

## COUNCIL MINUTES

December 20, 2004

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on December 20, 2004 at 5:46 p.m.

### COUNCIL PRESENT

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

### COUNCIL ABSENT

Mike Whalen

### OFFICERS PRESENT

Mike Hutchinson  
Barbara Jones  
Debbie Spinner

Councilmember Rawles participated in the entire meeting through the use of telephonic equipment.

Mayor Hawker excused Councilmember Whalen from the entire meeting.

Invocation by Vice Mayor Walters.

Pledge of Allegiance was led by David Tayrien, Boy Scout Troop #159.

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. Consider all consent agenda items.

At this time, all matters on the consent agenda were considered or were removed at the request of a member of the Council. All items identified with an asterisk (\*) were approved with one Council action.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, that the consent agenda items be approved as amended.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom-Walters  
NAYS - None  
ABSENT - Whalen

Mayor Hawker declared the motion carried unanimously by those present.

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

Minutes from the October 18, November 15, and December 6, 2004 Council meetings.

3. Consider the following liquor license applications:

\*a. KIM KENNETH KWIATKOWSKI, AGENT

New Beer & Wine Store License application for Circle K #6649, 1953 E. Southern Avenue. This is an existing building. The license previously held at this location by Amy Nations, Agent, Ventre Enterprises, Inc., will revert back to the State. District #4.

\*b. KIM KENNETH KWIATKOWSKI, AGENT

New Beer & Wine Store License application for Circle K #6656, 2011 E. McKellips Road. This is an existing building. The license previously held at this location by Rodney S. Herbert, Agent, Reay's Ranch Investors, LLC, will revert back to the State. District #1.

\*c. KIM KENNETH KWIATKOWSKI, AGENT

New Beer & Wine Store License application for Circle K #6660, 2005 W. Broadway Road. This is an existing building. The license previously held at this location by Amy Nations, Agent, Ventre Enterprises, Inc., will revert back to the State. District #3.

\*d. KIM KENNETH KWIATKOWSKI, AGENT

New Beer & Wine Store License application for Circle K #6661, 7546 E. Baseline Road. This is an existing building. The license previously held at this location by Rodney S. Herbert, Agent, Reay's Ranch Investors, LLC, will revert back to the State. District #6.

\*e. JASON BARCLAY MORRIS, AGENT

New Beer & Wine Store License application for CVS Pharmacy #7837, 2807 N. Power Road. This is an existing business. No previous liquor licenses at this location. District #5.

\*f. DENISE D. TAMMINEN, ADMINISTRATOR

Special Event License application for Denise D. Tamminen, Administrator, Diocese of Phoenix, St. Anne Little Flower Montessori School, a one-day event to be held on April 2, 2005, 5:00 p.m. to 2:00 a.m. at 2017 N. Greenfield Road. District #5.

g. RANDALL HERBERT VOGEL, AGENT

New Government License for Mesa Arts Center, 1 East Main Street. This is new construction. No previous liquor licenses at this location. District #4.

Mayor Hawker requested that the City Attorney provide an explanation of a government liquor license and an overview of the laws that pertain to the liquor licenses.

City Attorney Debbie Spinner advised that the City is routinely requested to make recommendations to the State Liquor Board regarding liquor license applications, and that the City is initiating the subject license application for the Mesa Arts Center. She reported that at the suggestion of Councilmember Rawles, staff reviewed the City Code and determined that Mesa's liquor regulations were not in compliance with the Arizona Statutes.

Ms. Spinner noted that the State "pre-empted the field" in certain areas of the law, which means that the State intends to impose all regulations. She referred to A.R.S. (Arizona Revised Statutes) Section 4-224, which states that, "A city, town or county shall not adopt ordinances or regulations in conflict with the provisions in this title..." Ms. Spinner advised that no city or town within the State of Arizona is allowed to impose additional restrictions on the issuance of liquor licenses, and therefore the provisions in the Mesa City Code are void regarding the sale of alcoholic beverages. She noted that an amendment to the Code is included on this agenda in order to bring the Mesa City Code into compliance with the Arizona Revised Statutes.

Ms. Spinner advised that the Council could consider agenda item 3g and make a recommendation to the State Liquor Board regarding the government license for the Mesa Arts Center.

In response to questions from Councilmember Griswold, Ms. Spinner advised that specific exemptions exist relative to issuing a liquor license, including a government license, to an establishment located within 300 feet of a school or church, and those exemptions include restaurants, hotels/motels, special events and government licenses. She clarified that a "bar only" establishment could not be located within 300 feet of a school or church.

