

COUNCIL MEETING

October 27, 2003

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on October 27, 2003 at 5:45 p.m.

COUNCIL PRESENT

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

COUNCIL ABSENT

None

STAFF PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

*(Mayor Hawker participated in the entire meeting through the use of teleconferencing equipment.)

Invocation by Councilmember Griswold.

Pledge of Allegiance was led by Jacob McGlothin, Boy Scout Troop No. 393.

Mayor's Welcome.

Vice Mayor Kavanaugh 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 Councilmember Walters, seconded by Councilmember Whalen, that the consent agenda items be approved.

Carried unanimously.

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

Minutes from the October 9, 13 and 23, 2003 City Council meetings.

3. Conduct a public hearing on the Power Road (Delmon to McDowell Road) Improvement Project #00-043. This project improved portions of the east and west sides of North Power Road from Delmon Street to McDowell Road. (See item 8d).

Vice Mayor Kavanaugh announced that this is the time and place for a public hearing regarding the Power Road (Delmon to McDowell Road) Improvement Project #00-043.

There being no citizens present wishing to speak on this issue, the Vice Mayor declared the public hearing closed

4. Conduct a public hearing regarding the continuation of the Home Rule Expenditure Limit Option.

Vice Mayor Kavanaugh announced that this is the time and place for a public hearing regarding the Home Rule Expenditure Limit Option.

Kirby Allan, 2043 E. Hackamore Street, addressed the Council and expressed a series of concerns regarding the Home Rule Expenditure Limit Option.

There being no further citizens present wishing to speak on this issue, the Vice Mayor declared the public hearing closed.

4.1 Conduct a public hearing concerning a request from Cable America Corporation to renew its license to provide cable service in the City of Mesa.

Vice Mayor Kavanaugh announced that this is the time and place for a public hearing regarding a request from Cable America Corporation to renew its license to provide cable service in the City of Mesa.

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

There being no citizens present wishing to speak on this issue, the Vice Mayor declared the public hearing closed.

5. Consider the following liquor license applications:

* a. JAMES H. RYAN, CHAIRMAN

Ten Special Event License applications for James H. Ryan, Chairman, Back to School Clothing Drive Association, ten one-day charitable events to be held Friday, October 31, 2003, from 6:00 p.m. to 10:00 p.m., Friday, November 21, 2003, Friday, December 12, 2003, Friday, January 9, 2004, Friday, January 30, 2004, Friday, February 6, 2004, Friday, February 27, 2004, from 11:00 a.m. to 2:00 p.m., Monday, March 8, 2004, from 6:00 p.m. to 9:00 p.m., Friday, March 12, 2004, from 11:00 a.m. to 2:00 p.m., and Monday, March 29, 2004, from 6:00 p.m. to 10:00 p.m. at 1101 S. Ellsworth Road, The Resort.

* b. JOSEPH SPADARO, PROGRAM DIRECTOR

Special Event License application for Joseph Spadaro, Program Director, St. Bridget's Knights of Columbus, a one-day charitable event to be held Sunday, November 16, 2003, from 4:00 p.m. to 7:00 p.m. at 2213 N. Lindsay Road, St. Bridget's Catholic Church.

* c. JOSEPH SPADARO, FUNDRAISER CHAIRMAN

Special Event License application for Joseph Spadaro, Fundraiser Chairman, St. Bridget's Catholic Church, a one-day religious event to be held Saturday, November 1, 2003, from 6:00 p.m. to 9:00 p.m. at 2213 N. Lindsay Road, St. Bridget's Catholic Church.

* d. RODNEY S. HERBERT, AGENT

New Beer and Wine Store License for Texaco Star Mart #769, 1959 S. Greenfield Road. This is an existing business. The Beer and Wine Store License previously held at this location by Gregory Sargovatz, Agent, Equilon Enterprises, LLC, will revert back to the State.

* e. RODNEY S. HERBERT, AGENT

New Beer and Wine Store License for Texaco Star Mart #770, 1158 W. University Drive. This is an existing business. The Beer and Wine Store License previously held at this location by Gregory Sargovatz, Agent, Equilon Enterprises, LLC, will revert back to the State.

