

# COUNCIL MINUTES

February 3, 2003

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 February 3, 2003 at 4:15 p.m.

**COUNCIL PRESENT**

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

**COUNCIL ABSENT**

None

**OFFICERS PRESENT**

Mike Hutchinson  
Debbie Spinner  
Barbara Jones

(Councilmember Whalen arrived at the meeting at 4:20 p.m.)

1. Review items on the agenda for the February 3, 2003 Regular Council Meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

The following conflicts of interest were declared: 5e and 5g (Hawker), 5f (Walters)

2. Discuss and consider policy guidelines for ownership of Federally-funded properties leased to nonprofit agencies.

Community Revitalization Director Kit Kelly addressed the Council relative to this agenda item. She reported that today's presentation is an opportunity for staff to respond to a series of questions and concerns posed by the Council at the September 12, 2002 Study Session regarding ownership policy guidelines for the Community Development Block Grant (CDBG) and Home Investment Partnerships (HOME) funds. Ms. Kelly stated that staff is proposing revisions to City policies for properties acquired with Federal funds which would allow nonprofit agencies the opportunity to receive ownership of the sites under specified conditions.

Ms. Kelly referred to the January 30, 2003 City Council Report, copies of which were distributed to the Council, and briefly outlined staff's recommendations and alternatives with regard to the transfer of older CDBG-funded properties from the City to nonprofit agencies, as well as the

ability of nonprofit agencies to acquire ownership of residential rental properties acquired with Federal HOME funds. (See Attachment)

Discussion ensued relative to the fact that Federal CDBG regulations allow a property to be transferred, provided the City enforces guarantees that the property will continue to be used for an eligible purpose for a minimum of five years after completion of the transfer; that it is the recommendation of staff that the City allow the transfer of the CDBG properties which have been leased for 15 years to the eligible agencies; that residential rental properties acquired with Federal HOME funds must remain affordable as defined by the HOME regulations for minimum periods of five to 20 years, and that it is also the recommendation of staff that nonprofit housing developers be granted title of residential properties that are acquired or constructed with Federal HOME funds at the time they are obtained.

Mayor Hawker expressed a series of concerns regarding this issue and stated that he would not like to see a long-time, Mesa-based nonprofit agency (that received ownership of a site) sell the property and use those funds to relocate its program and services to a neighboring community.

Vice Mayor Kavanaugh commented that the City of Mesa has a long-standing relationship with many of the nonprofit agencies located within the community. He stated the opinion that staff's proposal is designed to enhance the operations of the various organizations and provide Mesa with a policy that is comparable to guidelines already in place in surrounding communities.

Councilmember Walters said she concurred with Mayor Hawker's comments, but also acknowledged that allowing a nonprofit agency the opportunity to acquire title to a property enables the organization to more easily obtain financing to upgrade the facility, enhance the value of the property, and become better neighbors in the community. She said that in addition to receiving Federal funding from the CDBG and HOME programs, many Mesa-based nonprofit agencies also engage in various fundraising activities as well.

Councilmembers Griswold and Whalen expressed support for staff's proposal and concurred with Vice Mayor Kavanaugh and Councilmember Walters' comments.

Further discussion ensued relative to a policy decision of a previous Council that permitted the City to retain ownership of the properties leased to nonprofit agencies to ensure the properties were used for an eligible purpose and that they provided the best possible services to the community.

It was moved by Councilmember Whalen, seconded by Councilmember Griswold, that staff proceed with the drafting of a resolution relative to this agenda item.

In response to a question from Mayor Hawker, Ms. Kelly advised that staff will conduct further research to determine if any Valley cities have granted title of properties to nonprofit agencies after a period of only five years and whether the organizations are still operating in those communities.

Carried unanimously.

Mayor Hawker thanked staff for the presentation.

3. Discuss and consider impact fees for facilities owned by nonprofit agencies.

Neighborhood Services Director Bryan Raines addressed the Council relative to this agenda item. He reported that staff was approached recently by a local nonprofit agency constructing a new facility and requested that the City waive impact fee charges associated with the organization's project. Mr. Raines advised that with few exceptions, Mesa's impact fee regulations do not allow for exemptions, and noted that if impact fees are waived for development, the City is then required to pay the fees on behalf of the project. He stated that other than those cases that are specifically exempted by City Code, only the City Council has the discretion to authorize payment by the City for development impact fees assessed to development. He added that it is the recommendation of staff that the Council not accept responsibility for the payment of impact fees related to the construction of facilities being built by nonprofit agencies.

Mayor Hawker concurred with staff's recommendations. He stated that it is incumbent upon a nonprofit agency to include the impact fee costs related to the construction of a new facility in its budget and added that the City should not be required to pay those fees.