Mayor Hawker stated that the Council would hear public comment after which the applicant could address the Council.

The following individuals addressed the Council in support of the application for a government license:

Mike Elliott, 1810 East Hackamore Street  
Tom Verploegen, Executive Director, Mesa Town  
Center Corporation  
Dennis Kavanaugh, 2146 West Isabella, representing the  
Friends of the Mesa Arts Center Board  
Don Strauch, 453 West Hillview Circle  
Robert Brinton, 120 North Center, Executive Director of  
the Mesa Convention & Visitors Bureau

Comments made in support of the application included:

- The availability of alcoholic beverages is an amenity found at the majority of world-class arts centers, including most of the regional venues such as the Herberger, the Dodge Theater and the Scottsdale Center for the Arts.
- The majority of downtown area businesses support the license application as an amenity that will add to the success of the Arts Center and improve business in the downtown area.
- The City also holds government licenses for Centennial Center, Hohokam Stadium and the Riverview Golf Course, and the availability of alcohol at these locations has been handled responsibly.
- The facility will not serve alcohol on a daily basis, only for special events, performances and receptions.
- The availability of alcoholic beverages is critical to the local tourism industry's success in attracting activities and events to the City of Mesa.

Mayor Hawker advised that the following individuals completed cards in support of the liquor license, but indicated that they did not wish to address the Council:

Martin J. Whalen, 1829 East Lynwood  
Mary Jo Whalen, 1829 East Lynwood

Earl Taylor, Jr., 450 North 39<sup>th</sup> Way, Principal and Director of Heritage Academy in Mesa, expressed opposition to the license, and he stated the opinion that the proliferation of alcohol is one of the most damaging elements to society. He suggested that if the application does move forward, that the Council establish rules and policies to insure that children will not be exposed to the consumption and effects of alcohol.

Performing Arts Administrator Randy Vogel reported that the Mesa Arts Center would be the largest and newest arts venue in the State of Arizona when it opens in the spring of 2005. He advised that other regional venues also hold liquor licenses, and that focus group research conducted during the planning for the Arts Center indicated that alcoholic refreshments are an expected amenity. Mr. Vogel noted that the Arts Center is expected to serve as a catalyst for economic development, and he stated that the liquor license would support the effort to attract conferences and special events to the City of Mesa.

Vice Mayor Walters stated that despite her personal beliefs regarding the use of alcohol, she has supported liquor license applications that are allowed within the law. She explained that her initial concern regarding the issue was that the City of Mesa was receiving a special exemption from existing laws, but added that she has since learned that a restaurant in the same area would also be legally entitled to hold a liquor license.

Councilmember Rawles noted that his concern regarding the City having a monopoly on liquor sales in the Mesa Arts Center area has been addressed, and he will support the motion.

Councilmember Thom stated that the Mesa Arts Center could have been constructed at a different location. She recommended that a stipulation be added to the license application stating that liquor will not be served while the neighboring school is in session or while students are present at the Mesa Arts Center.

City Manager Mike Hutchinson suggested that the Council's recommendation to the State Liquor Board not include any stipulations, and that staff be directed to prepare policies and procedures to address Council concerns relative to the sale of liquor at the Mesa Arts Center.

Ms. Spinner clarified that the State Liquor Board will not allow stipulations to be placed on a liquor license. She recommended that the Council consider the application as presented, and that staff address the Council's concerns by drafting policies and procedures for Council review.

Councilmember Jones stated that although he was personally opposed to the use of alcohol, the Arts Center is legally entitled to hold a liquor license and he would support the application.

Councilmember Griswold explained that the availability of alcohol at the Arts Center would be in an area restricted to ticket holders for that event.

Councilmember Thom stated that she would support the motion, but she expressed concern relative to the risk of children being exposed to alcohol while on a school trip to the Arts Center, during which time they would not be accompanied by their parents.

It was moved by Vice Mayor Walters, seconded by Councilmember Griswold, that the Mesa Art Center's government liquor license application be moved forward to the State Liquor Board with a recommendation for approval.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom-Walters  
NAYS - None  
ABSENT - Whalen

Mayor Hawker declared the motion carried unanimously by those present.

4. Consider the following contracts:

- \*a. Thirty self-contained breathing apparatus as requested by the Fire Department for Police personnel assigned to the Weapons of Mass Destruction and SWAT Teams.

The Purchasing Division recommends accepting the low bid by First In Inc. at \$166,968.45 including applicable sales tax. This purchase is 100% funded by a federal grant from the 2003 Urban Area Security Initiative.

- \*b. Replacement of microwave equipment as requested by the Communications Division.

The Purchasing Division recommends authorizing purchase from the Western States Contracting Alliance (WSCA) contract with Harris Corporation for \$149,956.50 and Radio Frequency Services for \$23,788.50.

- c. Three-year supply contract for T-Shirts as requested by the Parks, Recreation and Cultural Division.

The Purchasing Division recommends accepting the low bid by Lamb Sportswear as the primary supplier for annual purchases estimated at \$104,000.00. To ensure continuity of supply a secondary contract is recommended to Sports Station Ltd.

Vice Mayor Walters stated that she supported providing T-shirts in order to identify Parks and Recreation staff members during programs. She explained that although the expense for adult T-shirts and programs is fully recovered by fees, the children's programs are subsidized. Vice Mayor Walters noted that because the City is faced with difficult budget decisions, she would support the purchase contract if the full cost of the T-shirts could be recovered for both the adult and children's programs.

Councilmember Rawles expressed concern that cost recovery for the children's T-shirts would be difficult to track and could result in the City providing a larger subsidy to the children's programs. He stated that he would oppose the contract without assurance that full cost recovery was possible.

In answer to a question from Mayor Hawker, Parks and Recreation Director Terri Palmberg advised that the subject open bid contract provides baseline costs, and that the order quantity would be subject to Council direction. She confirmed that no minimum order quantity was required.

Mr. Hutchinson suggested that the Council continue this item to allow staff an opportunity to provide additional information.

Responding to a question from Councilmember Jones, Ms. Palmberg stated that corporate and business sponsors of children's programs could purchase T-shirts under the City's contract for the participants with the business logo or name imprint.

It was moved by Vice Mayor Walters, seconded by Councilmember Griswold, that consideration of the subject contract be continued to a later date.

Councilmember Thom suggested that the total contract be reduced, and that improved oversight of the program be initiated. She expressed the opinion that an excess number of shirts have been ordered in the past.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom-Walters  
NAYS - None  
ABSENT - Whalen

Mayor Hawker declared the motion carried unanimously by those present.

- d. Lift Station Abandonment and New Gravity Sewer Line, Main Street and Ellsworth Road, City of Mesa Project No. 01-35.3.

This project will install approximately 750 feet of new 8-inch gravity sewer line, manholes, landscape restoration, salvage lift station equipment and abandon the lift station at 9124 East Main Street.

Recommend award to low bidder, Visus, Inc., in the amount of \$169,436.00 plus an additional \$16,943.00 (10% allowance for change orders) for a total award of \$186,379.00.

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

It was moved by Councilmember Griswold, seconded by Councilmember Thom, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters  
NAYS - None  
ABSTAIN - Hawker  
ABSENT - Whalen

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

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

\*e. Repair of Falcon Field Well #5.

In accordance with the emergency provisions of the Purchasing Ordinance, a contractor was hired to replace the Falcon Field Well #5 electrical switchgear, which was destroyed by an electrical fire on November 19, 2004. Due to the need for this well to operate and the fact that the public peace, health and safety are threatened, the formal bidding process described in Section 1-21-4 of the Purchasing Ordinance was impracticable and contrary to the public interest.

Total costs for complete well switchgear replacement and operational check is \$80,770.00.

5. Introduction of the following ordinances and setting January 3, 2005 as the date of public hearing on these ordinances:

- \*a. Relating to public health and safety, amending certain provisions in the amendments to the International Fire Code; amending Title 7, Chapter 2 of the Mesa City Code to add a limited exception to the requirement for fire sprinklers in Group B occupancies.
- \*b. Amending Section 4-2-1(S) of Chapter 2 (Mesa Building Code) of Title 4 of the Mesa City Code to add a limited exception to the requirement for sprinklers in Group B occupancies.

