



COUNCIL MINUTES

March 23, 2009

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on March 23, 2009 at 5:52 p.m.

COUNCIL PRESENT

Mayor Scott Smith
Alex Finter
Dina Higgins
Kyle Jones
Dennis Kavanaugh
Dave Richins
Scott Somers

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Invocation by Sr. Pastor Dr. Terry M. Crist, City of Grace Church.

Pledge of Allegiance was led by Scout Jacob O'Connell of Troop 288.

Mayor's Welcome.

Mayor Smith welcomed everyone to the meeting. A videotaped presentation was aired that outlined meeting procedures and provided attendees with instructions relative to addressing the Council.

1. Take action on all consent agenda items.

All items listed with an asterisk (*) will be considered as a group by the City Council and will be enacted with one motion. There will be no separate discussion of these items unless a Councilmember or citizen requests, in which event the item will be removed from the consent agenda and considered as a separate item. If a citizen wants an item removed from the consent agenda, a blue card must be completed and given to the City Clerk prior to the Council's vote on the consent agenda.

Mayor Smith announced that a citizen requested that item 6a be removed from the consent agenda.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Somers, that the consent agenda items, with the exception of item 6a, be approved.

Carried unanimously.

*2. Approval of minutes of previous meetings as written.

Minutes of the September 25, November 20, and December 18, 2008 Council meetings and the January 12, February 5, February 12, and March 2, 2009 Council meetings.

3. Take action on the following liquor license applications:

*3a. BOCA7

New Restaurant License for BOCA7, 66 S. Dobson Road Suite 133-135, BOCA7 LLC – Vinh Tran, Agent. No previous liquor license at this location (**District 3**).

*3b. Café Mix

New Restaurant License for Café Mix, 4405 E. McKellips Road Suite 106, Warina LLC – Mounir Shilly, Agent. No previous liquor license at this location (**District 5**).

*3c. Julio Cesar Chavez Campeones

New Restaurant License for Julio Cesar Chavez Campeones, 1300 S. Country Club Drive Suite 105, JCC Campeones One, LLC – Brian Weymouth, Agent. No previous liquor license at this location (**District 3**).

*3d. Pastis Delicatessen & Eurogrille

New Restaurant License for Pastis Delicatessen & Eurogrille, 758 1935 S. Val Vista Drive Ste 107, DGS Enterprises LLC, Slaven Grubisha, Agent. The previous Restaurant License held at this location by Oasian Noodle Bar was surrendered to the State Liquor Board on May 16, 2008 (**District 6**).

4. Take action on the following contracts:

*4a. Purchase of an Infrared Spectrometer and Accessories (Additional equipment) for the Police Department (Fully funded Arizona Criminal Justice Commission-Forensic Crime Laboratory Grant).

The Business Services Department recommends authorizing purchase from the Scottsdale contract with Thermo Electron North America at \$30,380.90, including applicable sales tax.

*4b. Term contract for paint & sundry supplies for Warehouse Inventory.

The Business Services Department recommends awarding the contract to the highest scored proposal from The Glidden Co., dba ICI Paints, at \$108,903.60 annually, including applicable sales tax, based on estimated requirements.

- *4c. Term contract renewal for sign sheeting for the Transportation Department, Field Operations Division.

The Business Services Department recommends authorizing renewal to 3M Company, Traffic Safety Systems at \$60,000 annually, including applicable use tax, based on estimated requirements.

- *4d. Term contract renewal for tires for Materials & Supply and Fire Maintenance Warehouse Inventory.

The Business Services Department recommends authorizing purchase from the State of Arizona/WSCA contract with GCR Tire Centers, a division of Bridgestone Firestone North American Tire, LLC, at \$200,000.00 annually, including applicable sales tax, based on estimated requirements.

- *4e. One-year renewal of the term contract for water treatment chemicals for Warehouse Inventory.

The Business Services Department recommends authorizing purchase from Brenntag Pacific at \$92,357.65 and DPC Enterprises at \$78,574.94, including applicable sales tax, for a combined annual award of \$170,932.59, based on estimated purchases.

