

POLICE COMMITTEE MINUTES

April 20, 2000

The Police Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on April 20, 2000 at 8:00 a.m.

COMMITTEE PRESENT

Pat Pomeroy, Chairman
John Giles
Bill Jaffa

COMMITTEE ABSENT

None

COUNCIL PRESENT

Jim Davidson
Keno Hawker
Dennis Kavanaugh

STAFF PRESENT

Mike Hutchinson
Don Ayers
Kathy Barrett
Neal Beets
Dan Brewer
Linda Crocker
Luigi DiGirolamo
G. T. Fowler
Pat Granillo
Jeff Martin
Ellen Pence
Ron Poulin
Bryan Raines
Andrea Rasizer
Tom Remes
Jan Strauss
Walter Switzer
Others

OTHERS PRESENT

Betty Beard
Barrett Marson
Others

1. Discuss and consider recommendations concerning the photo safety program citation process.

Chairman Pomeroy requested input on this issue from staff and commented on recent publicity relative to the City's ability to enforce the photo safety program citation process that is currently in place.

Assistant Police Chief G.T. Fowler addressed the Committee and stated that the Mesa Police Department has been reviewing options to increase the overall effectiveness of the photo safety enforcement program. Chief Fowler acknowledged that in accordance with current procedures, the City does not have the ability to address unacknowledged citations that are delivered by mail and discussed staff's recommendation that process servers be utilized to deliver the summonses to defendants named on photo safety complaints.

Discussion ensued relative to the fact that at the present time registered owners of vehicles are mailed complaints which require acknowledgement of service, the fact that a large volume of citations remain unacknowledged, the fact that if no response is received within 65 days of the violation date, a second notice is mailed to the registered owner and the fact that both the original citations and follow-up letters are generated and mailed by the photo safety vendor.

Chief Fowler noted that Arizona Rules of Civil Procedure (4)I states that if a summons is not acknowledged by the defendant within 120 days after the filing of the complaint by the Mesa City Court, the Court, upon its own motion, shall dismiss the action without prejudice. Chief Fowler informed the members of the Committee that legislative action is required to change this law and said that the Council may consider lobbying the State legislators at the upcoming session in an effort to initiate revisions to this rule.

Chief Fowler explained that since changes in the law will take considerable time to enact, staff is proposing that in the interim a pilot program be initiated during which the City would contract with process servers to serve the complaints after the 65-day period in which no acknowledgment has been received by the Court.

Additional discussion ensued relative to staff's recommendations that the first phase of the program be modified to reflect that all second notices be mailed to the registered owners of the vehicles 45 days following the violation, the fact that if no responses are received after an additional 15 days (60 total days after the violation), the citation could be turned over to the process services to be delivered, the fact that the Police Department staff will work with the Motor Vehicle division in an effort to assist in identifying the drivers of the vehicles, the fact that inconclusive photo results would not be turned over to the process service, and the fact that currently 900 citations a month remain unacknowledged and staff's recommendation that during the six-month pilot program, 300 citations a month be delivered by process servers.

Chief Fowler noted that the total cost estimate for the entire six-month pilot program would be \$51,000 and added that no additional personnel would be required to implement the interim program. Chief Fowler commented that the program costs would be offset by the fine schedule and said that staff anticipates that the pilot program will result in a better than 50% rate of return. Chief Fowler stated the opinion that should the Council direct staff to increase the number of citations to be delivered by the servers from 300 to 900, additional staffing would be required.

Committeemember Giles emphasized the fact that the photo radar program is a politically sensitive issue and expressed disappointment in the fact that the limited enforcement authority of the City was not brought to the attention of the Council and discussed prior to recent publicity surrounding this matter. Committeemember Giles stated the opinion that had he been made aware of the fact that the City has no legal authority to enforce the program, he would not have voted in support of utilizing resources to proceed with the project. Committeemember Giles added that he appreciates the efforts of staff to correct the situation, but said that in the absence of new legislation to change the law, the City's enforcement capabilities remain limited. Committeemember Giles expressed the opinion that the City should either initiate steps to place the current photo safety contract on hold until the gap in the law is corrected or contract with process servers to serve all of the citations that are issued rather than the 300 citations a month that is being recommended by staff. Committeemember Giles added the opinion that anything less than the above options would indicate a total disregard for the law.