- \*c. **Z04-100 (District 6)** 6136 East Auto Loop Avenue. Located south and west of Southern Avenue and Superstition Springs Boulevard (5.7± ac). Rezone from M-1 PAD to M-1 PAD BIZ and Site Plan Review. This request is for the development of a four story parking facility with associated auto services. Kent C. Earle, owner; Richard Cartell/Bob Fisher, applicant.
- \*d. **Z04-102 (District 4)** 659 East Main Street. Located south and east of Main Street and Mesa Drive (0.67± ac). Rezone from R-2 to C-2 and Site Plan Review. This request is for the development of additional on-site parking and associated site improvements for an existing business. Mike Dudley, owner; Marty Fifer, applicant.
- \*e. **Z04-103 (District 5)** 2919 North Oakland. Located north and west of McDowell Road and Greenfield Road (6.23± ac). Rezone from M-1 to M-1 PAD and Site Plan Review. This request is for the development of office/industrial condominiums. Brad Davis, Greenfield Air Park, LLC, owner; Paul Masse, PHM, Ltd., applicant.
- \*f. **Z04- 104 (District 2)** The 600 block of North Val Vista Drive (west side). Located north of University and west of Val Vista (17± ac). Site Plan Modification. This request is to allow both ingress and egress to the "Hidden Groves" subdivision from East Decatur Street. Hidden Groves HOA, Sharanette Farnsworth, owner/applicant.
- \*g. **A04-12 (District 6)** Annexing the northeast corner of Ray and South Mountain Roads (73.54 ± acres). Initiated by the property owners.
- \*h. Amending Title 5, Chapter 9 of the Mesa City Code relating to regulating the sale of alcoholic beverages.
- i. Amending Title 6, Chapter 15, Section 6 (B) of the Mesa City Code pertaining to alarm user permit requirements.

Councilmember Jones declared a potential conflict of interest and said he would refrain from discussion/participation in this agenda item.

Mayor Hawker stated that the subject amendment imposes a fee for all alarm users without any exclusions based on age or financial hardship.

It was moved by Councilmember Thom, seconded by Mayor Hawker, that Title 5, Chapter 15, Section 6 (B) of the Mesa City Code pertaining to alarm user permit requirements be amended.

Mayor Hawker explained that the \$10 annual fee will enable the City to maintain current telephone numbers, addresses and contact information for those residents with alarm systems.

Discussion ensued relative to the fact an annual fee does not fully recover the cost of responding to false alarms; and that the fee is a method for the City to obtain the information necessary to respond to an alarm.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Rawles-Thom-Walters  
NAYS - None  
ABSTAIN - Jones  
ABSENT - Whalen

Mayor Hawker declared the motion carried unanimously by those present and voting.

6. Consider the following resolutions:

- a. Approving and authorizing the City Manager to execute an Agreement between the Arizona Department of Transportation and the City of Mesa to extend the expiration date of existing Grant number E9023 for Security Fencing on Falcon Field Airport to June 30, 2005 – Resolution No. 8386.

Councilmember Griswold declared a potential conflict of interest and said he would refrain from discussion/participation in this agenda item.

It was moved by Vice Mayor Walters, seconded by Councilmember Thom, that Resolution No. 8386 be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Jones-Rawles-Thom-Walters  
NAYS - None  
ABSTAIN - Griswold  
ABSENT - Whalen

Mayor Hawker declared the motion carried unanimously by those present and voting and Resolution No. 8386 adopted.

- \*b. Approving and authorizing the City Manager to execute a City Share Reimbursement Agreement for the reimbursement of regional offsite street lighting, storm drain and street improvements that will be installed in conjunction with the subdivision known as the 5 Lot Land Division located at 9303 East McKellips Road – Resolution No. 8379.
- \*c. Approving and authorizing the City Manager’s representative to execute an Intergovernmental Agreement between the Town of Gilbert and the City of Mesa for the installation of a sanitary sewer line and two reclaimed water lines along Greenfield Road from the Greenfield Water Reclamation Plant to Germann Road – Resolution No. 8380.
- \*d. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Town of Gilbert and the City of Mesa for the installation of reclaimed water lines and a domestic water line along Germann, Higley, Pecos, Recker and Baseline Roads – Resolution No. 8381.

- \*e. Exchanging Irrigation and Access Easements for right-of-way at the Greenfield Water Reclamation Plant with the Roosevelt Water Conservation District – Resolution No. 8382.

This exchange is necessary for the construction of the water reclamation plant.

- \*f. Approving and authorizing the City Manager to execute an agreement between the Office of Manufactured Housing within the Arizona Department of Building and Fire Safety and the City of Mesa to enforce installation standards of manufactured housing and mobile homes – Resolution No. 8383.

- \*g. Vacating certain street rights-of-way and extinguishing portions of a Public Utility Easement and Slope Easement located near the northeast corner of Baseline Road and Crismon Road – Resolution No. 8384.