* f. RODNEY S. HERBERT, AGENT

New Beer and Wine Store License for Texaco Star Mart #771, 16 W. McKellips Road. This is an existing business. The Beer and Wine Store License previously held at this location by Gregory Sargovatz, Agent, Equilon Enterprises, LLC, will revert back to the State.

* g. RODNEY S. HERBERT, AGENT

New Beer and Wine Store License for Texaco Star Mart #774, 1957 N. Country Club Drive. This is an existing business. The Beer and Wine Store License previously held at this location by Gregory Sargovatz, Agent, Equilon Enterprises, LLC, will revert back to the State.

* h. RODNEY S. HERBERT, AGENT

New Beer and Wine Store License for Texaco Star Mart #776, 2011 E. McKellips Road. This is an existing business. The Beer and Wine Store License previously held at this location by Gregory Sargovatz, Agent, Equilon Enterprises, LLC, will revert back to the State.

* i. LOUIS G. BERGERON, ET AL

New Restaurant License for Jersey Shore Pizza, 3655 E. Southern Avenue, Suite B-1. This is an existing business. The Restaurant License previously held at this location by Christopher John Halvorsen, Agent, Chris's Pizza LLC, will revert back to the State.

* j. ROBERT BILLANY, AGENT

New Restaurant License for Regal Café, 4700 E. Main Street. This is an existing building. No previous liquor licenses at this location.

6. Consider the following contracts:

* a. Three-year supply contract for plastic refuse container lids as requested by the Solid Waste Division.

The Purchasing Division recommends accepting the low bid by RLS Services, Inc. at \$19,915.27 based on estimated annual requirements.

* b. Three-year supply contract for water meters for the warehouse inventory to be used by the Utilities Department.

The Purchasing Division recommends accepting the low bid including a trade-in offer by Dana Kepner Company, Inc. (option 2) at \$618,242.12 based on estimated annual requirements.

* c. New Citywide Telecommunications System as requested by the Communications Division.

The Purchasing Division endorses the Evaluation Team's recommendation to accept the proposal from Norstan Communications for \$2,928,693.15. An additional \$348,869 is requested for project contingencies. The combined project cost is \$3,277,562.15 excluding interest expense, to be financed through a five-year tax-exempt lease.

7. Introduction of the following ordinances and setting November 3, 2003 as the date of public hearing on these ordinances:

* a. **Z03-44** (District 6) The 5800 block of East Southern Avenue (south side). South of the Salt River Project substation on the west side of the Roosevelt Water Conservation District Canal (20 ac. ±). Generally located south and east of Southern and Higley. Rezone from R-3 to R1-6 PAD. This request is for the development of a residential subdivision. Harris Bank, N.A., owner; Chris Clonts, KB Homes, applicant.

* b. **Z03-45** (District 2) Northeast corner of Brown Road and Val Vista Road (9.2 ac ±). Rezone from AG to R1-35 PAD. This request is for the development of a residential subdivision. Ralph Horlacher, owner; Robert Walker, applicant.

* c. **Z03-46** (District 1) West of the southwest corner of McKellips and Arboleda (2.5 ac. ±). Generally located south and west of McKellips and Val Vista. Rezone from R1-43

(Conceptual C-2) to O-S. This request is for the development of an office building. Delos Development, L.L.C., owner; Dorothy Shupe, Dreamcatchers Planning & Design, applicant.

- * d. **Z03-47** (District 6) Southwest corner of Greenfield and US 60 (43.58 ±). Council Use Permit and Site Plan Review. This request is for the development of a Wal-Mart Supercenter. Brent Berge Revocable Trust & Lumberjack Capital LLC, owner; Sean Lake, Pew & Lake, applicant.
- * e. Deleted.
- f. Amending Section 201 of the Mesa City Charter modifying residency requirements for candidates for Mayor and City Council.

Mr. Allan addressed the Council and expressed a series of concerns regarding the Mesa City Charter.