Discussion ensued relative to the fact that at the October 17, 2002 Finance Committee meeting, staff's recommendation was approved by a vote of 2 to 1 and forwarded to the Council; that the item was pulled from the November 4, 2002 agenda so that it could be discussed along with ownership of Federally-funded properties leased to nonprofit agencies (Item 2); that Council approval of the item would amend City Ordinance No. 5-17-6 and would not be a violation of the gift clause, and that the Council may decide to pay some or all of the impact fees if the development promotes economic development or the public health, safety and general welfare of the residents and that the payment of the fees must be consistent with Council policy to promote such development.

Vice Mayor Kavanaugh commented that at the October 17, 2002 Finance Committee meeting when the issue was first addressed, he was supportive of staff's recommendation and noted that his opinion has not changed since that time.

Councilmembers Jones and Whalen concurred with Vice Mayor Kavanaugh's comments.

Mayor Hawker stated that it is the consensus of the Council that no support exists for this item and that the issue should not be pursued.

Mayor Hawker thanked Mr. Raines for the presentation.

4. Acknowledge receipt of minutes of boards and committees.

- a. Finance Committee meeting held January 23, 2003.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that receipt of the above-listed minutes be acknowledged.

Carried unanimously.

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

The following members of the Council provided brief updates on various meetings/conferences they attended as follows:

Councilmember Jones and Mayor Hawker  
Mayor Hawker

Meeting with East Valley Legislators  
Chandler Mayor Boyd Dunn's State of the  
City Address

Councilmember Griswold  
Councilmember Whalen  
Councilmember Thom

Mesa Community College Planning Session  
Mesa Police Department Awards Ceremony  
Ribbon Cutting Ceremony at Pierpont  
Business Park

6. Scheduling of meetings and general information.

City Manager Mike Hutchinson stated that the meeting schedule is as follows:

Thursday, February 6, 2003, 7:30 a.m. – Study Session - Cancelled

Saturday, February 8, 2003, 11:00 a.m. – Dedication of Augusta Ranch Park

Tuesday, February 11, 2003, 7:00 a.m. – Joint Meeting with Dobson Ranch Association

Thursday, February 13, 2003, 7:30 a.m. – Study Session

Thursday, February 13, 2003, After Study – Tour to ASU-East – Briefing by Dr. Michael Crow

Thursday, February 20, 2003, 7:30 a.m. – Study Session

Monday, February 24, 2003, TBA – Study Session

Monday, February 23, 2003, 5:45 p.m. – Regular Council Meeting

Wednesday, February 26, 2003, 8:00 a.m. – General Development Committee Meeting

7. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

8. Adjournment.

Without objection, the Study Session adjourned at 5:30 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 Study Session of the City Council of Mesa, Arizona, held on the 3<sup>rd</sup> day of February 2003. 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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Attachment

## CITY COUNCIL REPORT

**Date:** January 30, 2003  
**To:** Mayor and City Council  
**Through:** Paul Wenbert, Deputy City Manager  
**From:** Bryan Raines, Neighborhood Services Manager  
**Subject:** Review of Policy Guidelines for Ownership of Federally Funded Properties Leased to Nonprofit Agencies Citywide

### **Purpose and Recommendation**

The purpose of this report is to follow up on a previous discussion of the ownership policy guidelines for the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs. Consider and approve a revision to City policies for properties acquired with federal funds by allowing nonprofit agencies to receive ownership of sites under specified conditions.

### **Background**

Under the policy guidelines previously adopted by the City Council, the ownership of properties constructed or purchased with the City's allocation of federal CDBG or HOME funds are leased back to nonprofit agencies at a nominal cost (\$1/year) for 20 years with two 5-year renewable options. The City began acquiring properties with CDBG funds in 1975. These first sites were leased to PREHAB of Arizona and the MARC Center to serve their clients:

As required under CDBG and HOME regulations, properties must be used as a public facility in a qualified neighborhood; to provide shelter; create affordable housing; or to make available client services for special needs populations, those in poverty, families in crisis, or low and moderate income individuals and households.

The City currently owns 27 properties that were acquired, constructed, and/or rehabilitated using federal funds. These include seven public facilities, five shelter related facilities, and fifteen residential properties. (Attachment #1) With a significant inventory of federally funded properties and an excellent record of operating continuance, the City may want to reconsider its ownership policy for these structures.

The Mayor and City Council held a discussion at the study session on September 12, 2002 and staff was asked to address certain issues that were raised by the Council and to return with a response. (Refer to minutes - Attachment #2.)

## Discussion, Recommendations, and Alternatives

**CDBG - Transfer of Older Properties** - Federal CDBG regulations allow the properties to be transferred provided that the City enforces guarantees that the property continue to be used for an eligible purpose for a minimum of five years after the transfer is complete. Except in limited circumstances, other local jurisdictions generally do not retain ownership of federally funded properties.

### Recommendations (Attachment #3)

- That the City allow the transfer of CDBG funded properties that have been leased from the City for fifteen years or more, except in the situation where significant additional investment with federal dollars by the City for expansion or renovation has occurred within the last 15 years.
- Require that the properties continue to be used for an eligible purpose *for five years* after the transfer with no further restrictions.

This requirement would be enforced through a deed restriction that causes the property to be transferred back to the City if the requirement is not met. The deed restriction will likely impact the nonprofit's ability to use the property as collateral during that period.

- Properties that meet the criteria may be transferred to the eligible agency. Any public facilities or residential units in which more than \$500,000 in federal CDBG dollars was invested shall be considered by the City Council individually once the agency requests transfer of ownership.
- When a facility meets these requirements, but the agency does not wish to have the property transferred to them, the City would then continue the lease. If the agency ceased operations the City would secure another eligible tenant, or sell the property. Funds received for a sale, if that should occur, are considered program income and must be used for an eligible purpose as required under the federal programs.

### Alternatives for CDBG Funded Properties

- **CDBG - Ongoing Restrictions:** Transfer ownership of older properties to the nonprofit agencies that have leased them for 15 or more years that meet the criteria for transfer. The City would require that the properties continue to be used for an eligible purpose *in perpetuity* after the transfer.

This requirement would be enforced through a deed restriction that causes the property to be transferred back to the City if the requirement is not met. The deed restriction will likely impact the nonprofit's ability to use the property as collateral.

- **Select a Different Time Period** - Make a policy that sets a different time period than the recommended 15 years for transfer. Choose a longer or shorter period.

- **Continue Existing Policies** - Make no change in the Policy Guidelines and continue holding title to all properties acquired or constructed with federal funds.

**HOME - Ownership of Residential Properties** - Residential rental properties acquired with federal HOME funds must remain affordable as defined by the HOME regulations for minimum periods of 5 to 20 years no matter whether owned by the City or another entity. (The length of affordability restrictions is subject to the type of activity and the amount of HOME funds invested per unit.)

By allowing qualified nonprofits ownership of residential properties acquired with HOME funds, the City would have a comparable policy with other member jurisdictions of the Maricopa HOME Consortium (Scottsdale, Tempe, Glendale, Chandler, Peoria, the Town of Gilbert, and unincorporated areas of Maricopa County) and with the City of Phoenix.

### **Recommendations (Attachment #3)**

- That nonprofit housing developers be granted title of residential properties that are acquired or constructed with federal HOME funds at the time they are obtained.
- That the City allow ownership of HOME funded properties by the nonprofit agencies that meet the criteria for ownership. Require that the properties continue to be used for an eligible purpose for the *applicable Period of Affordability* according to HOME regulations (5 to 20 years).

This requirement would be enforced through a deed restriction that causes the property to be transferred back to the City if the requirement is not met. The deed restriction will likely impact the nonprofit's ability to use the property as collateral during that period.

- To protect the City's interest, each project would be evaluated based on the amount of federal funding provided, the portion of HOME funds compared to other funding, and the experience and viability of the nonprofit agency. In cases where an agency may have limited capacity or experience, City staff would have the option to determine whether or not the City should retain ownership.
- Measures would be used to protect the City's interest and to ensure that the properties were in compliance with federal requirements. Staff recommends that the City maintain a first lien position during the required Period of Affordability except in situations where the funding provided was a smaller portion of the total project funding utilized than the funding of an outside lender and there were assurances that the property would remain affordable.

### Alternatives for HOME Funded Properties

- **HOME - Ongoing Restrictions:** The City would require that the properties continue to be used for an eligible purpose in *perpetuity* after the transfer.

This requirement would be enforced through a deed restriction that causes the property to be transferred back to the City if the requirement is not met. The deed restriction will likely impact the nonprofit's ability to use the property as collateral.

- **Continue Existing Policies** - Make no change in the Policy Guidelines and continue holding title to all properties acquired or constructed with federal funds.

### Fiscal Impact

By keeping the existing policy the City continues to increase its property inventory. The fiscal impact of a change in the policy (Attachment #4) is negligible. The City must ensure however that the properties meet an eligible purpose and is responsible for meeting the federal requirements (Attachment #5). If the requirements are not met, there is a potential liability that HUD may require repayment of the funds. This liability exists whether or not the City holds title to the properties.

By holding title, the nonprofit agencies have indicated that they may be better able to secure other private funds needed to leverage the acquisition costs, to pay for needed renovations, or provide supportive services.

### Concurrence

Nonprofit providers have indicated that owning properties constructed or acquired with federal funds would be a benefit. This proposed revision was discussed with Real Estate Services staff who concurred that allowing nonprofits to own the properties would ease the City's property management oversight responsibility and reduce the City's potential liability. Community Revitalization was assisted by the City's legal staff in preparing the Council Report documentation.

Kathleen Kelly  
Community Revitalization Director

Bryan Raines  
Neighborhood Services Manager

Paul Wenbert  
Deputy City Manager