

# COUNCIL MINUTES

November 27, 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 November 27, 1996, at 7:30 a.m.

## COUNCIL PRESENT

Mayor Wayne Brown  
Pat Gilbert  
John Giles  
Dennis Kavanaugh  
Joan Payne  
Wayne Pomeroy  
Jim Stapley

## COUNCIL ABSENT

None

## STAFF PRESENT

C.K. Luster  
Pauline Backer  
Wayne Balmer  
Neal Beets  
Linda Crocker  
Glenn Gorke  
Bill Haney  
Joe Holmwood  
Mike Hutchinson  
Janice Jackson  
Lars Jarvie  
Barbara Jones  
Ron Krosting  
Larry Lines  
Dave Nichols  
Ellen Pence  
Ray Pittman  
Bryan Raines  
Tom Remes  
Denise Samuel  
Others

## OTHERS PRESENT

Bill Brandofino  
Luule Brandofino  
Robert Brinton  
John DeShetler  
Kat Gallant  
Patty Hair  
Cliff Harris  
Tom McGilvra  
Chris Moeser  
Dan Nowicki  
Others

(Items on the agenda were discussed out of order but for purposes of clarity will remain as shown on the agenda.)

### 1. Review items on the agenda for the December 2, 1996 Regular Council Meeting.

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

### 7. Consider the following resolution and ordinance:

- \*a. Relating to the Privilege License Tax; Adopting "The 1996 Amendments to the City Tax Code of the City of Mesa, Arizona, including a Taxpayer Bill of Rights" by reference; establishing an effective date and providing penalties for violations.

Vice Mayor Gilbert requested that staff provide the Council with a brief status report on the Model City Tax Code at the Council Study Session preceding the Regular Council Meeting.

Tax and Licensing Administrator Larry Lines provided the Council with an update on the proposed Tax Code amendments. Mr. Lines reported that the State adopted a Taxpayer Bill of Rights two years ago and added that the City's version closely parallels the State's legislation. Mr. Lines stated the opinion that the proposed Taxpayer's Bill of Rights will not negatively impact the City of Mesa.

- 8. Consider the following ordinances:
  - a. Pertaining to traffic safety; Amending Title 10, Chapter 3 by adding a new Section, 19(1); prohibiting soliciting and distributing by pedestrians from roadways and traffic medians, as recommended by the Police Committee.
  - b. Pertaining to recreational activities; Amending Title 6, Chapter 10 by adding a new Section 3(H); regulating participation in archery in City parks and retention basin areas, as recommended by the Police Committee.

In response to a request from Councilmember Kavanaugh, Mayor Brown advised that agenda items 8a and 8b will be removed from the Consent Agenda.

- 10. Consider the following cases from the Planning and Zoning Board and possible adoption of the corresponding Ordinances:
  - a. **Z96-64**

Councilmember Giles noted that although the Planning and Zoning Board's recommendations listed on the agenda include a stipulation that the minimum lot size for the project will be 18,000 square feet, the minutes of the Planning and Zoning Board reflect that the motion relative to lot size failed. Councilmember Giles questioned whether stipulations 11 and 12 should be listed as approved recommendations.

Community Development Manager Wayne Balmer advised that the applicant has not agreed to the larger lot size stipulation and added that this recommendation is the result of staff's concern that a smaller lot size would set a precedent for the neighborhood. Mr. Balmer reported that stipulations 11 and 12 should not have been added to the list of Planning and Zoning Board recommendations and will be deleted.

## 2. Scheduling of meetings and general information.

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

Monday, December 2, 1996, 5:45 p.m. - Regular Council Meeting

Thursday, December 5, 1996, 4:00 p.m. - Policy Session

Friday, December 6, 1996, 7:30 a.m. - Study Session

Monday, December 10, 1996 - Photo Radar Demonstration

3. Further discussion and consideration concerning smoking regulations.

Mayor Brown requested that the Council identify and discuss specific objectives to be accomplished relative to this issue for the purpose of attaining a consensus and direction.

Councilmember Kavanaugh expressed the opinion that the existing ordinance should be reviewed but indicated that he has no intention of engaging in a major rewrite of that ordinance. Councilmember Kavanaugh added that citizens will have an opportunity to vote on this issue when it appears on a future election ballot. Councilmember Kavanaugh advised that his goal is to initiate a limited number of changes in accordance with the spirit of the law to provide a measure of relief to affected businesses in the City of Mesa.

Councilmember Kavanaugh recommended that: 1) current Fire Department ordinance enforcement be transferred to the Building Inspections Department and that penalties for non-compliance be reviewed for possible increases to achieve a compatibility level with other civil penalties imposed by the City; 2) the private meeting room issue should be further explored for the purpose of providing relief to conference facilities, hotels and private clubs; 3) the Council further explore the issue of outdoor facilities including patios in restaurants and coffee shops, the Mesa Amphitheatre and the future ballpark for the purpose of providing relief to those facilities, and 4) the Council should also further analyze the issue of variances and explore the possibility of providing all liquor licensees the ability to seek variances; initiating a hardship provision for non-liquor licenses; and developing regulations to determining facility space division and allowing smoking to occur throughout various establishments.