The Rights-of-way and easements are no longer necessary as a new subdivision is being replatted over this area.

- \*h. Authorizing the sale of a portion of a City-owned detention basin located northeast of the intersection of Crismon Road and Main Street – Resolution No. 8385.

The sale of this portion of the basin will accommodate the adjoining property owner's business and its traffic circulation on site.

7. Consider the following ordinances:

- \*a. Amending various sections of the Mesa City Code relating to Sanitary Sewer Regulations – Ordinance No. 4330.

\*8. Consider adopting a Notice of Intention to adjust current Fire, Public Safety, and Cultural development impact fees and establishing February 22, 2005 as the date for the public hearing.

8.1. Discuss and consider proceeding with a Request for Proposals for Emergency Towing Services.

Mr. Hutchinson recommended approval of staff's recommendation relative to the Request for Proposals (RFP) for Emergency Towing Services.

Mayor Hawker stated that a number of people were present who wished to address the Council.

Chad Gammage, General Manager of Daryl's Towing, 438 West 3<sup>rd</sup> Avenue, noted that he was also speaking on behalf of five other individuals, and he made the following comments:

- City elected and appointed officials have failed to provide reliable leadership and represent the people.
- The rejection of the original bid was a violation of State laws, and City staff members are not being held accountable for this action.
- The current RFP is written to accommodate Cactus Towing and to eliminate almost 90 percent of other towing companies.
- Cactus Towing received a copy of the RFP that was not available to other companies.

- A recorded telephone conversation with former Materials Management Director Sharon Seekins verifies that she stated that the proposed RFP is not available to anyone.
- A complaint has been filed with the State of Arizona requesting that the Mayor, most of the Councilmembers, the City Manager and his entire staff, the City Attorney and the Deputy City Attorney be removed from office. The complaint also requests that the daily operation of the City of Mesa be facilitated by the State until new individuals can be hired and elections can be held.
- The original bid should be reinstated and the contract awarded to United Road Services.

Christopher A. Ferrante, P. O. Box 31644, an operator of a towing and collision repair business in a neighboring city, stated that he is not interested in pursuing the City's contract. He added that he did not support the actual contract, but he complimented the Council and City staff for the language included in Section 2.2.3, which prohibits solicitation. Referring to section 2.2.5, which addresses relocation, Mr. Ferrante suggested that the following wording be added to the last sentence, "...that it must be done in a timely fashion so that the recovery of that vehicle can take place in minutes, not hours." He advised that a perception exists among the local towing and insurance industry representatives that a lack of honesty exists relative to the granting and administration of towing contracts in the City of Mesa. Mr. Ferrante expressed the opinion that the contract should be open to multiple providers in order to encourage fair competition and allow the free market to operate.

Mayor Hawker asked Mr. Ferrante to make a recommendation as to the number of sub-areas that should be included in the contract.

Mr. Ferrante expressed the opinion that the contract should not designate areas. He stated that two companies with 20 trucks, each serving one of the two zones, provides the City of Mesa with the services of 40 tow trucks, but ten companies with 10 or more trucks operating on a rotational basis provides the City with the services of over 100 tow trucks. Mr. Ferrante advised that the community in which he operates his business has an efficient rotational system in place. He urged the Council to allow the free market system to operate by utilizing a rotational system.

Matt Salmon, former U.S. Congressional Representative, stated that he was present on behalf of his friend, Todd DeMasseo, owner of Cactus Towing, and he outlined many of Mr. DeMasseo's contributions to the community. Mr. Salmon expressed the opinion that Cactus Towing has provided exceptional service in the past, and he added that the rotational system is difficult to administer, creates an accountability gap and fails to utilize the economies of scale that a single contract would provide.

Todd DeMasseo, 261 East 10<sup>th</sup> Street, owner of Cactus Towing, addressed the issue of making vehicles available for a second tow. He noted that a complaint filed against his firm claimed that another tow truck company driver was forced to wait for two hours in the rain before the vehicle was made available. Mr. DeMasseo stated that an investigation of the complaint determined that no rain occurred on the date in question. He advised that his firm purchased two forklifts to expedite the release of vehicles from the storage yard. Mr. DeMasseo stated that a flatbed truck, which may not always be available, could be required to move a recovered stolen vehicle without tires. He expressed the opinions that his firm has kept pace with current technology, that the City of Mesa has been provided good service, and that good performance in a free market should be rewarded.

