



ITEM P5C
DATE 9-10-09
STUDY SESSION

COMMUNITY & NEIGHBORHOOD SERVICES COMMITTEE

August 27, 2009

The Community & Neighborhood Services Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on August 27, 2009 at 9:07 a.m.

COMMITTEE PRESENT	COUNCIL PRESENT	STAFF PRESENT
Dina Higgins, Chairwoman Dennis Kavanaugh Dave Richins	None	Natalie Lewis Debbie Spinner

1. Items from citizens present.

(See item 3.)

2. Hear a presentation, discuss and provide direction whether to further pursue a program to advertise on bus shelters.

Deputy Transportation Director Mike James and Zoning/Civil Hearing Administrator Gordon Sheffield addressed the Committee relative to this item.

Mr. Sheffield displayed a PowerPoint presentation (A copy is available for review in the City Clerk's Office) and reported that in Mesa's present sign ordinance, transit shelter signs would be included in a category of signage entitled off-site signage or billboards. He read the definition of an off-site sign as follows: "A sign which directs attention for a commercial purpose to a business, commodity, a service, entertainment, or product **not related to the other commercial uses existing on the premises** upon which the sign is located." Mr. Sheffield noted that examples of off-site signs could range from traditional billboards to smaller square foot signs that provide directions, for instance, to a church or facility not located on an arterial street.

Mr. Sheffield provided an extensive historical/legal overview of billboards in the City of Mesa. His comments included, but were not limited to, the following: that prior to 1986, billboards were considered a Council Use Permit in commercial districts and uses by right in industrial districts; that in the mid-1980s, a series of signs were installed on Stapley Drive between the freeway and Baseline Road, which resulted in the City Council ultimately prohibiting new billboards in Mesa; that the billboard industry filed a lawsuit against the City of Mesa and the case (which was joined with a Tucson case that had a similar set of circumstances) was eventually heard by the 9th U.S. Circuit Court of Appeals; that during the same period of time, the Supreme Court

heard a case involving the City of San Diego and ruled that there could be limitations on commercial speech; and that in Mesa's case, the 9th Circuit Court found that such limitations on commercial speech could extend to off-site signs or billboards and the Court upheld the actions of the City of Mesa.

Mr. Sheffield advised that the lawsuit was an extensive legal undertaking for the City and said that the Council's advice to staff at that time was to be extremely cautious with regard to the issue of off-site signs.

Mr. Sheffield further reported that in 1991, the City of Los Angeles took action to prohibit billboards in that community, but "carved out" special exceptions for other types of signs that may be considered technically off-site signs. He stated that one such type of sign was a transit sign, which could be found in rights-of-way adjacent to transit stops that the City would own, lease out and from which it would gain advertising revenue. Mr. Sheffield noted that the billboard industry filed a lawsuit against the City of Los Angeles and said that the case was eventually heard by the 9th Circuit Court. He said that the Court agreed that an exception for transit signs was reasonable and upheld the action of the City of Los Angeles.

Chairwoman Higgins clarified that the reason the City is considering this matter is to address concerns she raised over a year ago regarding how Mesa can assist citizens who use public transit and are impacted by a lack of shade and shelter while waiting for buses and not as a mechanism by which the City can raise revenue.

Mr. Sheffield responded that staff is not questioning the policy, but attempting to understand the parameters under which they would work so that the City did not experience any "unintended consequences."

Mr. Sheffield further remarked that prior to the issuance of a Request for Proposals (RFP), it would be necessary for staff to modify Mesa's sign code, which is part of the Zoning Ordinance, and "carve out" some of the same exceptions that the City of Los Angeles created. He stated that this would require additional research in order to complete the process.

Committeemember Kavanaugh stated that because Arizona is within the jurisdiction of the 9th Circuit Court, Mesa should be consistent with the Court's ruling in the City of Los Angeles case in order to avoid litigation.

Committeemember Richins inquired if transit signs would apply, for example, to signage on City vehicles, street furniture, or garbage cans that are placed in the public right-of-way.

Mr. Sheffield responded that from staff's standpoint, the definition of "transit sign" would govern a fixed sign at a fixed location that conveys a message that is not specific to that site. He added that the types of signs affixed to vehicles would be outside the jurisdiction of the City's sign ordinance.

City Attorney Debbie Spinner clarified that the Los Angeles case was limited strictly to transit shelters and stated that at this time, staff is only bringing forward the option of advertising on those structures.

Discussion ensued relative to various benchmarking findings with regard to Chandler and Phoenix; that Chandler has 50 to 100 transit shelters, which generate an estimated \$54,000 to \$84,000 in revenue per year; that Phoenix has 2,500 transit shelters and receives 50% of the net advertising receipts, with a minimum guarantee of \$1.5 million; and a series of photographs illustrating examples of different kinds of transit shelters in Chandler and Phoenix.

Mr. James noted that staff considered a potential model for advertising at transit shelters based on what Phoenix has established. He highlighted the various components of the model as follows:

Issue Request for Proposals:

- City identifies locations, restrictions and conditions of shelters and their placement.
- Authorizes an exclusive agreement to install, provide funds for City contractor to maintain and sell advertising on transit infrastructure.
- Requires the vendor to maintain shelter and install advertising.
- Establishes cleaning and maintenance routine and establishes fines for non-compliance.
- Establishes financial payment schedule.