- *4f. Purchase of one (1) SUV (Replacement) to be used as K-9 vehicle for the Mesa Police Department (Fully funded Federal Homeland Security LETPP Program Grant).

The Business Services Department recommends authorizing purchase from the State of Arizona contract with Midway Chevrolet at \$49,562.75, including upfitting costs and applicable sales tax.

- *4g. Purchase of five (5) Transitional Response Vehicles (TRV) (Additions to the Fleet) for the Fire Department (Quality of Life and Approved Contingency Funded).

The Business Services Department recommends authorizing purchase from Pierce Manufacturing, Inc. at \$548,312.69, including applicable use tax.

- *4h. Gas Mains and Services Annual Contract, City of Mesa Project No. M99-2008-017.

This project will install approximately 24,000 linear feet of 4-inch polyethylene (PE) gas pipe, 111,000 linear feet of 2-inch PE gas pipe, 6,500 linear feet of 1-inch PE gas pipe, 45,000 linear feet of ½-inch PE gas pipe, 1,400 residential service lines and other items of work. The quantities noted will not be used at one time, rather, in definable portions of work identified by separate projects. Projects may be the complete installation of an operational gas system for a subdivision or a commercial development. The projects are installed throughout the City of Mesa's gas utility service area, including the Magma Gas System in Pinal County on an as needed basis.

Recommend award to the low bidder, Northern Pipeline Construction Company, in the amount of \$1,206,071.85. Funding is available from the approved FY 08/09 and 09/10 Gas Bond Capital Program.

- *4i. 08/09 Wastewater manhole rehabilitation, City of Mesa Project No. 01-476-007 **(Districts 1, 3, 4, 5 and 6)**.

This project will rehabilitate forty-five (45) of the City's most deteriorated manholes.

Recommend award to the low bidder, JPCI Services, in the amount of \$349,380.00 plus an additional \$34,938.00 (10% allowance for change orders) for a total award of \$384,318.00. Funding is available from the approved FY 08/09 Wastewater Capital Bond Program.

- *4j. Desert Well No. 11 (10940 East Pecos Road), Electrical Improvements and Security Enhancements, City of Mesa Project No. 03-002-002 **(District 6)**.

This project will completely rebuild the electrical system, chlorination system, and process controls for this site, so that the well is fully functional. This project will also replace the existing chain link fence with an 8-foot high masonry block wall with security top, and the chain link gates will be replaced with wrought iron gates. A security camera system will be installed to monitor the site and relay intrusion alarms back to the Utilities Control Center.

Recommend award to the low bidder, W.E. O'Neil Construction Company of Arizona, in the amount of \$331,210.44 plus an additional \$33,121.04 (10% allowance for change orders) for a total award of \$364,331.48. Funding is available from the approved FY 08/09 Water Bond Program.

- *4k. New Police evidence freezer storage, City of Mesa Project No. 05-004-001 **(District 4)**.

This project will construct a new 1,200 square foot evidence freezer in the basement of the Central Police Station parking garage located at 120 North Robson.

Recommend award to the low bidder, W.E. O'Neil Construction Company of Arizona, in the amount of \$416,000.00 plus an additional \$41,600.00 (10% allowance for change orders) for a total award of \$457,600.00. Funding is available from the approved FY 08/09 Law Enforcement Capital Program (Quality of Life Funds).

- *4l. Southeast Water Reclamation Plant (SEWRP) Bar Screen Installation, City of Mesa Project No. 07-012-001 **(District 6)**.

This project will replace the interim bar screens at the Southeast Water Reclamation Plant (SEWRP), located at 6308 East Baseline Road, with an automated screening system, which will minimize staff operations and maintenance involvement and improve system reliability. The automated screening system consists of mechanical bar screens, a conveyor, compactors and a dumpster for collection of the screened materials.

Recommend award to the low bidder, MGC Contractors, Inc., in the amount of \$862,617.00 plus an additional \$86,261.70 (10% allowance for change orders) for a total award of \$948,878.70. Funding is available from the approved FY 08/09 Wastewater Bond Program.

- *4m. Falcon Field Airport pavement preservation and marking improvements, City of Mesa Project No. 08-912-001 **(District 5)**.