Richard Thompson, owner of Valley Express Towing, 458 South Lebaron, stated that the allegations being made during this process are irrelevant. He expressed the opinion that utilizing a rotational system would solve many of the problems, and he added that many comments made during this meeting were untrue.

Bruce Baker, a representative of the towing and body shop industry, noted that the Police Department stated that prohibiting solicitation would be difficult to enforce. He suggested incorporating language stating that tow truck operators are prohibited from utilizing "excessive, unfair or unethical tactics," but they would still be able to solicit. He added that the Arizona Statutes presently prohibit secondary solicitation for other businesses, and he referred to several legal cases that addressed the issue.

There being no additional speakers, Mayor Hawker closed the public comment period. He noted that draft RFPs are not normally included in the Council packets, but that action, in addition to conducting a public hearing, made the document a matter of public record.

Mr. Hutchinson read the following into the record:

"Yesterday Cactus Towing's attorney, David Udall, requested a copy of the Emergency RFP from the Purchasing Division. Purchasing declined to provide the document because the RFP was in draft form. According to the City Attorney's Office, draft documents are not subject to the Public Records Law. Mr. Udall then contacted my office with the same request and a copy of the RFP was provided to Mr. Udall. The RFP was included in the backup material of the December 20<sup>th</sup> Council packet. As stated by Deputy City Attorney Joe Padilla, the Council packet is public record unless otherwise specified. Due to the public hearing and a public discussion of this particular RFP along with its inclusion in the packet, the document was released. In other circumstances, RFP's are not to be released until they are finalized and published. I apologize for the inconsistency in the distribution of this document. I will insure that this type of oversight is not repeated in the future. For your information, immediately following today's Study Session, additional copies of the RFP were provided to Chad Gammage and Daryl Raab of Daryl's Towing, and I believe others."

Mayor Hawker suggested that a future City policy be developed to ensure that copies of a draft RFP are provided to interested parties when the draft is presented and discussed at a Council Committee meeting or other public City meetings. He noted that he was under the impression that the draft RFP had been provided to the interested towing companies so that their input could be obtained, and he was not aware that the Purchasing Division had a different policy.

Mr. Hutchinson advised that the different answers provided by the Purchasing Division and the City Manager's Office are the result of a breakdown in communications. He noted that the Purchasing Division's normal procedure is not to release an RFP in draft form. He added that the subject RFP has been more thoroughly studied and discussed than any other RFP during his 27 years with the City of Mesa.

Mayor Hawker apologized to Mr. Gammage for the confusion regarding this issue.

Mr. Hutchinson stated that the operations of the City of the Mesa are an open book, and he would welcome a review of the subject process or any other process.

Vice Mayor Walters noted that during the Study Session prior to this meeting, the Council discussed recommendations in Christopher A. Ferrante's letter (see Attachment 1). She expressed the opinion that including the words "in a timely manner" were very important. Vice Mayor Walters also noted that many recommendations made by the towing industry representatives, such as the response time, were incorporated into the draft RFP.

Mayor Hawker stated that the Council recommended including a requirement in the RFP that the storage facility be staffed during specific hours. He added that the Council recommends that service charges not apply on Sundays, but noted that a question was raised concerning holidays.

Materials Management Director Ed Quedens confirmed that the draft RFP presently includes a requirement for staffing the storage facility during specific hours. He also advised that the RFP stipulates that service charges do not apply on Sundays or on specific major holidays.

In response to Mayor Hawker's question regarding the non-solicitation language, Mr. Quedens responded that the RFP language states that, "Vendors are prohibited from soliciting unless asked."

Councilmember Griswold proposed that the City consider utilizing an RFP process similar to that utilized by Maricopa County, which includes soliciting information from industry representatives and open discussion and debate followed by a best and final offer. He added that his research of other cities indicates that utilizing a rotational system would require a staff person to direct that activity.

Police Lieutenant Ben Kulina stated that the cost for the position would be approximately \$52,000 annually in salary and benefits.

Councilmember Griswold stated that he is expected to be fair and to ensure that the taxpayers' dollars are spent wisely. He noted that Los Angeles utilizes a zone approach in order to monitor accountability, and he expressed the opinion that as Mesa continues to grow, the City may be required to conduct business in a different manner and be open to new ideas. He also complimented staff for their efforts relative to the subject proposal.

