

COUNCIL MINUTES

May 4, 2006

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 May 4, 2006 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

COUNCIL-ELECT PRESENT

Scott Somers

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Barbara Jones

Mayor Hawker excused Vice Mayor Walters and Councilmember Thom from the beginning of the meeting. Councilmember Thom arrived at 7:31 a.m., and Vice Mayor Walters arrived at 7:34 a.m.

1. Discuss alternate proposals for reduction of hours at the Arizona Museum for Youth (Budget Reduction Item No. 30).

Assistant Arts and Cultural Division Director Rob Schultz introduced the Museum for Youth Administrative Coordinator Beth Bartholow and Executive Director Sunnee Spencer. He noted that Southwest Museum Director Tom Wilson was present to address the next agenda item.

Mr. Schultz advised that the Council Report (see Attachment 1) outlines two alternate proposals for reducing operating hours at the Arizona Museum for Youth. He noted that the "Current Proposal" to reduce operating hours to 24 hours per week would result in 45,000 fewer visitors per year rather than the 25,000 fewer visitors listed in the report.

Mayor Hawker questioned the figures that indicate that Alternate Proposal No. 1, which reduces operating hours from 48 to 40, results in a net savings of approximately \$20,000, whereas Alternative Proposal No. 2, which reduces operating hours from 48 to 34, represents a net savings of \$264,759.

Mr. Schultz stated that reductions in operating hours do not provide a commensurate reduction in costs.

City Manager Christopher Brady explained that Alternative No. 1 reduces the number of non-benefited, part-time employees, and that Alternative No. 2 has a more significant impact due to the fact that a number of benefited, full-time positions would be reduced.

In response to a question from Mayor Hawker relative to the optimum or most cost-effective operating schedule, Ms. Spencer stated that a 34-hour operating week is the optimal choice for reducing costs while maintaining services. She noted that the current proposal, which projects a net savings of \$514,942, calls for a reduction in operating hours from 48 to 24 hours per week.

Mayor Hawker expressed the opinion that the calculations appeared to be illogical.

Discussion ensued relative to the fact that benefits for full-time employees (FTEs) is a major cost factor; that approximately \$1.5 million would be saved by closing the museum; that the museum presently has 14 FTEs; that a total of 20 employees, including 9 FTEs, would be retained under the 34-hour per week scenario; that the Museum's Board of Directors continue to discuss opportunities that would increase private participation relative to the operating costs of the museum; and that moving to a fifty percent participation by the private sector would require a three to five year timeframe.

Mayor Hawker stated that he looked forward to reviewing a business plan for the museum, and he expressed the opinion that the City's financial support of the museum's activities should be phased into the private sector within a five-year period.

In response to a suggestion from Mayor Hawker, City Attorney Debbie Spinner said that staff would review the legal implications relative to deeding the museum to a private entity.

Further discussion ensued relative to the fact that \$1.1 million of the museum's annual budget addresses the salary and benefits for full-time and part-time staff; that passage of the sales tax ballot issue would enable the museum to operate for 24 hours a week, and that failure of both the property and sales tax ballot issues would result in closure of the museum.

Mayor Hawker thanked staff for the presentation.

2. Discuss ongoing expenses and obligations associated with the Southwest Museum (Budget Reduction Item No. 72).

Mr. Schultz stated that in the event of closure, the Southwest Museum would incur ongoing operating costs estimated at \$93,653 annually, as outlined in the Council Report (see Attachment 2). He added that a full-time employee would also be required at an estimated annual cost of \$82,000. Mr. Schultz noted that the City could utilize a current staff member who is familiar with the operation for that purpose or the City could contract for the services.

Discussion ensued relative to the fact that in the event of closure, the museum's lobby, corridors and former council chambers could be utilized to store a portion of the collections in order to reduce offsite storage expenses; that the City is self-insured for the museum buildings, but the collections are not included under the property insurance policy; that the City Attorney's Office would review the feasibility of including the collections under the City's property insurance; and that the museum's present insurance coverage includes the collections in the Southwest Museum, the Arizona Museum for Youth, the Public Art Program and the Mesa Arts Center.

In response to a series of questions from Councilmember Thom, Mr. Wilson advised that the museum is presently not meeting their obligation to maintain climate-controlled storage. He advised that only one quarter of the collections are in climate-controlled storage due to the expense. Mr. Wilson stated that many items that do not require a climate-controlled environment

are presently being stored in the Federal Building. He also estimated that 80 percent of the museum's \$2.3 million budget addresses the cost for employees.

Mr. Brady clarified that the only expense previously not identified relative to closure of the facility is the cost of one FTE. He added that permanent closure of the museum would also require future discussions regarding the sale or disposition of the collections.

Responding to a question from Councilmember Whalen, Mr. Wilson advised that the recent remodeling project was a private/public partnership with each sector contributing approximately \$2 million to the cost.

Mayor Hawker stated the opinion that the remodeling project was a very successful effort, and he thanked staff for the updated information.

3. Discuss and provide direction regarding excluding street rights-of-way from future annexation petitions.

Planning Director John Wesley stated that staff was present to seek Council direction regarding the City's policy relative to annexation requests for properties located across a public street from an existing City boundary. He advised that staff's recommendation is that the current policy be modified to allow non-contiguous annexations within a County island in those cases that meet the following criteria: 100 percent of the area requesting annexation is located directly and entirely opposite the existing City limits and the only intervening property is a dedicated street right-of-way. He added that the intervening street right-of-way would not be annexed.

Mr. Wesley said that under the current policy, annexation of property located across a public street from an existing City of Mesa boundary requires that the City annex a section of the street. He advised that the City would then be responsible for maintaining an isolated section of street, which could be very costly and confusing. Mr. Wesley added that this type of annexation also poses problems for the Police and Fire Departments.

Mr. Wesley displayed diagrams (see Attachment 3) to illustrate three possible types of annexation cases (A, B and C) for properties located within an established County island.

Discussion ensued relative to the fact that in the future all properties within the City's 150-mile boundary are likely to be annexed into the City; that the County should be responsible for the street improvements; and that the City is liable for the condition of all roadways within the City.

Mr. Brady noted that the City participates in mutual aid agreements with neighboring communities, and he added that the Mesa Police and Fire Departments respond to calls for emergency services outside of the City's boundaries.

Interim Police Chief G. T. Fowler advised that City of Mesa Police officers are certified by the State of Arizona and therefore have full law enforcement authority in the County. He cited the example of Mesa Police officers responding to an automobile accident in the County, and he stated that the City would provide service and emergency aid until such time as the County was able to respond.

Councilmember Griswold stated the opinion that the City's existing policy prevents some County properties from annexing into the City. He expressed support for the City of Glendale's

annexation model, which does not require a contiguous boundary if the property is located within a County island.

Mr. Wesley responded to comments made by Councilmember Thom by advising that a County island is defined as property completely surrounded by the City of Mesa. He added that Council interest in adopting the Glendale model would require additional study by staff.

Mayor Hawker expressed support for annexing properties in County islands that are located directly across the street from the City's boundaries provided that the City does not assume responsibility for street maintenance and upgrades. He added that annexation agreements should specify that the County is responsible for upgrades to City standards. Mayor Hawker stated the opinion that the examples shown in Annexations A and B were acceptable, and added that he does not support the example shown in Annexation C.

Assistant Development Services Manager Kari Kent clarified that staff was not recommending the example displayed in the diagram identified as Annexation C.

Councilmember Griswold noted that one property owner could prevent other annexations, and he expressed the opinion that staff should conduct additional research on the Glendale model.

Ms. Spinner advised that staff has studied the Glendale model, and she reported that to date no court challenge has been filed regarding the model.

Councilmember Griswold noted that legal challenges are not likely to occur when the property owners have expressed a desire to annex into the City.

Mr. Brady stated that staff would review the Glendale model relative to the impact of isolated annexations on Public Safety and the City's ability to provide services, after which a recommendation would be presented to the Council.

Councilmember Jones said that the City is not obligated to approve every annexation request. He also noted that annexing properties without including the streets could pose future problems when the surrounding properties are in the City and the streets remain in the County.

Mayor Hawker summarized that the majority of the Councilmembers indicated their concurrence that annexations could be accomplished without including the streets, as shown in the examples marked Annexation A and B.

Mayor Hawker thanked staff for the presentation.

4. Hear an update and provide direction on a proposed ordinance pertaining to sale of products containing pseudoephedrine.

Ms. Spinner stated that following a December presentation to the Council by State Attorney General Terry Goddard regarding pseudoephedrine, the Council directed staff to draft an ordinance. She explained that consideration of an ordinance was delayed when the Federal government proposed to include pseudoephedrine regulations in the *Patriot Act*. Ms. Spinner advised that the *Patriot Act* was adopted in March, and that staff has drafted a local ordinance (see Attachment 4) for Council consideration.

Discussion ensued relative to the fact that the *Patriot Act* restricts pseudoephedrine to being sold from “behind the counter,” which in effect means that only a pharmacist can sell pseudoephedrine; that a local ordinance would be in violation of the *Patriot Act* if sales were allowed from a locked cabinet by a store clerk; and that the *Patriot Act* requires a retailer to obtain approval from the United States Attorney General in order to sell pseudoephedrine from a locked cabinet.

Police Staff Attorney Pete Thompson responded to a series of question from Mayor Hawker by advising that adoption of a local ordinance enables the Mesa Police Department to provide a “first time warning” and to be proactive in the community regarding pseudoephedrine. He said that enforcement of a local ordinance would not pre-empt Federal prosecution for violations of the *Patriot Act*, but he expressed the opinion that the Drug Enforcement Agency (DEA) is more likely to address major violations.

City Prosecutor John Pombier stated that the advantage of a local ordinance is that the Police Department can address problems on a day-to-day basis. He stated that an investigation of a major offense would be coordinated between the Federal and local agencies, and in the event of Federal charges, the local agency typically steps aside.

Mr. Thompson advised that the Police and the Prosecutor’s Office have the discretion to address problems on the local level or to refer more serious violations to the Federal level. He noted that the Police Department and the Prosecutor’s Office coordinate with Federal agencies and the U.S. Attorney’s office on a regular basis.

Further discussion ensued relative to the fact that the local ordinance does not include requirements for records of sales; that the *Patriot Act* has strict guidelines regarding records of sales; that the Police Department has the discretion to issue a “warning” or file charges for violations of the local ordinance; that violations would be considered on a case-by-case basis; and that in the event a 17-year-old clerk was not properly trained or regulated by the pharmacist or the business, the pharmacist or the business could be charged with a violation.

Responding to a question from Councilmember Rawles, Assistant City Prosecutor Steve Mercer advised that a reference to pharmacists was included in the proposed ordinance at the direction of the Council. He noted that a pharmacist is the individual charged by the DEA with complying with the law relative to dispensing behind-the-counter drugs, and therefore the pharmacist is the logical person to be held responsible.

In response to concern expressed by Councilmember Rawles that an individual would not be able to obtain pseudoephedrine in the middle of the night from a supermarket, Mr. Mercer stated that the *Patriot Act* prohibits these types of sales unless the U.S. Attorney General issues an exception, and therefore the Council is unable to change that provision.

Additional discussion ensued relative to the fact that the local ordinance provides an opportunity for the imposition of less severe penalties than those imposed by the *Patriot Act*; that the local ordinance provides an opportunity for the Police to control minor problems on a local level without involving the DEA; that the Police Department has indicated that they do not intend to collect the information or take on an additional burden; that the *Patriot Act* utilizes a self-reporting system that is regulated by the Federal government; and that forms and a reporting system are in the process of being established by the U.S. Attorney’s Office.

Councilmember Rawles addressed the restrictions imposed by the State of Oklahoma regarding pseudoephedrine, and he stated the opinion that reducing the local production of methamphetamine (meth) increases the supply that is brought into the U.S. from other countries. He added that the methamphetamine smuggled into the country is of a higher quality and more addictive than the type that is locally produced. Councilmember Rawles further stated that he supports prohibitions regarding pseudoephedrine in order to eliminate the hazards of “cooking meth” in residential neighborhoods.

In response to a question from Mayor Hawker, Mr. Pombier replied that delaying consideration of a local ordinance for six months would provide staff an opportunity to observe the manner in which the *Patriot Act* is enforced.

Vice Mayor Walters stated the opinion that an ordinance should move forward in order to provide the Police Department with the necessary tools to address local problems with methamphetamine laboratories. She also noted that the *Patriot Act* has a provision in place that addresses the availability of 24-hour pharmacies.

In response to a question from Councilmember Thom, Interim Police Chief G. T. Fowler reported that the Federal government formed a High Intensity Drug Task Force in Maricopa County several years ago. He advised that this agency is responsible for investigating methamphetamine laboratories, and therefore he has no recent statistics for Mesa. Chief Fowler stated that although the number of laboratories in the City of Mesa has decreased, these types of operations continue to be a problem. He confirmed that increased quantities of methamphetamine are being brought across the Mexican border. Chief Fowler added that the proposed ordinance would provide the Police Department with an additional tool to reinforce the message that the production of methamphetamine results in criminal prosecution.

Councilmember Griswold expressed support for the local ordinance, and he stated the opinion that the ordinance provides an additional level of safety for the community.

Councilmember Rawles suggested, and Vice Mayor Walters concurred, that the local ordinance include a provision that recognizes and accepts Federal exemptions granted to retailers relative to the sale of pseudoephedrine.

Responding to a question from Councilmember Whalen regarding products that contain a small amount of pseudoephedrine, Mr. Mercer clarified that the *Patriot Act* addresses all products that contain pseudoephedrine.

Councilmember Whalen expressed support for implementing a local ordinance.

Mayor Hawker thanked staff for the information, and he summarized that the concurrence of the Council was that the local ordinance be moved forward, and that staff be directed to include a provision that recognizes and accepts exemptions granted to retailers by the Federal government.

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

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

6. Scheduling of meetings and/or conferences attended.

Thursday, May 11, 2006, 7:30 a.m. – Study Session
Thursday, May 18, 2006, 7:30 a.m. – Study Session
Monday, May 22, 2006, 2:00 p.m. – Budget Hearing
Monday, May 22, 2006, TBA – Study Session
Monday, May 22, 2006, 5:45 p.m. – Regular Council Meeting
Tuesday, May 23, 2006, 7:30 a.m. – Budget Hearing
Thursday, May 25, 2006, 7:30 a.m. – Study Session
Thursday, May 25, 2006, 8:00 a.m. – Budget Hearing

7. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

8. Items from citizens present.

There were no items from citizens present.

9. Adjournment.

Without objection, the Study Session adjourned at 8:58 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 4th day of May 2006. 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)