This project will provide crack sealing, seal coating, and new pavement markings on both of the airport runways, including the paved shoulders. In addition this project will enable the airport to install enhanced taxiway centerline and runway holding position markings, as required by the Federal Aviation Administration (FAA), in accordance with the newly updated FAA Advisory Circular AC 150/5340-1J: Standards for Airport Markings.

Recommend award to the low bidder, Cactus Asphalt Inc., in the amount of \$293,951.65 plus an additional \$29,395.17 (10% allowance for change orders) for a total award of \$323,346.82. Funding is available from the approved FY 08/09 Falcon Field Operations Budget.

5. Take action on the following resolutions:

- *5a Approving and authorizing the City Manager to execute an Agreement with the Department of Economic Security to secure pass through grant funds in the amount of \$86,250 for Mesa Public Schools to support the Youth Employment Program – Resolution No. 9468 **(Related to Item 5b)**.
- *5b. Approving and authorizing the City Manager to execute a Memorandum of Understanding with Mesa Public Schools to administer the grant funds in the amount of \$86,250 received from the Department of Economic Security – Resolution No. 9469 **(Related to Item 5a)**.
- *5c. Canvassing, declaring and adopting the results of the Special Election held on March 10, 2009 – Resolution No. 9470.

6. Introduction of the following ordinances and setting April 6, 2009, as the date of the public hearing on these ordinances:

- 6a. Delaying implementation of adopting the most recent International Code Council (ICC) Construction Valuation Table (5 to 6 percent increase) for calculating building permit fees.

Kendall Baxley, representing the Home Builders Association, expressed appreciation to Mayor Smith and the Council for delaying the adoption of the ICC Construction Valuation Table for the calculation of building permit fees.

It was moved by Councilmember Higgins, seconded by Vice Mayor Jones, that the subject ordinance be introduced and that April 6, 2009, be established as the date for the public hearing.

Carried unanimously.

7. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting. Any citizen who wants to provide comment should submit a blue card to the Clerk before the item is voted on. If a citizen wants to comment on an item listed with an asterisk (*), a blue card must be given to the Clerk before Council votes on the consent agenda:

*7a. **Z09-01 (District 5)** The 5500 block of East McKellips Road (south side). Located east of Higley Road on the south side of McKellips Road (4.24± ac.). Site Plan Modification. This request will amend the approved site plan to allow two-story homes in an area previously approved for one-story homes – Ordinance No 4920.

PHO Recommendation: Approval with conditions.

7b. **Z09-02 (District 3)** 2051 South Dobson Road, Suite 7. Located south of Baseline Road on the east side of Dobson Road (1,000sf). Council Use Permit. This request will allow a tattoo parlor to operate at this location. Ryan Coleman, owner; Jeff Welker, applicant.

P&Z Recommendation: Denial. (Vote: 3-2 with Boardmembers Coons and Perkinson voting nay and Boardmembers Esparza and Salas absent.)

Mayor Smith noted that many speaker cards have been submitted regarding this item. He suggested that in an effort to efficiently utilize time that each group, those in support and those opposed to the tattoo parlor, designate a spokesperson to represent their concerns. He said that the Council would hear from the applicant, after which the spokesperson for each group would be allotted extra time to express their views.

Jeff Welker, representing the applicant, stated that the City Code is the guiding document for the Council, staff and applicants regarding an applicant's qualification for a Council Use Permit (CUP). He said that the staff report indicates that Angel Tattoo complies with all criteria established by the City Code and the General Plan. Mr. Welker noted that the major hurdle he anticipated regarding this application was the statement in the City Code (Section 11.6.1) that "it must be determined that the Council Use Permit for a tattoo parlor is compatible with and not detrimental to adjacent properties or the neighborhood in general." He reviewed the only previous CUP issued for a tattoo parlor and found that although staff recommended denial because the tattoo parlor (Damaged Ink) was located less than 1,200 feet from a school, the City Council unanimously approved the application. Mr. Welker added that when comments linked the tattoo parlor to the potential for increased crime and decreased property values, the Council concluded that no evidence existed to substantiate these concerns. He said that concerns are now being expressed that when dissimilar businesses operating under a CUP (bars, check cashing establishments and tattoo parlors) are located in proximity to each other, that collectively the businesses increase the potential for criminal activity and declining property values. Mr. Welker further stated that the staff report provides information on the number of check cashing establishments, bars, pay day loan operations, etc. in the area and the distance of each from Angel Tattoo, and he noted that this type of information was not a consideration when the CUP for Damaged Ink was approved. He requested that Angel Tattoo's application be judged on the same criteria that were utilized for the Damaged Ink case.

