

COUNCIL MINUTES

December 21, 2006

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 December 21, 2006 at 7:30 a.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Tom Rawles
Scott Somers
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Barbara Jones

1. Hear a presentation, discuss and provide direction on the protocol relating to special events previously sponsored by the City of Mesa.

Executive Manager Trisha Sorensen introduced Acting Deputy City Attorney Alfred Smith, Parks, Recreation & Commercial Facilities Director Rhett Evans, and Fredda Bisman, an attorney with Mariscal, Weeks, McIntyre & Friedlander, P.A., who were prepared to address the Council relative to this agenda item.

Ms. Sorensen reported that due to the elimination of special events funding from the Parks and Recreation Division's budget in FY 2006/07, the City's role in the production/coordination of special events is now limited to information dissemination and creating reservations for equipment and facilities. She explained that in recent months, staff has provided "a certain level of guidance" to community groups and private organizations that have assumed the sponsorship of various special events. Ms. Sorensen suggested that during the upcoming budget process, it might be appropriate for the Council to consider the implementation of a fee for those services.

Ms. Sorensen commented that because of competing interest for some events by various organizations, a criteria-based award process was recommended by the Parks and Recreation Board and subsequently forwarded on to the City Attorney's Office for legal review.

Mr. Smith reported that as a result of various questions posed by the Council at the September 21, 2006 Study Session concerning the protocol related to special events previously sponsored by the City, the City Attorney's Office retained the law firm of Mariscal Weeks to provide a legal opinion in that regard. He referred the Council to the December 21, 2006 City Council Report which details those findings. (See Attachment 1.) Mr. Smith added that he invited Ms. Bisman to

provide a brief summary of those findings and also respond to any questions the Council may have relative to the City's proposed special events policy.

Ms. Bisman reported that she would be offering the Council legal advice and indicated that per the Arizona Open Meeting law, this discussion could take place in Executive Session. She stated that it was her understanding the Council wished to receive this information at the Study Session, thereby waiving any attorney/client privilege. Ms. Bisman requested confirmation from the Council if that was, indeed, the case.

In response to a question from Mayor Hawker, City Attorney Debbie Spinner clarified that staff was directed to provide the Council with a summary of Ms. Bisman's legal opinion, which is contained in the City Council Report, and therefore a public record. She explained that the details of an "Attorney-Client Privileged Communication Memo" authored by Ms. Bisman and provided to the Council remains confidential, but said that depending on the extent of today's discussion it may also become a public record. Ms. Spinner added that if the Council prefers the memorandum remain confidential, this agenda item should be rescheduled for an Executive Session.

Mayor Hawker and Councilmembers Rawles and Griswold said that they would not object to Ms. Bisman addressing the Council in an open meeting or allowing the confidential memo to become a public record.

Ms. Bisman commented that it is important for the Council to understand that City parks are public forums, which means that what occurs at those facilities is generally subject to First Amendment protection. She stated that the City has the authority to impose what is called "reasonable time, place and manner" restrictions on activities that occur in public parks. Ms. Bisman added that whatever restrictions the City imposes are linked to a "significant public interest" that can be articulated and said a connection can be made between those criteria and such public interest.

Ms. Bisman referred the Council to the first of four legal findings (as contained in Attachment 1.):

1. The City may give preference to a non-profit over a for-profit entity as host for a City special event, but only by adopting narrow restrictions in its selection of which entity to favor, ensuring that the restrictions serve a significant interest and providing adequate alternative channels of communication to those entities not favored.

In response to a question from Vice Mayor Walters, Ms. Bisman clarified that if two non-profit organizations express interest in sponsoring a special event, it is important to establish the necessary criteria for choosing between the interested entities. She stated that it is also essential to determine the purpose of the event and the interest it is serving within the community. Ms. Bisman added that because an organization sponsored an event in the past, the criteria of historic contributions alone are not necessarily valid.

City Manager Christopher Brady noted that it is important for the Council and staff to establish criteria at the beginning of the process in order to determine what should be accomplished by the event. He explained that evaluation criteria might include not only an entity's previous experience in sponsoring such events, but also assessing the organization's contributions (i.e., financial) to the community in sponsoring the event in the future.

Ms. Bisman responded to a series of inquiries from the Council regarding this item. Her comments included, but were not limited to, the following: that she is not suggesting that the City establish separate criteria for each event; that in reviewing the draft of the "City of Mesa Special Events Supplemental Application (Criteria Scoring)" (See Attachment 2.), she was unsure what purpose the criteria were trying to serve; and that with regard to different types of special events (i.e., Martin Luther King Day, Cinco de Mayo (multi-cultural) versus the Turkey Trot), the City may want to establish different criteria for different events as long as it is stated upfront.

Councilmember Rawles concurred with Ms. Bisman's analysis and stated that in reviewing the criteria contained in Attachment 2, he could not see a specific governmental purpose being advanced by said criteria. He also noted that his comments regarding the criteria are not intended as a criticism, but simply a reflection of how difficult it is for staff to draft a policy until the Council offers input relative to the objectives that they want the event to achieve for the community. Councilmember Rawles added that such objectives could change with each event and make the process even more difficult.

Vice Mayor Walters stated that it was her recollection that the City was attempting to provide an opportunity for special events in the community that could also potentially serve as fundraisers for entities that serve the community. She cited, by way of example, the Sertoma Club that has sponsored the Turkey Trot for many years. Vice Mayor Walters questioned whether that would be considered a legitimate public purpose.

In response to Vice Mayor Walters' inquiry, Ms. Bisman clarified that fundraisers that serve the community are a public purpose, but commented that in order to distinguish between the various entities that serve the community, it would be necessary to establish more specific criteria.

Councilmember Jones expressed concern that under the proposed guidelines, an organization that has successfully sponsored an event for many years (i.e. Sertoma Club/Turkey Trot) may not necessarily be the entity selected to sponsor the event in future years.

Discussion ensued relative to the fact that this item was initially presented to the Council because two entities expressed interest in sponsoring Cinco de Mayo; that Mesa's Sister Cities organization sponsored the event for many years and that a private entity sponsored last year's Cinco de Mayo; and that in order to address more than one entity expressing interest in holding the same type of event at the same City park on the same day, the proposed criteria-based award process was recommended by the Parks Board.

Mr. Brady commented that the process before the Council only suggests that this application would be required when interests were competing for the same event or the same park location for the event. He stated that staff is not saying just because an organization has sponsored an event for several years, that it is the most qualified or it should be permitted to sponsor it in the future. Mr. Brady also requested Council direction regarding what types of groups should be allowed to participate in fundraising activities in City parks, whether they must be non-profit organizations, and if they should be required to contribute to Mesa programs.

In response to a question from Councilmember Griswold, Ms. Bisman clarified that the City cannot discriminate against a group (i.e., Skinheads of America) wishing to sponsor a special event based solely on who the group is. She noted, however, that the City might have criteria against which the group could be rated to determine whether it would be an appropriate organization to sponsor an event. Ms. Bisman added that the City is allowed to establish criteria for the kind of activities that occur in its public parks.

Councilmember Rawles commented that even if the City continued to sponsor special events, it would still need to establish criteria so that staff could select between competing groups expressing interest in sponsoring an event. He added that the City never covered all of the costs for an event and was only a partial sponsor.

Councilmember Rawles further noted that although he is willing to hear the remainder of the legal review findings, it may be more appropriate for staff, with the assistance of Ms. Bisman's law firm, as deemed advisable, to identify "potential objectives" for the Council. He proposed that the Council: 1.) Review staff's suggested objectives; 2.) Consider objectives of their own; 3.) Design criteria to fit those objectives; and 4.) Receive a final legal review to ensure that the Council's objectives and criteria "mesh in a Constitutional manner."

