

# COUNCIL MINUTES

August 2, 1996

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 August 2, 1996 at 7:35 a.m.

## COUNCIL PRESENT

Mayor Wayne Brown  
Pat Gilbert  
John Giles  
T. Farrell Jensen  
Dennis Kavanaugh  
Joan Payne  
Jim Stapley

## COUNCIL ABSENT

None

## STAFF PRESENT

C.K. Luster  
Pauline Backer  
Wayne Balmer  
Neal Beets  
Dan Brewer  
Tanya Collins  
Linda Crocker  
Joe Holmwood  
Mike Hutchinson  
Lars Jarvie  
Barbara Jones  
Sharon Joyce  
Harry Kent  
Karen Kille  
Wayne Korinek  
Larry Lines  
Rich Lorig  
Jeff Martin  
Tom Mattingly  
Frank Mizner  
John Oliver  
Ellen Pence  
Bill Petrie  
Andrea Rasizer  
Regan Robbins  
John Smoyer  
Jan Strauss  
Doug Tessoroff  
Mindy White  
Others

## OTHERS PRESENT

Bill Brando  
Dave Brown  
Cliff Harris  
Hal Key  
Jill Moughler  
Dan Nowicki  
Jerry Petrie  
Randy Wood  
Others

1. Prescheduled public opinion appearances. (Maximum of three speakers for five minutes per speaker)

- a. Hear from Jill Moughler regarding the explosion at the shooting range.

Jill Moughler, 215 East Lehi Road, informed the Council that she resides within a quarter mile of the shooting range. Ms. Moughler expressed appreciation to everyone who has responded to her concerns relative to the recent explosion at the shooting range. Ms. Moughler advised that a meeting has been scheduled for August 21, 1996 at 7:00 p.m. between concerned residents and the Police Department to discuss this issue.

Ms. Moughler stated that prior to the recent explosion, which has brought the issue of the shooting range to the forefront, residents of the Lehi area were negatively impacted by the facility. Ms. Moughler discussed complaints previously filed by residents in response to noise disturbances in the area. Ms. Moughler extended an invitation to the Council to visit her residence and witness firsthand the effects of the shooting range on the quality of life in the neighborhood.

Discussion ensued relative to a previous gas leak in the area, impacts of the explosion on residences, and safety hazards.

Mayor Brown thanked Ms. Moughler for her comments.

1.1. Review items on the agenda for the August 5, 1996 Regular Council Meeting.

All of the agenda items were reviewed among the Council and staff, with no formal action taken. There was particular discussion with regard to the following agenda items:

11. Consider the following cases from the Planning and Zoning Board and possible adoption of the corresponding ordinances:

a. **Z96-43**

Community Development Manager Wayne Balmer advised that this case was continued from the previous meeting to allow the applicant and neighbors sufficient time to discuss the proposed development. Mr. Balmer reported that a letter has been received advising that an agreement has been reached between the applicant and the neighbors. Mr. Balmer added that the legal protest has been withdrawn.

Mayor Brown requested that this item be placed on the consent agenda.

2. Further discussion and consideration regarding alternative means for complying with the intent of the new smoking regulations which require a single pass ventilation system for bars (Series 6 Liquor License).

Building Inspection Superintendent Tom Mattingly and Hal Key, Project Engineer for Grainger Consulting, addressed the Council relative to this agenda item. Mr. Mattingly informed the Council that Mr. Key has been retained by the City of Mesa to provide input relative to complying with the intent of the new smoking regulations.

Mr. Key referred to a proposal which was distributed to the Council and noted that recommended changes to the Smoking Ordinance are outlined on pages 7 through 10. (See Attachment.) Mr. Key noted that the changes include an alternative to allow a separate

HVAC system for the Series 6 bars. Mr. Key commented that in accordance with the proposal, bar owners would apply for a variance if all fire code standards are met and there is complete separation by a floor to ceiling physical wall, a closed door and a separate single pass ventilation system for the smoking area separate from any other section or sections of the building. Mr. Key stated that the separate HVAC system may be the least expensive option for many establishments and noted that the option restricts the tobacco smoke contaminated air to the smoking area.

In response to a question from Councilmember Giles, Mr. Key advised that the proposed ordinance addition changes the testing requirements outlined in Option 3.B. from annually to every five years and explained that during the interim five-year period, maintenance records for the HVAC system would be submitted to the City of Mesa. Mr. Key stated that the records would include preventative maintenance, filter changes and verification of air flow quantities.

Councilmember Giles questioned the appropriateness of allowing options A and B to remain in the proposed ordinance addition. Building Inspection Superintendent Tom Mattingly expressed the opinion that all three options should remain and stated that situations may arise which require the utilization of either Option A or B in order to comply with the law.

Councilmember Kavanaugh commended Mr. Hall on his efforts and concurred that all three options should remain in the proposed ordinance addition.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Giles, that staff be directed to proceed with preparing an ordinance for introduction as outlined by Mr. Hall.

Carried unanimously.

3. Further discussion and consideration concerning proposed requirements for secondary fencing for residential swimming pools.

Councilmember Stapley advised that this issue has been placed on the agenda to determine whether support exists among the members of the Council to allow a variance for homeowners who do not have children under the age of seven living at their residence. Councilmember Stapley stated that the Council has received a large volume of telephone calls and letters from citizens relative to this issue and indicated that the matter requires further consideration.

In response to a question from Vice Mayor Gilbert, Community Development Manager Wayne Balmer advised that the City of Phoenix pool fencing ordinance does not contain an age exemption for families without children under the age of seven. Mr. Balmer explained that the City of Phoenix allowed citizens a one-year period of time in which to bring all pools into compliance and added that although an age exemption option was included in the State law which was passed, none of the cities have included the exemption in their permanent ordinances.

Discussion ensued relative to proposed options and the fact that enforcement of an age exemption would require the assistance of the real estate community.

Councilmember Giles and Kavanaugh expressed support for allowing the secondary pool fencing ordinance to remain unchanged. In response to the Mayor's request for additional input, there was no further discussion relative to this issue.

4. Discuss and consider changing the Zoning Code to allow bars in C-2 zones.

Councilmember Giles expressed concern relative to the fact that the proposed zoning change to permit bars to operate in C-2 zones would allow the possibility of bars to operate in close proximity to residential areas, schools and churches and questioned whether Council Use Permits should be required. Councilmember Giles commented that the potential exists for Class 6 license transfers and suggested that regulations be enacted to require a Council Use Permit in order to transfer licenses from one geographic area to another.

Community Development Manager Wayne Balmer advised that the City's regulations cannot be more restrictive than the State's regulations. Mr. Balmer added that Council Use Permits are feasible and could contain specific provisions but added that neighborhood opposition to the granting of such permits would be brought before the Council for consideration.

Discussion ensued relative to food sale requirements associated with Class 12 licenses, the fact that the State Liquor Board has the responsibility of monitoring food sales, 'grand fathered' establishments, the fact that Class 6 licenses are no longer part of the lottery system and are very expensive, potential relocations by businesses currently operating in C-3, M-1 and M-2 zones, the possibility of requiring C-6 licenses to maintain 40% food sales, and anticipated requests from Class 12 license owners to change to Class 6 due to the lack of food sale requirements associated with that license.

In response to a question from Councilmember Giles relative to establishing a 40% food sale requirement for Class 6 licenses within the City of Mesa, City Attorney Neal Beets stated that the State Liquor Board maintains the responsibility of monitoring food sales. Mr. Beets added that the State does not perform audits for Class 6 bars since those licensees are not required to meet food sale standards. Mr. Beets commented that the City of Mesa is preempted by the State Liquor Code from modifying the terms and conditions under which the State Class 6 licenses operate.

Mr. Beets informed the Council that a Use Permit addresses issues such as compatibility with neighboring uses and stated the opinion that the Council could specify criteria such as the proximity of Class 6 establishments to certain surrounding uses.

Councilmember Giles indicated his interest in pursuing the Council Use Permit process.

It was moved by Councilmember Giles, seconded by Councilmember Kavanaugh, that staff be directed to draft Council Use Permit requirements for Class 6 bars to operate in zones other than C-3 and that the requirements parallel those of Class 12 liquor licenses, including food sale requirements.

Mayor Brown stated the opinion that the proposal is discriminatory and indicated that he would not support the motion.

Upon tabulation of votes, it showed:

AYES - Giles--Kavanaugh-Payne  
NAYS - Brown-Gilbert-Jensen-Stapley  
ABSENT - None

Mayor Brown declared the motion failed.

