

MINUTES OF THE WORK SESSION OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD FEBRUARY 10, 2009, IMMEDIATELY FOLLOWING THE CONCLUSION OF THE SPECIAL MEETING HELD AT 5:30 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

Mayor Joens called the meeting to order at 5:45 p.m. Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Diane Joens, Mayor
Karen Pfeifer, Vice Mayor
James Chapman, Council Member
Tim Elinski, Council Member
Duane Kirby, Council Member
Linda Norman, Council Member
Terence Pratt, Council Member

STAFF MEMBERS PRESENT

Doug Bartosh, City Manager	Mike Casson, Fire Chief
Richard Smith, Deputy Clerk	Jody Fanning, Police Chief
George Gehlert, Community Development Director	Kyla Allen, Executive Assistant
Scott Mangarpan, Project Manager	Charlie Scully, Planner

ITEMS FOR DISCUSSION, CONSIDERATION, AND POSSIBLE DIRECTION TO STAFF:

WATER ADVISORY COMMITTEE UPDATE–PRESENTATION BY JOHN RASMUSSEN

Mayor Joens stated Mr. Rasmussen had asked to postpone his presentation because of inclement weather.

YAVAPAI FAMILY ADVOCACY CENTER PRESENTATION BY DIRECTOR KATHLEEN MCLAUGHLIN

Mayor Joens stated Ms. McLaughlin had also asked to postpone her presentation because of the current inclement weather.

Mayor Joens suggested tabling the next scheduled item, wood burning stoves, pending the arrival of Mr. Scully, and suggested moving on to item 6, the unruly gathering Code proposal.

PROPOSED AMENDMENT TO THE COTTONWOOD MUNICIPAL CODE TO ADDRESS UNRULY GATHERINGS

Chief Fanning stated the police often had to respond repeatedly to the same location because of disruptive behavior. Staff was requesting guidance on proposals against unruly

gatherings. These pertained to loud parties at homes. There was little that could be done now other than requesting participants to be quiet. Often the noise would be repeated later, requiring another police response. In one instance, there was a home on Fir Street which has had 21 responses in less than one year. Current laws did not allow the police to do much in instances of loud parties. Other agencies had created unruly gathering ordinances. The one proposed now was based on that of Tucson. With such an ordinance, if the police arrived on the scene and determined there is an unruly gathering, based on the criteria of more than five participants, loud noise, underage alcoholic consumption, fighting, parking in the streets, blocking the streets, etc., then the person in charge of the residence at the time would be informed of the violation of the unruly gathering ordinance. A notice would be attached to the residence to publicly announce the residence had been identified as being in violation of the ordinance. For the next 180 days, any subsequent complaint at that location would result in the owner being notified of the situation and informed they too could be fined if they failed to assist in remedying the problem. If no additional complaints occurred during that time, no further action would be taken and the notice would be removed. If the notice was removed prior to that time, there would be a fine. There would be the right to an appeal after receiving a notice. If the owner evicted the tenants, the matter could also be appealed to have the notice removed from the residence. It was not anticipated enforcement would be exercised a lot, but it gave the police an additional tool to deal with repeat offenders. The renter could be fined and the home owner could also be fined if it was determined that the home owner was not assisting the police to calm the situation. The fines could be quite substantial. Staff was requesting guidance whether to proceed with creating such an ordinance and recommended proceeding with it.

Vice Mayor Pfeifer stated she supported the concept.

Council Member Elinski expressed his support for the idea. He stated that at the Sundial Motel, there were many transients. If there was a repeat occurrence, not by an occupant, but at a location, what would the response be?

Chief Fanning stated if it was not a repeat offender in the same room, enforcement would be difficult. That was not the case in areas such as the parking lot or foyer since the management was responsible for such public areas.

Council Member Elinski asked how calls made for harassment purposes would be handled.

Chief Fanning stated the ordinance specified 5 or more people had to be engaged in illegal activity such as fighting, disrupting the peace, or underage drinking. An officer would make a determination and would be advised to use the ordinance only as it was intended.

Council Member Elinski expressed reservations about placing a notice in a conspicuous spot on a residence for 180 days because there could be aesthetic issues should there be a large number of such notices on a single street.

Chief Fanning stated it was for the Council to determine sticker color, length of time it should be displayed, and the place it should be put on the residence, if not on the door.

Council Member Pratt asked if currently at unruly gatherings the police could only act if they arrived and observed something illegal taking place.

Chief Fanning replied, yes.

Mayor Joens asked if anyone from the audience would like to speak.

