



## COUNCIL MINUTES

August 11, 2004

The City Council of the City of Mesa met in a Special Council Meeting in the Council Chambers, 57 East 1st Street, on August 11, 2004 at 11:35 a.m.

### COUNCIL PRESENT

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

### COUNCIL ABSENT

None

### STAFF PRESENT

Mike Hutchinson  
Debbie Spinner  
Barbara Jones

1. Discuss and consider instructing the Mesa City Clerk to forward the petition submitted in RF04-1 to the County Recorder for signature verification.

Mayor Hawker advised that Councilmember Whalen is currently flying back to the Valley from out of state and is expected to arrive in Phoenix at approximately 12:30 p.m. He suggested that the Councilmembers proceed with the public hearing portion of this agenda item and then consider whether they wish to recess until such time as Councilmember Whalen is available to participate in the Council comments and voting process.

City Attorney Debbie Spinner addressed the Council and provided a brief overview of this agenda item. She reported that on June 21, 2004, the Council adopted utility rate increases for water, wastewater, solid waste and gas; that a citizen group named Stop Exploiting Taxpayers (SET) filed an application for referendum with the City Clerk's Office in an effort to repeal the Council's action; that SET subsequently submitted its petitions with signatures to the City Clerk; that on July 28, 2004, Ms. Spinner issued a letter to SET Chairman Janeva Hibbard, wherein she cited the reasons for rejecting the group's petitions; and that it was Ms. Spinner's legal opinion that the setting of utility rates was an administrative act, as opposed to legislative, and that under Arizona law, only legislative acts are subject to a referendum. Ms. Spinner stated that Ms. Hibbard was also advised that the referendum improperly attempted to refer four separate ordinances in one referendum, which is a violation of State law. She added that under the Arizona Constitution, municipalities are authorized to engage in businesses or enterprises and are subject to the same rules as private companies.

It was moved by Councilmember Rawles, to instruct the Mesa City Clerk to forward the petitions submitted in RF04-1 to the County Recorder for signature verification.

Councilmember Rawles commented that although it has been suggested that the June 21, 2004 Council adoption of utility rate increases was an administrative act (by claiming that it was fulfilling the City's obligations to the bondholders), in his opinion, the Council received neither documentation nor direction from staff indicating that that was the case. He also expressed opposition to further suggestions that it was an administrative act because: 1.) the Council's decision was complex and required specialized training and experience; and 2.) the Council was responding to the day-to-day operational needs of the Utilities Department. Councilmember Rawles stated the opinion that the Council's actions were not in response to the day-to-day operational needs of the Utilities Department, but rather to the City's annual budget requirements. He referred to the FY 2004/2005 budget book and commented that the utility rate increases were presented to the Council as part of the budget. Councilmember Rawles said that what the Council did was, indeed, a legislative act, and that "the people's constitutional right to vote and refer legislative acts are not to be blocked by legal technicalities, nor flimsy transparent legal conclusions in search of a rationale."

Councilmember Thom seconded the motion.

Mayor Hawker announced that this is the time and place for a public hearing regarding instructing the Mesa City Clerk to forward the petition submitted in RF04-1 to the County Recorder for signature verification.

The following citizens spoke in opposition to this issue:

Scott Rhodes	1551 E. Hope Street
Charmaine McCleve	No address provided

The foregoing citizens stated the following opinions:

- It is imperative that the Financing the Future Citizen Committee be allowed to complete its work, including its thorough examination of Mesa's financial structure for the next 25 years.
- If utility rates were no longer utilized to fund municipal services, what mechanism would be implemented in its place to provide such services to the community?
- Mesa needs a "financial cushion" in an effort to fund essential services in case of emergencies.
- The utility rate increases are proportional with regard to Mesa's ever-increasing population.

The following citizens spoke in support of this agenda item:

J. T. Ready	P.O. Box 571
Kenneth J. Bond	433 W. 3 <sup>rd</sup> Street
Marilynn Wennerstrom	1112 N. Center Street
John Oleksey, Jr.	7160 E. Quartz Street
Janeva Hibbard	8106 E. Broadway Road
Charlie Gail Hendrix	2133 E. Inverness
Jim Cavender	1510 N. 26 <sup>th</sup> Street

The above-referenced citizens stated the following opinions:

- Mesa residents are outraged by the utility rate increases, but even more disturbed by the City's rejection of the petitions.
- There is a difference between needed City services and desirable services.
- This funding issue needs "airing" so that Mesa voters can make the ultimate decision regarding the matter.
- The utility rate increases appear unnecessary and the Council and staff continue to avoid a serious examination of whether increased government expenditures are essential.
- Increased utility rates are having a devastating impact on many of Mesa's senior citizens and those individuals on fixed incomes.

Mayor Hawker declared the public hearing closed and thanked everyone for their input.

(Mayor Hawker declared a recess at 12:15 p.m. The meeting reconvened at 12:55 p.m., at which time Councilmember Whalen participated via teleconferencing equipment.)

Fred Rosenfeld, the City's bond counsel, provided a short synopsis of possible ramifications that the City of Mesa could encounter if the matter were to proceed forward. He reported that the City has a covenant in its bond resolution that it will faithfully and punctually perform all duties with reference to the system required under the constitution and laws of the State of Arizona. Mr. Rosenfeld advised that per State law, the Council is the sole determiner of utility rates when revenue bonds are outstanding. He explained that when the same issue arose and was tried at the trial court level for the cities of Chandler and Yuma, in both cases it was determined to be an administrative action so long as revenue bonds were outstanding and therefore, the referendum petition was invalid.

Mr. Rosenfeld emphasized that in this case, the City of Mesa would be in breach of contract with its utility bondholders if it knowingly overruled the City Attorney's opinion and forwarded the petitions to the County Recorder for signature verification. He said that if the utility rate increases went to a public vote, the City would be required to file a notice with the Securities and Exchange Commission, and Mesa's ability to sell utility revenue bonds in the future would be adversely affected. Mr. Rosenfeld also stated that the City has approximately \$470 million worth of bonds outstanding and urged the Council to be cautious regarding this matter. He added that if Councilmember Rawles' motion failed, the City could seek a court ruling to determine whether the item is referable.

Discussion ensued relative to various utility cost increases incurred and passed on to the City at the 91<sup>st</sup> Avenue Wastewater Treatment Plant and the Val Vista Water Treatment Plant in the FY 2004/05 budget; that at their September 2003 Council retreat, the Councilmembers were presented with a forecast that stated in FY 2007/08, when the City came out of "debt valley," debt costs would return to a normal level; that it was anticipated that the City would experience significant financial problems, especially in the general fund, where there was a reduction in the transfer identified in the forecast from the enterprise fund to the general fund; and that the transfer of additional monies into the general fund for FY 2004/05 is an attempt to address that future scenario.

Mayor Hawker briefly discussed the manner in which the profits from the City's utility revenues (since approximately 1944) have been transferred to the general fund in order to pay for

municipal services. He commented that historically, Mesa has always ranked as one of the most affordable communities in the Valley in which to live, even with the utility rate increases. Mayor Hawker acknowledged that utility rates have increased incrementally year after year, thereby resulting in a larger portion of an individual's disposable income going toward government services. He commented that the Financing the Future Citizen Committee is charged with examining this issue, among many others, and making recommendations to the Council in an effort to restrict the growth of government. He added that he would welcome citizen participation throughout the process. Mayor Hawker cautioned, however, that although he would support restricting the growth of government, it would be irresponsible to "cut off" all of the City's revenue from its utilities and be left with no solutions relative to "then what" scenarios.

Vice Mayor Walters expressed appreciation to the speakers for their input. She commented that as a Councilmember, she has a fiduciary responsibility to the taxpayers, as well as to those who purchase utility revenue bonds in good faith from the City of Mesa, and that she must uphold those obligations.

In response to a question from Vice Mayor Walters, Ms. Spinner clarified that because SET is dissatisfied with her legal opinion regarding this matter, the group has chosen to seek redress from the court. She explained that her office would file a response to the lawsuit if the Council does not forward the petitions to the County Recorder, and advised that the court would make the ultimate decision as to whether Council adoption of the utility rate increases was an administrative or legislative act.

Vice Mayor Walters expressed opposition to the motion and commented that if this issue were placed on the ballot, it would have long-term implications for the City in terms of its bond rating and the cost of issuing future debt. She emphasized that whatever course the Council takes, it must be legal.

Councilmember Griswold voiced opposition to the motion. He stated that the City's founding fathers chose an interesting way in which to finance municipal services by setting the property tax rate at zero and using the profits from its utility revenues. Councilmember Griswold commented that although he may disagree with such a method, it is appropriate that the court resolves this current issue once and for all.

Councilmember Thom expressed support for the motion and noted that if the Councilmembers do not instruct the City Clerk to forward the petitions to the County Recorder for verification of signatures, they would be violating their oaths of office. She stated that in her opinion, most people are reasonable and that allowing Mesa residents the opportunity to vote on this issue would not bankrupt the City. Councilmember Thom added that the utility rates are being used as another tax for which the voters would have no redress without sending the referendum to the ballot.

Councilmember Jones commented that it is an undisputable fact that Mesa is the least expensive city in the Valley in which to live. He noted, however, that the manner in which the City is funded is an entirely different challenge and is currently being scrutinized by the Financing the Future Citizen Committee, of which he is Chairman. Councilmember Jones stated that it would be premature for the Council to proceed with this matter and not allow the Committeemembers the opportunity to complete their charge. Councilmember Jones emphasized that the City operates in an efficient manner, and he invited anyone to demonstrate to him with substantive data how it is wasting money. He voiced opposition to the motion and

said that the most logical step that the City can take is to allow the court to determine whether Council's action was a legislative or administrative act.

Further discussion ensued relative to the fact that case law indicates that one of the limitations to the referendum power is acts that are simply administrative and not legislative; that if referendums were allowed to be filed on all Council actions, including administrative acts, the efficient operation of City government would be hampered; that the City's court case would be dealt with on a priority basis and a ruling expected within 60 to 90 days; and that if either party is dissatisfied with the lower court decision, an appeal could be made directly to the Arizona Supreme Court.

Councilmember Whalen acknowledged the concerns of those citizens who brought this issue forward and commented that he does not believe the City's current utility rate structure is the most appropriate method by which to fund Mesa. He commended the work of the Financing the Future Citizen Committee and concurred with Mayor Hawker's comment that Mesa residents should participate in the process. Councilmember Whalen stated that he would not support the motion.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion failed.

2. Adjournment.

Without objection, the Special Council Meeting adjourned at 1:45 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 Special Council Meeting of the City Council of Mesa, Arizona, held on the 11<sup>th</sup> day of August 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