5. Discuss and consider issues associated with the location of commercial wireless antennas.

Assistant City Manager Mike Hutchinson provided the Council with background information relative to this issue. Mr. Hutchinson stated that staff has been working with AT&T & Sprint regarding the utilization of City property for antenna sites. Mr. Hutchinson discussed staffs recommendation that the Council approve entering into a lease agreement with AT&T to establish PCS commercial antenna facilities at four City of Mesa facilities. Mr. Hutchinson added that two additional AT&T requested sites are currently involved in a special use permit appeal process and will be forwarded to the Council once all of the issues have been resolved.

Mr. Hutchinson noted that the four sites include Fire Station No. 9, Falcon Field Water Tank, Mesa Community College and the East Mesa Service Center.

Communications Director Don Pfohl narrated a brief slide presentation relative to this issue and the requested sites.

Discussion ensued relative to single providers and co-locating multiple providers, antenna sizes, rental revenue generated as a result of the leases, and the benefits to be realized by the City of Mesa.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Stapley, that the City Manager be directed to enter into a lease agreement with AT&T for PCS commercial antenna facilities at four City of Mesa facilities.

Carried unanimously.

6. Discuss and consider changing the requirement that appeals of Board of Adjustment decisions be heard by the Council and allow the appeals to go directly to Superior Court.

Councilmember Stapley stated the opinion that the Superior Court is the appropriate forum for the hearing of Board of Adjustment appeals.

It was moved by Councilmember Stapley, seconded by Councilmember Kavanaugh, that appeals of Board of Adjustment decisions be administered by the Superior Court rather than by the Mesa City Council.

Upon tabulation of votes, it showed:

AYES - Brown- Gilbert-Giles-Kavanaugh-Jensen-Stapley  
NAYS - Payne  
ABSENT - None

Mayor Brown declared the motion carried by majority vote.

7. Acknowledge receipt of minutes of meetings of various boards and committees.

- a. Economic Development Advisory Board meeting - July 25, 1996.
- b. Merit System Board meeting - July 31, 1996.

It was moved by Councilmember Stapley, seconded by Councilmember Jensen, that receipt of the minutes of various boards and committees be acknowledged.

Carried unanimously.

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

Councilmember Giles reported on a recent Town Center Corporation Board of Director's meeting that he attended with Mayor Brown and Councilmember Stapley.

Discussion ensued relative to complaints received regarding retail buildings in the Town Center Area which are operating as warehouses in violation of City Codes.

Community Development Manager Wayne Balmer advised that staff will research the matter and report to the Council at a future meeting.

9. Scheduling of meetings and general information.

City Manager Charles Luster advised that the meeting schedule is as follows:

Monday, August 5, 1996, 5:30 p.m. - Regular Council Meeting

Mr. Luster advised that the Friday, August 23, 1996 Council Study Session has been canceled.

10. Items from citizens present. (Maximum of three speakers for five minutes per speaker).

Mayor Brown advised that Mr. Lines has withdrawn his request to address the Council under this agenda item.

Mayor Brown stated that there were no additional items from citizens present.

11. Adjournment.

It was moved by Councilmember Stapley, seconded by Councilmember Jensen, that the Study Session adjourn at 8:49 a.m.

Carried unanimously.

WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

Attachment

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 2nd day of August, 1996. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 28<sup>th</sup> day of August 1996

BARBARA JONES, CITY CLERK

**A SEPERATE HEATING, VENTILATING AND AIR-CONDITIONING SYSTEM**

Grainger Consulting recommends that City of Mesa consider adding another alternative or option to the ordinance. This alternative incorporates a separate HVAC system for the series 6 bars similar to that specified for the Indoor Employee Smoking Area (IESA). The bar could use its existing system if it does not serve adjacent non-smoking areas. The HVAC system used only in the bar must be pressure negative to the adjacent non-smoking areas to prevent transfer of smoke-contaminated air to the non-smoking areas. Pressure negative means that air will flow from the adjacent non-smoking areas into the smoking area only; and conversely that air does not flow from the smoking area to the non-smoking area. The air within a bar with a smoking variance will be contaminated with tobacco smoke because patrons are allowed to smoke. This air will be far less contaminated than in an IESA where the occupants only enter for that specific purpose - to smoke. As long as the air in the bar is not circulated to adjacent spaces, the tobacco smoke contamination will be contained within the bar or exhausted to the outside of the building. This option would allow air from adjacent non-smoking areas to supply the bar as long as this air does not return to the adjacent non-smoking area (one form of the single pass system). The separate HVAC system option could be the least expensive option for many establishments because the only additional equipment to the existing HVAC equipment may be a new exhaust fan or fans to make the smoking area pressure negative. The outside air requirements for this option shall be consistent with the current City of Mesa Building Code which is a minimum of 15 cfm of outside air per person. This outside air requirement may be a change from the existing system conditions because the establishment may have been designed under earlier building codes that had lower outside air requirements. Grainger Consulting recommends this option because it is consistent with the other portions of the ordinance and it restricts the tobacco smoke contaminated air to the smoking area.