Martina Pickett, of 1623 East Avenida Rio Verde, President of the Cottonwood Square/Cottonwood Commons Homeowners Association, stated their association had 170 residences bordered by Fir Street, Elm Street, and 16th Place. They had had a lot of problems with renters and management companies who did not notify absentee landlords of this issue. As far as notices are concerned, eviction notices were already posted on front doors. Problem vehicles had prominent notices placed on them. This was to let the public know that law enforcement was aware of the problem. It was a good thing for the rest of the public to put a notice on a residence that was a problem house. It advised everyone what was going on. One owner who complained about parties was repeatedly challenged aggressively by unruly party members, despite the fact that the police had been summoned several times. The association procedure for dealing with complaints was directed only to owners, many of whom were absentees. She asked the City to provide some kind of additional help in these matters.

Chief Fanning stated one of the reasons for putting a notice on the front door was to let neighbors know the police department was aware of the situation and would deal with it.

Ms. Pickett added that such a notice empowered neighbors to feel they could call the police because they felt less intimidated.

Council Member Elinski stated there was an issue of aesthetics with a notice. A notice could act as a deterrent to prospective home buyers. Some color other than bright orange would be preferable.

Chief Fanning stated the color was entirely up to the Council.

Vice Mayor Pfeifer stated different colors could be used for different time periods or number of offenses.

Council Member Chapman stated he was in favor of the ordinance.

Council Member Norman stated it would be desirable also to have the means to deal with noise when less than 5 people were involved.

Mr. Bartosh stated such a measure was to be considered later in this meeting.

Council Member Chapman asked if field sobriety tests would be performed.

Chief Fanning stated tests would be performed. If the police found that there was anyone under the influence, their parents would be contacted and they would not be allowed to drive away.

Council Member Pratt stated his support for the ordinance.

Council Member Kirby stated there were two issues: impaired driving, and illegal consumption of alcohol by a minor. Whether driving or not, couldn't underage drinkers be cited?

Chief Fanning stated they could. However, under current law, if the police arrived at a home and the home owner refused them entrance, the police had to wait outside while a party continued. Search warrants in such instances were difficult to obtain. With an unruly gathering ordinance, if the police arrived at a house, and the gathering could be seen and heard, the house could be tagged. The minors might not get caught, but the responsible person at the property could be caught and fined.

Council Member Kirby suggested the chief and his staff be instructed to continue to work on the ordinance and to bring it back to the Council as soon as possible.

Mayor Joens agreed that the Council consensus was to direct staff to bring the ordinance back for its first and second readings.

WOOD BURNING STOVE AND FIREPLACE REGULATIONS

Mr. Scully stated these regulations represented amendments to the Municipal Code relating to wood burning stoves and related devices. Most Arizona communities already had such regulations to improve air quality and because of health issues. Modern homes now use new, more efficient devices for heating. Recognized standards had been developed by the governments of larger urbanized areas.

Council Member Pratt stated such an ordinance was necessary due to growth in our area.

Vice Mayor Pfeifer asked if obnoxious odors from a fireplace could be addressed.

Mayor Joens stated she wanted the law to say it was illegal to burn garbage in homes.

Mr. Scully stated he was unsure how that could be enforced.

Chief Casson stated that State regulations outlawed the burning of trash. The ordinance allowed gas fireplaces as well as wood pellet and wood burning stoves so long as there is an outside source of air and they met certain clean air specifications.

Mr. Scully stated the International Building Code addressed that. Inspections would be required if it was a new installation or a change to an existing system.

Council Members Elinski and Pratt stated their support for the ordinance.

Council Member Kirby stated instruction should be given to staff to proceed with the process of presenting the Council with an ordinance in this regard.

Mr. Bartosh stated smoke issues and a banning of garbage burning could be added to the ordinance. The problem would be enforcement, since we would not have a right to enter and inspect. Perhaps those issues could be handled as nuisances where their affect outside a structure could easily be assessed.

Mayor Joens stated the general direction was to move forward with the idea, which was the consensus of the Council.

DISCONTINUING THE DEVELOPMENT REVIEW BOARD AND AMENDING THE FUNCTIONS OF THE PLANNING AND ZONING COMMISSION TO INCLUDE DESIGN REVIEW

Mr. Gehlert stated this was a follow-up to the joint session discussion held last month with the Planning and Zoning Commission (P&ZC) and Design Review Board (DRB) over the design review process. This item was an amendment to the Administrative Code in which the design review function would become part of the P&ZC. The composition of the DRB required that at least 3 of the 7 members have design related backgrounds which was something that should be considered in the review of this ordinance. It was a valid issue, particularly in the absence of any tangible design policy. We had no book of design standards, nor had we adopted a Design Code. He would support and encourage having people with design backgrounds on the P&ZC until such standards were adopted. Meeting attendance was an issue. Currently members could be dismissed following 3 unexcused absences. It would be simpler to have a policy stating if a member missed 3 successive meetings, his appointment would have to be reconfirmed.