Councilmember Kavanaugh added that the Council may consider allowing the percentage of liquor sales in the various establishments to be the determining factor in deciding whether the business is a bar and said that both the various facilities' size and the economic feasibility of creating separate smoking and non-smoking areas should be explored.

Vice Mayor Gilbert stated that he agreed smoking ordinance enforcement should be the responsibility of the Building Inspections Department. Vice Mayor Gilbert recommended that all 'exceptions' be removed from the ordinance as it relates to liquor licenses and commented that this action would simplify the ordinance, including Class 6 licensees, and address concerns relative to the issue of fairness for all liquor licensees in the City. Vice Mayor Gilbert added that the City Council would then be charged with the responsibility of determining whether exceptions should be granted and the basis for such exceptions.

Vice Mayor Gilbert stated the opinion that an additional alternative would be allowing every liquor licensee in the City the ability to apply for some type of segregated area or other smoking section. Vice Mayor Gilbert stressed the importance of protecting children from smoke and recommended that the Council consider prohibiting access for children under the age of eighteen to any facility that may be exempted from the smoking ordinance.

Vice Mayor Gilbert also discussed smaller facilities such as the Marquee Restaurant which attracts a smoking clientele. Vice Mayor Gilbert expressed interest in determining whether restaurants such as these should be exempted, either through a hardship provision and reduced sales or seating capacity. Vice Mayor Gilbert added that it may be determined that this category of retailer should be afforded the opportunity of posting signage declaring that the facility is exempted from the ordinance and allows smoking. Vice Mayor Gilbert reported that smaller, limited capacity establishments are in danger of going out of business unless they are granted some relief.

Vice Mayor Gilbert agreed with Councilmember Kavanaugh's recommendation that limited ordinance modifications should be discussed relative to private meeting rooms and outdoor facilities. Vice Mayor Gilbert stressed the importance of ensuring that all City facilities comply with the smoking regulations.

Councilmember Pomeroy expressed an interest in modifying the existing ordinance to grant relief to 'mom and pop' establishments which are suffering severe economic hardships as a result of the smoking ban. Councilmember Pomeroy added that tobacco shops should also be exempted from the ordinance and agreed with previous comments relative to allowing smoking to occur in private clubs and meeting rooms. Councilmember Pomeroy stated that enforcement should be under the direct control of the Building Inspections Department rather than the Fire Department.

Councilmember Pomeroy said that he does not oppose smoking in bars but added that smoking should not occur in restaurants. Councilmember Pomeroy commented that restaurants must be better defined. Councilmember Pomeroy stressed the importance of ensuring that establishments which allow smoking post proper signage advising potential customers of this fact. Councilmember Pomeroy agreed that discussion should occur relative to ensuring that a fair policy of licensing be adopted relative to liquor licenses and the smoking issue.

Councilmember Giles expressed concern relative to offending citizens who voted for Proposition 200 by amending the smoking ordinance but indicated that he concurs with the previous Councilmembers' remarks relative to enforcement and pursuing a progressive fine approach for non-compliance. Councilmember Giles discussed the difficulty involved in defining bars and restaurants for licensing purposes and recommended that the Council analyze four different definitions for a bar: 1) a location where drinking takes place and food served at that location is incidental to liquor sales; 2) any location which achieves over 50% of its revenue from liquor sales; 3) allowing all liquor license holders who choose to provide a bar area separate from the dining area by floor-to-ceiling barriers and separate ventilation; and 4) an area where minors, children under the age of eighteen, are not allowed.

Councilmember Giles stated the opinion that whatever bar and restaurant definitions are adopted by the Council, a phasing-in provision must be included. Councilmember Giles commented that the phase-in period would allow adequate time for physical modifications to the buildings and allow businesses, over a reasonable period of time, to remain operational and attract smoking patrons while renovating their facilities. Councilmember Giles stressed the importance of requiring separate ventilation systems, barriers, and proper signage.

Councilmember Giles also commented that he agrees that stadiums, arenas and outdoor facilities should be exempted and added the opinion that functions such as religious events,

tobacco shops, and private meeting rooms should also be excluded. Councilmember Giles indicated that the granting of hardship variances for businesses which do not fall into the bar definition but are negatively impacted should also be explored.