Mr. Welker reported that as a result of the applicant's neighborhood outreach, a six-point "Good Neighbor Policy" was developed, which he is willing to include as a condition of the Council Use Permit. He requested that the Council follow staff's recommendation to approve this application.

He added that the applicant is offering to shorten the list of speakers in support of Angel Tattoo if those in opposition to the case are willing to do the same.

Mayor Smith stated that Joanne Smith, the spokesperson representing the Dobson Ranch Homeowners' Association, would be permitted to speak for five minutes. He added that a representative in support of Angel Tattoo would be provided with the same opportunity.

Joanne Smith, speaking on behalf of the Dobson Ranch Homeowners' Association, expressed concern regarding the increasing amount of criminal activity in the area and the possible decline of property values. She provided information on recent gang activity at Rhodes Junior High School. Ms. Smith stated the opinion that a tattoo parlor has the potential to attract gang members and increase criminal activity in the Dobson Ranch area. She also questioned the City's ability to regulate the applicant's commitment to refuse service to gang members. Ms. Smith advised that the proposed location of the tattoo parlor is directly across from Rhodes Junior High School and that the area surrounding Dobson Ranch area includes 29 massage parlors, 15 pay day loan operations, 8 bars, 4 pawnshops and 2 other tattoo/body piercing shops. She requested that the Council deny the application.

Planning Director John Wesley explained that the basic criteria utilized to evaluate the location of a tattoo parlor includes a minimum separation of 1,200 feet from a school and that the Angel Tattoo application does meet all of the requirements of the City Code. He added that the Council has the discretion to consider the beneficial or detrimental effect on the neighborhood. Mr. Wesley noted that the Planning and Zoning (P&Z) Board determined that the location was inappropriate and made a recommendation for denial.

Mayor Smith questioned the basis for the negative perception of a tattoo parlor when no data exists that substantiates an increase in crime or a decrease in property values. He asked Mr. Wesley to comment on whether the basis of the perception could be related to the appearance of the business or the business activity itself.

Mr. Wesley said that the most common complaint received related to customers loitering and smoking in proximity to the tattoo parlor.

Mr. Welker advised that his research indicated that the vast majority of gangs only allow their members to be tattooed by another gang member. He stated the opinion that the P&Z decision was based on perceptions rather than facts, and he suggested that the business closings in the area were driven by the economy. Mr. Welker said he visited the location of a tattoo parlor on Alma School north of Guadalupe and discovered that most of the smokers loitering at that location were employees of a neighboring business.

Ryan Coleman, the applicant, displayed a new Barbie doll that features tattoos, and he stated the opinion that the doll indicates public acceptance of tattoos. He submitted petitions signed by 196 individuals in support of the business (copies are available for review in the City Clerk's Office). Mr. Coleman said that gang members seeking their services would be turned away. He added that his "Good Neighbor Policy," which he is willing to include as a condition of the permit, states that his business would close at 7:00 p.m. each day and that loitering outside of the business would be discouraged. Mr. Coleman reported that his business would employ six or seven people, most of whom have families and some who are presently unemployed. He noted that he is making a financial investment in the community and plans to donate to charitable causes.

Carrie Ann Sitren, an attorney with the Goldwater Institute, addressed the Council in support of the applicant. She advised that the Goldwater Institute is presently involved in litigation regarding the denial of a Use Permit for a tattoo studio by the City of Tempe, which has tattoo parlor regulations very similar to those of the City of Mesa. Ms. Sitren stated that the rights of an individual to have a tattoo and the rights of the artist to provide a tattoo are protected as a form of expression by the First Amendment and the State of Arizona Constitution. She added that other Constitutional issues are "equal protection under the law" for a legal business and "due process," which a court case determined was the right of "the individual to engage in any of the common occupations of life as essential to the orderly pursuit of happiness by free men." Ms. Sitren also cited an example of a court case determination that the perception of negative impacts was an insufficient reason for denying a conditional use permit. She added that information regarding this issue was available on the Goldwater Institute's website.

Janice Stenglein, Mr. Coleman's cousin, spoke in support of the applicant and advised that their family valued the American work ethic and economic freedoms in addition to the freedoms of religion and speech. She advised that Mr. Coleman and his wife were very successful tattoo artists in France, and she was surprised by the opposition to the business in this country. Ms. Stenglein urged the Council to support the application.

Responding to a question from Councilmember Richins, City Attorney Debbie Spinner advised that the City of Mesa considered tattoos to be a service and were not taxable.

Frank Gazzano, representing the Marlborough Mesa neighborhood, spoke in opposition to the tattoo parlor. He stated the opinion that a proliferation of tattoo parlors, payday loan stores, and massage parlors in the area would decrease property values. Mr. Gazzano noted that the difference between this case and the City of Tempe case is that the Tempe Zoning Board approved the permit, which was later revoked by the Tempe City Council.

Nate Caine, a resident of Dobson Ranch, stated the opinion that the signature entrance for the Dobson Ranch community is an inappropriate location for a tattoo business. He added that the tattoo parlor began to remodel the space without obtaining the necessary permits.

Dawn Roberts addressed the Council in support of the applicant and suggested that those speaking in opposition had an outdated view of a tattoo parlor. She stated that tattoos are now viewed as an art form and are a part of mainstream culture. Ms. Roberts said that today's tattoo shops are typically clean, hip and trendy. She urged the Council to approve the application.

John Stich, speaking in opposition to the tattoo parlor, referred to individuals he perceived to be typical tattoo parlor customers and stated the opinion that the presence of these individuals would be undesirable in the neighborhood.

Manelle Williamson stated the opinion that a tattoo parlor located in proximity to the entrance to Dobson Ranch would not represent the values of the residents or be consistent with the neighborhood. She added that her research indicated that fewer people have tattoos than what was recently reported in the newspaper. Ms. Williamson encouraged Angel Tattoo to relocate to an area that is more representative of their clientele.

Don Casey said that Dobson Ranch is a unique development that does not need a third tattoo parlor in the area.

Austen Angel, speaking as a parent of Rhodes Junior High School students, expressed concern that families would not want to locate in the area because of the tattoo parlor, which ultimately could affect the quality of education.

Laetitia Coleman, co-owner of Angel Tattoo, said she had thirteen years of experience as a tattoo artist in Nice, France, where her customers included many prominent individuals. She stated that the business is operated in a very sanitary manner.

As requested by Mayor Smith, Vice Mayor Jones read the names of individuals who completed speaker/comment cards indicating they did not wish to address the Council.

The following individuals indicated support of the applicant's request to operate a tattoo parlor at 2051 South Dobson Road:

Sandra L. Givens
Ron Evans
Dumont Angelique
Daniel Richardson, Queen Creek
Joseph Richardson, Queen Creek
Xenia Gard
Victor "Chris" Vidal
Steven Richardson, Queen Creek
Matt Stuckman, Chandler
Stephanie Heffron, Chandler
Lindsey Dodds
Jessa Tabat
Chance Schellenbaum
Derek Schersano
Kelly Garcia
Kayla Trickel
Micah McGuire, Chandler
Holly Givens
Terry Givens
Stacy Richardson, Queen Creek

The individuals listed below indicated opposition to the applicant's request:

Charles Williamson
Don L. Williams
Nina L. Williams
Gary Carr
Kathi Carr
Bernadine McCarthy
Donald McCarthy
Dorothy Budgett
Bobbi Vendith
Bryan McCleney
Mike Rosenfeld
Gerald R. Budgett

Michael J. Wall
Pat Patterson
Alma Jones
Diane Schaefer
Fred Schaefer
James A. Jones
Linda Patterson
Cathy Magana-Hill
Ellen J. Bachman
Michele Ray-Brethower

Mayor Smith thanked everyone for their participation in the discussion, and he noted that good arguments were expressed on both sides of the issue.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Higgins, that Case Z09-02 be denied, as recommended by the Planning and Zoning Board.

In response to a series of questions from Vice Mayor Jones, Mr. Coleman explained that the types of renovations made to their rented space did not require a building permit. Regarding their commitment to refuse service to anyone under the age of 18, he advised that each customer would be required to provide identification and sign an authorization document, a copy of which is kept on file with a photocopy of their identification attached. Mr. Coleman added that services would not be provided to anyone who appears to be intoxicated or under the influence of drugs.

Councilmember Higgins thanked everyone for their articulate comments. She explained that she seconded the motion to deny the application because of the many citizens who came forward with their comments. She stated the opinion that the use is not compatible with the Dobson Ranch neighborhood.

Councilmember Kavanaugh congratulated Mr. Welker and the applicant for presenting a well-researched case, and he noted that the speakers presented their views in a respectful manner. He said that he was a member of the Council in 1997 when the Council Use Permit process was enacted, which was in response to citizen concerns that a concentration of certain uses would be detrimental to neighborhoods and/or other businesses. Councilmember Kavanaugh added that the process was not designed to ban the uses, and he stated that he was not opposed to tattoo businesses. He expressed the opinion that the primary issue is that the location for the tattoo business is incompatible with the neighborhood.

Councilmember Richins said that he is generally opposed to service businesses locating in commercial strip malls that are designed to generate sales tax revenues. He added that the Council Use Permit process could be improved and streamlined. Councilmember Richins stated the opinion that the perception of West Mesa would be completely different without the presence of pawn shops, payday loan stores, and massage parlors, and he added that neighborhoods with a concentration of these types of business have lower property values. Councilmember Richins noted that he has been involved in economic development issues in West Mesa for several years, and he recognized the cause and effect of these types of businesses.

Councilmember Finter said that he was not opposed to tattoo art or to locating this business in the City of Mesa. He expressed concern that \$62,000 was expended in tenant improvements prior to submitting the application, and he suggested that most individuals within the tattoo business would be aware that certain rules and regulations exist. He added that he would support the motion.

Mayor Smith said that this was a difficult issue and that he was uncomfortable with the current Council Use Permit process. He explained that he was not for or against tattoos, and he has not heard any evidence that the tattoo business is detrimental to a neighborhood other than the perception. Mayor Smith explained that he understood the necessity for regulations regarding health issues. He stated the opinion that a local store selling a type of clothing might have a more direct connection to gangs than a tattoo business. Mayor Smith questioned the subjective manner in which the Council approaches the process for Council Use Permits, and he suggested that the decision was likely to be based on emotions and perceptions rather than the legality of the business. He noted that smokers loitering outside of a business could be more detrimental to the area than the actual business itself. Mayor Smith recommended that the standards be raised and that judgments be based on facts rather than perceptions. He added that the Council has the ability to revoke a Council Use Permit if an applicant fails to meet the required standards and therefore, he would oppose the motion. He said that the Dobson Ranch neighborhood thrives because the residents take pride in the area, but he questioned why these residents do not support neighborhood businesses. Mayor Smith further stated that he was willing to give Mr. Coleman the opportunity to open his business.

Vice Mayor Jones explained that his primary concern was to support the effort that has been ongoing for several years to improve the standards in West Mesa and to avoid the proliferation of these types of businesses.

Mayor Smith stated the opinions that the City should expect higher standards that improve the community, that the current policies and procedures are ineffective, and that the Council Use Permit process is inadequate. He explained that an effort should be made to raise the standards while encouraging the development of businesses.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES – Finter-Higgins-Jones-Kavanaugh-Richins-Somers
NAYS – Smith

Mayor Smith declared the motion carried by a majority vote.

8. Items from citizens present:

There were no items from citizens present.

9. Adjournment.

Without objection, the meeting adjourned at 7:53 p.m.

SCOTT SMITH, MAYOR

ATTEST:

LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 23rd day of March 2009. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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