Councilmember Thom stated that Mesa is a wonderful place to live, but she noted that citizens continue to complain about towing service. She added that citizens have expressed the opinion that the City and the public would be better served, both economically and in quality of service, if a rotational system were utilized. Councilmember Thom also expressed her support for some of the changes that have been incorporated into the RFP during this process, but she requested that rotational service be added to the RFP, regardless of whether the RFP does or does not specify zones. She also recommended that the RFP clearly state that the bidder will not be the only provider within a zone.

Mayor Hawker recalled the numerous problems that occurred in 1986 when the rotational system was in place, and he stated that he would not support implementing a rotational system. He noted that he was willing to consider dividing the City into four zones, but he would support the present draft RFP that divides the City into two zones with the successful bidder being able to acquire one or both of the zones.

It was moved by Mayor Hawker that the proposed draft RFP dividing the City into two towing zones and enabling the bidder to acquire one or both zones, be adopted with the addition of language to stipulate that vehicles should be released from the storage facility "in a timely manner."

Councilmember Rawles requested that the motion be amended to state that the vehicles be released "in a commercially timely manner" in order to reflect industry standards.

Mayor Hawker amended the motion to state that vehicles should be released from the storage facility "in a commercially timely manner."

Responding to a question from Councilmember Rawles, Mr. Hutchinson clarified that the Purchasing Division responded in the same manner to all requests for a copy of the draft RFP, and that only those who then made the request to the City Manager's Office received a copy of the RFP due to the fact that the draft RFP became a public record when it was provided as backup material in the Council packets.

Councilmember Rawles stated that although he believes that the subject activity would be more appropriately addressed by the free market system, the proposal before the Council was fair and reasonable and has been handled in an above-board manner, and therefore he would support the motion.

Councilmember Rawles agreed to second the motion as amended.

Vice Mayor Walters stated that the RFP presently before the Council is substantially different than the original proposal, and she added that many individuals came forward to provide input. She noted that a few individuals have addressed the Council in a manner that indicated that the RFP should be written to accommodate the current provider, but she advised that her objective was to obtain input from all interested parties in order to develop a contract that provides good service at a fair price for the citizens of Mesa. She added that another area of importance was ensuring that the contract be accomplished in a fair manner. Vice Mayor Walters also recalled the problems with towing service that existed in the mid to late 1980's when the City had a full rotational contract. She noted that dividing the City into four zones would also be acceptable to her. Vice Mayor Walters expressed the opinion that all of the issues raised have been addressed.

Councilmember Thom expressed appreciation to both the industry representatives and City staff for the information provided to the Council. She stated that she opposed the proposed contract due to the fact that one company could become the sole provider. Councilmember Thom noted that additional staff would not be required if the officer at the scene noted the name of the towing company on the police report. She noted that unqualified towing companies providing service caused the problems in the past. Councilmember Thom noted that only qualified towing companies could respond to the RFP, and she stated the opinion that multiple companies should have the opportunity to provide service to Mesa residents. She advised that she would not support the motion.

Councilmember Griswold asked the Mayor, as the maker of the motion, to consider amending the motion to include four zones.

Mayor Hawker stated that he was willing to amend the motion on the condition that one provider be allowed to contract for all four zones.

In response to Mayor Hawker's question regarding the most effective manner in which to divide the City into four zones, Mr. Quedens responded that staff considered several scenarios. He advised that Police Dispatch currently uses Lindsay and Broadway as the most effective point to divide the City into four zones. He clarified that four quadrants would create the potential for the City to be served by four different companies, which would increase the City's administration time and costs.

Mayor Hawker noted that each provider would be responsible for a specific quadrant despite the fact that towing volumes could be substantially different between the quadrants. He also noted that one provider could be the successful bidder for each of the four quadrants.

Lieutenant Kulina advised that the Police Department favored establishing two zones, but that staff would abide by the Council's decision. He stated that if the Council established four zones, staff would review the towing volumes to provide RFP respondents with more accurate information.

Responding to Mayor Hawker's question regarding the impact on the Police Department as a result of establishing four zones, Lieutenant Bulina advised that staff would be required to address complaints, review monthly reports and audit the service in each of the four zones. He added that increasing the number of zones creates a more complex system.

Councilmember Jones noted that the subject RFP process has been difficult. He added that the Council has attempted to be inclusive in their efforts to provide fair service to the citizens of Mesa. He said that the Council wanted to insure that the initial tow cost included the transfer of the vehicle to the street. Councilmember Jones noted that he believed the Council discussion at the December 18<sup>th</sup> Study Session favored an east/west division for two zones rather than the north/south division as listed in the present document, and therefore he would support a Council recommendation for four zones.

