

COUNCIL MINUTES

November 18, 2004

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 18, 2004 at 7:30 a.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Tom Rawles
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Barbara Jones
Debbie Spinner

1. Discuss and consider approving the free admission on the second Sunday of each month to the Mesa Southwest Museum and the Arizona Museum for Youth as recommended by the Museum and Cultural Advisory Board.

Acting Cultural Director Jerry Dillehay, Museum for Youth Administrator Barbara Myerson, and Southwest Museum Administrator Tom Wilson addressed the Council relative to this agenda item.

Mr. Dillehay reported that in June of this year, the Council approved a six-month trial run for a "2nd Sunday Free" campaign at Mesa's museums (Mesa Southwest Museum and Arizona Museum for Youth). He explained that the museums are currently in the fifth month of the campaign and said that staff determined that the results have exceeded expectations without causing a revenue loss to the City. Mr. Dillehay noted that it is staff's recommendation that the program be extended before the six-month trial has ended in order to maintain the current marketing momentum and allow the event calendars to advertise the campaign through 2005. He added that at their November 10, 2004 meeting, the Museum and Cultural Advisory Board recommended that the City Council consider approving the continuation of the "2nd Sunday Free" at Mesa's museums for an indefinite period.

Discussion ensued relative to the fact that more than 11,000 individuals visited the museum during the first four free days; that in August, high attendance levels challenged the museum's capacity to accommodate the crowds; that less than \$3000 was spent on advertising for the event; that staff's research revealed that at the beginning of the campaign, 42% were first-time visitors and that the number increased to 50% as the months continued; and that by not charging an admission fee, economically challenged individuals were afforded the opportunity to see/experience the museums.

Mayor Hawker voiced concerns that the City is providing a “free service” with Mesa tax dollars and that less than half of the attendees are Mesa residents.

In response to a question from Vice Mayor Walters, Mr. Dillehay clarified that if the “2nd Sunday” program continues, the City would not require an increased budget for the museums in order to provide the service to the public.

Vice Mayor Walters expressed support for continuing the program as long as it does not cost the City additional money.

Councilmember Griswold voiced support for staff’s recommendation and stated that it is an excellent marketing tool to increase the museums’ attendance through return business the remainder of the year.

Councilmember Whalen said that as the Council liaison to the Museum Board, he is supportive of the free admission and added that he would like to see the program expand and become an evening event as well.

It was moved by Vice Mayor Walters, seconded by Councilmember Whalen, that the free admission on the second Sunday of each month to the Mesa Southwest Museum and the Arizona Museum for Youth, as recommended by the Museum and Cultural Advisory Board, be continued for an indefinite period of time.

Carried unanimously.

2. Hear an update on the proposed development agreements and other matters related to the Riverview at Dobson project.

Mayor Hawker and Councilmember Rawles declared potential conflicts of interest and said they would refrain from discussion/consideration of this item. Mayor Hawker yielded the gavel to Vice Mayor Walters for action on this agenda item.

City Manager Mike Hutchinson introduced Supervising Engineer Kelly Jensen who displayed a PowerPoint presentation depicting the proposed Riverview at Dobson site. Mr. Hutchinson provided a brief historical chronology of the development, which includes, among other items, restaurants, movie theaters, and a Bass Pro Shop. He explained that the City has met with the developers over a period of months and determined that it would be appropriate to craft two Development Agreements. Mr. Hutchinson commented that by December, he anticipates Ernst & Young would provide their independent analysis of the sales tax generation and benefit for the City. He added that he also expects the Development Agreements to be ready for Council consideration at the December 6th Regular Council meeting.

City Attorney Debbie Spinner stated that in her opinion, the Development Agreements would be considered referable (subject to the referendum process) based on the size and scope of the Riverview at Dobson project. She noted that the City has not included an emergency clause in the agreements; however, they do contain a provision that the Council would call a Special Election if referendum petitions were submitted specifically regarding the Development Agreements and zoning.

Mr. Hutchinson referred the Council to documents entitled Developer's Incentive Package, Phase I and Developer's Incentive Package, Phase II, which outlined various incentives for the development projects and reimbursable infrastructure improvements. (See Attachments 1. and 2.)

Vice Mayor Walters stated that the City has not "hidden" information regarding developer incentives from the public and noted that the Development Agreements would be available for citizens to review approximately one week prior to the December 6th Regular Council meeting.

Councilmember Jones indicated that he looks forward to reviewing the final Development Agreements and the matter coming forward to the Council for discussion and consideration.

Councilmember Thom said that she is anxious for the Riverview at Dobson project to move ahead and commented that Bass Pro would be a "wonderful addition" to any city.

Councilmember Whalen concurred with Vice Mayor Walters that Mesa is not "trying to pull something underhanded" and that the Council conducts its business "in the open."

Vice Mayor Walters thanked everyone for the presentation and yielded the gavel back to Mayor Hawker.

3. Further discussion and consideration of the recommendation of the Police Oversight Committee to create a Use of Force Review Board to advise the Chief of Police.

Mr. Hutchinson reported that the Council has discussed this item on several occasions and at one point raised the issue of including non-voting members on the Police Oversight Committee. He explained that City Attorney Debbie Spinner conducted research in this regard and concluded that allowing non-voting members to serve on the Committee would not require a Charter change. He noted, however, that in his opinion, it would be difficult for individuals to participate in the process and not be able to vote on the issues.

Mayor Hawker concurred with Mr. Hutchinson that the Council has discussed this matter on various occasions and requested that the Councilmembers provide input and direction to staff in this regard. He referred the Council to the November 15, 2004 City Council Report, which included various alternatives with regard to this item. (See Attachment 3.)

It was moved by Councilmember Rawles, that Alternative 1 (Use of Force Review Board with Voting Civilian Members: Accept the recommendation of the Ad Hoc Committee to Study Police Oversight to create a Use of Force Review Board and direct staff to prepare options for potential Charter amendment language that would enable the City Council to create a UFRB that is advisory to the Chief of Police and includes two civilian members and three or more sworn members of the department, all of whom are able to vote on the Board's recommendations to the Chief), be approved.

Vice Mayor Walters indicated, as a member of the Ad Hoc Committee to Study Police Oversight, that it was "the will" of the Boardmembers that the UFRB only be advisory to the Chief of Police and that the civilian members represent a "numerical minority."

(An extensive discussion ensued among the Council, with the members offering divergent opinions and options regard this issue.)

It was moved by Councilmember Whalen, seconded by Vice Mayor Walters, that Alternative 2 (Use of Force Review Board with Non-voting Civilian Members: begin implementation of a Use of Force Review Board by directing staff to prepare an implementation report to enable the City Council to create a UFRB that is advisory to the Chief of Police and includes two non-voting civilian members and three or more sworn members of the department) be approved, and that the Police Chief and City Manager bring back to the Council a process for the implementation of the Committee and the selection of the civilian members.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote.

4. Further discussion and consideration of a policy regarding the undergrounding of overhead power lines.

City Engineer Keith Nath reported that the purpose of this agenda item is to provide staff the opportunity to respond to a series of questions posed by the Council at a previous Study Session. He explained that according to data obtained from Salt River Project (SRP), Mesa has 3,061 miles of 12 kV lines, including overhead and underground. He said that of that number, the City has been able to underground 2,675 miles, thereby leaving only 386 miles of 12 kV or smaller overhead power lines. Mr. Nath added that the cost to the City to complete such undergrounding would be approximately \$300 million.

Deputy Building Safety Director Jeff Welker referred to the November 16, 2004 City Council Report and highlighted staff's efforts to determine what other Valley communities require relative to undergrounding overhead power lines with private development. (See Attachment 4.) He noted that although the cities that were surveyed do not have specific exemption criteria for undergrounding overhead power lines as Mesa does, they do have a general appeals process for all development requirements that addresses these types of circumstances.

Mr. Welker indicated that in addition to staff's recommendation (Alternative 1) that the City maintain its current development requirement to underground overhead power lines in conjunction with new developments that are located adjacent to arterial and collector streets, they have also provided Alternatives 2 through 5 for Council consideration (as contained in the November 16th City Council Report). He provided a short synopsis of each item.

An extensive discussion ensued among the Councilmembers and staff regarding the various alternatives.

Vice Mayor Walters commented that she would prefer Alternative 4, but noted that prior to fully supporting the option, she would need more information from staff regarding the impact such a policy would have on the property owners.

Councilmember Rawles stated that if the Council does not intend to vote on this issue today, he would concur with Vice Mayor Walters' request for additional research. He said he would reserve his comments until such time as the matter is brought back to the Council.

Councilmembers Jones and Whalen indicated they were not prepared to move ahead with this matter and also requested additional input in order to make informed decisions.

(Councilmember Rawles left the meeting at 9:30 a.m.)

It was moved by Vice Mayor Walters, seconded by Councilmember Thom, that Alternative 4 be used as a model, with further refinements, and that staff come back with additional language reflecting that such a policy would not impact "mega projects" (i.e., General Motors Proving Grounds).

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Thom-Walters-Whalen
NAYS - Hawker
ABSENT - Rawles

Mayor Hawker declared the motion carried by majority vote of those present.

Mayor Hawker stated that he had to leave the meeting for another appointment and yielded the gavel to Vice Mayor Walters for action on the remaining agenda items.

5. Acknowledge receipt of minutes of boards and committees.

- a. Downtown Development Committee meeting held August 19, 2004.
- b. Historic Preservation Committee meeting held September 9, 2004.

It was moved by Councilmember Jones, seconded by Councilmember Whalen, that receipt of the above-listed minutes be acknowledged.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Thom-Walters-Whalen
ABSENT - Hawker-Rawles

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

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

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

7. Scheduling of meetings and general information.

City Manager Mike Hutchinson stated that the meeting schedule is as follows:

Thursday, December 2, 2004, 7:30 a.m. – Study Session

Monday, December 6, 2004, TBA – Study Session

Monday, December 6, 2004, 5:45 p.m. – Regular Council Meeting

Thursday, December 9, 2004, 7:30 a.m. – Study Session

8. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

9. Items from citizens present.

There were no items from citizens present.

10. Adjournment.

Without objection, the Study Session adjourned at 10:00 a.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 18^h day of November 2004. 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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attachments (4)

DEVELOPER'S INCENTIVE PACKAGE
Phase I

Phase I includes the theatre and the retail development surrounding the theatre.

Developers Incentive Package for Phase I includes:

Reimbursable infrastructure improvements	\$1,500,000
Reimbursable city permit & impact fees	<u>500,000</u>
Total Incentive Package for Phase I	\$2,000,000

Infrastructure improvements and city permit and impact fees are capped at the above listed amounts.

Developer is responsible for the payment of infrastructure improvements and permit and impact fees and will only be reimbursed upon the completion of minimum required improvements.

For Phase I the City retains all City sales tax dollars generated.

**DEVELOPER'S INCENTIVE PACKAGE
Phase II**

Phase II includes the remaining retail development on both the west side and the east side of Dobson Road that is not included in Phase I.

Developers Incentive Package for Phase II includes:

Reimbursable infrastructure improvements	\$2,500,000
Reimbursable city permit & impact fees	<u>1,800,000</u>
Total reimbursable expenses	\$4,300,000
Developer will share in sales tax generated from construction	700,000
Developer will share in sales tax generated from retail sales:	
Non - interest bearing	5,000,000
Interest bearing @ 7%	<u>30,000,000</u>
Total Incentive Package for Phase II	\$40,000,000

Infrastructure improvements, city permit and impact fees, and construction sales tax are capped at the above amounts.

Developer is responsible for the payment of infrastructure improvements and permit and impact fees and will only be reimbursed upon the completion of minimum required improvements.

Sales tax will only be shared upon the completion of minimum required improvements.

**AUTO DEALERSHIP INCENTIVE PACKAGE
Phase II**

In addition to the \$42 million dollar incentive package in Phase I and Phase II the City will incentivise for the location of auto dealerships on the west side of Dobson Road by sharing 60 percent (.75 of the City's 1.25%) of the sales tax in years 11 thru 20 of the Development Agreement. Total incentive amount will depend on the sales tax generated from the sale of vehicles during the 10 year year period.

City Council Report

Date: November 15, 2004
To: City Council
Through: Mike Hutchinson
From: Eric Norenberg
Subject: Use of Force Review Board Recommendation from
the Ad Hoc Committee to Study Police Oversight
Citywide Issue

Purpose and Recommendation

On June 9, the Ad Hoc Committee to Study Police Oversight voted unanimously to forward its recommendations to the City Council. It is requested that the City Council provide direction regarding proceeding with the recommendation to create a Use of Force Review Board to advise the Chief of Police as described in the Committee's Final Report.

Background

In October 2003, the City Council approved forming a committee to study the issue of implementing some form of civilian oversight for the Police Department. The City Council appointed a diverse Committee to represent the community. The Committee met once or twice a month between January and June 2004. During those meetings, the Committee heard presentations from the Police Department on training and complaint investigation procedures, the County Attorney's Office on oversight of police-shooting investigations and the Maricopa County Medical Examiner. To gather citizen input, the Committee held Town Hall meetings and conducted an online survey on the City's Web site in February and March. Two of the Town Hall meetings were held for residents and one for members of the Police Department. Fifty residents attended a Town Hall meeting, 45 members of the Police Department attended a Town Hall meeting, and 100 on-line surveys were completed. The full Committee report was distributed previously and is on the City's Web site.

The Ad Hoc Committee to Study Police Oversight recommended the City Council create a Use of Force Review Board. This Board would be advisory to the Chief and consist of two civilians and three or more members of the department. Civilian members would be randomly selected from a pool of potential members appointed to the pool by the Mayor and City Council.

The Use of Force Review Board would convene:

- Any time a person is injured or killed by an employee's firearm discharge.
- Any time an attempt is made to injure a person by discharging a firearm.
- Any time a person dies while in the custody of an MPD employee.

- Any incident involving use of force as directed by the Chief of Police.

The Use of Force Review Board shall advise the Chief regarding whether the employee's action was in or out of policy and may recommend additional training or changes in training or policy. If the determination is made that the actions of the employee were out of policy, the Chief of Police will consider discipline in the case.

Discussion

Implementation of the Use of Force Board recommendation will take an amendment to the City Charter. The City Attorney has issued an opinion that creation of a Use of Force Review Board as recommended will conflict with Section 501 of the Mesa City Charter that prohibits creation of a Civilian Police Review Board. The City Attorney's Opinion is Attachment 1. The Committee has recommended that the City Council put the issue before the voters in the form of an amendment to the Charter that would replace the current prohibition with new language. In order for the citizens of Mesa to vote on such an amendment, the City Council would need to place the issue on a citywide ballot.

In September, the City Council discussed the possibility of creating the Use of Force Review Board with non-voting civilian members. The City Attorney was asked to study this option and determine if this alternative to the recommended Board would conflict with the Charter prohibition as well. The City Attorney determined that if the civilian members of the Board could not vote, there would be no conflict with the Charter. The City Attorney's Opinion is Attachment 2.

Alternatives

1. **Use of Force Review Board with Voting Civilian Members:** Accept the recommendation of the Ad Hoc Committee to Study Police Oversight to create a Use of Force Review Board and direct staff to prepare options for potential charter amendment language that would enable the City Council to create a UFRB that is advisory to the Chief of Police and includes two civilian members and three or more sworn members of the department, all of whom are able to vote on the Board's recommendations to the Chief.
2. **Use of Force Review Board with Non-voting Civilian Members:** Begin implementation of a Use of Force Review Board by directing staff to prepare an implementation report to enable the City Council to create a UFRB that is advisory to the Chief of Police and includes two non-voting civilian members and three or more sworn members of the department.

Eric Norenberg, Special Assistant
to the City Manager

Mike Hutchinson, City Manager

CITY COUNCIL REPORT

DATE: November 16, 2004

TO: City Council

THROUGH: Mike Hutchinson, City Manager
Paul Wenbert, Deputy City Manager

FROM: Jack Friedline, Development Services Manager

SUBJECT: UNDERGROUNDING OVERHEAD POWER LINES

Purpose and Recommendation

The purpose of this report is to provide information to, and receive direction from, the City Council regarding Mesa's current development requirement to underground overhead power lines (12kV or smaller) in conjunction with new developments that are located adjacent to arterial and collector streets.

It is staff's recommendation that this particular development requirement be maintained in its current form. (i.e. Alternative #1). Other alternatives have also been provided in this report for the City Council's consideration.

Background and Discussion

Historically, the City has required overhead power lines (12kV or smaller) to be buried along arterial and collector streets when a property develops. The purpose of this requirement is to improve the aesthetics and safety of the community. In the past, this requirement has been applied to all development except for new unsubdivided single-family lots.

In response to Valley Cities' interest to improve the aesthetics of existing or proposed SRP facilities, SRP developed the "Aesthetic Funding Program". This program, which began in 1989, provides an annual allocation of funds to the City for its use towards improving the aesthetics of existing and/or proposed SRP facilities: The annual allocation is based on a percentage of SRP's annual gross revenue within the City. The City's allocation since 1989 has varied yearly from approximately \$760,000 per year to over \$2,000,000 per year. To date, the City has approved over \$20,000,000 in projects using these funds. The large majority of this funding has been used to bury overhead power lines in conjunction with the City's roadway projects. A small portion of the funding has been used in conjunction with private development projects where the undergrounding of overhead lines paid for by the developer was continued beyond the development. Typically, a project this has been done is where, by continuing the undergrounding, the City was able to eliminate an overhead crossing on an adjacent street.

To date, the City has not used these funds to pay for the developer's obligation for burying overhead power lines. Further, the funding allocation from SRP, if used to pay for the developer's current obligation, would only cover a fraction of the cost involved, and would result in funding not being available for a large number of private development projects or for City capital improvement projects. According to SRP's data, Mesa has 3,061 miles of 12kV or smaller power lines (some of these 12kV lines may be collocated with 69kV lines). Via capital improvement projects and private development, the City has been able to underground 2,675 miles of these lines. SRP asserts that this leaves only 386 miles of 12kV or smaller overhead power lines remaining.

