

COUNCIL MINUTES

November 15, 2010

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 November 15, 2010 at 4:47 p.m.

COUNCIL PRESENT

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

COUNCIL ABSENT

Scott Somers

COUNCIL-ELECT

Chris Glover

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Mayor Smith excused Councilmember Somers from the entire meeting. He also welcomed Councilmember-Elect Chris Glover to the Study Session.

1. Review items on the agenda for the November 15, 2010 Regular Council meeting.

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

Items removed from the consent agenda: 6-a

Items deleted from the consent agenda: 5-h

2-a. Hear a presentation, discuss and provide direction on consumers use of fireworks within the City of Mesa.

City Attorney Debbie Spinner stated that at the October 28, 2010 Study Session, the Council inquired what authority or jurisdiction, if any, they would have to restrict the sale of fireworks in the City of Mesa, given the passage of House Bill (HB) 2246 which becomes effective December 1, 2010. She noted that in analyzing the language contained in the statute, it was her legal opinion that the Council could not impose any restrictions in this regard.

Ms. Spinner cited pertinent language in the statute as follows: "The sale and use of permissible consumer fireworks are a Statewide concern. The regulation of permissible consumer fireworks pursuant to this article and their use is not subject to further regulation by a governing body,

except that an incorporated city or town may regulate the use of permissible consumer fireworks within its corporate limits.”

Ms. Spinner commented that with respect to the use of consumer fireworks within the City of Mesa, the Council has wide discretion to set certain limitations (i.e., the time of day/time of year fireworks can be used) or even prohibit their use. She noted, however, that State law does not allow the City to adopt additional restrictions concerning the sale of consumer fireworks.

City Manager Christopher Brady explained that in follow-up to the October 28th Study Session, staff from his office, the City Attorney's Office and the Police and Fire Departments met with representatives of the fireworks industry to develop alternatives to the Fire Department's recommendation of a complete ban of fireworks. He stated that the parties have reached a proposed agreement that he would recommend move forward to the Council.

Mr. Brady advised that the industry representatives presented a proposal to the City of Mesa and indicated that they would be willing to support a series of regulations related to the sale of fireworks as follows:

- Temporary tent sales would only occur the two weeks prior to the July 4th and New Year's Day holidays.
- Maximum tent size will be 1,500 square feet.
- Prominent, but reasonable signage indicating that the use of permissible consumer fireworks is only permitted from December 26 through January 1 or June 28 through July 4 and that permissible consumer fireworks may not be sold to persons under the age of 16. Signs would be required to be posted at each register and in each area fireworks are displayed for sale.
- Insurance requirement to operate a temporary tent would be at a minimum \$5 million in liability.
- Temporary tent sales will only occur in C-1, C-2 and C-3 zoned areas. Industry would be willing to eliminate C-1 zoned areas, per a Memorandum of Understanding (MOU), beginning January 1, 2011.
- Cost for permitting would not be greater than \$250 per tent.
- Indoor retail sales of permissible consumer fireworks are allowed in C-2 and C-3 zoned areas one month prior to the July 4th and New Year's Day holidays.
- All retail sales and storage must still comply with the regulations set forth in National Fire Prevention Association (NFPA) 1124.

Mr. Brady further remarked that as part of the compromise, the City of Mesa would adopt an ordinance that would allow for the use of permissible fireworks the week leading up to the 4th of July and New Year's Day.

Responding to a comment from Councilmember Kavanaugh, Mr. Brady clarified that the industry representatives proposed entering into an MOU with the City of Mesa due to the fact that State law already allows them to sell fireworks at any time or place. He noted, however, that the representatives agreed to restrict the sale during the above-referenced times and have indicated they would seek legislation in the future to restrict what is already in place today.

Councilmember Kavanaugh asked if the Council directed that the City enter into a contractual arrangement to permit the use of fireworks as outlined by Mr. Brady, whether there would be further liability potential for the City, including property damage and personal injury.

Ms. Spinner responded that if an incident occurred on public property, it would be important to determine whether negligence was the cause of it and by whom. She stated that if an incident occurred on private property, however, and was caused by the negligence of the individual using the fireworks, the only liability exposure that would be created for the City would be if the first responders were negligent in some manner in their response to the incident.

Ms. Spinner further clarified that the use of fireworks in the City would be regulated through an ordinance and said the MOU would place restrictions on the sale of fireworks. She added that she was not aware of any liability exposure that would be created by the Council in changing the City's previous ban on the use of fireworks in the community, especially in light of the passage of HB2246, which authorizes the sale and use of certain types of consumer fireworks in Arizona.

Councilwoman Higgins inquired why Cinco de Mayo and Chinese New Year's were not included as holidays at which the use of fireworks would be permitted.

Mr. Brady responded that the 4th of July and New Year's Day were the two holidays generally allowed by other communities for the use of fireworks. He stated that the final decision in this regard would be at the discretion of the Council.

Councilwoman Higgins suggested that the Council consider expanding the number of holidays to include those that are celebrated by a large majority of Mesa's population.

Mayor Smith questioned whether staff considered including language in the ordinance that would be similar to Arizona's "stupid motorist law" and would allow the City of Mesa to recover costs for responding to incidents in which fireworks were involved.

Ms. Spinner responded that staff researched what other communities have included in their ordinances and said the four main provisions in those ordinances consist of the following: 1.) Restrictions on use; 2.) Restrictions on sale, pursuant to State law. (Note: No other city was adopting additional restrictions beyond State law.); 3.) The type of signage; and 4.) The ability to recover the cost of emergency response. She said that if the Council preferred that staff include some type of cost recovery provision in the ordinance, they would be happy to do so.

Mayor Smith stated that at the previous Study Session, there was some Council discussion that if an individual created a problem with fireworks that caused a fire, there should be some obligation for the person to reimburse the City for responding to the incident.

Councilwoman Higgins commented that the City does not charge residents when they have a car accident or an incident occurs, for instance, in their backyard swimming pool. She stated that it would set a bad precedent if the City charged individuals for responding to incidents that involved fireworks.

Councilmember Kavanaugh concurred with Councilwoman Higgins' comments, although he fully supported the Fire Department's recommendation of maintaining current restrictions by prohibiting the use of consumer fireworks within the City limits. He stated that if the City entered

into an MOU with the fireworks industry, it would result in unintended consequences and increased risk of personal injury and property damage.

Mayor Smith noted that Councilmember Somers was supportive of a complete ban of consumer fireworks within the City limits.

Councilmember Finter stated that although the proposal was not necessarily the approach he would have taken, he would support the compromise. He suggested that following the 4th of July and New Year's Eve holidays, that the Fire Department evaluate the use of fireworks in the City and assess whether it encountered any problems or difficulties in this regard. Councilmember Finter added that if staff did experience challenges, it would be necessary for the Council to revisit the matter.

Mayor Smith stated that it was absurd that the State Legislature enacted a law that prohibits cities from restricting the sale of permissible consumer fireworks and yet allows the communities to restrict their use. He noted that he would anticipate that the Legislature would revisit this matter in the not too distant future to address the contradictions in the law that currently exist.

Councilmember Richins suggested that if staff proceeds with the development of the MOU, that the document include language that the sites at which the fireworks are sold be dust-proof and free of weeds. He stated that he was not in support of the City entering into the MOU.

Sara Sparman, Williams and Associates, 2929 North Central, Phoenix, responded to a question from Councilmember Richins and clarified that the City would enter into the MOU with the three largest fireworks vendors: TNT Fireworks, Phantom Fireworks, and Winco Fireworks. She explained that her firm represents about 100% of indoor retail sales and 80% of temporary tent sales. Ms. Sparman also noted that the City would most likely be contacted by different fireworks vendors and said her firm would encourage them to also enter into the MOU.

Councilmember Kavanaugh commented that he did not believe the City had any regulatory authority to enforce an MOU like it would an ordinance.

Ms. Spinner concurred that that was a challenge staff was considering. She explained that the fireworks vendors were voluntarily entering into the MOU and said that if they did not comply, the Council could come back at any time and change the ordinance to ban all use of fireworks in the City of Mesa.

Councilmember Richins suggested possibly implementing a cost recovery model similar to the City's False Alarm Program.

Mayor Smith expressed appreciation to staff for their efforts in trying to find a solution that "meshes the law with the City's Catch 22" situation of not being able to restrict the sale of fireworks, but having the ability to restrict their use.

Councilwoman Higgins requested input from the Council relative to her suggestion to increase the number of holidays in which fireworks could be sold.

Mayor Smith stated that he could not support Councilwoman Higgins' suggestion and said that July 4th and New Year's Day are two "universal holidays" for everyone in the community.

Mayor Smith stated that although staff's proposal was "far from perfect," it was a good compromise for now.

Vice Mayor Jones concurred with Mayor Smith's comments that the State Legislature has placed the City in a very awkward situation with regard to the sale and use of consumer fireworks. He acknowledged the fireworks industry for being willing to compromise relative to the sale of fireworks which, in his opinion, was a step in the right direction and said he would be willing to move forward with a limited compromise.

Mayor Smith stated that a majority of the Council were supportive of moving forward with staff's proposal. He also suggested a \$500 maximum fine, but noted that that element of the ordinance was not a "make or break" issue for him.

Mr. Brady stated that staff would bring back a draft ordinance to the Council for their review.

Mayor Smith thanked staff for the presentation.

2-b. Hear a presentation and discuss the site for a new Police substation.

Assistant to the City Manager Trish Sorensen displayed a PowerPoint presentation (**See Attachment 1**) and reported that in 2008, the Public Safety Bond Program included \$15 million in funding for site acquisition, design and construction to replace the Dobson Police Station. She explained that the site requirements consisted of a 5 to 7 acre property with two access roads and a more centrally located site in the district that would contribute to revitalization in the surrounding area.

Ms. Sorensen advised that the City was in the process of purchasing a 4.88 acre parcel located on the northwest corner of Grove and Westwood (the Aquaterra site) at a cost of \$2.4 million. She said that it was anticipated that the City would close on the property by the end of the year. Ms. Sorensen also noted that the Real Estate Department was in the process of ordering an appraisal of the property and a new American Land Title Association (A.L.T.A.) Survey and Phase 1 Environmental Report.

Ms. Sorensen displayed several aerial photographs illustrating the existing Dobson Police Station, the proposed site and the surrounding area. (See Pages 4 through 6 of Attachment 1)

Councilmember Kavanaugh expressed appreciation to Ms. Sorensen and City staff for their efforts and hard work in this regard. He also acknowledged Councilmember Finter for his thoughtful comments during the site selection process with respect to "the reality of commercial real estate." Councilmember Kavanaugh added that Councilmember Finter's input resulted in a much more desirable project for the City that would save public safety funds to be used for other purposes.

Mayor Smith also thanked staff for their efforts and said he looked forward to the completion of the new Fiesta District Police Station.

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

3-a. Community & Neighborhood Services Committee meeting held on September 9, 2010.

- 3-b. Public Safety Committee meeting held on October 14, 2010.
- 3-c. Economic Development Advisory Board meeting held on October 5, 2010.

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

Mayor Smith declared the motion carried unanimously by those present.

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

- Councilmember Kavanaugh: Arizona Host Committee meeting for the National League of Cities National Convention
- Mayor Smith: Commemorative Air Force Arizona Wing "Dinner with Legends;" Royal Air Force (RAF) Cadet Memorial; Mesa Veterans Day Parade
- Councilmember Richins: Arizona Town Hall; Arizona Brainfood Warehouse Ribbon Cutting Ceremony; met with members of the Mesa Sign Sweep Team

5. Scheduling of meetings and general information.

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

Thursday, November 18, 2010, TBA – Study Session

Thursday, November 18, 2010, TBA – Local Redevelopment Authority

Saturday, November 20, 2010, 8:00 a.m. – District 3 Pancake Breakfast and Toy Drive, Fire Station 207

6. Adjournment.

Without objection, the Study Session adjourned at 5:46 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 Study Session of the City Council of Mesa, Arizona, held on the 15th day of November 2010. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

pag
(attachment – 1)

Fiesta District Police Station

Update on Replacement for Dobson Police Station



Presentation to City Council
November 15, 2010

Background

- **Funding in the 2008 Public Safety Bond Program**
- **\$15 million for site acquisition, design and construction**
- **Site Requirements**
 - **5-7 acres**
 - **Two access roads (preferable)**
 - **Visible to the community**
 - **Contribute to revitalization of surrounding area**
 - **More centrally located in district**

Site Selection

- In process of purchasing site located on north west corner of Grove and Westwood
- Parcel Size – approximately 4.88 acres
- Purchase Price - \$2,444,587.00 (\$11.50 sq/ft.)
- Closing by December 31, 2010
- Real Estate is in the process of ordering an appraisal of the property.
- Real Estate will be ordering a new A.L.T.A. Survey and Phase I Environmental Report