Mr. Bartosh stated that the language adopted for the new Airport Commission Ordinance regarding absences should be adopted here as well.

Mayor Joens stated that would keep all the boards and commissions the same.

Mr. Gehlert stated the ordinance also added elements for architectural quality, building design proportions, landscaping, and lighting which were formerly the responsibility of the DRB. Staff encouraged a Code which allowed flexibility for either having or not having a DRB. That way, if it was decided in the future to reconstitute the DRB, it would not be necessary, as it was now, to go through the Code amendment process. There were also housekeeping issues included regarding Planned Area Development and the DRB.

Council Member Elinski stated he supported the ordinance. It would be necessary to gauge public response to the new ordinance.

Council Member Pratt stated his support for the ordinance. He asked how “balanced and harmonious proportions” were defined.

Mr. Gehlert admitted it would be a subjective response by appointed committee members, and could change over time.

Mr. Bartosh stated the next stage would be the development of design standards which would be put into a policy and Code so as to give decision makers some guidelines.

Mayor Joens stated there was no DRB in Sedona; they had a Design Code.

Mr. Bartosh stated that was fairer to a contractor; without a code the current system was detrimental to the developer.

Council Member Elinski stated it was important not to make the whole community homogenous. There should definitely be guidelines, but not made too tight.

Mr. Darold Smith, of 2335 West Desert Willow Drive, asked how big the P&ZC would be after the dissolution of the DRB. He also asked how many members would be required to have a design background. He thought the meetings would be too long and stated there would be the possibility that a member of the public who wished to participate in discussions might not get an opportunity to speak during a lengthy meeting. He did not believe there would be a reduction in the duplication of staff work. Members of the general public should remain on any new commission. He believed that the public felt there was inadequate communication from the Council.

Mr. Gehlert stated there would likely not be fewer meetings, just fewer people to work between. In the absence of any design related Code, thought should be given to filling vacancies with people having design backgrounds. It was not necessary to write that into the Code. Traditionally the P&ZC was more reflective of the community at large than the DRB. No recommendation was being made to add members to the P&ZC.

Council Member Pratt suggested Mr. Gehlert return to the Council with a proposed amendment to the Zoning Ordinance and answer the questions posed by Mr. Smith.

Mayor Joens determined there was Council consensus and directed staff to move forward with this ordinance.

PROPOSED AMENDMENTS TO THE COTTONWOOD MUNICIPAL CODE TO PROVIDE STANDARDS FOR SPECIFIC TYPES OF NOISE

Mr. Scully stated peace and quiet were important for community well being. Noise was

inevitable but it was a matter of appropriateness. The Municipal Code addressed noise issues but omitted a good many things. It was a subject which generated many complaints and further regulation was necessary. The ordinance addressed the major types of noise, whether produced at home, from vehicles, animals, in public places, or at commercial sites. It gave the police some ability to use reasonable judgment when speaking with people. If compliance was not forthcoming, penalties could be imposed and enforced through the courts, if necessary. The ordinance defined those penalties and exceptions which were allowed, based on reasonableness.

Council Member Pratt stated his support for the ordinance.

Discussion occurred regarding car radio noise and that from bars and nightclubs.

Chief Fanning stated this ordinance would allow action to be taken to reduce this type of noise.

Council Member Kirby expressed his support for the ordinance.

Mayor Joens stated she had been asked by Ms. Donna Castillo about having such an ordinance since she, herself, had become a Council Member. The 50-foot rule was pleasing, as were the substantial penalties possible.

Vice Mayor Pfeifer asked about dog noise from one's own animals that might be caused by other people letting their dogs loose on the streets.

Chief Fanning stated the police were aware that such situations could arise and did their best to deal with them fairly.

Council Member Kirby asked if sound measurements would be taken.

Mr. Scully stated the science of sound recording and measurements was expensive and difficult to implement. The reasonableness approach was much simpler to carry out.

Mayor Joens asked if there was Council consensus. She determined that there was. Direction was given to go ahead with the ordinance and bring it before the Council.

ADJOURNMENT

Mayor Joens moved to adjourn. Council Member Elinski seconded the motion, which carried unanimously.

The work session adjourned at 7:15 p.m.

Diane Joens, Mayor

ATTEST:

Richard Smith, Deputy Clerk