status: HCR2009 passed the full House by a vote of 31-26-3 on March 12, 2003, and is awaiting committee assignment in the Senate.

HCR2011: STATE SPENDING LIMIT; BUDGET STABILIZATION

The 2004 general election ballot is to carry the question of amending the state constitution to replace its prohibition of the state spending more than seven per cent of estimated total personal income with language saying the state cannot spend more than it spent the previous year plus or minus cost of living and population change percentages. Additionally, HCR 2011 requires state revenues exceeding the appropriations limit to be deposited into a rainy day fund or returned to taxpayers.

Sponsor: Rep. Pearce

Status: HCR2011 has passed House Committee hearings and the Committee of the Whole. It is waiting third read by the full House.

HCR2024: VOTER APPROVED SPENDING; LIMITATION

The 2004 general election ballot is to carry the question of amending the state constitution to provide that if voter-approved spending fails to fully fund the program for which it is allocated, the Legislature, with approval of the governor, may proportionately reduce the spending.

Sponsor: Rep. Konopnicki

Status: HCR2024 passed third read in the House 32-25-3 on March 12, 2003, and is awaiting Senate committee assignment.

HB2248: APPROPRIATION OF FEDERAL MONIES

The legislature retains the authority to appropriate all noncustodial federal monies (not for university research grants or the dept. of emergency and military affairs, or school districts or community colleges) received by any state agency, and if the legislature declines to appropriate, the state agency shall administer and spend the monies pursuant to federal and state law.

Sponsor: Sen. Bennett

Status: The bill passed the House 38-21-1 and the Senate 16-13-1. The Governor subsequently vetoed the legislation on March 2, 2003.

Staff will also provide a verbal update at Monday's Study Session concerning the progress of the FY 03 &.04 budget negotiations and potential impacts on the City of Mesa. As the Session progresses, we will be providing Council with progress reports on these and other issues of significance to the City of Mesa.

Jim Huling
Assistant to the City Manager

Mike Hutchinson
City Manager