Councilmember Thom stated that the Mesa City Charter is an enabling document which provides the City with parameters under which it may operate. She commented that the proposed Charter amendments will ultimately be approved or disapproved by Mesa voters in the March 2004 election.

Councilmember Griswold expressed support for this item and commented that its purpose is to correct a number of residency requirement issues that arose as a result of the recent redistricting process within the City of Mesa.

It was moved by Councilmember Walters, seconded by Councilmember Whalen, to introduce the above-referenced ordinance and set November 3, 2003 as the date of public hearing on the ordinance.

Carried unanimously.

- g. Amending Section 211 of the Mesa City Charter to designate by resolution two days of the week to publish legal notices.

Mr. Alan addressed the Council and voiced opposition to this agenda item.

It was moved by Councilmember Thom, seconded by Councilmember Jones, to introduce the above-referenced ordinance and set November 3, 2003 as the date of public hearing on the ordinance.

Carried unanimously.

- h. Amending Section 609 of the Mesa City Charter relating to the purchasing policies of the City.

Mr. Alan addressed the Council and expressed a series of concerns regarding this agenda item.

It was moved by Councilmember Jones, seconded by Councilmember Thom, to introduce the above-referenced ordinance and set November 3, 2003 as the date of public hearing on the ordinance.

Carried unanimously.

- i. Amending Section 903 of the Mesa City Charter establishing when City Charter amendments shall be submitted.

Mr. Alan addressed the Council and voiced opposition to this agenda item.

It was moved by Councilmember Walters, seconded by Councilmember Thom, to introduce the above-referenced ordinance and set November 3, 2003 as the date of public hearing on the ordinance.

Carried unanimously.

8. Consider the following resolutions:

- * a. Granting an Overhead and Underground Power Distribution Easement to Salt River Project at the Desert Sage Tank Site #9 at 9601 East Pueblo Avenue – Resolution No. 8123.

This easement is to provide power to the Desert Sage Tank Site.

- * b. Extinguishing portions of a 1-foot Vehicular Non-Access Easement on Tract A of the Mesa Commerce Center in the 4400 block of East McLellan Road – Resolution No. 8124.

These portions of the easement conflict with the approved site plan.

- c. Extinguishing portions of Public Utility Easements at 1452 S. Ellsworth Road at the Valley Del Oro Amended Subdivision – Resolution No. 8129.

The portions of the easements are no longer required.

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

It was moved by Councilmember Thom, seconded by Councilmember Walters, that Resolution No. 8129 be adopted.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Kavanaugh-Thom-Walters
NAYS - None
ABSTAIN - Whalen

Vice Mayor Kavanaugh declared the motion carried unanimously by those voting and Resolution No. 8129 adopted.

- d. Approving the Final Assessment for the Power Road (Delmon to McDowell Road) Improvement Project #00-043 – Resolution No. 8130.

This project installed street improvements along portions of the east and west side of Power Road from Delmon Street to McDowell Road.

It was moved by Councilmember Thom, seconded by Councilmember Walters, that Resolution No. 8130 be adopted.

Carried unanimously.

- * e. Approving the use of the Scalloped Street Assessment Laws to assess a portion of the costs for the Power Road (Adobe to McKellips Road) Improvement Project #00-043.1 – Resolution No. 8125.

This project will install street improvements along portions of the east and west side of North Power Road from Adobe Road to McKellips Road.

- * f. Approving and authorizing the City Manager to execute a License Agreement between the City of Mesa and the Mesa Association of Sports for the Disabled (MASD) – Resolution No. 8126.

- * g. Vacating the right-of-way at 2465 North Horne and reserving an easement for public utilities – Resolution No. 8127.

This right-of-way is no longer required.

- * h. Authorizing the sale of City property to Carniceria Sonora I, Inc. for the development of a retail center – Resolution No. 8128.

This is excess City-owned property located at 223 South Mesa Drive.

- i. Approving and authorizing the City Manager to execute the City of Mesa, Arizona Nonexclusive, 2003 Cable Television Renewal License with Cable America Corporation – Resolution No. 8131.

Councilmember 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 Whalen, that Resolution No. 8131 be adopted.

