

## COUNCIL MINUTES

October 21, 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 October 21, 2010 at 7:33 a.m.

### COUNCIL PRESENT

Scott Smith  
Alex Finter  
Dina Higgins  
Dennis Kavanaugh  
Dave Richins  
Scott Somers

### COUNCIL ABSENT

Kyle Jones

### OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Linda Crocker

Mayor Smith excused Vice Mayor Jones from the entire meeting.

### 1-a. Hear a presentation, discuss and provide direction on a Convenience Store Ordinance.

Assistant Chief of Police, John Meza, displayed a PowerPoint presentation (**See Attachment 1**) highlighting the proposed Convenience Store Ordinance based on Crime Prevention through Environmental Design (CPTED) principles and thanked the stakeholders for working through the process to develop an ordinance that was fair and effective.

Chief Meza briefly outlined the goals and objectives of the CPTED principles as follows:

- Deterring crime through prevention.
- Reducing crime and calls for service.
- Increasing prosecution.
- Provide a safer environment.
- Free up police resources.

Chief Meza briefly summarized the history of the Convenience Store Ordinance and advised that in June of 2009 the Police Department had presented the propose Ordinance and security plan to the Public Safety Committee. He said that various CPTED principles had been incorporated into the Revised Zoning Ordinance. He added that the Police Department had also met with key stakeholders regarding the security plans and found that an Ordinance was preferred over a security plan.

In response to a question from Councilwoman Higgins, Assistant Chief Meza explained that a security plan option had been added to the proposal at the direction of Council and it would be covered in this presentation.

Chief Meza said that the Police Department had worked with the City's legal department to format the revisions to the Ordinance. He added that a final meeting was held with the Stakeholders on October 12, 2010 and additional revisions were made to the Ordinance that included the recommendations from City Council.

Chief Meza briefly outlined the revisions to the Ordinance as follows:

- Documentation requirements were streamlined.
- Registration Compliance Decal requirement was removed.
- Revised the appeals section to identify the City Manager or designee as the hearing authority.
- Revised the visibility and height requirement.
- Revised the language requiring landline telephone access for employees.
- Revised the lighting requirement to "Dusk to Dawn".
- Revised the language to include "beer and alcohol be secured from 2:00 a.m. to 6:00 a.m."
- Revised the address requirement.
- Included a Security Plan section.
- Minor language changes to conform to standard City Code.
- Changed the registration requirement from annual to bi-annual.
- Revised the preservation of digital video recording requirement from 30 days to 15 days.
- Revised the availability of digital video recording requirement from 24 hours to 72 hours.
- Removed the 6 x 6 vision portal requirement on all enclosure gates.

Chief Meza stated that in addition the employee training requirement had been changed from annually to bi-annually and that the "Violations and Penalties" section had been changed to include a set fine in lieu of variant penalties. He said that the wording for "Hardship Exception," which was monetary in nature, was revised to include "or other substantial hardship". He added that the effective date for the adoption of the Ordinance had also been changed from 30 days to 120 days. (See Pages 4 & 5 of Attachment 1).

Chief Meza reported that the stakeholders had concerns regarding the Ordinance and were requesting that a Board be designated to hear all appeals instead of the City Manager or designee. He advised that the stakeholders unanimously oppose and disagree with the "Right to Require Additional Security Measures" portion of the Ordinance. He added that all convenience stores would need to be notified when the Ordinance was adopted.

Chief Meza advised that the goal of the Ordinance was maximizing police resources by limiting the calls for service on issues that did not pose a serious safety risk or where no viable information was received. He explained that police officers were currently responding to calls for a stolen donut.

Mayor Smith commented that the original purpose of this Ordinance was to limit the use of police resources. He remarked that it seemed the issues were now shifted and added another layer of bureaucracy that would require the use of resources from a different area.

Councilmember Somers described a situation where his wife's credit card had been stolen and an attempt had been made to use the credit card at a Circle K store. He said that Chandler Police were able to obtain the security camera video within 48 hours of the crime. He remarked that this should be the type of crime that police should be responding to.

Mayor Smith said that the start of the process had been the numerous calls for police service for petty thefts at convenience stores. He added that calls for service for petty crimes posed a true drain on police resources.

Chief Meza clarified that major crimes do happen at convenience stores and provided an example of a robbery situation, where a group of individuals took over an independent store. He explained that because the windows were covered customers could not see what was going on inside the store and as customers entered the store they were "tied up" by the robbery suspects.

Councilmember Kavanaugh stated that convenience stores are major consumers of Public Safety services. He said that the Police Department had been working with the Industry for more than 3 years to develop a way to help prevent crime and provide a safe environment for customers and employees. He advised that the measure had undergone a significant amount of revision with input received from the stakeholders.

Chief Meza said that it was difficult to find a balance and develop an Ordinance that was effective and also established a good partnership with the convenience stores. He reported that three alternatives had been developed. He explained that Alternative "A" would be to adopt the Ordinance that was presented today with the omission or revision to the requirement for "additional security measures" as it was not supported by the stakeholders.

Councilmember Kavanaugh expressed his concern in regards to the change in the stakeholders' position. He advised that the "additional security measures" were a proposal that came to the committee from the stakeholders.

Chief Meza advised that no support had been received from the stakeholders in regards to the "additional security measures". He stated that all of the stores were concerned with the idea of being regulated especially those businesses that were not experiencing problems.

Councilwoman Higgins advised that business owners who were in compliance were concerned that they would be asked to make further revisions. She said the Ordinance affected not only those stores with problems but also the stores without issues.

City Manager Christopher Brady clarified that the additional security measures would only be a requirement if a business had "excessive calls" and at that time the Police Chief would make a determination.

Chief Meza advised that Alternative "B" would be applicable only to new builds and remodels and existing stores could be "grandfathered." He explained that Alternative "C" would implement an online reporting system for an offense under \$100 or an amount to be determined when there was no viable information on a suspect. He said that Circle K has provided a recommendation for a tiered or phased approach where a store with excessive calls for service would have phases of the Ordinance implemented.

Councilwoman Higgins expressed support for a tiered approach and said that in a tiered approach there would not be penalties for the stores that did not have problems. She added that in the event these stores did have problems the steps and options would be available and could be implemented.

Mayor Smith advised that petty crimes like the “donut run” would be able to be reported online allowing MPD to track them. He said the idea was not to ignore the petty crimes as they could grow into bigger crimes.

Chief Meza advised that online reporting would definitely be a benefit to the Police Department.

Discussion ensued regarding the CPTED requirements for new and remodeled convenience stores under the Convenience Store Ordinance.

Councilmember Kavanaugh advised that existing stores would not be “grandfathered” but would have the right to request an alternate security plan. He stated that the business would need to outline the measures that would not work in their store or posed a hardship. He added that the Police Department would have the ability to implement an alternate security plan that would meet the same goals of the Ordinance. He remarked that most existing stores could become compliant by making simple corrections in lighting, visibility and camera use.

Mayor Smith stated that Council was in agreement that the CPTED principles would apply to new builds and remodels and attention could now be directed to what principles would be applied to existing stores.

Councilmember Kavanaugh explained that all measures would apply to existing stores and they would have 120 days to come into compliance or apply for a “hardship” due to the nature and design of their building. He said the businesses would need to outline the measures that would not work for them and the Police Department would review the plan to see if equivalent safety measures were available.

Discussion ensued regarding the blanket approach of the new Ordinance requiring a good business owner without major crime problems to be required to comply with the CPTED principles or apply and proceed through the hardship process.

Chief Meza advised that the idea of the blanket approach was to have a set of rules that everyone would have to follow. He described a “hardship” as a monetary issue or the result of the design of the building. He added in this case if the store did not have any crime issues then the department could make a “hardship exception.”

Mayor Smith suggested the Ordinance state that if a business did not have any reported crimes in the last 10 years that the business would be excluded from having to comply with the Ordinance.

Chief Meza remarked that care needed to be taken so that the Ordinance did not discourage people from calling the police.

Mayor Smith suggested that once online reporting was implemented that crimes reported online not count against the business. He said this would not discourage crime reporting and would allow for tracking crimes without using resources.

Councilwoman Higgins said that in a tiered approach a set of criteria could be provided and as a store developed more issues additional requirements could be added on.

Chief Meza cautioned that with the tiered approach a business might refuse to call for service for fear of being moved up to the second tier.

Mayor Smith pointed out that there appeared to be two sub-issues, one was the use of police resources and the other was the level of crime at certain stores due to the owner's failure to correct a situation. He said that stores sell more beer when it is displayed in the front of the store and may not want to move it to another location. He remarked that a store owner might be of the opinion that the loss of beer on a "beer run" was minimal compared to the amount that could be sold by displaying the beer in the front of the store. He added that when the Police were called to a store for a "beer run" the business owner was then including the City in the store's cost of business.

Responding to a question from Mayor Smith, Chief Mesa said that one of the requirements of the Ordinance was to net the beer and to lock the beer in the cooler. He stated that the Industry felt this was not an effective deterrent and believed that someone would break a cooler to get to the beer if it was locked.

Mayor Smith remarked that someone entering a store and breaking a cooler to obtain beer was a crime that needed to be reported and have an officer respond to in order to get that type of criminal off the street.

Chief Meza explained that crime prevention was layers of protection that deter most criminals. He said that there is a cost to doing business and that the Industry would continue to display beer in the front of the store for advertizing purposes and put displays in the windows. He added that it had been suggested to the Industry to not cover the entire window with posters.

Mayor Smith said that the store owners cost of doing business should not be the City's cost and that their business decisions could be a burden on the community.

In response to a question from Mayor Smith, Assistant Chief Meza explained that the online reporting in Alternative "C" would be a benefit to the Police Department, as an officer would not be physically reporting to the scene. He advised that the online reporting would not just be for convenience stores but for citizens overall to make small level reports. He said if a store did not have online access they would need to arrange how they would accomplish making the report.

In response to a question from Councilmember Finter, Chief Meza explained that the convenience stores have requested that a Board hear and grant appeals unlike the Hotel/Motel Review Board that operated in more of an advisory role. He said that currently any appeals for variances would go to the City Manager or designee.

Councilmember Finter commented that it appeared that there had been no desire from the Industry to work with the City and that if the Industry wanted to prevent becoming saddled with

regulations they needed to become more proactive in finding a solution. He remarked that it was encouraging to see that one of the businesses had offered the suggested tiered approach.

Chief Meza said that the Industry had started working with MPD and a sense of partnership had been developed. He added that together, work was being conducted to discover rules that everyone could be comfortable with.

In response to a question from Councilmember Somers, Chief Meza explained that Alternatives "A," "B," & "C" were not independent alternatives and a combination of alternatives could be implemented. He added that the Police Department was seeking direction from Council in order to find an effective solution.

Mayor Smith advised that there were businesses that created unsafe situations that burdened the City. He said that taking the blanket approach was a problem, as it brought innocent parties under regulation. He stated that good business operators should not have to be regulated and should be left alone to succeed and thrive. He expressed his opposition to covering all convenience store operators under the new regulations when there are only a few "bad actors."

Councilmember Somers commented that it was difficult to develop policies that pointed to specific businesses like the Hotel/Motels and Massage Parlors as the Council could be accused of "singling out" certain businesses. He said that in an attempt to be fair the Council had taken a broad based blanket approach. He explained that covered windows and no security cameras were problems that the convenience stores create themselves by not following the guidelines. He stated that the stores that did not have problems were already following the guidelines. He added that the Ordinance was about protecting customers and reducing the burden on the Police Department.

Mayor Smith stated that he supported regulating those who create unsafe situations that burden the City. He expressed his concern that in an attempt to be fair and not offend anyone a wide net was cast and good businesses were impacted. He remarked that a business that created a problem by practicing unsafe standards offended the community.

Councilmember Kavanaugh said the Ordinance aided in criminal apprehension and not just crime prevention. He stated that the measures they were putting in place assisted the Police Department in apprehension, crime prevention and created a safe environment for workers and patrons. He said he understood the concerns from the Industry and expressed support for removing the "additional security measure" and allowing Alternative "C" to be part of the Ordinance.

Councilmember Somers said that the Police Department had used data from the best business and practices in our community as well as other communities to create this Ordinance. He stated that statistics showed that businesses that follow CPTED principles experienced less criminal activity. He pointed out that businesses in older buildings would have structural concerns that were financially impossible to deal with. He said that the Security Plan Option had been developed to provide some flexibility for the businesses in older buildings. He noted that a Security Plan might not be as effective as the CPTED principles.

In response to a question from Mayor Smith, Chief Meza explained that there were 8,840 calls for service at convenience stores and that out of 150 convenience stores 10 of the stores were responsible for 4,110 of those calls.

Mayor Smith remarked that an ordinance should be developed that covered just the 10 stores that accounted for the majority of calls for service.

Councilwoman Higgins said implementing the ordinance in a tiered approach would require all stores to be registered. She stated that the stores could go through the listed principles and address the requirements that had no cost associated in implementing. She added that reviewing the calls for service over the last 10 years would help the businesses stay under an allotted number of calls for service.

Mayor Smith said that he did not want to micro-manage the proposal and expressed his opposition to increasing overall regulation and bureaucracy to address a problem that could be handled with a much more detailed approach. He added that in an attempt to be community friendly huge burdens were being placed on our businesses.

In response to a question from Councilmember Richins, Chief Meza explained that currently not one of the 150 stores would be completely in compliance, as not one of the stores was netting their beer.

Crime Prevention Officer Patsy Gallagher said that most stores had floor displays and that few of them would be completely in compliance. She added that with a few minor changes the majority of the stores would be able to achieve complete compliance.

Councilmember Richins commented that it would be beneficial to know which stores were in compliance or close to becoming compliant and would not suffer any regulatory burden. He said with a few minor changes the stores could be compliant and then regulations could drill down to those "bad actors."

Ms. Gallagher explained that there would need to be an inspection done on all the stores to determine which stores were in compliance.

Chief Meza said there would be some of the "bigger players" that would be asking for a hardship due to some variances and those would be granted because they were practicing the CPTED principles. He provided an example of a store in regards to the 4 foot rule for visibility. He said this particular store's displays were at 4 foot 6 inches which would mean that the store would be required to change all of the displays in the front of the store in order to comply with the 4 foot rule.

Responding to a question from Councilmember Richins, Chief Meza explained that the rule for visibility was originally at 3 foot and was raised to 4 foot. He added that this particular store then came back and said their displays were at 4 foot 6 inches. He added that at some point a standard needed to be set.

Councilmember Richins commented that in order to be business friendly it was important to know what the industry standards were. He gave an example of the regulations regarding the length of an RV parked on the side of a house. He said if the length requirement for an RV was

arbitrarily set and everything the Industry sold was 2 feet longer, then everyone would be out of compliance. He stated that if we know what the standards regarding displays sold to stores were then an Ordinance could be developed that matched the Industry standards.

Chief Meza said that the CPTED height limit for displays was 3 foot and since the display sizes were "all over the board" the Ordinance raised the height requirement to 4 foot which would allow stores to put up more displays.

Mayor Smith stated that all new builds and remodels would have to comply with the 4 foot standard for displays.

Councilmember Richins commented that he visited the stores in his area to see what conditions would apply. He said that the convenience stores were a concern to the residents and that he was in agreement with the Ordinance's approach. He added that the Ordinance would need a little work to make it more business friendly.

Councilmember Somers stated that just because a standard was set did not mean that you are not business friendly. He said there had been a lot of clean up in the City and provided an example of the Massage Parlor Ordinance where standards were set across the board that required the massage parlors to make some additional changes to bring them into compliance. He remarked that the parlors that were targeted were the ones that were providing "extra services" that were not listed services. He added that by setting a standard the problems were reduced significantly.

In response to a question from Councilmember Somers, City Attorney Debbie Spinner explained that the City did not want to single out individual businesses. She said a tiered approach based on calls of services or other objective criteria could be explored.

Assistant City Attorney, Christine Stutz advised that similar options had been explored however, they had not been drafted. She said there had been discussion on whether or not other objective criteria could be created. She stated that the largest objections were in regards to not discouraging the businesses from calling police since all the physical data would be based on the calls for service. She added that from a legal perspective other objective criteria could be created.

Mayor Smith suggested that the online reporting work like points on a driver's license. He said that it could be an incentive for the store to report certain types of crimes online and those crimes would not be counted against them. He stated that this could meet the objective of reporting in a way that did not create a burden. He remarked that he understood where there could be a disincentive in reporting petty crimes, however, if the online reporting was used it could be a tracking tool that would not count against the store.

Councilwoman Higgins stated that there were going to be businesses that are already complying with this Ordinance. She said for these businesses it probably would not be a disincentive if the number of calls for service over the last 10 years were reviewed.

Mayor Smith remarked that the use of the online reporting system would be a benefit for everyone.



Councilmember Richins suggested that the top 10 stores be mapped to determine if they were located in a CDBG area, as crime prevention was an eligible use in the CDBG program. He said there might be a way to partner with CDBG and receive their help with this process. He said that most of the crime was occurring in the CDBG area and that by working with the businesses all stores could be brought into compliance in a short amount of time.

Councilmember Somers suggested that since many of the stores were in CDBG eligible areas that a grant be set up to fund some of the changes.

Councilmember Richins advised that possibly next year a grant could be addressed as CDBG grant applications had already been submitted. He suggested that the possibility of a crime prevention program in the CDBG area be explored.

Mayor Smith reiterated that Council is in agreement that CPTED principles should apply to new builds and remodels. He asked Council if there was an agreement that the online reporting should be an incentive that would meet the objectives.

Councilwoman Higgins remarked that she did not think the online reporting was an incentive and that online reporting should be a requirement.

Chief Meza stated that policies and thresholds for crimes that could be reported online had not yet been developed.

Mayor Smith said one of the objectives was to reduce the calls for service by making the online reporting a requirement. He added that there was not yet an agreement as to how online reporting would be applied to existing businesses.

Mr. Brady indicated that if Council was in support of "Alternative B" that an Ordinance could be brought back next week that applied "Alternative B" to new builds and remodels at a minimum. He advised that the next part of the Ordinance would be the required use of online reporting when that system became available. He said a decision was still needed regarding whether the Ordinance should cover all existing businesses regardless of their level of crime prevention and whether or not to use a tiered concept. He added that the tiered approach would require research to establish criteria and would need to be brought back to the Council.

Mayor Smith remarked that the real issue was how to apply the principles to existing businesses. He expressed his support for a process that did not force businesses to go through a hearing to prove they had a hardship. He said if a store was compliant but was in an old building the exception process should be made simple and should not require the business owner to go through a hearing process.

Responding to a question from Ms. Stutz, Mayor Smith explained that the process needed to be made simple and not be treated as a hardship. He said the store owner would need to prove that they were in a bad position and not able to meet the requirements. He remarked that a store that was a magnet for crime and did not follow the CPTED principles was an unsafe situation not a hardship. He added that the community was paying a huge cost for the store to be unsafe. He requested that the process be simplified and not treated as a hardship and that some ideas be brought back to Council.

Discussion ensued relative to the issues that would qualify as a hardship.

In response to a question from Mr. Brady, Mayor Smith explained that a store that was a magnet for crime and not able to afford the installation of a security system or other measure could qualify for a hardship. He said that installing a security system was not a guarantee that the problem would be solved. He added that developing an Ordinance was a balancing act and that qualifying for a hardship would not fix the problem.

Mr. Brady stated that if a store with numerous calls for service was not able to come into compliance due to a financial burden, the Ordinance would allow for an alternative plan to be implemented, other than what was contained in the Ordinance.

Mayor Smith expressed support for the idea of a “safety plan” as the ultimate goal was public safety.

Discussion ensued regarding the issue of a hardship exception that allowed alternative security measures to be put in place, as well as how to address stores that had problems after having applied the CPTED principles.

Mr. Brady explained that “Alternative A” of the Ordinance would apply to all stores regardless of whether they were a good or bad store. He said if a store continued to have excessive calls then additional security measures would need to be implemented. He clarified that the part of the Ordinance that stated that the Chief could request that additional measures be implemented was the portion of the Ordinance that was proposed to be dropped. He stated that the debate was now whether all existing convenience stores would have to comply with the terms of this Ordinance. He added that in the event the number of calls migrated above a number not yet determined then that store could be subject to the additional requirements.

Mayor Smith said that there were certain basic simple changes all stores could make and comply with such as unblocking the windows.

In responses to a comment from Mayor Smith, Chief Meza explained that for some businesses it would be easy to comply by clearing the window area however, for some clearing the windows would be difficult because that area was space needed for product.

Ms. Gallagher provided an example of one of the stakeholders that had a wall of windows that was completely covered with stock in his store. She explained that this was due to the design of his building as the windows were considered a wall. She remarked that this was one of the businesses with very few calls for service. She said that there were posters on the window and that at first this store owner was upset about the requirements. In addition, she said that after the Ordinance was explained to him the store owner then understood the requirements and expressed his support for the Ordinance.

In response to a question from Mayor Smith, Ms. Gallagher explained that this store owner would not have to comply with moving his stock from the window, as this would fall under the “hardship exception” due to the design of the building.

Mayor Smith commented that this store could be an example for “grandfathering” as the store meets the basic standards.

Ms. Gallagher advised that once the exceptions were granted at a store those exceptions would always remain in place, even if another owner were to take over that store.

Mayor Smith said that accomplishing the statements and examples provided by Ms. Gallagher, it would appear that the Ordinance was moving in the right direction.

Mr. Brady stated that the Ordinance would be brought back to Council and work would be conducted to develop more artful language for “hardship” as well the other alternatives.

In response to a question from Mr. Brady, Councilwoman Higgins explained that if the exceptions allowed for those stores will few calls for service to not have to comply with the whole Ordinance then the Ordinance would work the same as the tiered approach.

Discussion ensued regarding raising the standards to create a safe environment and what consideration should be given to businesses that as a result of physical location could not comply with the Ordinance.

City Attorney Debbie Spinner commented that the objective measure needed to be defined and staff would need to determine if the goal was calls for service or another objective.

Mayor Smith remarked that calls for service might not be the best objective. He said he understood that it would be difficult to come up with an objective standard.

Ms. Stutz advised that instead of a hardship exception a waiver provision could be developed which would cover the hardship and allow a store to state that they believe that their store does not pose a problem.

Mayor Smith expressed his support for the idea of a waiver provision.

Discussion ensued regarding when all convenience stores would be required to come into compliance.

Mr. Brady said bringing all stores into compliance could be explored in the future when CDBG funding became available.

Mayor Smith stated that he would like to have the process simplified for the stores that were “good actors.”

Councilmember Somers pointed out that the “exception” section was the longest section in the standard and may need some adjusting to address some of the Mayor’s concerns.

Arizona Food Marketing Alliance Representatives, Trisha Hart and Tim McHaven, provided a handout to the Council (**See Attachment 2**) outlining the tiered approach.

Ms. Hart reported that a meeting was held with City staff on October 12, 2010 and several changes to the proposal had been made. She said one of the issues was on the “hardship exception” as it did not meet the objectives intended. She advised that after exploring ways to assist with the “hardship exemption” the following tiered proposal was offered:

- The first tier – all stores be required to register allowing the Police Department to have all the information on the store and employee training.
- The second tier – meet certain criteria and fines would be assessed.
- The final tier for the highest level of calls – subject to the whole ordinance.

In response to a question from Councilmember Richins, Ms. Hart explained that in the Design and Review Standard there was specific language that indicated there would need to be at least a 50% change of the building to be considered a remodel.

In response to a question from Councilmember Richins, Zoning/Civil Hearing Administrator Gordon Sheffield explained that from a zoning perspective changes to the Certificate of Occupancy would be considered a remodel.

Discussion ensued regarding what circumstances or type of changes would constitute a remodel using Building Code standards.

Ms. Hart continued with her presentation and said the tiered approach was developed for the stores that were not experiencing problems and provided tools and mechanisms to go after the problem stores.

Mr. McHaven addressed the Council and said they had partnered with the Police Department in an effort to “do the right thing” and not slow down the process. He said this was a very multi-faceted business that was already significantly regulated. He explained that the stakeholders were not opposed to netting the beer, however, studies indicated that netting the beer did not accomplish the goal and was an undue expense as most of the crimes occurred between 2:00 a.m. and 6:00 a.m. when beer should be locked in a cooler. He added that the Ordinance had come a long way in a short amount of time and was close to being completed.

Mayor Smith thanked staff and the stakeholders for their continued efforts. He said that it is anticipated that what will be brought back to Council would be agreeable and would accomplish all the goals and objectives.

Mayor Smith announced that there will be a short break and the meeting resumed at 9:30 a.m.

1-b. Hear a presentation, discuss and provide direction on Proposition 203, Medical Use of Marijuana.

Ms. Spinner displayed a PowerPoint presentation (**See Attachment 3**) and said if Proposition 203 should pass the Department of Health Services (DHS) will need the City’s Zoning Codes in place within 120 days in order for DHS to be able to impose their rules and regulations.

Ms. Spinner explained that Prop. 203 would allow patients with certain medical conditions to obtain and use marijuana for medical purposes. She stated that the patients would have to

provide authorization from a physician to DHS in order to receive certification that would allow them to purchase Medical Marijuana for certain medical conditions.

In response to a series of questions from Councilmember Somers, Ms. Spinner explained that a physician is described as a Medical Doctor, Osteopath, Homeopath or Naturopath. She said that a patient could petition DHS if they believe they have a medical condition that is not a listed condition that would be benefited with the use of Medical Marijuana. (See Page 4 of Attachment 3). She advised that potential medical conditions included severe or persistent muscle spasms including those specific of Multiple Sclerosis, nausea, seizures, severe and chronic pain not otherwise defined.

Councilmember Somers stated that Arizona was not the first State to pass a Medical Marijuana Law. He reported that in California the percentage of patients with cancer or glaucoma that actually had a prescription for Medical Marijuana was only 2% to 4%. He said the remaining prescriptions went to those with chronic pain or non-descriptive pain with the average patient being between the ages of 17 and 35 years.

Mayor Smith stated that whether we like it or not the issue is if Prop. 203 should pass Medical Marijuana Dispensaries will be allowed and the City will need to make decisions regarding where the dispensaries will be located.

Responding to a question from Councilwoman Higgins, Ms. Spinner explained that, it was her understanding that the State was not required to enforce Federal Laws and the States choice to not enforce Federal Drug Laws would not be a violation. She said that in other states, Federal Law Enforcement had not stepped in when the marijuana was for medical use.

Ms. Spinner reported that DHS had asked that if the City was going to impose zoning regulations on the dispensaries that it does so before DHS began reviewing applications. She said that there is a specific rule that the applicants must certify that the dispensary is in compliance with the local zoning ordinances.

Mayor Smith said that Arizona could have up to 120 dispensaries which is one for every 10 pharmacies.

In response to a question from Mayor Smith, Ms. Spinner explained that the Proposition does not specify that the dispensaries would not be clustered and that DHS has indicated that it was their intention to spread them out equally. She advised that DHS was going to make the number of dispensaries proportional to the population. She said that the Proposition stated that DHS could add more than 120 dispensaries in the State if it was necessary however, there would need to be at least one dispensary in every County. She added that if there was not a dispensary located within 25 miles of a qualifying patient, that patient could grow and cultivate their own marijuana.

Mayor Smith explained that this was not like a free market, and noted, for example, that before the rules were tightened the massage parlors congregated in Mesa because the City's rules were not as strict as other cities. He said that it appeared in this situation that DHS would decide where the dispensaries will be located so there will be a control mechanism at the State level.

In response to a question from Councilmember Somers, Ms. Spinner explained that Vicodin or other controlled substances are approved by the Food and Drug Administration (FDA) and that the FDA imposes rules and regulations for traditional medicines. She said that medicinal use of marijuana would not be regulated by the FDA and was not subject to the rules and regulations of other controlled substances. She stated that counties have the authority to impose health and safety regulations that included where medicines could be sold. She advised that Pima County was considering a requirement that medical marijuana only be sold in pharmacies and added that Maricopa County could possibly impose the same requirement.

Mayor Smith commented that the City could only address the zoning issues surrounding Proposition 203.

Zoning/Civil Hearing Administrator Gordon Sheffield advised that there was legislation under Prop. 203 that authorizes the cities to adopt reasonable zoning regulations that limit the use of the land. He explained that should Prop. 203 pass the City would have 120 days to adopt zoning regulations once the Governor signs that proclamation. He suggested that before the November Planning and Zoning meeting a text amendment to the existing zoning codes be prepared. He said the amendment could be brought back to Council in December or January and would likely have an effective date in February 2011. He stated that this would put the City ahead of the 120 day time period in March 2011. He added that the Arizona League of Cities and Towns had created a model ordinance and that at this time the City was actually ahead of that model.

In response to a question from Mayor Smith, Mr. Sheffield said that a collaboration of cities had been working together to help develop an Ordinance and that the City of Phoenix was leading that effort. He added that Pima County had drafted an Ordinance through the Health Code.

Mr. Sheffield said that Tucson had developed a draft Ordinance specifically related to zoning amendments and that many of the ideas presented today were from Tucson's draft Ordinance. He advised that the proposal that was being explored for the location of dispensaries would be a by-right and not a Council Use Permit in the C2 and C3 Districts. He stated that dispensaries could have one on-site cultivation facility as well and one off-site. He added that a cultivation site would be a land use and would be authorized separately in the C3, M1 or M2 Districts.

Responding to questions from Councilwoman Higgins and Mayor Smith, Mr. Sheffield and Ms. Spinner both advised that the cultivation site would be off-site from the dispensary and would need to be an enclosed and locked facility.

Mr. Sheffield advised that dispensaries would be prohibited in the Industrial and Employment Districts as well as the PEP, M1 and M2 Districts.

Councilmember Richins stated that commercial spaces should be preserved for sales tax producing businesses and from what he could determine sales tax could not be collected on medicinal use.

In response to a question from Councilmember Richins, Mr. Sheffield explained that Commercial Districts were not organized to generate sales tax but were generated by land use activity. He stated that from a land use perspective the indoor activity, traffic and transactions

are considered. He further explained that a medical marijuana dispensary was different from a doctor's office since patients will be going there to make a purchase.

Mr. Sheffield said that a dispensary is basically a pharmacy and that one of the recommendations was that the size be maximized to 2500 square feet, which would be comparable to a small inline store. He stated that the storage area for the marijuana would be 500 square feet with 25% of the space to be used for a customer waiting area. He added that a dispensary could only be operated from a permanent building and marijuana could not be used on site. He also said that there could not be drive-up service, open air seating, or delivery services.

Councilmember Richins remarked that dispensaries could go into vacant check cashing stores. He added that the City had removed the blight of check cashing stores and would now have the blight of marijuana dispensaries.

Mr. Sheffield advised that there were large separation requirements and explained that there could not be more than one dispensary in an intersection unlike the check cashing stores that had more than one store at an intersection.

Responding to a question from Councilmember Kavanaugh, Mr. Sheffield explained that sign regulations had not been proposed and that commercial district regulations on signage would apply.

In response to a question from Councilmember Richins, Ms. Spinner explained that a patient with a qualifying medical condition would be required to go through a process to obtain a certificate from DHS. She said that patients would be issued an identification card that would allow them to buy 2.5 oz of medical marijuana every two weeks. She added that qualifying patients would be placed in the dispensary's system in order to monitor the marijuana dispensed to that patient.

Responding to a question from Councilmember Richins, Ms. Spinner explained that patients would be required to go through the process and provide specific information in order to have an identification card issued from DHS. She added that the dispensaries would be under a great amount of scrutiny and dispensary operators would be required to go through fingerprinting and background checks before they would be permitted to dispense.

In response to a question from Councilwoman Higgins, Ms. Spinner explained that a qualifying patient could designate a caregiver to obtain medical marijuana for them. She said caregivers would be required to be certified with DHS and would have to obtain a separate card for each person they assisted.

In response to a question from Mayor Smith, Mr. Sheffield explained that the current maximum 1,200 foot separation requirement had been extended to 2,400 feet to ensure that only one dispensary could be located in an intersection in a C2 District. He said that the 2,400 foot separation was the same separation used for sexually oriented businesses (SOB), payday loan stores and, pawn shops. He stated that the separation protected classes that include churches, parks, libraries and HOA maintained open spaces and therefore significantly limits the commercially zoned property that is available. He added that the separation requirement from

daycare, schools, preschools and group homes for the handicapped and elderly would be 500 feet. (See Page 12 of Attachment 3)

In response to a question from Councilwoman Higgins, Mr. Sheffield explained that the City plans to cooperate with the Maricopa County Planning Department in terms of where the dispensaries would be located and the separation requirements in the County.

Mr. Sheffield said the dispensaries would also be required to register with Mesa's Planning Division, maintain an active DHS license and comply with all DHS requirements.

Mr. Sheffield continued with his presentation and displayed maps that designated the areas that meet the proposed zoning restrictions for C2 and C3 zoning districts. He explained that after the zoning restrictions and the separation requirements were applied the section of an intersection that could be eligible for use as a dispensary was extremely limited. (See Page 14 of Attachment 3)

In response to questions from Councilwoman Higgins, Mr. Sheffield explained that after applying all the separation requirements the only areas that would meet the requirements were the intersections of Gilbert Road and Southern Avenue and Power and McKellips Roads.

Mayor Smith stated that Mesa's portion of the 120 dispensaries that would be placed in Arizona could be approximately 10. He expressed his concern regarding the City being too restrictive and therefore, not be able to find 10 areas where dispensaries could be placed.

In response to a question from Councilwoman Higgins, Mr. Sheffield explained that including preschools and day care facilities into the separation requirement was an area that was being explored and would further restrict the eligible areas. He stated that massage parlors and tattoo parlors is another overlay of separation that had not yet been researched.

Responding to a question from Councilmember Somers, Ms. Spinner explained that private businesses or corporations could dictate what types of businesses would be allowed in their facility. She said it was possible that corporations and businesses would not allow a dispensary to be located on their property.

Councilmember Somers commented that land owners such as those at Superstition Springs are likely to not allow this type of business and it would appear that dispensaries would be pushed into the areas where revitalizing work was in progress.

In response to a question from Councilmember Somers, Mr. Sheffield explained that having only one or two dispensaries in the City would cover the 25 mile limit that would allow someone to cultivate their own medical marijuana.

In response to a question from Mayor Smith, Mr. Sheffield explained that a Special Use Permit would not be required for a dispensary as it would be a by-right use.

Ms. Spinner advised that the League of Arizona Cities and Towns had been considering a Time of Use Permit.



Mayor Smith stated that specific buildings that could be used for dispensaries need to be identified. He said if Prop. 203 passes dispensaries are going to be here and the City needed to make sure there were acceptable places where they could be located without requiring a Use Permit.

Mr. Sheffield said the approach that has been recommended when considering a medical marijuana dispensary was similar to the approach Council adopted when considering a Sexually Oriented Business (SOB). He explained that very stringent criteria is set and by setting the criteria so high some people decide not to go through the process or that it is too difficult.

Mayor Smith said that dispensaries would be different from an SOB since a dispensary would be a right that was imbedded in the Constitution which is different than a SOB. He added that the City can only dictate where the dispensary can be located and provide a few guidelines.

Mr. Sheffield said that if Prop. 203 passes it will be the will of the people and the City will have to react to that. He stated that the idea was to have reasonable separations to make sure the side effects of the dispensaries remain far away from the protected classes.

In response to a question from Councilmember Somers, Mr. Sheffield explained that this was the first presentation and it has not yet gone before the Planning and Zoning Board. He said that the purpose of today's presentation was to request some policy direction from Council and obtain some basic ideas that would assist in drafting an Ordinance.

Mayor Smith expressed his opposition to a Use Permit and said that it would be a challenge to not push the dispensaries into older developments which may not be the best choice for a dispensary. He suggest that the zoning restriction be reconsidered in order to develop a more even split in regards to locations.

Mr. Sheffield commented that the prevalence of public parks would be higher in East Mesa.

Councilmember Richins expressed his opposition for dispensary locations in a commercial district.

In response to a series of question from Councilmember Richins, Ms. Spinner advised that DHS was required to provide a qualifying patient with a list of dispensaries in the area. She said that it was possible that someone could go through the process to obtain a license and Certification from DHS to sell medical marijuana and then hold on to the license without ever opening a dispensary. She added that DHS would determine if another certification to sell marijuana in that area could be issued.

Responding to a question from Councilmember Higgins, Ms. Spinner said that DHS would impose regulations in regards to the transportation of marijuana from an off-site cultivation facility. She advised that Prop. 203 did not set forth regulations regarding transportation of medical marijuana. She added that she would research whether or not the cultivation facility was required to be in the State of Arizona.

Mr. Sheffield said that depending on the request of Council the next step would be to present the recommendations to the Planning and Zoning Board.

Mayor Smith said that there are some specifics that need to be balanced out so that the regulations were not so burdensome.

Ryan Hurley, attorney with the Rose Law Group, spoke on behalf of their client Community Cannabis Clinic, and said that they were a group of investors that were committed to the safe access of medical cannabis. He stated that the Ordinance was in line with what was being used in other jurisdictions. He advised that there were possible consequences of a 3,000 square foot limitation on a growth facility. He explained that 3,000 square feet would not work for even a small or medium sized dispensary. He said there would need to be more growth facilities or dispensaries would need to go outside the jurisdiction to obtain the marijuana, which would mean increased risks associated with transport. He reported that larger dispensaries tended to be operated by more sophisticated and well capitalized people who have a larger interest in making sure that their business was well run. He also said that most of the problems had been with dispensaries in the smaller type of stores that do not require as much investment or sophistication to operate. He added that their group believed it was prudent not to have a Use Permit as it would open up the possibility of litigation. In addition, he said that the sales tax issue had been researched and that the City could impose a sales tax.

Mayor Smith thanked Mr. Hurley for his comments and said that this was the beginning of the process and that he would have plenty of other opportunities to provide input.

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

There were no reports on meetings or conferences attended.

3. Scheduling of meetings and general information.

Deputy City Manager Kari Kent stated that the meeting schedule is as follows:

Thursday, October 21, 2010, 6:30 p.m. – Building Strong Neighborhoods

Saturday, October 22, 2010, 10:00 a.m. – Mesa Financial Planning, Mesa Convention Center

Saturday, October 22, 2010, 12:00 p.m. – Community Day of Play Falcon Hill Park

Saturday, October 22, 2010, 6:00 p.m. – Double Feature Movie Night, Mesa Amphitheatre

4. Items from Citizens Present.

There were no items from citizens present.

5. Adjournment.

Without objection, the Study Session adjourned at 10:14 a.m.

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SCOTT SMITH, MAYOR

ATTEST:

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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 21<sup>st</sup> day of October 2010. I further certify that the meeting was duly called and held and that a quorum was present.

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LINDA CROCKER, CITY CLERK

baa/bdw  
(attachments – 3)

# Convenience Store Ordinance

Based on

**C**rime **P**revention **T**hrough **E**nvironmental **D**esign  
(CPTED) Principles

Presentation to City Council Study Session

October 21, 2010



# Seeking Direction

The Mesa Police Department is seeking direction from the City Council on moving forward with the proposed Convenience Store Ordinance based on CPTED Principles.



# Goals



- Deter crime through prevention methods
- Reduce crime and calls for service
- Increase successful prosecution of criminal activity occurring at convenience stores
- Provide a safer environment for employees, customers, and community
- Free up police resources

# History



- In June, 2009 the Mesa Police Department presented a proposed CPTED Ordinance and Security Plans to the Public Safety Committee
- Various CPTED Principles were incorporated into the revised City of Mesa Zoning Ordinance
- MPD met with key Stakeholders regarding Security Plans



# History Continued

- Through meeting with Stakeholders, MPD learned an Ordinance was preferred over Security Plans
- MPD returned to the Public Safety Committee for direction regarding an ordinance
- MPD continued to meet with Stakeholders
- In May, 2010 the Public Safety Committee recommended the proposed ordinance be brought to the full City Council for consideration





# Current Status

- MPD brought the ordinance to the full City Council and revised it based on recommendations
- The City Legal Department worked with MPD to format the revised version
- A final Stakeholders meeting was held on October 12, 2010.
- Additional revisions were made to the ordinance with current recommendations to City Council

# Revisions Completed



- Streamlined documentation requirements
- Removed Registration Compliance Decal requirement
- Revised appeals section to identify the City Manager or designee as the hearing authority
- Revised visibility requirements
- Revised language requiring landline telephone access be provided for employees in case of emergencies

# Revisions Completed



- Revised lighting requirement to “Dusk to Dawn”
- Revised language to include beer and other alcohol be secured 2-6 a.m.
- Revised Address Numbers requirement
- Included Security Plan sections
- Other minor language changes to conform with standard City Code



# Additional Revisions

- Changed registration requirement from annual to bi-annual
- Revised preservation of digital video recording requirement from 30 days to 15 days
- Revised availability of digital video recording requirement from 24 hours to 72 hours
- Removed 6" x 6" vision portal requirement on all refuse enclosure gates



# Additional Revisions Cont.

- Changed employee training requirement from annually to bi-annually
- Changed “Violations; Penalties” section to include a set fine penalty in lieu of variant penalties
- Added “or other substantial hardships” to the “Hardship Exception” section
- Changed effective date of ordinance upon adoption from 30 days to 120 days



# Stakeholder Concerns

- Immediate notification and copies of the ordinance be provided to all stakeholders if ordinance is enacted
- Requested a designated board be established to hear all appeals in lieu of the City Manager or designee
- Strongly oppose the “Right to Require Additional Security Measures” section of this ordinance

# What We Are Trying to Accomplish



- **Maximizing police resources out on the streets and in the community by:**
  - Reducing police resources spent on offenses that do not pose a serious safety risk
  - Reducing police resources spent on offenses with no viable information or leads
- **Continuing to collect crime data to track crimes and focus department resources where they will do the most good and be most effective**



# Alternatives

## Alternative “A”

Adopt the ordinance (*removing the Right to Require Additional Security Measures section*) and apply it to existing and future convenience stores

## Alternative “B”

Adopt the ordinance (*removing the Right to Require Additional Security Measures section*) but make it **applicable only** to new builds and remodels (grandfathering existing stores)

## Alternative “C”

Implement an on-line reporting system for offenses under \$100 where there is no viable information available on the suspect (known suspect, vehicle license plate, etc.)



# Questions?



## **Convenience Store Ordinance Proposal**

The ordinance will be drafted as proposed on October 21, 2010.

The ordinance would be a three tier approach.

Initial approach would be for ALL convenience stores in Mesa.

This approach would incorporate certain elements of the new ordinance that would include:

- Registration
- Employee Training

The next tier would be for stores that meet a certain criteria for service calls to the police department. This would be considered stores that have some problems but not considered significant.

Additional elements of the ordinance would be applied to these stores.

These include:

- Cameras
- Storage
- Signs
- Safes
- Lighting

Fines would be administered accordingly.

The final tier approach would include stores that meet a high level of service calls or problem stores that are considered significant.

The entire ordinance would apply to these stores that would include:

- All camera safety conditions
- Visibility
- Any remaining sections in Chapter 21 of the ordinance

The hardship exception can be removed with this three tier approach.

Any remodels or new stores would be required to comply with the entire ordinance.

In summary, the entire ordinance would apply to all store but the full ordinance would impact only the problem stores. This allows stores that currently do not have problems to meet minimum standards.



# Medical Marijuana Initiative Prop. 203

**Presentation to City Council  
October 21, 2010**



# Prop. 203

- If passed, Prop. 203 will allow patients with specific debilitating medical conditions to obtain Department of Health Services (DHS) certification for use of medical marijuana
- To obtain DHS certification, a physician must certify that the patient has a debilitating medical condition

# Prop. 203

- The product would be cultivated and sold through nonprofit Medical Marijuana Dispensaries regulated by DHS
- All dispensaries must receive a registration certificate from DHS
- All patients and caregivers must be registered and obtain an identification card from DHS

# **Prop. 203**

## **QUALIFYING PATIENTS**

**Identifies debilitating diseases or medical conditions that are eligible for treatment – examples include, but are not limited to:**

- **Cancer**
- **Glaucoma**
- **Positive Status for HIV**
- **AIDS**
- **Severe/Chronic Pain**
- **Severe Nausea**
- **Seizures**
- **Severe/Persistent Muscle Spasms (MS)**

# **Prop. 203**

## **QUALIFYING PATIENTS**

- **Qualifying patients with a DHS identification card:**
  - **Can obtain up to 2.5 ounces of marijuana every two weeks from a state regulated dispensary**
  - **Registry cards expire one year after date of issuance**
  - **Must be 18 years of age or older to obtain registry card (under 18, with parent or guardian consent)**

# **Prop. 203**

## **DISPENSARIES**

- **DHS cannot issue more than one dispensary certificate for every 10 pharmacies in AZ**
- **Anticipate approximately 120 dispensaries in AZ**
  - **Can exceed limit if needed to ensure at least one dispensary in each county**
- **DHS has said they intend to authorize dispensaries roughly proportional to population and will try to avoid the 25 mile exception wherever possible**
- **If a person with a card resides more than 25 miles from a dispensary, they are allowed to grow their own marijuana**



# **Prop. 203**

## **DISPENSARIES**

- **Each dispensary can have one cultivation site, which must be an enclosed, locked facility**
- **Dispensaries cannot be within 500 feet of a public or private school**
- **Medical marijuana cannot be used on the dispensary property**

# **Prop. 203**

## **ZONING**

- **Cities and Towns are allowed to enact reasonable zoning regulations that limit the use of land**
- **DHS anticipates having regulations in place 120 days after Governor signs (approximately March 2011)**
- **DHS is strongly recommending that municipalities get zoning regulations in place ASAP**

# Timing for City of Mesa Zoning Amendments

<b>Planning and Zoning</b>	<b>Late November/ Early December</b>
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<b>City Council</b>	<b>January</b>
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<b>Adoption/Effective</b>	<b>February</b>
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# What Others Are Doing

- AZ League of Cities and Towns is creating a model ordinance that should be available later this month
- Pima County has drafted an ordinance, through their health code, requiring a licensed pharmacist or physician for dispensing medical marijuana
- Maricopa County has developed proposed zoning amendments set to go to P&Z Commission on November 4<sup>th</sup> and Board of Supervisors on November 17<sup>th</sup>
- Tucson has developed a draft ordinance limiting the use of land for registered dispensaries and cultivation

# Our Proposal

## Location Requirements

	DISPENSARIES	DISPENSARY OFF-SITE CULTIVATION	CAREGIVER CULTIVATION
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Allowable Locations	C-2, Ltd.Comm. C-3, Gen.Comm.	C-3, Gen.Comm. M-1, Ltd.Ind. M-2, Gen.Ind.	If 25 miles from dispensary, accessory use in any residence district
Specifically Prohibited Locations	PEP, Plan.Emp.Park M-1, Ltd.Ind. M-2, Gen.Ind.		

# Separation Requirements

DISPENSARIES		DISPENSARY OFF-SITE CULTIVATION	CAREGIVER CULTIVATION
2,400 feet	<ul style="list-style-type: none"><li>• Other dispensaries</li><li>• Residential Substance Abuse Treatment Facilities</li><li>• Alcohol Rehab Facilities</li><li>• Correctional Transitional Housing Facilities</li></ul>	None	None
1,200 feet	<ul style="list-style-type: none"><li>• Churches</li><li>• Parks and HOA maintained open spaces</li><li>• Libraries</li></ul>	<ul style="list-style-type: none"><li>• Churches</li><li>• Parks &amp; HOA maintained open spaces</li><li>• Libraries</li></ul>	
500 feet	<ul style="list-style-type: none"><li>• Group homes for the handicapped</li><li>• Schools (K thru 12 included in Prop. 203 language)</li><li>• Day Care / Pre-schools?</li></ul>	None	

# Our Proposal

## Space Requirements

	DISPENSARIES	DISPENSARY OFF-SITE CULTIVATION	CAREGIVER CULTIVATION
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Maximum space	2,500 sq. ft.	3,000 sq. ft.	250 sq. ft. Including storage
Storage	500 sq. ft.	1,000 sq. ft.	
Cust. Floor Space	Min. 25% of Gross Floor Area	NA	
Permanent Bldg	Yes	Yes	

# Other Requirements

## DISPENSARIES

- **Must register with Mesa's Planning Division**
- **Must maintain active DHS licenses/cards and comply with DHS rules and ARS statutes**
- **Cannot have:**
  - **Drive through window service**
  - **Open air seating**
  - **Delivery service**



# Areas Meeting Proposed Zoning Restrictions

