

COUNCIL MINUTES

August 23, 2007

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 August 23, 2007 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. Review items on the agenda for the August 27, 2007 Regular Council meeting.

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

Conflicts of interest declared: 4f (Griswold); 4h (Hawker); 7h (Griswold)

Items deleted from the consent agenda: None

Items removed from the consent agenda: 8m

2. Hear a presentation and provide direction on group homes.

Zoning/Civil Administrator Gordon Sheffield reported that the purpose of today's presentation is to provide background information and recommendations regarding policies related to Group Homes for the Handicapped (GHH) and Supervised Living Facilities (SLF). He explained that in 1988, Congress passed legislation known as the Federal Fair Housing Act (FFHA), which made it unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter based on his or her handicap. Mr. Sheffield reviewed the FFHA definition of "handicap" as follows:

"A physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such impairment; being regarded as having such impairment, but such term does not include current, illegal use of or addiction to a controlled substance. The term "mental or physical impairment" may include "alcoholism,

drug addiction.” The term “major life activity” may include “performing manual tasks,” caring for one’s self, learning, speaking or working.”

Mr. Sheffield commented that as part of the FFHA and the Americans with Disabilities Act (ADA), municipalities are required to “open up” their housing areas to individuals who have handicaps. He noted that in particular, municipalities are required to allow group homes in single residence districts. Mr. Sheffield stated that this is somewhat unusual in that without the handicap exception, the zoning ordinance would generally exclude group homes in those districts.

Mr. Sheffield informed the Council that Mesa’s ordinance parallels the FFHA and reviewed the definitions of “Handicapped,” “Group Homes for the Handicapped” and “Supervised Living Facility” as contained in the Mesa City Code. (See Attachments 1 and 2.)

Discussion ensued relative to the fact that a GHH is permitted in single residence/multiple residence districts; that if the facility has more than five guest rooms or houses more than ten residents, a Special Use Permit (SUP) is required; that a GHH is permitted in the Town Center District; that there can be no identification of the home from the street; that the facility must comply with all building and fire regulations, be separated from a similar facility by 1,200 feet, comply with all licensing requirements, register with the Community Development Department, and the residents cannot pose a direct threat to others or to property; and that an SLF, per the current Zoning Code, is considered a “Social Service Facility, subject to Social Security Facility Guidelines, requires locations in R-4 zoning, and approval of a Council Use Permit (CUP).

Mr. Sheffield also reported that in reviewing this item, staff recommends that Mesa’s regulations be brought closer in line with those of other Valley communities. He highlighted staff’s recommendations as follows: 1.) Add the term “recovery home” to the list of facilities that are not considered a GHH; 2.) Delete the current requirements for an SLF; and 3.) Delete the GHH and SLF licensing requirements. Mr. Sheffield added that with the deletion of such licensing requirements, staff would ask for a two to three month delay in the implementation of such changes in order to develop new enforcement tools.

Mr. Sheffield further indicated that with the elimination of the SLF requirements, staff is asking that the Council adopt a new definition to the zoning ordinance called a Correctional Transitional Housing Facility (CTHF), which would more closely align to Phoenix’s model. He reviewed the definition of the CTHF as follows:

“A supervised residential center where individuals who are completing a sentence reside for a defined period of time for counseling, job placement assistance, and similar services that assist in transitioning from institutional to community living. The term shall include any boarding house, dormitory or apartment building or other dwelling when developed, promoted, advertised or operated as a Correctional Transitional Housing Facility, but shall not include Group Homes for the Handicapped or any facility providing counseling or other services to individuals who do not reside on the premises.”

Mr. Sheffield also outlined the proposed requirements for a CTHF as follows:

- Location in the C-3, M-1 and M-2 zoning districts.
- Approval of a CUP.
- Cannot be located within one mile of another CTHF.

- Cannot have more than 30 beds.
- Cannot be within 500 feet of any residential zoning district.
- Must be certified by the Zoning Administrator relative to meeting certain zoning/location requirements.
- Compliance with all building and fire regulations.
- Cannot house anyone who poses a direct threat to the health and safety of others.

Further discussion ensued relative to the fact that Mesa requires annual fire inspections of group homes and staff would like to continue the process; and that the Town of Pinetop adopted an ordinance requiring the operators of GHHs to provide written certification from a licensed healthcare provider that all residents of the home meet the Federal definition of "handicapped."

Mr. Sheffield stated that staff is seeking Council direction with regard to implementing the proposed changes by presenting the proposal to the Planning & Zoning Board (P&Z) in October and bringing back the Board's recommendations to the Council in November. He also reviewed a series of maps depicting the location of parcels in the City that meet the proposed criteria for group homes.

Vice Mayor Walters thanked staff for their efforts and hard work with regard to this item. She stated that it was her understanding of Federal law that an individual's handicapped status takes precedence over the person's criminal status. Vice Mayor Walters commented that she disagrees with the law and endeavors to change it. She also voiced support for staff's recommendations and suggested that the State impose licensing requirements for operators of recovery facilities.

In response to a series of questions from the Council, City Attorney Debbie Spinner clarified that if an individual meets the legal definition of "handicapped," the person is entitled not only to protection under the FFHA, but is also eligible to reside in a GHH. She explained that if someone were currently using an illegal substance, including alcohol, the individual would not meet the legal definition.

Ms. Spinner further advised that if Adult Probation becomes aware of the fact that a resident in a GHH is currently using alcohol or drugs, it was suggested that the City be notified so that action could be taken to possibly remove the individual from the facility.

Councilmember Jones commented that it is not only important for the City to ensure that those individuals who are "legitimately disabled" are treated appropriately, but also to address residents in facilities who may be "hiding behind the law."

Councilmember Whalen voiced concern with regard to the City attempting to enforce whether a resident in a facility is sober, especially in light of the limited manpower with which to do so. He stated that Mesa has an abundance of "cheap housing" and low-income properties, which is why the City has a proliferation of group homes. Councilmember Whalen also expressed support for the City implementing annual certification of group homes.

Councilmember Rawles stated that he is troubled by the comment that if someone is addicted to alcohol and has a drink, that they are no longer handicapped. He stated that he does not believe that alcohol is a controlled substance, as defined under the Federal Code, and would

caution the City from considering the removal of a person from a home because the individual "took a drink."

Ms. Spinner clarified that if a person is residing in a recovery home, considered handicapped because of his or her alcohol addiction, and currently using the substance, in her opinion, the individual would no longer fall within the legal definition of being handicapped. She stated that she would conduct additional legal research with regard to whether alcohol is considered a controlled substance under the Federal Code.

Councilmember Rawles expressed support for staff's recommendations, but questioned how the City could be expected to have the manpower and resources to enforce the ongoing status of residents in group homes who have addictions.

Ms. Spinner stated that there was never any contemplation that staff would actually enforce the status of the residents, but rather would place the burden on the operators of the facilities to avow that they are, in fact, operating group homes for the handicapped and that the residents meet that legal definition.

Councilmember Griswold commented that there is a need in the City for CTHFs and stated that he sees no reason why the facilities could not be located, for instance, in industrial areas.

Additional discussion ensued relative to the differences between the ADA and FFHA; and the procedure that would be followed by Code Compliance to determine whether a facility has registered with the Planning Department as a GHH.

Mayor Hawker stated that there was Council concurrence with staff's recommendations. He also requested that at a future Study Session, the Council address annual fire inspections, annual certification and licensing issues related to this item.

Councilmember Whalen stated that with regard to annual fire inspections of group homes, he requested that Mr. Sheffield meet with Fire Department staff to consider an intermediate type of fire inspection as opposed to those that are conducted on high-risk or hazardous structures.

Mayor Hawker suggested that the issues related to annual fire inspections, certification and licensing be presented to the Public Safety Committee in order to expedite the process.

Mayor Hawker thanked staff for the presentation.

3. Hear a presentation on the 2007 Arizona Legislative Session Wrap-up.

Government Relations Director Scott Butler stated that in speaking with Mayor Hawker, it was suggested that this item be continued in order to devote additional time to address agenda item 4.

4. Hear a presentation, discuss and provide direction on proposed Arizona League of Cities & Towns resolutions as recommended by the Intergovernmental Affairs Committee.

Mr. Butler reported that on August 29, 2007, the Resolutions Committee of the Arizona League of Cities & Towns would meet to consider resolutions that will be adopted on August 31st during

the organizations' annual meeting. He explained that Vice Mayor Walters would serve as the City's representative to the League's Resolutions Committee and vote on behalf of Mesa.

Mr. Butler stated that last year, the League assembled a subcommittee of the Resolutions Committee in an attempt to "make sense" of the resolutions that were submitted. He referred to a multi-page document entitled "2007 Resolutions Subcommittee Recommendations," which was submitted to the Council's Intergovernmental Affairs Committee (IGA) and offered a brief overview of the IGA's recommendations. (See Attachment 3.)

Councilmember Rawles expressed opposition to all of the resolutions and stated that they are an attempt for local governments to spend more money and impose greater regulations.

Vice Mayor Walters stated that she voiced her opinion to the Resolutions Committee that the current resolution process should be reformed in order to prioritize a fewer number of legislative issues that affect the entire State. She stated that it would be appropriate for the League to assist smaller Arizona communities that do not have government liaisons on their staff with specific issues.

Mr. Butler referred to Resolution No. 13, which was revised by the Subcommittee to combine Resolution Nos. 13, 19 and 24. (See Attachment 4.) He explained that the purpose of the recommendation was to address statewide transportation funding opportunities.

Mr. Butler inquired if the Council disagrees with any of the IGA's recommendations. He stated that if they do not, the direction would be to confirm such recommendations.

Vice Mayor Walters stated that she objected to Resolution No. 21 (Allow Code Enforcement Employees to Issue Citations), but stated that she was not overly concerned because the resolution seeks permissive language in the State Code, which does not require adoption by a municipality.

Councilmember Rawles expressed opposition to Resolution Nos. 5 and 19.

Mayor Hawker stated that since Vice Mayor Walters would be the City's representative to the League's Resolutions Committee, he would yield the gavel to her with regard to any Council discussion on these items.

It was moved by Mayor Hawker, seconded by Councilmember Rawles, that Resolution No. 21 be opposed.

Upon tabulation of votes, it showed:

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

Vice Mayor Walters declared the motion failed for lack of a majority vote.

It was moved by Mayor Hawker, seconded by Councilmember Griswold, that Resolution No. 3 (Continue Small Town Revenue Appropriations) be opposed.

Upon tabulation of votes, it showed:

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

Vice Mayor Walters declared the motion failed for lack of a majority vote.

With action on this item being completed, Vice Mayor Walters yielded the gavel back to Mayor Hawker.

Mayor Hawker thanked Mr. Butler for the presentation.

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

- a. Historic Preservation Committee meeting held on June 7, 2007
- b. Parks & Recreation Board meeting held on August 9, 2007

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

Carried unanimously.

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

Mayor Hawker: Maricopa Association of Governments (MAG) Regional Council Meeting.
Vice Mayor Walters: Banner Gateway Tour; Downtown Mesa Association (DMA) Annual Bus Tour.

7. Scheduling of meetings and general information.

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

Monday, August 27, 2007, TBA – Study Session

Monday, August 27, 2007, 5:45 p.m. – Regular Council Meeting

Thursday, August 30, 2007, Study Session – Cancelled

Mr. Brady announced that on Friday, August 24th, at 2:30 p.m., a retirement party would be held for City Clerk Barbara Jones.

Mr. Brady further reported that since July 23rd of this year, William Gateway Airport (WGA) has received over \$6.3 million in Federal Aviation Administration (FAA) and Arizona Department of Transportation (ADOT) funds for taxiway and drainage improvements.

8. Items from citizens present.

There were no items from citizens present.

9. Adjournment.

Without objection, the Study Session adjourned at 9:19 a.m.

KENO HAWKER, MAYOR

ATTEST:

LINDA CROCKER, 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 23rd day of August 2007. 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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(attachments – 4)