Councilmember Whalen expressed appreciation to representatives from Cable America, the City Attorney's Office and his fellow Councilmembers for their efforts and hard work to bring the contract negotiations to a successful resolution. He commented that Cable America has demonstrated its willingness to work with the City, and added that it also brings a measure of competition to the community which ultimately results in more equitable rates for Mesa's cable users.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Kavanaugh-Thom-Whalen
NAYS - None
ABSTAIN - Walters

Vice Mayor Kavanaugh declared the motion carried unanimously by those voting and Resolution No. 8131 adopted.

9. Consider the following ordinances:

- * a. Amending various sections of the Mesa City Code regarding the following traffic modifications – Ordinance No. 4124:

Prohibiting Left Turns From Driveways: 10-3-15

On the east side of Greenfield Road from the driveway with centerline approximately 550 feet south of Hackamore Street.

No Parking: 10-3-24 (D) (Full Time No Parking)

On the west side of Drew Street from Main Street to a point 503 feet south of Main Street.

No Parking: 10-3-24 (F1) (No Parking, School Days, 8:00 am – 4:00 pm)

On the west side of 26th Street from a point 275 feet south of Hope Street to a point 525 feet south of Hope Street and on the west side from Highland Street to a point 135 feet north of Highland Street.

- * b. Relating to the City's organizational structure; amending Chapter 9, Title 3 of the Mesa City Code replacing the Management Services Department designation by establishing a Financial Services Department and the office and duties of the Financial Services Manager; and making other conforming changes to the Mesa City Code – Ordinance No. 4125.

10. Discuss and consider whether to file a petition for review in the Arizona Supreme Court regarding City of Mesa v. Bailey, 1CA-SA02-0108.

It was moved by Councilmember Walters, seconded by Councilmember Whalen, to direct the City Attorney's Office not to file a petition for review in the Arizona Supreme Court regarding City of Mesa v. Bailey, 1CA-SA02-0108.

Vice Mayor Kavanaugh advised that Mary Lou St. Cyr, 724 S. Kachina Lane, submitted a speaker card, but did not wish to address the Council. He stated that she expressed opposition to the City filing a petition for review in the Arizona Supreme Court relative to this matter.

Mr. Alan addressed the Council relative to this agenda item and voiced opposition to the City filing a petition for review in the Arizona Supreme Court.

Mayor Hawker expressed support for the motion and noted that he is in agreement with the Court of Appeals' October 1, 2003 decision regarding City of Mesa v. Bailey. He commented that as a result of its ruling, the Court has set a higher standard for municipalities relative to the issue of what constitutes a public use versus a private use. Mayor Hawker briefly cited a number of questions posed in the Court's decision that should be contemplated by a municipality before it considers enforcing the power of condemnation.

Councilmember Thom recognized Randy Bailey for attending tonight's Council meeting. She stated the opinion that it was the mistake of a previous Council to approve the redevelopment district that allowed this terrible transgression to occur. Councilmember Thom added that she looks forward to the redevelopment districts being the subject of a repeal of law so that the State will no longer lend its approval of this practice by any city in Arizona again.

Councilmember Whalen voiced support for the motion and stated that he is pleased that this chapter in Mesa's history is now over. He commented that he hopes the City and private landowners can work in a spirit of cooperation to move forward and make the corner on which Mr. Bailey's business is located something that everyone can be proud of. Councilmember Whalen also pledged his personal support and assistance to help in any way necessary to bring that about.

Councilmember Jones concurred with Councilmember Whalen's comments relative to the fact that this difficult chapter in Mesa's history is now over. He stated that the issue has been extremely challenging for the Council due to the fact it could have been handled differently from the very beginning, and added that it has caused great anguish to many citizens within the community.

Councilmember Griswold expressed support for the motion and also thanked Mr. Bailey for taking the time to attend tonight's meeting.

Councilmember Walters voiced support for the motion and commented that as human beings, no one is infallible and mistakes are made. She explained that with regard to this issue, she believes that a previous City Council was attempting to do something good for the City, which, unfortunately, resulted in some unintentional consequences. Councilmember Walters commented that this matter has been instructive not only for the City of Mesa, but for municipalities around Arizona and the country as well. She emphasized that she does not want to lose sight of the good that was trying to be accomplished initially, including the City addressing some serious blight issues at several properties surrounding Mr. Bailey's property.

Vice Mayor Kavanaugh voiced support for the motion and concurred with Councilmember Walters' comments. He stated that it is the goal of the City to encourage private reinvestment in the downtown area to complement a significant amount of public reinvestment that has been made throughout the years. Vice Mayor Kavanaugh commented that the parcel around Mr. Bailey's property had some serious challenges including abandoned and burned out buildings, criminal activity and were of concern to the residents on Pepper Street to the north.

Councilmember Whalen stated that if Council approves this item tonight, he would encourage staff to work with Mr. Bailey, to the extent legally possible, to remove the fencing around the perimeter of his property to provide him with more room in which to conduct business.

Carried unanimously.

11. Consider the following recommendations from the Transportation Committee:

- a. Approving a proposal for:
 - 1. Joint City/Valley Metro administration of bus program;
 - 2. The purchase of all Mesa bus service from Valley Metro (with the exception of routes purchased from Phoenix);
 - 3. The lease of Mesa Transit Maintenance Facility to Valley Metro.

Councilmember Whalen, as Chairman of the Transportation Committee, provided his fellow Councilmembers with a brief overview of this agenda item.

Assistant Development Services Manager Jeff Martin addressed the Council and highlighted the above-referenced proposals. He explained that the purpose of this agenda item is to seek Council approval for staff to continue to negotiate with Valley Metro on the proposals. Mr. Martin added that he anticipates the negotiation process will continue for several months, at which time staff will bring back the final agreements for Council discussion and consideration.

It was moved by Councilmember Whalen, seconded by Councilmember Walters, that staff be directed to continue to negotiate with Valley Metro relative to a proposal for 1. Joint City/Valley Metro administration of bus program; 2. the purchase of all Mesa bus service from Valley Metro (with the exception of routes purchased from Phoenix), and 3. the lease of the Mesa Transit Maintenance Facility to Valley Metro.

Councilmember Thom expressed opposition to the motion and voiced a series of concerns relative to the potential for the City to relinquish its ability to control its bus routes. She commented that if changes are made to the City's bus service and citizens are displeased with such changes, the City would be blamed when, in reality, another entity will have made the modifications. Councilmember Thom also stated that she would like to see the City prioritize its bus routes so that those with the highest ridership will have the best service and those routes that are used less extensively would be cut back. She added that with regard to the Transit Maintenance Facility, if the City does lease the facility to Valley Metro, she would like to be assured that whatever arrangements are made in that regard are financially beneficial to Mesa.

Councilmember Walters concurred with many of Councilmember Thom's concerns including the importance of addressing the needs of Mesa residents and having the ability to provide input to Valley Metro. She commented that the proposals will become more significant if the extension of the transportation half-cent sales tax is not approved by Arizona voters. Councilmember Walters expressed support for the concept.

Mayor Hawker voiced support for staff to continue to negotiate the proposals with Valley Metro. He noted, however, that he has two concerns regarding this issue if the extension of the half-cent sales tax is defeated including: 1.) that Mesa can restrict the level of service that Valley

Metro would provide to Mesa to accommodate the funds available in the City's budget, and 2.) that the City would have the opportunity to examine the East Valley Dial A Ride (EVDAR) program and possibly restrict the service to Americans With Disabilities Act (ADA) qualified citizens. Mayor Hawker added that he would not want to enter into a contract with Valley Metro that would not give the City the necessary flexibility to effectively address the needs of Mesa's residents.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Kavanaugh-Walters-Whalen
NAYS - Thom

Vice Mayor Kavanaugh declared the motion carried by majority vote.

12. Items from citizens present.

Mr. Allan addressed the Council and expressed a series of concerns relative to City government policy.

13. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:00 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 Regular Council Meeting of the City Council of Mesa, Arizona, held on the 27th day of October 2003. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK