

COUNCIL MINUTES

November 10, 1999

The City Council of the City of Mesa met in a Special Council Meeting in the lower level meeting room of the Council Chambers, 57 East 1st Street, on November 10, 1999 at 2:00 p.m.

COUNCIL PRESENT

Mayor Wayne Brown
Jim Davidson
John Giles
Keno Hawker
Bill Jaffa
Dennis Kavanaugh
Pat Pomeroy*

COUNCIL ABSENT

None

STAFF PRESENT

C.K. Luster
Neal Beets
Denise Bleyle
Linda Crocker
Mike Hutchinson
Barbara Jones
Joe Padilla
Ellen Pence
Bryan Raines
Andrea Rasizer
Becky Richardson
Jenny Sheppard
Kim West
Mindy White
Larry Woolf
Others

OTHERS PRESENT

Larry Given
Barrett Marson
Fred Rosenthal
Others

Mayor Brown stated that Councilmember Pomeroy will participate in the discussion and vote on agenda items 1 and 2 by use of teleconferencing equipment.

1. Consider bids received for the purpose of bonds and, if deemed advisable, to adopt a resolution providing for the issuance and sale of General Obligation Bonds, Series 1999, of the City of Mesa, Arizona and declaring an emergency – Resolution No. 7441.
2. Consider bids received for the purchase of bonds and, if deemed advisable, to adopt a resolution providing for the issuance and sale of Street and Highway User Revenue Bonds, Series 1999, of the City of Mesa, Arizona, and declaring an emergency – Resolution No. 7442.

Finance Director Larry Woolf introduced the City of Mesa's Financial Advisor Larry Given and Fred Rosenfeld, who serves as the City's Bond Counsel, to the members of the Council. Mr. Woolf advised that the City received a total of nine bids on the General Obligation Bonds and reported that the winning proposal was submitted by Prudential Securities Incorporated, with an average interest rate of 5.5396%.

Councilmember Kavanaugh commented on the fact that City staff is anticipating the filing this date of a citizens' initiative which seeks to require that an election be held in order for the City to impose primary and/or secondary property taxes. Councilmember Kavanaugh noted that State law already requires that an election be held in order to implement a primary property tax and questioned whether requiring an

election for the purpose of imposing a secondary property tax would negatively impact the sale of the City's existing or future bonds. Councilmember Kavanaugh requested input relative to this matter.

Mr. Rosenfeld addressed the Council regarding this issue and noted that in accordance with the Arizona Constitution, General Obligation Bonds cannot be issued unless an election is held. Mr. Rosenfeld also expressed the opinion that should the citizens' initiative be adopted, any future bond issues that are approved by the voters after the effective date of that initiative would continue to automatically provide the City with the authority to levy a secondary property tax without holding any additional elections.

Councilmember Kavanaugh clarified that should the City of Mesa determine that additional revenue streams are required in order to meet obligations associated with those bonds, the City would have the authority to levy a secondary property tax without holding an additional election. Mr. Rosenfeld concurred with Councilmember Kavanaugh's synopsis of the proposed situation.

Discussion ensued relative to the fact that the proposed initiative cannot amend State law, the fact that the initiative, if approved, will not impact the manner in which the City conducts business based on the fact that an election is already required in order to levy a primary tax, and the fact that bond issues approved by the voters automatically provide the City with the authority to levy a secondary property tax if required, without holding an election for this purpose.

It was moved by Vice Mayor Giles, seconded by Councilmember Hawker, that Resolution No. 7441 be adopted.

Carried unanimously.

It was moved by Vice Mayor Giles, seconded by Councilmember Kavanaugh, that Resolution No. 7442 be adopted.

Carried unanimously.

3. Further discussion and clarification of the process to review proposed Charter changes to establish additional ethics standards for elected officials and citizen advisory boards.

(Councilmember Pomeroy remained on line during a portion of the discussion on this agenda item.)

Councilmember Kavanaugh stated that the proposed Charter changes focus on three areas: 1) amending the City Charter to clarify/redefine the definition of misconduct as the term relates to elected officials and Advisory Board members; 2) amending the City Charter to clarify the City Council's sphere of authority/responsibility and range of available sanctions that may be applied in instances of misconduct; and 3) to create a Citizens' Advisory Board on Ethics Issues which would have two primary roles: a) respond to questions from the City Council and from Advisory Board members relative to interpreting and complying with the Ethics Code, and b) assist the City Council in conducting investigations relative to possible Ethics Code violations.

Councilmember Kavanaugh commented that the proposed Advisory Board would be fashioned after the Judicial Advisory Board and emphasized that in no manner or instance would the Board usurp the authority of the City Council to impose discipline or sanctions against an elected official and/or Advisory Board member. Councilmember Kavanaugh added that citizen involvement would be part of the overall process.

Mayor Brown stated that he and other members of the Council participated in misconduct proceedings in the past and said that the process was both difficult and unpleasant. Mayor Brown also expressed concerns that the proposed process may delegate an over abundance of power to the Advisory Board and added the opinion that the City Council should initiate all investigations into possible Ethics Code violations.

In response to a question from Mayor Brown, City Attorney Neal Beets expressed the opinion that the Council controls the content of the Ethics Code and Handbook, which was adopted by resolution. Mr. Beets added that a Charter change is not required in order to revise the contents of the Code. Mr. Beets commented that currently the Charter does not contain any language relative to ethics code violations.

Mayor Brown said that he supports implementing the proposed Ethics Code for a set period of time prior to deciding whether to place the issue on the ballot of a City election for the purpose of amending the City Charter. Mayor Brown discussed difficulties associated with determining the effectiveness of the Code without participating in at least one alleged Ethics Code violation process. Mayor Brown stated that he would prefer at this point to adopt the Ethics Code and allow it to remain in effect, appoint members to a Citizen Advisory Board and stipulate that it will be the responsibility of the City Council to initiate and delegate investigative responsibility to the members of the Board, if the Council deems such action to be appropriate. Mayor Brown added that the results of the investigation will be forwarded to the City Council for a determination on whether to initiate action on a case-by-case basis.

In response to a question from Councilmember Kavanaugh relative to Mayor Brown's comments, Mr. Beets stated the opinion that an ordinance rather than a Charter change would be sufficient to create an ethics commission or citizen advisory board. Mr. Beets added that the ordinance may also establish standards of conduct for citizens advisory board members. Mr. Beets also noted that standards of conduct for members of the City Council are already addressed in the City Charter (grounds for discipline and forfeiture of office) and said that in order to revise and clarify this issue, a City Charter amendment is required.

Vice Mayor Giles advised that he supports amending the City Charter to include clearer, broader definitions and guidance relative to the issue of inappropriate conduct. Vice Mayor Giles added that he also supports expanding the scope of sanctions that are available to the Council in dealing with sensitive issues of this type. Vice Mayor Giles stated that he basically concurs with the first two proposed changes as outlined (on the previous page) by Councilmember Kavanaugh but requested that consideration be given to reducing the scope of time involving prior arrests (which would disqualify candidates from running for public office) and changing the "voluntary" nature of the Ethics Code prior to enactment. Vice Mayor Giles stated his preference for allowing the City Attorney to retain responsibility for providing ethics opinions but added that a provision should be included in the Code and City Charter which provides the City Council and the Advisory Board members with the ability to engage the services of a special investigator should it be determined that this action is appropriate. Vice Mayor Giles emphasized that he would not support the appointment of a permanent panel to perform these services. Vice Mayor Giles also discussed replacing the voluntary ethics resolution with a permanent ordinance.

Councilmember Hawker commented on additional portions of the Code which he would like to address including extending the 24-hour gift reporting time frame and refining and clarifying definitions such as "ethics training" and "grounds upon which to initiate an investigation." Councilmember Hawker reiterated concerns regarding the proposed 15 member board and the powers they would be granted and agreed that a wide range of issues remain to be resolved and clarified by the City Attorney and the Council.

Councilmember Hawker indicated his interest in becoming a member of the committee to further review this issue and indicated dissatisfaction with the proposed Code in its current form. Councilmember Hawker added the opinion that members of the original Charter Review Committee should also be invited to participate in discussions and provide input.

Councilmember Jaffa expressed concerns relative to "built-in bias" that may be present as a result of discretionary board appointments and possible negative impacts on the City's liability insurance as a result of soliciting opinions from sources other than the City Attorney. Councilmember Jaffa said that he would support voluntary compliance but would not vote in support of a mandatory Code of Ethics.

Additional discussion ensued relative to the appropriateness of providing non-elected board members with powers that are typically reserved for elected officials.

Councilmember Davidson concurred with Vice Mayor Giles' comments and stated that he does not support the creation of a citizen advisory board. Councilmember Davidson added that he agrees that the authority of the City Council in this regard should be better defined but said that a Charter change, rather than the adoption of an ordinance, will accomplish this goal.

Discussion ensued relative to the extensive background and qualifications possessed by the members of the Mayor's Ad Hoc Committee on Ethics, the importance of securing and maintaining the integrity of the City Council, the fact that the Ad Hoc Committee supports public involvement in the process, and the importance of addressing and clarifying levels of conduct and sanctions.

Councilmember Kavanaugh stated that although he would prefer the appointment of the proposed Advisory Board, in the absence of Council consensus on this matter he would extend efforts to reach a compromise that will be acceptable to a majority of the Councilmembers. Councilmember Kavanaugh emphasized that the entire contents of the proposed Ethics Code and Handbook was thoroughly reviewed by legal counsel and experts from various pertinent fields.

Mayor Brown questioned whether the Council would prefer forwarding their proposed changes to the members of the original Ad Hoc Committee on Ethics or designating an independent group to review the changes. Vice Mayor Giles recommended that he and Councilmembers Kavanaugh and Hawker serve on a special Ad Hoc Committee to review the changes in an effort to develop a proposal that will be acceptable to a majority of the Council prior to the December 15th deadline date to place the Ethics Code on the ballot.

Councilmember Hawker indicated his willingness to serve on the proposed committee but reiterated his opinion that members of the original Charter Review Committee should be requested to participate in the process and provide input.

Mayor Brown stated his intention to appoint a Special Ad Hoc Committee on Ethics comprised of Vice Mayor Giles and Councilmembers Kavanaugh and Hawker to review and solicit input from other Councilmembers and selected sources in an effort to develop a proposal that will be acceptable to a majority of the members of the Council.

4. Convene an Executive Session.

It was moved by Vice Mayor Giles, seconded by Councilmember Jaffa, that the Council enter into an Executive session.

Mayor Brown declared the motion carried unanimously by those present.

5. Adjournment.

Without objection, the Special Council Meeting adjourned at 3:01 p.m.

WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Council Meeting of the City Council of Mesa, Arizona, held on the 10th day of November, 1999. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 1999

BARBARA JONES, CITY CLERK