Councilmember Stapley informed the Council that OSHA is preparing to ban smoking in all workplaces. Councilmember Stapley commented on recommendations from members of the Council to allow smoking in bars and expressed concern relative to separating the bar area from the restaurant section. Councilmember Stapley indicated that he does not oppose exempting outdoor facilities such as stadiums as long as smokers are separated from nonsmokers. Councilmember Stapley added that legitimate smoke shops which do not engage in any other type of business within the establishments should be exempted.

Councilmember Stapley expressed the opinion that a competitive imbalance exists relative to license issuance and indicated that efforts should be expended to ensure that all businesses are treated in a fair and equitable manner. Councilmember Stapley also stressed the importance of protecting the rights of smokers and non-smokers alike. Councilmember Stapley stated the opinion that the City's position relative to private patron clubs should be clarified and added that he agrees with many of the recommendations offered by the members of the Council.

Councilmember Payne expressed the opinion that it is very unlikely that a compromise which addresses all of the problems can be reached. Councilmember Payne reported that citizens are being harassed at their apartment complexes for smoking in the hallways and residents at Sunland Village East who pay to utilize amenities at the complex are not allowed to smoke while playing in the card table area. Councilmember Payne commented that an acceptable compromise would have to address all of the problems and be fair and equitable to all of the businesses in Mesa.

Councilmember Payne stated the opinion that a citizens' initiative which places financial hardships on the business community is inappropriate. Councilmember Payne stated that a special election should be held to allow the citizens of Mesa an opportunity to vote on this issue and stressed that the Council should not override the initiative.

Mayor Brown indicated that he concurred with a majority of the comments and recommendations offered by the members of the Council and added that the Council should strongly consider calling a Special Election to allow citizens an opportunity to vote on this issue.

In response to questions from Mayor Brown, City Attorney Neal Beets advised that a Special Election would have to be held on one of the four election consolidation dates and noted that one of those specific dates is the second Tuesday in March. Mr. Beets added that in order for a citizens' initiative to implement a district system of representation in Mesa to be placed on the ballot of a March 1997 Special Election, the petitions would have had to have been filed in November, four months prior to the election. Mr. Beets also advised that sufficient time still exists for the Council to propose a Charter amendment relative to implementing a district system. Mr. Beets reported that recently appointed Councilmember Pomeroy's term of office will expire in June 1998 and commented that candidates seeking to fill this seat cannot run for that office until the March 1998 Primary Election.

Mayor Brown stated the opinion that bowling alleys and pool halls are unique and indicated his willingness to discuss exempting those establishments from the smoking ordinance. Mayor Brown added that a moratorium on enforcement should not be enacted if the Council determines that a Special Election be called. Mayor Brown recommended that the Council pursue reaching a consensus of opinion on various amendments to the ordinance and allowing the citizens an opportunity to vote upon this issue at the election.

In response to a question from Councilmember Payne, Mr. Beets advised that the Special Election could be held in either March or May 1997.

Mayor Brown commented that ordinance revisions decided upon by the Council will provide relief to those businesses undergoing financial hardships. Mayor Brown requested that further discussion occur among the Council relative to calling a Special Election in 1997.

Councilmember Pomeroy recommended that the City Attorney's office review the various recommended amendments and compile them for the Council's review in an effort to develop a compromise solution which may be acceptable to everyone involved.

Vice Mayor Gilbert suggested that the Council's recommended ordinance revisions be reviewed by Mr. Marty Whalen, Mr. Jack LaSota, and other attorneys representing the various groups in an effort to arrive at an agreement relative to the proposed amendments. Vice Mayor Gilbert stated that although he was previously opposed to a Special Election, this process may be the only fair and acceptable manner in which to proceed.

Mayor Brown concurred with Vice Mayor Gilbert's recommendation relative to allowing the various groups' attorneys to review the compromise proposal in an effort to arrive at a mutually acceptable agreement.

In response to a question from Mayor Brown, Mr. Beets advised that he will draft a report for the Council's review which will include all of the input received at this meeting.

City Clerk Barbara Jones briefly updated the Council on the status of the Citizens to Repeal Proposition 200 initiative and noted that the results will be available within the next two-to-three weeks. Ms. Jones added that should the Council decide to hold a Special Election in March, the actual date of the election would be March 11, 1997.

Councilmember Giles stated the opinion that the changes recommended by the members of the Council should be considered separately from the Special Election issue. Councilmember Giles advised that he supports pursuing the modifications to the ordinance and then calling a Special Election to allow the voters to decide the final outcome.

Mayor Brown stressed the importance of proceeding as quickly as possible and advised that the Council will continue discussions on this issue at the Friday, December 6, 1996 Council Study Session.

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4. Adjournment.

It was moved by Councilmember Giles, seconded by Councilmember Pomeroy, that the Study Session adjourn at 8:46 a.m.

Carried unanimously.

WAYNE BROWN, 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 27th day of November 1996. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 20<sup>TH</sup> day of December 1996

BARBARA JONES, CITY CLERK