

# COUNCIL MINUTES

April 12, 2007

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 April 12, 2007 at 7:30 a.m.

## COUNCIL PRESENT

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

## COUNCIL ABSENT

None

## OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Barbara Jones

1. Review items on the agenda for the April 16, 2007 Regular Council meeting.

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

Conflicts of interest declared: 5g, 5h, 5i, 7a, 7d (Hawker); 7a (Whalen); 9a, 10c (Jones)

Items deleted from the agenda: None

Items removed from the consent agenda: 8b, 8e, 9b

2. Hear a presentation and discuss the proposal by Pulice Construction to close McDowell Road during the construction of the Red Mountain Freeway. (See item 7d on the April 16<sup>th</sup> Council Agenda).

Mayor Hawker declared a potential conflict of interest and said he would refrain from discussion/consideration of this agenda item. He yielded the gavel to Vice Mayor Walters for action on this agenda item.

City Traffic Engineer Alan Sanderson displayed a PowerPoint presentation (available for review in the City Clerk's Office) and provided an extensive overview of this agenda item. He reported that Pulice Construction is requesting that the City of Mesa allow the closure of McDowell Road during the construction of the Red Mountain Freeway. Mr. Sanderson explained that similar road closures occurred at Brown Road and McKellips Road.

Mr. Sanderson advised that construction of the Red Mountain Freeway in the area of McDowell Road poses a series of challenges, including the fact that the work area is surrounded on all sides by development. He also stated that a potential bypass route diverted through the Las Sendas community could impact Las Sendas Elementary School. Mr. Sanderson added that the profile of McDowell Road would change east of Power Road to west of Ridgecrest in addition to replacing the existing Central Arizona Project (CAP) canal bridge with a new structure. He also displayed a series of maps depicting the construction area.

Mr. Sanderson further commented that in response to the above-referenced concerns, Pulice Construction proposes to close McDowell Road for four months in order to complete the removal of the CAP canal bridge, construct a new bridge, and build the new profile on McDowell Road. He added that for the remainder of the interchange and the bridge over the freeway, Pulice intends to build bypasses and maintain traffic one way in each direction around the construction area.

Discussion ensued relative to various elements of the proposed agreement between Pulice and the City of Mesa which include: McDowell Road would close May 25<sup>th</sup> and reopen within 122 calendar days (September 23<sup>rd</sup>); that Brown Road must be open with two lanes in each direction; that traffic in normal lanes on Power Road must resume; that Pulice would contribute 50% of the cost for the left-turn signal and traffic camera at Power Road and Thomas/Eagle Crest (the west entrance to Las Sendas); that Pulice would pay the City approximately \$263,000 in fees for the project; and that if McDowell Road is not open by September 23<sup>rd</sup>, Pulice would be required to pay additional fees to the City.

Mr. Sanderson also spoke regarding traffic mitigation efforts that would be implemented during the construction project. He added that if traffic were maintained through the construction zone, the project would take approximately 14 months to complete.

Mr. Sanderson concluded his presentation and stated that staff is seeking Council approval of the above-referenced agreement between the City of Mesa and Pulice Construction.

Councilmember Griswold acknowledged that the closure of McDowell Road would be an inconvenience for the residents in the area. He stated, however, that completion of the Red Mountain Freeway is essential and would benefit the entire community.

Vice Mayor Walters expressed support for the proposal and said that this item is included on the April 16, 2007 agenda for Council action.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

3. Hear a presentation, discuss and provide direction on the use of Proposition 207 waivers.

Assistant City Attorney Jim Smith reported that Proposition 207 involves the issues of condemnation and land use regulation. He explained that the purpose of today's presentation is to seek Council direction regarding the need for and handling of Proposition 207 waivers that would reduce potential claims from landowners applying for annexation and/or land use/zoning changes for their land.

Mr. Smith referred to two types of waiver forms developed by the City Attorney's Office. (See Attachments 1 and 2.) He advised that the first proposed waiver (Attachment 1) would be used

for annexation requests (i.e., zoning, rezoning, Council Use Permits, Special Use Permits and Site Plans). Mr. Smith commented that the intent of the form is to request property owners seeking changes in zoning or other kinds of applications to consent to certain stipulations and explained that such approval would not give rise to a subsequent Proposition 207 claim. He added that the second proposed waiver form (Attachment 2) would be used in other land use cases and is similar to waivers currently used by Phoenix and Chandler.

Planning Director John Wesley commented that staff is seeking Council direction regarding whether they support the use of waiver forms; if the waivers forms presented to the Council are acceptable; and what action staff should take if an individual refused to sign a waiver form.

Mr. Wesley stated that it is the recommendation of staff that waivers be used and commented that it is important to protect the City of Mesa from potential claims. He explained that in cases where a property owner does not sign the waiver, staff would recommend denial of the application. Mr. Wesley added that the Council or the Planning & Zoning Board would make the final decision on the request based on the information provided.

Mayor Hawker concurred with staff's recommendation that the City should require waiver forms for annexation cases and land use claims.

Councilmember Rawles stated the opinion that the City is asking property owners to choose between those rights established under Proposition 207 and their rights to develop, use, enjoy and benefit from their own property. He expressed opposition to staff's recommendation and noted that the use of waivers is "a complete and total reversal" of the role of government. Councilmember Rawles also questioned how the implementation of waiver forms would restore the public's trust in City government, which is one of the Council's primary goals.

Mayor Hawker respectfully disagreed with Councilmember Rawles' comments and stated that property owners do have the right to develop and use their property as currently titled.

City Attorney Debbie Spinner clarified that Proposition 207, which was adopted by the voters, specifically states: "Nothing in this section prohibits this state or any political subdivision from reaching an agreement with a private property owner to waive a claim for diminution in value regarding any proposed action requested by the property owner." She clarified that if a property owner comes to the City and requests various zoning or land use changes, by signing the waiver form they are agreeing not to sue the City if the Council approves such a request.

Vice Mayor Walters commented that the City has an obligation to protect the assets of "the collective residents of Mesa" and especially when a property owner applies for land use or zoning changes from which they would benefit.

Discussion ensued relative to the fact that a property owner can withdraw an application for a land use or zoning change at any time throughout the process; that staff proposes to notify the applicants of the City's policy on Proposition 207 waivers as part of the pre-submittal process; that the waiver form would be provided following submission of the application; and that staff would not require that the applicant return the form until such time as the property owner is aware of the stipulations that have been recommended by the Planning & Zoning Board.

Vice Mayor Walters expressed support for the use of waiver forms as long as the property owner has the ability to withdraw an application at any time.

Councilmember Griswold stated that the purpose of the waiver forms is to prevent the filing of frivolous lawsuits against the City of Mesa. He stated that he would “begrudgingly” support staff’s recommendation, but added that he is opposed to government taking away the rights of its citizens.

In response to a question from Councilmember Jones, Mr. Smith clarified that by signing a waiver form, a property owner who applies, for example, for a rezoning change is consenting to the stipulations and all other conditions as part of the approval process.

Councilmember Rawles stated that the City is protecting itself against situations that, in his opinion, will never arise. He added that no one has ever litigated the effectiveness of waivers before.

Ms. Spinner commented that the waiver forms would not necessarily protect the City from future claims, but rather being a party to a lawsuit.

Further discussion ensued relative to the fact that with regard to annexation cases, property owners who did not sign the petition to agree to annexation could come back at a future time and file a Proposition 207 claim stating that the increased regulations reduced their property values; that in those cases where there is less than 100% approval on an annexation petition and waiver, staff would recommend denial of the request; and that it would be the ultimate decision of the Council whether the request would be approved.

It was moved by Vice Mayor Walters, seconded by Councilmember Griswold, that staff’s recommendation with regard to the Proposition 207 waivers be approved and also that staff be directed to move forward with their implementation.

In response to an inquiry from Councilmember Griswold, Ms. Spinner clarified that the pending motion is with regard to zoning changes. She explained that relative to annexation, it is staff’s recommendation that the City use a broader waiver. Ms. Spinner commented that a waiver is necessary with regard to the annexation and noted that per State Statute, annexation occurs first, followed by comparable zoning. She added that Mesa’s comparable zoning is not identical to the County’s, which would necessitate the change.

Vice Mayor Walters commented that she wanted to ensure that at any point in time an individual could withdraw a request and that the Council would not be forced to act on a request that is against the will of the property owner.

Mr. Wesley assured the Council that it is the position of the City that a property owner can withdraw an application at any point in time during the process.

Ms. Spinner added that staff has allowed applicants to withdraw their projects up until the time a motion is made and seconded by the Council.

Vice Mayor Walters stated that given the fact that the Council is instituting a waiver system, it is important to ensure that property owners have the option to withdraw their cases even up to the day of the Council meeting and not necessarily when a Councilmember makes a motion with regard to the issue.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Somers-Walters-Whalen  
NAYS - Rawles

Mayor Hawker declared the motion carried by majority vote.

4. Hear a presentation and discuss Building Safety budget issues.

Building Safety Director Terry Williams displayed a PowerPoint presentation and offered a brief overview of the proposed FY 2007/08 budget for Building Safety. He reviewed the current permit trends and explained that Building Safety permit revenues, which are treated as a restricted fund within the General Fund, are used only for services provided to the development industry. Mr. Williams reported that the ending fund balance for this fiscal year is projected at \$350,000. He stated that Building Safety's proposed FY 2007/08 budget includes \$10,500,000 in expenses and \$10,650,000 in revenues. Mr. Williams also displayed a series of graphs depicting permit trends, revenue trends and inspection trends from FY 2000/01 to FY 2006/07.

Mr. Williams advised that Building Safety staff regularly tracks revenues and expenditures on a monthly basis concerning permit trends and also operates in a "business mode" with internal staff providing monthly financial statements for review by the City Manager's Office.

Mr. Williams further reviewed Building Safety's revenue projections including, but not limited to: no change in permit volume over the previous fiscal year; an 8% increase, compounded, to reflect the impact of International Construction Code (ICC) bi-annual Cost of Construction Table adjustments; a proposed increase in non-ICC related permit fees; a review of upcoming large-scale projects expected next year; holding six positions vacant for FY 2007/08; and closely monitoring unusual expenditures.

Discussion ensued relative to building inspections, turnaround times, and benchmark performance measures.

Mayor Hawker thanked Mr. Williams for the presentation.

5. Hear a presentation and discuss Library operations and budget issues.

Library Director Heather Wolf introduced staff members present at the meeting and provided a brief overview of the proposed FY 2007/08 budget for her office. She reviewed the previous and current fiscal year staffing levels, the reduction in the hours of operation at the Dobson and Red Mountain branches, and a comparison between Mesa's library hours and those of the surrounding communities.

Ms. Wolf offered an analysis of service level trends from FY 2005/06 to FY 2006/07. She explained that there has been a 23% decrease overall in circulation and that 62% of library patrons utilize self-checking machines. Ms. Wolf also stated that there have been approximately 2.3 million electronic resource transactions, or a 47% increase over last year, and a 6% increase in the number of active library cards (over 238,000).

Ms. Wolf further commented that the library's baseline allocation, as proposed by the Budget Office, is \$10.1 million. She commented that staff intends to make a presentation before the Audit & Finance Committee to request a series of new and increased library fees and fines, which would total an estimated \$222,000. Ms. Wolf added that it is anticipated that the additional resources would be reinvested in the library to offset the Budget Adjustment Requests (BARs) submitted for FY 2007/08.

Ms. Wolf highlighted the library's FY 2007/08 BARS as follows: 1.) Radio Frequency Identification (RFID), which would be used as an inventory and security system and automate staff-intensive processes (\$725,000); and 2.) Municipal Security Officer at the Red Mountain Branch to address increased customer/staff safety (\$53,606). She added that the primary future goal for the library is the reinstatement of branch hours.

Ms. Wolf responded to a series of questions from the Council regarding various issues associated with library operations.

6. Acknowledge receipt of minutes of various boards and committees.

1. Museum and Cultural Advisory Board meeting held on March 14, 2007
2. Transportation & Infrastructure Committee meeting held on March 19, 2007

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

Carried unanimously.

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

Councilmember Somers:	Neighborhood Leaders Forum
Councilmember Griswold:	Sabena Airline Training Facility Grand Opening; Mesa General Hospital Board Meeting
Vice Mayor Walters:	"Stop the Metal-ing in Mesa" Campaign Press Conference; East Valley Partnership Meeting

8. Scheduling of meetings and general information.

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

Monday, April 16, 2007, 3:00 p.m. – Transportation & Infrastructure Committee Meeting

Monday, April 16, 2007, TBA – Study Session

Monday, April 16, 2007, 5:45 p.m. – Regular Council Meeting

Thursday, April 19, 2007, 7:30 a.m. – Study Session

Thursday, April 19, 2007, 8:30 a.m. – Audit & Finance Committee Meeting

Monday, April 23, 2007, 3:30 p.m. – Public Safety Committee Meeting

Thursday, April 26, 2007, 7:30 a.m. – Study Session

9. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

10. Adjournment.

Without objection, the Study Session adjourned at 10:05 a.m.

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KENO HAWKER, MAYOR

ATTEST:

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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 12<sup>th</sup> day of April 2007. I further certify that the meeting was duly called and held and that a quorum was present.

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BARBARA JONES, CITY CLERK

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(attachments – 2)