

COUNCIL MINUTES

June 24, 2002

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 June 24, 2002 at 4:00 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Dennis Kavanaugh
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

1. Review items on the agenda for the June 24, 2002 Regular Council Meeting.

All of the items on the agenda were reviewed among Council and staff with no formal action taken. There was specific discussion relative to the following items:

Mayor Hawker declared a potential conflict of interest on agenda item 7e (Power Road Improvements, Delmon to McDowell) and said he would refrain from discussion and participation in this item.

Councilmember Whalen declared a potential conflict of interest on agenda item 12 (Consider the proposed acquisition of property for a West Mesa Parks and Recreation Complex in the 2200 block of North Center Street) and said he would refrain from discussion and participation in this item.

2. Hear, discuss and consider the Parks and Recreation Plan.

Mayor Hawker indicated that this agenda item would be continued to the July 1, 2002 Study Session.

3. Discuss and consider activities of the Civil Hearing Office and review the current process, procedures and civil penalties.

Zoning Administrator John Gendron and Planning Assistant Krissa Hargis addressed the Council concerning this agenda item. Mr. Gendron provided a brief historical overview

concerning the City's nuisance and property maintenance Code compliance adjudication process. He reported that prior to 1990, the City's Code compliance efforts concerning these regulations were severely hampered by poorly written Code definitions and provisions that were scattered throughout various portions of the City Code, which resulted in the existence of a cumbersome criminal litigation process that was used to address disputed citations. He further reported that in response to a contentious City Court case in 1990 pertaining to a severely overgrown yard, a City staff work group was established under the direction of City Attorney Neal Beets to address changes necessary to the existing system. Mr. Gendron advised that as a result of that process, Ordinance No. 2568 was adopted in 1990 which implemented the following changes: 1) rewrote all of the definitions to ensure they could be proven in Court; 2) consolidated all of the nuisance and property maintenance Code provisions into one central location; and 3) changed the existing criminal process to a civil process and established a Civil Hearing Office to adjudicate Code violations. He noted that contract Civil Hearing Officers currently preside over hearings under this system.

Mr. Gendron outlined the advantages associated with the City's civil Code compliance process, including: 1) hearings are scheduled within two weeks of plea date; 2) contract Civil Hearing Officers have specialized knowledge in zoning, public nuisance, and sign code regulations; 3) guilty (responsible) judgments are determined by a "preponderance of evidence" rather than the "reasonable doubt" test used in criminal court; and 4) hearings are informal using simple procedures easily understood by citizens and City personnel, which eliminated the need for legal counsel to be present.

Mr. Gendron discussed the citation process and said that each citation carries a standard fine of \$50. He further explained that Defendants have the option of requesting a hearing before a Civil Hearing Officer and if determined to be *not responsible*, no fine is assessed. He added that if the Hearing Officer determines that the Defendant is *responsible*, a minimum \$100, maximum \$500 fine is assessed. Mr. Gendron commented on the reasoning behind the elevated fine structure, including the fact that it represents a disincentive for Defendants who are guilty to request a hearing, and also helps to subsidize the costs associated with conducting hearings. He noted that each hearing costs a minimum of \$240 to conduct.

Mr. Gendron commented on the growth rate of citations issued and hearings conducted since 1991 and noted that during the past year, 83 civil hearings were conducted relative to 140 citations. He discussed the fact that Code Compliance staff investigates approximately 30,000 complaints each year, the majority of which are resolved without a citation being issued; and the fact that only 7.7% of the citations advance to the civil hearing process. He also discussed the various types of citations issued and areas of the City where an increased rate of citations are issued.

Mr. Gendron reported that 91% of citations issued are determined to be *responsible* either by default, plea or hearing, 8% are dismissed and 1% are determined *not responsible*. Mr. Gendron also outlined revenues generated by the Code compliance process and stated that \$145,000 in fines were assessed last year resulting in direct payments of \$40,000 and recorded property liens of approximately \$74,000. He added that the remaining unpaid fines typically associated with renters are pursued through the Finance Department's collections program.