Over the last few years, developers and others have approached Council and staff about exceptions to this requirement. The main concerns raised, deal with 1) the cost to bury the overhead power lines, 2) the requirement to bury overhead power lines in an area where a large portion of the area is already developed and the lines exist overhead, and 3) the requirement to bury the overhead power lines for a residential use, such as a duplex. In July of this year, based on this input, staff developed exception criteria to the requirement that the overhead power lines be buried. The criteria developed was as follows:

1. The cost of undergrounding the overhead power lines is at least 30% of the valuation of the project based on the valuation methodology used in the adopted building code for assessing building permit fees, and
 If less than 50% of the frontage of properties within the property's reach (reach being a one mile section from arterial street to arterial street) has been previously undergrounded, or
2. If the site is to be developed for residential use with the maximum number of dwelling units being three.

Also, in an effort to determine what other cities in the Valley require relative to undergrounding overhead power lines with private development, staff surveyed several cities. Below is a summary, which shows what other cities in the Valley are currently doing. As shown in this chart, most cities require the developer to underground the overhead power lines.

	Chandler	Gilbert	Goodyear	Peoria	Phoenix	Tempe
Require developers to underground overhead lines?	YES	YES	YES	YES	Only if pole is moved.	YES
Use SRP - Aesthetics Funds to assist developers?	NO	NO	N/A (APS Service Area)	NO.	NO	NO

Have specific exemption criteria?	NO*	NO*	NO*	NO*	NO*	NO*
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*While these cities don't have specific exemption criteria for undergrounding overhead power lines, they do have a general appeals process for all development requirements that addresses these types of circumstances.

Alternatives

The following alternatives are presented for the Council's consideration:

1. Maintain this development requirement and associated exemptions in its current form.
2. Amend the current exemptions to include properties wherein the City Code for adjacent arterial and collector streets does not require public roadway improvements.
3. Amend the current exemptions to include properties wherein City Code required public roadway improvements for arterial and collector streets adjacent to the development do not create the need to move any existing poles that support 12kV or smaller overhead power lines (i.e. similar to the Phoenix method).
4. Amend the current exemptions as follows:
 1. The cost of undergrounding the overhead power lines is at least 30% of the valuation of the project based on the valuation methodology used in the adopted building code for assessing building permit fees, and OR
 2. If less than 50% of the frontage of properties within the property's reach (reach being a one mile section from arterial street to arterial street) has been previously undergrounded, or
 3. The site is to be developed for residential use with the maximum number of dwelling units being three.
5. Discontinue the current requirement for private development to bury overhead power lines in conjunction with new development. With SRP's contention that only 386 miles of 12kV or smaller overhead power lines remain in Mesa (new annexations notwithstanding), and SRP's annual aesthetic fund allocation to Mesa averages \$1.4M, and because the current cost to underground overhead power averages \$150/LF, it will take approximately 218 years to underground the remaining overhead 12kV or smaller power lines using only SRP aesthetic dollars.

Developing exemption criteria for public improvement requirements is problematic at best. Staff believes Mesa's current exemptions are fair and effectively address the majority of circumstances (i.e. redevelopment, infill, etc) while achieving previous Council's direction to underground these overhead lines (only 12.6% of 12kV lines

remain overhead). Unfortunately, some developments will always fall outside whatever exemptions the City establishes. These developers will make the same arguments for immunity as those currently expressing their concerns to staff and the Council. At the end of the day, it gets back to the fundamental question of whether or not the current City Council wants staff to continue enforcing this historic development requirement.

Fiscal Impact

There would be no fiscal impact to the City, with any of the alternatives noted above, unless the Council chooses to supplement the annual SRP aesthetic allocation with City general funds to accelerate the undergrounding program. Staff estimates the potential cost of undergrounding the remaining 12kV or smaller overhead SRP power lines would be approximately \$306M. Due to the lack of a legal nexus, staff does not believe Mesa can establish an impact fee for the purposes of funding the undergrounding of overhead power lines.

Concurrence

No other departments are affected by this recommendation.

Staff Originators - Keith Nath
CITY ENGINEER

Staff Originators – Jeff Welker
DEPUTY BUILDING SAFETY DIRECTOR

Jack Friedline
DEVELOPMENTSERVICES MANAGER

Paul Wenbert
DEPUTY CITY MANAGER

Mike Hutchinson
CITY MANAGER