Vice Mayor Walters concurred with Councilmember Rawles' direction to staff. She also referred to Attachment 2 and suggested that under "Community Support," the verbiage "Identify anticipated contribution to be made to the Mesa Parks Foundation" be eliminated. Vice Mayor Walters stated that she understands staff's reason for including such language in the application since the park is used to generate revenue, but would prefer that such bias be removed from the document.

Further discussion ensued relative to the issue of the City granting fee waivers; the budgeting for staff who assist event organizers; and that other communities do not give preference to certain organizations for events.

Councilmember Somers suggested that it might be appropriate that staff not waive fees for event organizers.

Mayor Hawker suggested that each Councilmember offer input with regard to potential objectives and criteria in order to determine if there would be four votes for approval when staff brings back this item for further discussion and consideration.

Councilmember Rawles stated that he would prefer that each Councilmember submit his or her ideas directly to the attorneys. He noted that staff would have the opportunity to assess whether the input was appropriate and "passes Constitutional muster."

In response to a question from Councilmember Jones, Mr. Evans explained that with regard to the special events eliminated from the City's budget, Mesa is granting fee waivers for facility or park rentals that are owned by the City. He added that the City is passing on the direct staff costs associated with the event to the sponsoring organization.

Councilmember Jones expressed support for the City Manager exercising discretion with regard to the amount of staff involvement in the special event process. He also voiced support for the City assessing direct costs to the sponsors.

In response to a question from Councilmember Whalen, Ms. Bisman recommended that an appeal process be implemented regarding the selection of the organization that would assume the sponsorship of a special event. She noted that such criteria would govern not only the initial decision, but also any appeal process.

Councilmember Whalen noted that the Council has yet to discuss a policy that would allow for more than one organization to co-sponsor an event.

Mr. Brady suggested that a concept the Council may wish to consider in the future is when there are competing interests wishing to sponsor an event, a multiple year opportunity (i.e., three years) be considered.

Mayor Hawker directed that staff and outside counsel work on the objectives and criteria as previously outlined by Councilmember Rawles. He further directed that staff address fee waivers and a timetable for the submission of applications in relationship to the City's budget cycle.

In response to a question from Vice Mayor Walters, Ms. Spinner clarified that if the City were the sole sponsor of Cinco de Mayo, this particular issue would be resolved. She noted, however, that if entities were competing to be the co-sponsors, the City would still be in the same position it is today with regard to this matter.

Councilmember Griswold voiced support for the City outsourcing sponsorship to organizations that are skilled and have the necessary experience so long as the event remains of the highest quality and at no cost to the City.

Mr. Brady advised that staff would bring back this item at the January 4th or January 8th, 2007 Study Session for Council consideration.

Councilmember Whalen commented on the fact that Cinco de Mayo is the only special event in question at this time and inquired whether it would be worthwhile for the City to revisit its policy with regard to funding and coordinating the event rather than proceeding with the criteria-based award process.

Mayor Hawker thanked everyone for the presentation.

2. Acknowledge receipt of minutes of various boards and committees.

- a. Historic Preservation Committee meetings held on August 22 and October 12, 2006.
- b. Transportation Advisory Board meeting held on November 21, 2006.

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

Carried unanimously.

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

There were no reports on meetings and/or conferences attended.

4. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Thursday, December 28, 2006, 7:30 a.m. – Study Session – Cancelled

Thursday, January 4, 2007, 7:30 a.m. – Study Session

Thursday, January 4, 2007, TBA – Utility Committee Meeting

Monday, January 8, 2007, TBA – Study Session

Monday, January 8, 2007, 5:45 p.m. – Regular Council Meeting

5. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

6. Items from citizens present.

There were no items from citizens present.

7. Adjournment.

Without objection, the Study Session adjourned at 8:45 a.m.

KENO HAWKER, 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 21st day of December 2006. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK