

MINUTES OF THE WORK SESSION OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD OCTOBER 12, 2010, AT 6:00 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

CALL TO ORDER AND ROLL CALL

Mayor Joens called the work session to order at 6:00 p.m. Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Diane Joens, Mayor
Karen Pfeifer, Vice Mayor
Tim Elinski, Council Member
Duane Kirby, Council Member
Terence Pratt, Council Member
Darold Smith, Council Member

COUNCIL MEMBER ABSENT

Linda Norman, Council Member

STAFF MEMBERS PRESENT

Doug Bartosh, City Manager
Steve Horton, City Manager
Marianne Jiménez, City Clerk
Mike Casson, Fire Chief
Rick Contreras, Fire Marshal
George Gehlert, Community Development Director
Charlie Scully, Long Range Planner

ITEMS FOR DISCUSSION, CONSIDERATION, AND POSSIBLE DIRECTION TO STAFF

POSSIBLE REGULATION OR BANNING THE USE OF CONSUMER FIREWORKS WITHIN THE CITY LIMITS

Chief Casson stated the Legislature recently passed HB-2246 permitting fireworks for private use within the state which previously banned them. Prior to its passage, fireworks were only permitted at public displays, theatrical displays, under permits, and under certified shooters. The bill authorized the sale and use of permissible consumer fireworks. The legislation gave the opportunity or authorization for cities and towns to establish their own regulations or prohibition of the use of permissible consumer fireworks within their incorporated city or town limits.

Council Member Kirby asked if there was any regulation pertaining to counties and if the Council passed something for the City of Cottonwood, were people just going to be able to abrogate that by going out into the county.

Chief Casson stated the legislation did not allow cities or towns to prohibit the sale of permissible fireworks. It did allow them to say they could not be used or they could be used

only in certain locations or at certain times. Counties could not prohibit them but could restrict their use during times of high fire danger. The state fire marshal could do the same on state lands. The U.S. Forest Service had and would continue to have a prohibition on all fireworks on U.S. Forest Service lands. We could require signage that said it was illegal to use fireworks in our community, if that was direction the Council wanted to take, or signage that said fireworks could only be used in our community at certain times or in certain locations.

Mr. Contreras presented a PowerPoint presentation and stated fireworks, such as those displayed for the Council, were presently illegal in the State of Arizona. HB-2246 authorized the sale and use of consumer fireworks in Arizona as of December 1, 2010, and allowed anyone 16 years of age or older to buy consumer fireworks. HB-2246 still prohibited firecrackers, items that exploded, and aerial fireworks. It allowed federally deregulated novelty items, did not prohibit permitted public displayed fireworks, and allowed cities and towns to regulate only the use of consumer fireworks within city and town limits. Within the City of Cottonwood the Council had the option of banning them, setting certain days when they would be allowed, or establishing certain timelines for use. There were many types of fireworks—over 6,600 were listed in Fireworks Catalog.com. Bottle rockets were still illegal, but included as legal novelties items were sparklers, party poppers, snappers, toy smoke devices, snakes, glowworms, dipsticks, and wired sparklers.

Chief Casson stated there would be questions and challenges over sparklers because some interpretations were that sparklers were considered a novelty item and some considered them consumer fireworks.

Council Member Smith asked if the city could not regulate sparklers at all.

Chief Casson stated if they fell under novelties we would not be able to regulate them. If they fell under permissible fireworks, we could choose to regulate them.

Mr. Contreras stated permissible consumer fireworks fell under the state rule and deregulated novelties were federally regulated. He then showed various types of consumer fireworks describing their characteristics and composition.

Mr. Contreras continued, stating display fireworks, as seen on the Fourth of July, meant large firework devices or explosive materials intended for use for fireworks displays and designed to produce visible or audible effects by combustion, vibration, or detonation. For the Fourth of July there was a permit process to be gone through to put on this program. These were with certified state shooters who had to meet all the regulations of the International Fire Code.

Chief Casson stated permission was not granted until the fire department had evaluated the site and the pyrotechnics to be used to ensure they conformed and complied with standards for distances and combustibles. Both theatrical and display fireworks were not intended for consumer use. These were only for professionals under stringent, secure, and safe

conditions. The law did not prohibit the sale of consumer fireworks by a retail establishment if the retail establishment complied with the rules adopted pursuant to Section 36-1609. We could not prohibit their sale. Rules were contained in the National Fireworks Association (NFA) Standard and federal register, and retailers would have to comply with those. The sale of permissible consumer fireworks to a person under 16 years of age was illegal. HB-2246 did not regulate the age of a person selling fireworks. There could be store displays, tents, and roadside stands, but mobile sales were not allowed.

Ms. Jiménez stated people could not just set up a tent or stand on the roadside because they first had to get a temporary use permit that had to be approved by the Planning & Zoning department and they had to obtain a business registration.

Mr. Contreras stated the impacts on the city would be tax revenues from sales. There would be an increase in fires, injuries, and vandalism, whether intentional or not. Fireworks stands had been the targets of theft and fraud crimes and there would be fireworks related noise complaints. The latest figures from the National Fire Protection Association (NFPA) in 2008 showed fireworks caused an estimated 22,500 fires, including 1,400 structure fires, 500 vehicle fires, and 20,600 outside and other fires. Fires risks existed at points of sale, during transport in delivery trucks and private vehicles, and in storage and use in residences. Risk extended to outdoor combustible sources such as weeds, dry grass, shrubbery, trees, combustible roofs, and outdoor storage. NFPA figures showed that in 2008, fireworks resulted in one death and an estimated 40 civilian injuries, and \$42 million in direct property damage.

Chief Casson stated the injury totals were for those injuries that were reported. There would be many more that did not get reported. There were more injuries to children from sparklers than from any other fireworks.

Mr. Contreras stated fire crackers, though illegal, also caused a large number of injuries. Fireworks scared dogs and shelters always received more animals after fireworks displays. Local enforcement was not allowed for sales, but was allowed for use of fireworks.

Council Member Kirby stated local enforcement was not allowed for the sale of fireworks, and asked if that meant the city could not say that fireworks could not be sold on Main Street or we could not make them take it to a certain area.

Chief Casson stated fireworks sales could not be restricted any differently than we did for other sales licensing or permitting. Planning & Zoning had certain requirements related to certain sales activity and they would have to comply with those. Some possible options for the Council to consider would be to limit use of consumer fireworks to specific dates, such as July Fourth, New Year's Eve, or Super Bowl. Use could be limited to certain hours of the day or night. Use could be prohibited in public parks or other open spaces or in specific locations such as Riverfront Park because it was an area of high fire danger. Use could be prohibited during certain times of high fire danger or there could be a complete prohibition in the city. Those were the options for the Council to consider.

Mr. Contreras played a video showing the use of different types of fireworks, and commented on the smoke they emitted and the possibility of false alarm calls being made to the fire department.

Council Member Kirby stated the less the city allowed for use, the less pressure there would be for sales.

Council Member Pratt stated considering how many people lived outside the city he suspected sales would be pretty high.

Council Member Elinski stated he would favor allowing fireworks during New Year's and Super Bowl, but not Fourth of July, if that was the Council's consensus.

Chief Casson stated his recommendation as fire chief and public safety officer for this community was not to confuse the public by allowing fireworks sometimes and not allowing them at other times. His recommendation, and that of the fire marshal, was to ban them completely in our community because of the concern for public safety.

Council Member Kirby asked if people could make a special request or application to the city to have a commercial fireworks display.

Mr. Contreras stated yes. They would have to be shot by professional shooters from a reputable company and follow the restrictions set by the fire department.

Council Member Smith stated he would love to see the city ban fireworks use within the city limits.

Council Member Pratt stated it was a matter of public safety and he would support a ban.

Council Member Kirby asked what kind of message was being sent if we were allowing the sale of fireworks and had a ban on using them.

Mayor Joens stated thanks to our Legislature we had to deal with it.

Mr. Contreras stated if fireworks were going to be allowed it should be only in the wintertime, not during Fourth of July.

Council Member Elinski stated he was okay with the use of them during the winter and agreed an all out ban would be a clearer message than allowing their use once or twice throughout the year. He was really in favor of an all out ban.

Council Member Kirby stated he would be in favor of the complete ban as the best thing we could do for the City of Cottonwood. We really needed to provide some kind of educational materials year round to make people understand they could buy fireworks here but not shoot them.

Chief Casson stated additional energies would be put into public education programs in the schools reminding children and families they were still dangerous even if they were legal to buy and shoot outside of the city.

Mr. Bartosh stated it might be a good idea to get it into the ordinance to require wherever they were sold there would actually be a sign displayed that clearly specified it.

A brief discussion followed as to the desirability of having people under the age of 16 be able to sell fireworks and whether there was anything the city could do about it.

Council Member Kirby stated if we wrote an ordinance which said you must be at least working age, or 16, before you could work in a fireworks stand and sell fireworks, it would be up to the state to prove we could not do that.

Mr. Horton stated if the Council in passing that understood it could be subject to challenge and the city would then have to decide whether to step away from it or defend it, it could certainly be added to the ordinance.

Mayor Joens asked what about age 18.

Council Member Kirby recommended that in writing our ordinance we insist upon a specific age. What that would be he was not ready to recommend. It should be at least working age in the State of Arizona and that we require that and then wait and see what the state wanted to do about it. We would enforce our ordinance until somebody challenged it and beat it.

Mayor Joens stated maybe we could state children under a certain age could not sell fireworks.

Chief Casson recommended going with 16 since that was the age to buy.

Council Member Kirby stated what he was trying to get at was we had bowed to the state too much in a lot of these things and he thought it was time we took a stand on a lot of issues we had not done in the past.

Mayor Joens stated the direction of the Council was to go ahead and move forward with writing a ban on the use of fireworks within the city limits and to follow the law on selling them but add in there a minimum age of sellers.

DISCUSSION REGARDING PROPOSED AMENDMENTS TO THE ZONING ORDINANCE, SECTION 304 (DESIGN REVIEW) AND SECTION 404.H. PERTAINING TO HEIGHT REGULATIONS

Mr. Scully stated this was an issue which had come up a number of times in the past few years. Based on input from interested developers and property owners, we looked to make sure proposals were in conformance with state law and federal law. We also looked at what other cities did and thought it was time to address this issue. Generally the heights of buildings were governed by firefighting propensities and this was for non-habitable

structures. The various sections were architectural embellishments that basically allowed more flexibility to make it easier to allow use of certain parts of structures. Other types of rooftop structures and types of mechanical equipment were given percentages of roof area. The same thing went for design view. The issue with monuments, memorials, and statues was one that came up recently. The basic approach to this was that public art statues were a good thing but should be something that fit in the context of and scale of that development. Flagpoles had heights limited by collapse zones and the need for a place to fall down. Wireless communication facilities were covered by the Federal Tele-Communications Law of 1996. Placement of cell towers had not been an issue here since there were located on top of the water tank. It was the same thing with solar and wind energy devices. If there was a tall building it would not say they could not do it. This made it easier since it would allow those to be put on tall buildings. Small residential scale turbines created noise and would require spacing.

Council Member Smith asked was being done about churches and religious monuments.

Mr. Scully stated some type of memorials were allowed to go up to 25 feet in height. The whole intent of this was to meet the scale, a human scale, for the people on that site to enjoy that and enhance the quality of that site and was not really meant to be a landscape scale statement, whether it was on a commercial site, a college campus, or anywhere.

Mr. Bartosh stated we may be in contradiction to state law when it came to religious items.

Mr. Scully stated it was written so this was a maximum. It still allowed the design review process to consider how it fit in the context. It could actually be a lower height so it fit into the scale of that development.

Council Member Pratt stated he liked the provisions, especially the fall zone.

Council Member Elinski stated it was really well written and clear.

Mr. Horton stated the point about religious structures was this was neutral on that sort of thing and that was the way to go about legislating. On a case by case situation we may have to look and see whether this stood against the challenge if somebody had compelling reason to need an accommodation. Once this became local law this would be what presumptively applied.

Council Member Kirby asked what the height limit designations were in the various districts of Cottonwood.

Mr. Scully stated they were pretty much across the board all 35 feet maximum for buildings.

Mr. Gehlert stated the crux of this issue was the Zoning Ordinance regulated the heights of buildings. The way buildings were defined was they were structures which contained people and their things. What we were trying to do was put together a code that regulated the

height of everything else. The current code did not regulate flagpoles or cell towers.

A discussion followed about some exceptions like Cottonwood Village and the hospital.

Chief Casson stated the intent was to have the fire department able to get an elevated stream of water above a fire and to be able to affect a rescue. The hospital got an exemption because it was an institutional occupancy and because of its built-in fire protection features.

Mayor Joens stated the Council consensus was to continue with this ordinance.

Mr. Horton stated, to clarify, staff said every residential, commercial and industrial zone in the city had the same two and one half stories, 35 foot height limitation.

Mr. Gehlert stated except for the Community Facility (CF) zone which did not have any. That was where the slag pile was. The other CF zone was where the Catholic Church was.

A short discussion followed regarding exceptions for temporary structures such as holiday decorations and the need to protect scenic views.

ADJOURNMENT

Council Member Kirby moved to adjourn. Council Member Smith seconded the motion, which carried unanimously. The work session adjourned at 7:31 p.m.

Diane Joens, Mayor

ATTEST:

Marianne Jiménez, City Clerk