**TESTING**

The variance system specified by each establishment shall be tested when first installed and again ~~every year~~ regularly (such as every five years) to verify that the conditions stated in the variance request continue to be met. During the interim from the initial testing until the regular test, documentation of equipment maintenance shall be submitted annually to the City of Mesa to show continued preventative maintenance of the variance system. If the ventilation method or separate HVAC system option is used a simple air flow measurement by a certified test and balance contractor is all that is necessary. If the IAQ procedure is used, a test by a certified industrial hygienist along with a certified test and balance contractor is required. A simple check of the OSA quantities on a couple of rooftop air-conditioning units by a certified test and balance contractor may be only a few hundred dollars. The testing of an IAQ system by a certified industrial hygenist may be as high as three or four thousand dollars. The complexity of the systems will determine the expense of testing.

**TOBACCO SMOKE**

Tobacco smoke (cigarette, cigar, or pipe) contains many chemicals and compounds that are harmful to human health. Tobacco smoke is made of primarily two components - particulates

(tars, nicotines, etc.) and gases (carbon monoxide, carbon dioxide, ozone, etc.). This is simplistic, but for the discussion in this investigation this is sufficient (over 3,000 different components have been found in tobacco smoke). The particulate component of tobacco smoke ranges in size from 0.01 micron to 1 micron in diameter. Present air filter technology is capable of filtering these size particles of this size from the air.

Present HVAC systems can effectively treat tobacco smoke in the indoor environment if enough air is circulated through efficient enough filters. The filter arrangement must contain particulate and gas phase filters. Particulate filters filter particulates such as tar and nicotine. Gas phase filters filter gas from the air such as carbon monoxide, carbon dioxide and ozone. The particulate filters must be a minimum of 95% efficient filters for particles as small as 0.3 micron. The gas phase filters currently on the market are not regulated by any recognized standard. ASHRAE has a committee working on a new standard for gas phase filtration. Grainger Consulting recommends reviewing this standard when ASHRAE publishes it for possible inclusion in the variance criteria.

system serves both the adjacent non-smoking areas and the bar, all adjacent areas served by that system and the bar must be analyzed. The smoke loading for the IAQ analysis shall use the following loading for the bar only: 1) Two-thirds of the occupants shall be smoking. 2) Each smoker shall consume two cigarettes per hour (or equivalent cigars or pipe tobacco). 3) The consumption time for each cigarette shall be 7 ½ minutes. The indoor air quality procedure analysis shall be done by a licensed professional engineer.  
Or:

- C. A separate HVAC system shall meet the requirements of the City of Mesa Building Code and shall be negatively pressurized to adjacent non-smoking-areas. Supply air from adjacent areas to the "Bar" is acceptable, but no return air shall circulate from the "Bar" to adjacent spaces.
- 4. The HVAC system specified in 3.B., above, shall be tested by a certified test and balance agency after completion of construction the test shall comply with variance procedure and demonstrate compliance with the specified perimeters. The HVAC system shall be tested ~~annually~~ every five years thereafter to verify the system maintains the conditions required for the variance. During the interim five year period, maintenance records for the HVAC system shall be submitted to the City of Mesa. Maintenance records of the HVAC system shall include but are not limited to preventative maintenance, filter changes and verification of air flow quantities. The testing shall include verification of all air quantities (supply air, return air and exhaust air), pressure drop across the barrier wall, and contaminant counts for contaminants listed in Table 1, ASHRAE 62a-8990. Contaminant counts shall be tested and analyzed by a certified industrial hygienist using a certified laboratory. The collection period shall be not less than 24 hours. The testing procedure shall be submitted with the variance request.