Committeemember Jaffa concurred with Committeemember Giles' comments and stressed the importance of improving communication and providing the Council with all information that is available on issues such as this when the issues are initially presented to the Council for consideration. Committeemember Jaffa agreed that steps should also be initiated to lobby State legislators to amend the law and questioned whether the City has the ability to request that the courts continue rather than dismiss violations that are not efforts are expended. and noted the positive impacts that the City's photo radar program has had on public safety to date.

Chairman Pomeroy commented that pursuing this matter at the State level will be a lengthy process and indicated support for the implementation of a pilot program which would go into effect immediately. Chairman Pomeroy noted the positive impacts that the City's photo radar program has had on traffic safety to

date and expressed the opinion that staff's recommendations provide the City with an opportunity to test the process and gauge the results of utilizing the servers.

Additional discussion ensued relative to the fact that costs associated with process servers will be added on to the amount of the citation and staff's opinion that approximately 50 to 75% of the costs will be recouped, and the fact that the proposal contains added enforcement strength in that citizens who ignore the legal services may be subject to license suspension for non-compliance.

It was moved by Committeemember Jaffa, seconded by Chairman Pomeroy, to recommend to the Council that staff's recommendations relative to the development of an interim pilot program during which the City will contract with a process server to deliver summonses to approximately 300 defendants a month who have not acknowledged receipt of the summonses within a 65-day period be approved, and that staff be directed to pursue changes in State law relative to this issue.

In response to a question from Councilmember Davidson, Lt. Luigi DiGirolamo confirmed that the City of Tempe does not cite fleet vehicles at the current time and discussed the difficulties associated with identifying the violators in such cases. Councilmember Davidson recommended that for the purpose of realizing maximum results during the test program, the citing of fleet vehicles be eliminated.

Committeemember Giles commented that he cannot support the proposed recommendations of staff and stated the opinion that the pilot program does not demonstrate a strong commitment to enforcing the law.

Committeemember Jaffa expressed the opinion that the proposal should be presented to the full Council for further discussion and consideration and added that staff's recommendations provide the City with an opportunity to explore improvements that may be initiated at the State level. Committeemember Jaffa also concurred with Chairman Pomeroy's comments relative to the positive effects the current system has had on traffic safety and indicated that he does not support placing the program on hold until State law is amended.

Upon tabulation of votes, it showed:

AYES - Pomeroy-Jaffa
NAYS - Giles

Chairman Pomeroy declared the motion carried by majority vote.

2. Discuss and consider a recommendation concerning the following proposed ordinances:

- a. Jail Confinement Fee and Municipal Court User Fee;
- b. Traffic Safety Omnibus

City Attorney Neal Beets presented an overview of two ordinances concerning a modification to Municipal Court Fees and Traffic Safety regulations. Mr. Beets stated that it is the recommendation of staff that the ordinances be included on the agenda for introduction at the May 1, 2000 Regular Council Meeting and considered for adoption at the May 15 Regular Council Meeting.

Mr. Beets noted that the ordinance relating to municipal court fees would increase the current Court User Fee from \$10 to \$20 and would additionally require certain defendants in the Mesa Municipal Court to pay for the cost of their own incarceration in the Maricopa County Jail. Mr. Beets indicated that the Jail Confinement Fee would be applicable to those individuals financially able to pay.

In response to a question from Chairman Pomeroy, Assistant to the City Manager Bryan Raines noted that the City currently pays \$84 for the first (booking) day of confinement and \$35 per day thereafter, but advised that as of July 1, 2000, the rate will increase to \$93 for the first (booking) day and \$40 per day thereafter.

Committeemember Giles expressed concern relative to the inability of many individuals to pay fees.

Presiding City Magistrate Walter Switzer commented that fees often are not imposed due to financial hardship and that many judges offer community service work in exchange for payment of fees.

Committeemember Giles spoke in favor of the proposal relating to municipal court fees given the road level of discretion available to judges.