Mr. Gendron reported that except for the City of Scottsdale, other Valley municipalities utilize a criminal process for nuisance and property maintenance regulations. He noted that Scottsdale only recently converted its criminal process to a civil process after evaluating Mesa's program.

In response to a question from Councilmember Griswold, Mr. Gendron discussed the complaint process and stated that Code Compliance staff typically send a minimum of two notices to violators prior to issuing citations and added that the majority of complaints are voluntarily resolved.

In response to a question from Councilmember Thom concerning the process associated with recording property liens for unpaid fines, Mr. Gendron reported that property liens are recorded after Defendants are given ample opportunity to pay fines assessed either by default or at a Civil Hearing.

Councilmember Walters stated support regarding the fact that Code compliance cases are now governed by a civil process rather than a criminal process. She voiced concerns regarding the fact that the minimum fine that can be assessed by a Hearing Officer against Defendants who are determined to be responsible is \$100 rather than \$50, the amount of the initial citation fine. She said that although she supports the assessment of higher fines that fully subsidize hearing costs in conjunction with egregious cases, she has concerns that elderly citizens who believe they were wrongly cited may be intimidated by the process and pay a reduced fine rather than risk the possibility that they may lose their case and be assessed an even higher fine.

Mr. Gendron noted that lowering the minimum fine assessed by Hearing Officers to \$50 would likely result in an increased number of hearings and costs incurred by the City in conjunction with conducting hearings.

Mayor Hawker concurred with Councilmember Walters' comments.

Councilmember Thom voiced concerns regarding the City's practice of recording property liens in conjunction with cases outside the criminal process system; the fact that there has been a significant increase in the number of citations issued in recent years; the fact that she has received complaints from citizens that Code Compliance officers have randomly inspected property without receiving a complaint; and that some citations issued by Code Compliance officers are the result of residents seeking to cause problems for their neighbors.

Vice Mayor Kavanaugh stated support for the City's existing civil process system. He also commented on the fact that property liens are routinely recorded in conjunction with other types of civil cases and the fact that the increased number of citations and hearings in recent years is related to the voter-authorized enactment of the City's Housing Code. He also commented on the fact that a high percentage of these cases are resolved outside the hearing process.

Mayor Hawker directed staff to reevaluate this process pursuant to Council direction and return to the Council with various options related to the citation fee structure.

Councilmember Jones requested that when the Council reconsiders this issue in the future, that Councilmembers be provided a copy of the pertinent City Code relative to this matter.

4. Appointments to boards and committees.

Mayor Hawker recommended the following appointments to Boards and Committees:

GREATER PHOENIX ECONOMIC COUNCIL (GPEC) BOARD OF DIRECTORS

Gary Smith, Reappointment for one-year term.

Jack Sellers, Reappointment for one-year term.

Debra Duvall, New appointment for one-year term.

It was moved by Councilmember Walters, seconded by Vice Mayor Kavanaugh, that the Council concur with the Mayor's recommendations and the appointments be confirmed.

Carried unanimously.

5. Acknowledge receipt of minutes of boards and committees.

- a. Human Relations Advisory Board meeting held May 15, 2002.
- b. Judicial Advisory Board meeting held May 1, 2002.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Jones, to acknowledge receipt of the minutes of the above-listed boards and committees.

Carried unanimously.

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

Mayor Hawker stated that due to time constraints, this item would be continued to a subsequent Study Session.

7. Scheduling of meetings and general information.

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

Thursday, June 27, 2002, 7:30 a.m. – Study Session

Monday, July 1, 2002, 3:00 p.m. – Police Committee Meeting

Monday, July 1, 2002, TBA – Study Session

Monday, July 1, 2002, 5:45 p.m. - Regular Council Meeting

Thursday, July 11, 2002, 7:30 a.m. – Study Session

Monday, July 15, 2002, TBA - Study Session

Monday, July 15, 2002, 5:45 p.m. - Regular Council Meeting

8. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

9. Adjournment.

Without objection, the Study Session adjourned at 5:40 p.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 24th day of June 2002. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

pjt