



COUNCIL MINUTES

February 5, 2007

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on February 5, 2007 at 5:45 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Tom Rawles
Scott Somers
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

STAFF PRESENT

Christopher Brady
Debbie Spinner
Barbara Jones

Invocation by Pastor Gregory Dasby, Holy Temple Church of God in Christ.

Pledge of Allegiance was led by Brandon Bombernick, Boy Scout Troop 355.

City Attorney Debbie Spinner responded to a question from Vice Mayor Walters by advising that Councilmembers could comment on the actions taken by Councilmember Rawles regarding the Pledge of Allegiance and his protest of the war in Iraq.

Vice Mayor Walters said that although the choice made by Councilmember Rawles to protest the war by refusing to stand for the Pledge of Allegiance would not be her choice, she recognized that he has the right to do so. She thanked the veterans in the audience for their service to secure the freedoms that enables citizens of this country to exercise the right of free speech. Vice Mayor Walters stated the opinion that Councilmember Rawles has not violated the City Charter or the Code of Ethics. She added that having the right to take a certain action does not necessarily mean that everyone would agree that the action was appropriate. Vice Mayor Walters stated that her choice to stand for the Pledge of Allegiance represents her personal views and her respect for the flag.

Councilmember Whalen advised that he would not judge the actions of another person. He said that as an elected official of the City of Mesa, he believes he has a responsibility to the citizens of Mesa to stand and show respect for the flag of our country. Councilmember Whalen added that he highly respects Councilmember Rawles, but he expressed the opinion that Councilmember Rawles made a poor choice regarding his manner of protest.

Councilmember Somers said that he has enjoyed serving with all members of the Council, and that regardless of an individual's position on the war, he does not believe that the Council Chambers is an appropriate venue for a protest. He noted that the media attention has been disruptive, and he expressed the opinion that the message that Councilmember Rawles was attempting to convey was lost in the reaction to his method of protest.

Councilmember Jones expressed appreciation to the citizens who were present to voice their opinions regarding the issue. He said that he is grateful for the freedoms afforded by this country and that he considers pledging allegiance to the flag to be a personal privilege and honor. Councilmember Jones explained that although he understands the reason for Councilmember Rawles' protest, he does not believe that a Council meeting is the appropriate forum, and he was dismayed by the accompanying distraction generated by the protest.

Councilmember Griswold expressed strong disagreement with the manner in which Councilmember Rawles chose to protest the war. He stated the opinion that other more appropriate methods of protest are available.

Mayor's Welcome.

Mayor Hawker welcomed everyone to the meeting. A videotaped presentation was aired that outlined meeting procedures and provided attendees with instructions relative to addressing the Council.

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 Somers, seconded by Vice Mayor Walters, that the consent agenda items be approved.

Carried unanimously.

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

Minutes from the January 18 and 22, 2007 Council meetings.

3. Take action on the following liquor license applications:

*3a. Caledonian Society of Arizona - **Deleted.**

*3b. Asiana Market Plus

New Beer & Wine Store License for Asiana Market Plus, 1116 S. Dobson Road, Suite 117, Jun Ho Trading Company Inc – Applicant; Insoon Lee Ha – Agent. The previous

Beer & Wine Store license held at this location by Kye Sun Chang will revert back to the State. (District #3).

*3c. Tesco

New Beer & Wine Store License for Tesco, 2009 N. Stapley Drive, Tesco Stores West, Inc. – Applicant; Randy D. Nations – Agent. No previous liquor license at this location. (District #1).

*3d. Tesco

New Beer & Wine Store License for Tesco, 9950 E. Guadalupe Road, Tesco Stores West, Inc. – Applicant; Randy D. Nations – Agent. No previous liquor license at this location. (District #6).

4. Take action on the following contracts:

*4a. Two-year renewal of the contract for landscape maintenance services for Parks and Retention Basins, in an area designated as Zone 5, as requested by the Parks, Recreation & Commercial Facilities Department.

The Procurement Services Department recommends exercising the two-year renewal option with Mariposa Horticultural Enterprises, Inc. at \$180,769.00 annually, based on estimated requirements.

*4b. Contract dollar limit increase to the supply contract for ferrous chloride as requested by the Utilities Department, Water Division.

The Procurement Services Department recommends increasing the contract dollar limit to Kemiron Companies, Inc. by \$240,000.00 to \$495,024.00 annually for 2006/07.

*4c. Sewer diversion structure rehabilitation at Baseline and Emerson Roads, City of Mesa Project No. 01-687-003.

The City maintains a large number of wastewater diversion structures within the wastewater collection system. This project will rehabilitate one of these diversion structures to eliminate odors coming from the structure.

Recommend award to the low bidder, Currier Construction, Inc., in the amount of \$120,084.00 plus an additional \$12,008.40 (10% allowance for change orders) for a total award of \$132,092.40. Funding for this project is available from the Wastewater Bond Program.

*4d. Beverly Park Fence and Wall, City of Mesa Project No. 06-001-001.

This project will install approximately 665 feet of wrought iron fence and block wall along the northerly side of Beverly Park, which is located north of Main Street and east of Alma School Road. These improvements will provide a barrier between the park and the properties to the north.

Recommend award to the low bidder, Comcast Corporation, in the amount of \$72,275.00 plus an additional \$7,227.50 (10% allowance for change orders) for a total award of \$79,502.50. Funding for this project is available from Park bond proceeds and approved Park Operating funds.

4e. FY 06/07 Residential Street Overlays, City of Mesa Project No. 06-092-001.

Each year the Transportation Department identifies roadway segments that require some measure of pavement maintenance. This project will overlay 240,000 square yards of asphalt rubber pavement. Residential areas included in this project are the northwest area of Lindsay Road and Brown Road, southwest area of Stapley Drive and Southern Avenue, and many residential streets in the Dobson Ranch area. Improvements include construction of ADA compliant sidewalk ramps and other minor street improvements.

Recommend award to the low bidder, M.R. Tanner Development and Construction, Inc., in the amount of \$2,585,000 plus an additional \$258,500.00 (10% allowance for change orders) for a total award of \$2,843,500.00. Funding for this project is available from Highway User Revenue Fund (HURF) funds.

Mayor Hawker declared a potential conflict of interest and stated that he would not discuss/participate in this agenda item. He yielded the gavel to Vice Mayor Walters.

It was moved by Councilmember Jones, seconded by Councilmember Griswold, that staff's recommendation be approved.

Upon tabulation of votes, it showed:

AYES – Griswold-Jones-Rawles-Somers-Walters-Whalen
NAYS – None
ABSTAIN – Hawker

Vice Mayor Walters declared the motion carried unanimously by those voting.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

*4f. Replacement carpeting for the 2nd floor of Mesa City Plaza Building located at 20 E. Main Street utilizing State of Arizona Contract #EPS060077-2, City of Mesa Project No. 06-907-002.

This project will replace carpeting that was installed more than ten years ago and has reached the end of its useful life. Replacing this carpet will result in increased safety and improved facility appearance. This floor will become offices for the Personnel Division.

Recommend purchasing from the State of Arizona contract #EPS060077-2, through Wholesale Floors, Inc., in the amount of \$55,653.79 plus an additional \$5,565.37 (10% allowance for change orders) for a total award of \$61,219.16. Funding for this project is available from the approved Facilities Maintenance Department budget.

5. Introduction of the following ordinances and setting February 20, 2007 as the date of the public hearing on these ordinances:

- *5a. **Z07-07 (District 6)** The 10000 to 10200 block of East Hampton Avenue (south side). Located east of Crismon Road and north of US60 (10.25 acres). Site Plan Modification. This request is for offices, medical offices, and warehousing. Ed Kendler, owner; Wesley R. Balmer, applicant. *(Held two neighborhood meetings, and notified property owners.)*

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

- *5b. **Z07-08 (District 6)** 2235 South Hawes Road (east side). Located south of the southeast corner of Baseline Road and Hawes Road (7±ac.). Rezone from AG to R-2 and Site Plan Review. This request will allow the development of an assisted living facility and duplexes. Michael Killeen, owner; Boyd H. Thacker, applicant. *(Held two neighborhood meetings, notified property owners, interested parties, registered neighborhoods and homeowners associations.)*

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

6. Take action on the following resolutions:

- *6a. Extinguishing a Temporary Drainage Easement at the southeast corner of South Vineyard and West Baseline Road – Resolution No. 8916.

This easement is no longer required as the current development has dedicated easements for the new drainage area.

- *6b. Extinguishing a Temporary Emergency Access Easement located at East Renfield Street and South Mountain Road – Resolution No. 8917.

The purpose for this temporary easement is no longer required as the development of the subdivision is complete.

7. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting. Any citizen who 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. **Z07-01 (District 5)** The 2169-2183 block of North Sossaman Road (east side). Located on the northeast corner of Sossaman and McKellips Roads (4.7±ac.). Rezone from Maricopa County R1-35 RUPD to City of Mesa R1-35 PAD. For the establishment of City of Mesa zoning on recently annexed property. Glen Duke, Michael Parish, Borbala Csaki & Carl Lytikainen, owners; City of Mesa, applicant – Ordinance No. 4667.

PHO Recommendation: Approval with conditions.

- *7b. **Z07-02 (District 6)** The 10202-10238 block of East Broadway Road (north side). Located on the northeast corner of Broadway and Crismon Roads (2.3±ac.). Rezone from Maricopa County R1-8 to City of Mesa R1-9. For the establishment of City of Mesa zoning on recently annexed property. John Brauchler, owner; City of Mesa, applicant – Ordinance No. 4668.

PHO Recommendation: Approval with conditions.

- *7c. **Z07-03 (District 5)** The 9310-9346 block of East Main Street (north side). Located on the northeast corner of Main Street and Ellsworth Road (20.1±ac.). Rezone from Maricopa County C-3 & R-5 to City of Mesa C-3 & R-4. For the establishment of City of Mesa zoning on recently annexed property. Silver Spur MHP, LLC, Geff Gunsalas, General Manager, owner; City of Mesa, applicant – Ordinance No. 4669.

PHO Recommendation: Approval with conditions.

- *7d. **Z07-04 (District 6)** The 9030-9112 block of East Southern Avenue (north side). Located on the northwest corner of Southern Avenue and Ellsworth Road (3.17±ac.). Rezone from Maricopa County Rural-43 & R1-7 to City of Mesa R1-43 & R1-7. For the establishment of City of Mesa zoning on recently annexed property. Mark Kohner, owner; City of Mesa, applicant – Ordinance No. 4670.

PHO Recommendation: Approval with conditions.

- *7e. **Z07-05 (District 5)** The 6000-6400 Block of East Evergreen Road (south side). Located south and east of the southeast corner of Recker and Brown Roads (6.85±ac.). Rezone from Maricopa County R1-6 SC to City of Mesa R1-6 AS. For the establishment of City of Mesa zoning on recently annexed property. Robert Dethlefs, Joseph Dziedzic, Alfred Ellis, Scott Erdman, Richard Fessler, Donald Forness, Oscar Gansky, Clayton Gourley, Ricky Hanson, Robert Jandeczek, Robert Karraker, Phyllis Kowaluk, Joseph Kuka, Sandra Legrand, Robert Lenhart, Albert Loucks, Cheesman McIntosh, David Leo Meyer, James Partida, Kathryn Pugnier, Gaither Robinson, Raymond Roslan, Victoria Rovenko, Clarence Schilperoort, Frank Shirey, Michael Stone, Darlene Taylor, Delbert Tice, Claude Torbit, Jaunita White, Joseph Wilson, owners; City of Mesa, applicant – Ordinance No. 4671.

PHO Recommendation: Approval with conditions.

8. Take action on the following subdivision plats:

- *8a. “AQUILA LAS SENDAS” (**District 5**) 2600 to 2700 block of North Power Road (east side) located south and east of McDowell Road and Power Road. 138 R-3 PAD condominium units (10.43 ac.). Aquila Las Sendas, LLC, Richard Lloyd, managing member, owner.
- *8b. “McKELLIPS CENTER” (**District 5**) 4800 block of East McKellips Road (south side) located south and west of McKellips Road and Higley Road. 2 M-1 PAD industrial lots (3.86 ac.). Ross Property Group, LLC, Lance Ross, managing member, owner.

*8c. "FAIRWAY TERRACE CONDOMINIUMS" (**District 1**) 524 West Fairway Drive (north side) located north and west of Brown Road and Country Club Drive. 16 R1-9 condominium units (1.55 ac.). Fairway Investments, LLC, Gwendolyn J. Ingels, manager, owner.

*9 Approve write-off of utility and miscellaneous accounts for the three-month period ending September 30, 2006 in the amount of \$294,134.00. Collection efforts will continue with respect to all of these accounts, including the assignment of accounts to a collection agency.

*9.1. Discuss and take action on the recommendation of the City Attorney's Office regarding the disclosure of certain taxpayer information pursuant to a Summons from an agency of the Federal Government.

10. Items from citizens present.

Randy Fushee, a member of the Veterans of Foreign Wars Post No. 1760, thanked the Council for their support of the Veteran's Day Parade. He expressed the opinion that Councilmember Rawles lacks the spirit that drives this country, and he hoped that the Councilmember would reconsider his method of protest.

Frank Alger, 1009 North April, representing the Mesa Veteran's Day Parade Committee, stated the opinion that pledging allegiance to the flag demonstrates respect for the symbol of our country. He expressed concern that the action taken by Councilmember Rawles sets a poor example for the children who are the leaders of tomorrow.

Mike Thelen, 131 North Higley Road, a member of American Legion Post No. 26, stated the opinion that Councilmember Rawles, as an elected representative of the people, has disrespected our country and the men and women who have served our country. He said that Councilmember Rawles has the right to protest as a private citizen but not in the role of an elected official.

Jack Holloway, 831 North Alvaro Circle, stated the opinions that Councilmember Rawles has the right to express his personal viewpoint in this manner and that denying this right would constitute a denial of the freedoms for which many have fought. He expressed concern that the focus has been on the manner of protest rather than the message. He stated that all constitutional freedoms should be defended and protected.

Pauline Bedsworth, 2435 East Caballero, expressed the opinion that Councilmember Rawles was utilizing his position as an elected official for personal gain. She noted that the public interest regarding his method of protest has diverted attention from important issues confronting the City of Mesa. Ms. Bedsworth further stated that although Councilmember Rawles has the right to express his views as a private citizen, the City Council should focus on local issues.

Val Tapia, 852 East Ellis, said that no citizen is required to pledge allegiance to the flag. He stated the opinions that individuals seek public office in order to create change and that a City Council meeting was an appropriate venue for this type of protest.

Greg Woods, 1426 West Pepper Place, said he was ashamed and embarrassed by the fact that Tom Rawles was his Council representative. He expressed the opinion that Councilmember

Rawles has violated his oath of office, and he requested that the Council censure the Councilmember for his actions.

Doraine Frick, 123 North Robson, questioned why anyone could be proud of a country that has "killings, hatred and disunity." She said that if this was "one nation under God, where is the liberty for all."

Jerry D. Walker, 113 South Ogden Circle, stated that he disagreed with Councilmember Rawles' method of protest. As a member of the Veteran's Day Parade Committee, he requested that the Council and any other interested parties provide financial support for the 2007 Parade.

Dianne Woods, 1426 West Pepper Place, reported a problem with broken glass in the gutters of the City's streets, and she proposed an additional tax on bottles to provide funds to address the problem. She also suggested that Councilmember Rawles reconsider his actions regarding his protest of the war.

Mayor Hawker thanked the speakers for their comments, and he thanked the members of the audience for respecting the rules of the Council proceedings. He said that Councilmember Rawles would have an opportunity to respond to the comments made by the speakers.

Councilmember Rawles said he would obtain additional information on the issue of broken glass in the streets. Addressing the critics of his protest, he expressed his admiration, honor and respect for all those who have served in the military, which includes both his father and his grandfather. He stated that his protest is not about disrespect or love of country. He said he concurred with the comments of Councilmember Jones in that he is also truly grateful for this country, and he is grateful for the freedom not to stand for the pledge as well as to stand for the pledge. Councilmember Rawles explained that "if I don't have the freedom not to stand for the pledge, standing for the pledge means absolutely nothing." He said that he also honors and respects the protest of his protest, and he expressed appreciation to those individuals who took the time to articulate their views. Councilmember Rawles said he loves his country and he loves the flag. He recalled the protests of the Vietnam Era and said that although he found the act of burning the flag to be offensive, he recognized the rights of these individuals to do so. Referring to the comment made by Councilmember Somers that the reaction to his protest obscured the issue of the war, Councilmember Rawles stated the opinion that both issues were important and that debate regarding freedom of speech issues is likely to continue after the war is over. He also thanked everyone for their civility when expressing their viewpoints.

11. Adjournment.

Without objection, the Regular Council Meeting adjourned at 6:25 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 Regular Council Meeting of the City Council of Mesa, Arizona, held on the 5th day of February 2007. 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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