In response to questions from Committeemember Jaffa, Mr. Beets related the City's current collection practices. Judge Switzer noted that recourse is available to the City in the event financially capable individuals willfully do not pay. Judge Switzer reiterated the option of volunteer community service offered to individuals who are unable to pay fees.

It was moved by Committeemember Giles, seconded by Committeemember Jaffa, to recommend to the Council that staff's recommendations relative to increasing the current Court User Fees from \$10 to \$20 and requiring certain defendants in the Mesa Municipal Court to pay for the cost of their own incarceration in the Maricopa County Jail, be approved.

In response to a question from Councilmember Jaffa, Mr. Beets advised that if approved, an ordinance relative to this issue may be introduced at the May 1, 2000 Regular Council Meeting and placed on the agenda of the May 15, 2000 Regular Council Meeting for Council consideration and action.

Carried unanimously.

b. Traffic Safety Omnibus

Mr. Beets also outlined four major revisions included in the proposed Traffic Safety Omnibus ordinance: a) adopting the Tempe noise provision relative to "boom boxes" in cars, which makes it a civil offense to play a sound amplification system in a vehicle so that it can be heard 50' away or in such a fashion that it disturbs the response of any person in the vicinity; b) making the squealing of tires a civil traffic offense, not a criminal misdemeanor; c) modifying the noise ordinance to apply to vehicle noise on any "paved surface" within the City (such as mall or strip center parking lots), not just public rights-of-way; and d) creating certain affirmative defenses and conforming the wording of Mesa's handicapped parking regulations with the wording of State law.

In response to a question from Chairman Pomeroy concerning enforcement, Mr. Beets explained that while citizens can initiate noise complaints, citations must be issued by a police officer.

Committeemember Giles spoke in favor of the proposed ordinance and stated that the ordinance will address the concerns of many citizens.

In response to a question from Committeemember Giles, Mr. Beets provided clarification pertaining to the recommended handicapped parking regulations and insurance/placard requirements.

Mr. Beets also responded to questions posed by Committeemember Jaffa, and reiterated that the noise ordinance would apply to vehicle noise on any "paved surface" within the City as well as public rights-of-way.

It was moved by Committeemember Giles, seconded by Committeemember Jaffa, to recommend to the Council that staff's recommendations (a through d) relative to revisions in the Traffic Safety Omnibus ordinance, outlined in paragraph one of this agenda item (Page 4), be approved.

Carried unanimously.

In response to a question from Committeemember Giles, Mr. Beets stated that an ordinance relative to this issue may be introduced at the May 1, 2000 Regular Council Meeting and placed on the agenda of the May 15, 2000 Regular Council Meeting for Council discussion and consideration.

3. Discuss and consider additional information and recommend revisions to the massage therapist and the massage establishment regulations.

Tax and Licensing Director Don Ayers provided information in response to questions concerning malpractice insurance and testing presented by the Police Committee at their meeting of April 13, 2000. Mr. Ayers stated that although none of the Valley cities surveyed require malpractice insurance, it is staff's recommendation that malpractice insurance be required of all massage therapists upon the renewal of their licenses after June 1, 2000. Mr. Ayers advised that malpractice insurance is provided free of charge to those individuals who pay a \$235 annual membership fee to the American Massage Therapy Association (AMTA).

Chairman Pomeroy noted that the Committee has not received any feedback from members of the industry concerning malpractice insurance following the April 13th meeting.

Mr. Ayers reported that in response to a question from Committeemember Giles, staff has contacted the management of the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), who indicated that they are not interested in conducting massage therapist testing for the City of Mesa.

Discussion ensued among the members of the Committee relative to various massage therapy trade organizations and the certification provided by the NCBTMB.

Chairman Pomeroy stated that it is the consensus of the Committee that the recommendations developed by the Committee at their April 13th meeting remain unchanged and that they be presented to the Council for their review and consideration.

City Manager Mike Hutchinson noted that the Police Committee recommendations will be included on the agenda of the May 1, 2000 Regular Council Meeting.

4. Adjournment.

Without objection, the meeting of the Police Committee adjourned at 9:05 a.m.

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I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Police Committee meeting of the City of Mesa, Arizona, held on the 20th day of April, 2000. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 2000

BARBARA JONES, CITY CLERK