

## COUNCIL MINUTES

February 10, 2005

The City Council of the City of Mesa met in a Special Council Meeting in the lower level meeting room of the Council Chambers, 57 East 1st Street, on February 10, 2005 at 7:31 a.m.

### COUNCIL PRESENT

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

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Mike Hutchinson  
Debbie Spinner

1. Consider the following liquor license application:

a. RANDY D. NATIONS, AGENT

Person & Location Transfer Bar License for Famous Sam's #44, 2860 E. Main Street, Suite #111-114. This is an existing business. Current Restaurant License exists at this location. This is a person and location transfer from Randy D. Nations, Agent, Cat Eye Lounge, Inc., at 7164 E. Stetson Drive, Scottsdale. This license will transfer to the applicant. District #2.

In response to a question from Mayor Hawker, Deputy City Attorney Joe Padilla confirmed that Councilmember Griswold no longer has a potential conflict of interest relative to consideration of the subject case.

Mayor Hawker asked the applicant to come forward.

Salvatore Palazzola, the applicant, advised that Randy Nations was unable to be present at this meeting. He noted that information was provided to the Council at the Regular Council Meeting on Monday, February 7, 2005, and he asked if the Councilmembers had any additional questions.

In response to a question from Vice Mayor Walters, Mr. Palazzola stated that if the Council approved the subject application today, he agreed to sign a document confirming his commitment to apply for a future Council Use Permit when the Council has established the process.

Mr. Palazzola responded to a question from Councilmember Thom by advising that the area surrounding his place of business primarily consists of mobile home and recreational vehicle resorts for persons aged 55 and over.

Responding to a question from Councilmember Whalen, Mr. Padilla advised that the City's recommendation for denial would likely result in a denial by the State Liquor Board based on the fact that the City prohibits Series 6 licenses in C-2 zoning.

Mr. Palazzola advised that his business failed a State audit in April of 2004, and that he initiated the process to purchase a Series 6 license in June. He explained that payment for the license occurred over the subsequent five-month period, and that he was not allowed to utilize the license until payment was made in full.

Discussion ensued relative to the fact that the State audit process involves the records of both the business and the vendors; that alcohol prices must be kept low in order to meet the 40 percent requirement for food sales; and that food sales of 39.9 percent fails to meet the 60/40 ratio and would result in closure of the business.

Mayor Hawker noted that the applicant stated at the Council Meeting on Monday that City Liquor Licensing Section staff advised him that a business could hold a Series 6 license in a C-2 zone.

In response to a question from Mayor Hawker, Mr. Palazzola stated that he did not obtain the name of the person who provided the information.

Business License and Revenue Collections Administrator Tim Meyer advised that City staff responded appropriately when questioned individually regarding the type of information that would be provided to an applicant in a case similar to Mr. Palazzola's case. He noted that the department is comprised of experienced employees with many years of service and extensive knowledge of the required procedures.

Councilmember Griswold concurred with Vice Mayor Walters' comment that the issue of Series 6 licenses in C-2 zones should be addressed by the Council on a Citywide basis. He suggested that a future Study Session focus on C-2 and C-3 zoning issues.

It was moved by Councilmember Rawles, seconded by Councilmember Whalen, that the subject Series 6 license application be forwarded to the State Liquor Control Board with a recommendation for approval.

In response to Mayor Hawker's comment that the motion was inappropriate until the public had an opportunity to comment, the maker and the second withdrew the motion.

John Pulzato, 2730 East Fairfield Circle, addressed the Council in support of the applicant's request for a Series 6 license. He also advised that he presently holds a Series 12 license in the City of Mesa, and he expressed the opinion that a "level playing field" should exist for Series 12 licensed businesses that would like to hold a Series 6 license. Mr. Pulzato noted that small independent businesses struggle to compete with large corporations, and he added that the small independent businesses employ a substantial number of people.

Responding to a question from Mayor Hawker regarding the possibility of opening a business in an appropriately zoned area, Mr. Pulzato advised that the City of Mesa does not have many locations with the required zoning in areas that would be conducive for a thriving business.

Councilmember Whalen noted that the State Legislature determined the Series 12 license requirements. He asked Mr. Pulzato for his opinion relative to the State Legislature's understanding of the burden imposed on small businesses by these requirements.

Mr. Pulzato advised that many businesses must keep the price of alcohol low in order to meet the ratio requirement. He explained that the percentages for a Series 12 license were 75/25 prior to the present requirement of 60/40, and that many businesses were "grandfathered" in at the 75/25 ratio. He added that a Series 12 licensed business in other valley communities could apply for a Series 6 license if the 60/40 ratio was not met. Mr. Pulzato confirmed that to his knowledge Mesa was the only Valley city that requires Series 6 license to be located in a C-3 zone. He noted that several years ago Mesa changed many areas of C-3 zoning to C-2 zoning in order to prevent businesses from obtaining a Series 6 license.

Mayor Hawker thanked Mr. Pulzato for his comments.

Vice Mayor Walters expressed the opinion that changing all C-2 zones to C-3 was not the proper approach. She further stated that the circumstances of this case and the applicant's location indicate that a future Council Use Permit would be appropriate. Vice Mayor Walters suggested that regulations be established relative to the Council Use Permit, and she expressed support for a motion to approve the subject Series 6 license application with the condition that the applicant agrees in writing to apply for a Council Use Permit when that process is available.

Councilmember Rawles noted that the requirement to apply for a Council Use Permit would be conditional because the City has not yet changed the ordinance to provide for a Council Use Permit to enable a business to apply for a Series 6 license. He expressed the opinion that an audit provision would not be necessary under the Council Use Permit.

City Manager Mike Hutchinson noted that another issue to consider is that the applicant could go through the process and be denied.

It was moved by Councilmember Rawles, seconded by Councilmember Thom, that the Series 6 license application be forwarded to the State Liquor Board with a recommendation for approval provided that the applicant agrees in writing to apply for a Council Use Permit when that process is approved by the Council and to be audited by the City for the 60/40 requirement as long as the requirement continues to exist.

Councilmember Whalen stated the opinion that the Council is business-friendly, and he expressed support for the motion and for future Council review of the zoning issues

Councilmember Griswold provided some background information on State liquor licenses. He advised that a Series 12 liquor license is readily available for restaurants and costs approximately \$5,000. He noted that as a result of some "bar only" establishments applying for a Series 12 license, the State imposed a requirement that a certain percentage of the business revenue must be attributable to food service. Councilmember Griswold stated that the City would not be deluged with Series 6 license applications due to the fact that a limited number are available at a price of \$100,000 each.

Mayor Hawker noted that if a limited number of Series 6 licenses are available, the State could consider issuing additional Series 6 licenses as a method of generating revenue to address the budget deficit.

Mr. Hutchinson suggested that a State Liquor Board representative be invited to address the Council at a Study Session discussion regarding zoning issues. He noted that several years ago State Liquor Board representatives were regularly invited to provide updates to the Council.

Mayor Hawker advised that attempts have been made to close the liquor license loopholes in order to prevent "bar only" businesses from operating under a Series 12 license. He expressed concern relative to changing the designation of C-2 zones. Mayor Hawker noted that the Council Use Permit process is very subjective, and he expressed a preference for rules and regulations rather than being required to make discretionary decisions. He also expressed reluctance to permit Series 6 licenses in C-2 zones with residential development, and therefore said he would not support the motion. Mayor Hawker recommended that the zoning issues be discussed in a public forum if fundamental changes are proposed for the City.

Vice Mayor Walters concurred with Mayor Hawker's comments, and added that she may reconsider her vote on the license application. She suggested that the Council consider utilizing overlay districts in areas such as Superstition Springs and Fiesta Mall.

Councilmember Whalen agreed that the Council should study the zoning issues. He noted that a Council recommendation for denial of the subject application would result in the applicant being required to close his business. Councilmember Whalen stated that he does not want to be placed in the position of making a decision that results in the closure of a local business. He added that Mesa is the only Valley city that requires C-3 zoning for a Series 6 license, and he stated the opinion that this requirement places Mesa business owners at a disadvantage.

Councilmember Jones noted that there is consensus that the issue should be addressed as soon as possible. He also noted that the applicant and City staff had differing opinions relative to the information provided to the applicant by staff. Councilmember Jones concurred that consideration of future cases should not utilize a "piece meal" approach.

Mayor Hawker stated that he would not support the subject application. He expressed the opinion that approving a Series 6 license at that location without input from the property owner could jeopardize future revitalization efforts. Mayor Hawker noted that the applicant's failure to comply with the 60/40 requirements could result in a zoning violation. He restated the motion that recommends approval to the State Liquor Board of the Series 6 license provided the

applicant agrees to stipulations that permit City audits in order to verify compliance with the 60/40 provisions, and that the applicant is required to obtain a Council Use Permit when that process is in place.

Councilmember Griswold stated that the applicant's business should not be "held hostage" while the Council determines the policy. He noted the applicant is located next to a closed K-Mart in an area that is struggling to survive. He added that a recommendation for approval of the subject license would result in a total of two exceptions in the entire City, and therefore he would support the motion.

Discussion ensued relative to the fact that approximately 12 establishments in the City of Mesa presently hold Series 12 licenses in a C-2 zone.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by a majority vote.

2. Items from citizens present.

There were no items from citizens present.

3. Adjournment.

Without objection, the Special Council Meeting adjourned at 8:11 a.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 10th day of February 2005. 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

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