Mayor Hawker amended the motion to state that the RFP will include four zones split at Lindsay and Broadway.

Councilmember Rawles agreed to second the motion as further amended.

Councilmember Thom stated that staff should be able to administer four zones. She suggested that the motion be amended to state that a provider in one zone is precluded from providing service in another zone to ensure that four companies provide service to the City.

Mayor Hawker, as the maker of the motion, and Councilmember Rawles, as the second, advised that they would not support Councilmember Thom's amendment.

Mayor Hawker summarized that the motion before the Council is to issue the RFP which divides the City into four towing zones at the intersection of Broadway and Lindsay, and enables the bidder to acquire one or more or all of the zones, and includes the additional language that stipulates that vehicles should be released from the storage facility "in a commercially timely manner."

In response to a question from Councilmember Jones, Mayor Hawker clarified that the storage lot must be located within the City of Mesa, but not necessarily within the zone.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

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

\*8.2. Consider the following case from the Planning and Zoning Board and possible adoption of the corresponding Ordinance:

- a. **Z04-94 (District 4)** 1511 South Mesa Drive. Located north of the Superstition Freeway and east of Mesa Drive (2.39± ac). Rezone from R1-6 to C-1 and Site Plan Review. This case is to allow for the development of a retail center. Venancio Macias, owner; Robert Gomez, applicant. **(Continued to the January 18, 2005 Council Meeting.)**

P&Z Recommendation: Approval with Conditions. (Vote: Passed 4-3 (Mizner, Cowan, Esparza voting nay))

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Compliance with all requirements of the Design Review Board.
5. No vehicular access to East Holmes Avenue from the subject property.

9. Consider the following subdivision plats:

- a. "REPLAT OF A PORTION OF LOT 6, LOTS 11, 16, 21, 22 OF COUNTRY CLUB COMMERCE CENTER", – (Council District 4) – 200-300 blocks of West Hampton Avenue (north and south side) located north and east of US 60 Superstition Freeway and Country Club Drive. 2 M-2 industrial lots (13.83 ac). Golfand-Sunsplash Entertainment, Inc., owner; Extreme Land Surveying, Inc., engineer.

Vice Mayor Walters declared a potential conflict of interest and said she would refrain from discussion/participation in this agenda item.

It was moved by Councilmember Griswold, seconded by Councilmember Jones, that the subject subdivision plat be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom  
NAYS - None  
ABSTAIN - Walters  
ABSENT - Whalen

Mayor Hawker declared the motion carried unanimously by those present and voting.

10. Items from citizens present.

There were no items from citizens present.

11. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:57 p.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 Regular Council Meeting of the City Council of Mesa, Arizona, held on the 20<sup>th</sup> day of December 2004. 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

baa

Attachment

Attachment

AGENDA  
ITEM 8.1  
DATE 12/20/04

Christopher A. Ferrante  
P.O. Box 31644  
Mesa, Arizona 85275-1644

December 20, 2004

Mr. Edward Quedens  
Materials Management Director  
City of Mesa  
20 E. Main Street  
Mesa, Arizona 85211

Re: Proposed towing contract

Dear Mr. Quedens:

Please forward these comments to the City Council for the December 20, 2004 meeting:

- Regarding the type of contract: The towing contract granted by the City of Mesa will never be perceived by the public, the body shop industry, or the insurance industry to be honestly granted and administered unless the City is opened up to access by multiple towing contractors, without the granting of a virtual monopoly to a sole source for towing
- No honest person, council member or not, should have any objection to the prohibition of the receipt of any form of payment, cash, trade, or remuneration in any form of transfer by repair shops of any kind, by accident law firms, or others who may seek to "purchase" the repair business or legal business from a towing contractor for the city. Only persons of questionable ethics could have any objection to this
- The granting of a contract that allows for exorbitant re-tow fees in lieu of fair and just initial towing fees just promotes abuse of the public trust. Either regulate both the initial tow and the re-tow, or open it up to a rotation list and let the towing contractors charge fair market rates. Gate fees and re-tow fees from the yard to the street should be prohibited under the contract. Creating time delays by the low contractor to punish those who wish to pick up their vehicles rather than have them re-towed should be prohibited.

Thank you.

Sincerely,

Christopher A. Ferrante