Mr. James also spoke regarding various advertising restrictions that have been utilized by the City of Phoenix. (See Attachment 1)

Committeemember Kavanaugh inquired how Mesa would handle requests for advertisements from religious and political organizations, tourist advertisements from other communities (i.e., Las Vegas) and employment advertisements (i.e., Phoenix recruiting Mesa police officers).

Mr. James responded that in speaking with Debbie Cotton, Phoenix's Public Transit Director, she recommended that Mesa restrict its advertising at transit shelters to commodities that can be bought and sold.

Ms. Spinner commented that this is a matter that staff would continue to consider because of First Amendment issues and the fact that "there are limits on your ability to restrict based on content." She acknowledged the Council's sensitivity to those issues and stated that staff would engage in a dialogue with Phoenix to determine how advertising restrictions are implemented in that community in order to achieve the goals of this Council.

Chairwoman Higgins questioned why freedom of speech issues would be involved in this process if the City entered into a private contract with an entity. She suggested that in dealing with a private vendor, the City could inform the entity that "if you don't follow these rules, we're not going into contract with you."

Ms. Spinner responded that because Mesa is "the government," there are certain standards of equality that must be maintained. She stated that there are certain categories of advertising that staff believes it can restrict in their entirety such as illegal activity, sexual materials, alcohol, and tobacco. Ms. Spinner added that staff must "define what it can exclude in its entirety to meet the Council's goals without infringing on any First Amendment issues."

Mr. James reviewed a variety of potential benefits to the City by allowing advertising on bus shelters (See Attachment 2) and also a series of potential risks. (See Attachment 3)

Mr. James further reported that Mesa currently has 794 bus stops and 219 transit shelters. He indicated that the average operations and maintenance (O&M) cost for a full size shelter is \$780 per year and added that the annual O&M cost for the inventory of shelters is estimated at \$150,000.

Mr. James requested input from the Committeemembers with regard to moving this item forward to the full Council for further discussion and direction. He stated that if the direction given by the full Council is to proceed with the process, staff would draft the sign ordinance, which would be presented to the Planning & Zoning Board (P&Z) for input and recommendations, and then forwarded on to the Council for adoption.

Assistant to the City Manager Natalie Lewis clarified that per the direction of the Committee, staff would present this proposal to the full Council. She explained that if the Council directed staff to move the item forward, staff would draft the sign ordinance, which would then be brought back for Council action.

Mr. Sheffield advised that he is currently working on the Zoning Code update and is devoting as much time as possible to that process. He stated that because of limited staff resources, he is the individual who would be delegated to draft the sign ordinance, which would delay the completion of the Zoning Code update.

Committeemember Kavanaugh commented that he is conflicted on this issue, but noted that the community has benefited over time as a result of the City's efforts to regulate billboards and signage. He stated, on the other hand, that he has advocated the need for more bus shelters in Mesa for many years. Committeemember Kavanaugh noted that in his travels to other communities throughout the country, he has seen examples of well designed transit shelters that provide shade and are also clean and well maintained.

Committeemember Kavanaugh further remarked that the needs of public transit users perhaps outweigh his dislike of advertising everywhere and stated that he would be interested in moving this issue forward for further research and discussion. He commented that he foresees challenges with regard to First Amendment issues similar to those encountered by other communities. Committeemember Kavanaugh also noted that as Mesa's population ages, it will be important for the City to accommodate those individuals with more bus shelters. He added that the Council and staff also need to be respectful of Mr. Sheffield's time in terms of drafting the sign ordinance and completing the Zoning Code update.

In response to a question from Chairwoman Higgins, Mr. James explained that Phoenix generally enters into seven year contracts with their transit shelter vendors, but noted that Mesa's staff would prefer shorter contracts of one or two years' duration.

Committeemember Richins concurred with Committeemember Kavanaugh's comments and said that he is "uncomfortable going down this road." He noted, however, that he would support moving this item forward to the full Council.

Chairwoman Higgins stated that it was the consensus of the Committee to move this item forward to the full Council.

Ms. Lewis advised that staff would conduct additional research regarding the advertising restrictions and the other issues discussed this morning. She reiterated that staff would present this item to the full Council and said that if the Council directs staff to pursue a program to advertise on bus shelters, staff would begin to draft the ordinance and establish a timeline with regard to that process. Ms. Lewis added that once the ordinance is approved, staff would draft the RFP and work to implement the program.

Chairwoman Higgins thanked staff for the presentation.

3. Hear a presentation and discuss the volunteer nuisance sign removal program.

Development & Sustainability Department Deputy Director Tammy Albright introduced Neighborhood Services Director Ray Villa, who was prepared to address the Committee relative to this agenda item.

Mr. Villa displayed a PowerPoint presentation (A copy is available for review in the City Clerk's Office) and reported that the Volunteer Bandit Sign Removal Program came about as a result of a recommendation by the City Management Academy. He explained that the group was interested in forming a volunteer program to alleviate Code Compliance officers from picking up "bandit signs" throughout the community. Mr. Villa advised that in August of last year, the first Sign Sweep took place in the area of Val Vista and Southern and stated that because the event was such a success, additional sweeps have taken place in other areas of the community.

Mr. Villa advised that in March of this year, Volunteer Coordinator Katie Brown and a number of volunteers met to formalize the procedures for the program, including the selection of a team leader. He also highlighted the creation of job descriptions for the team leader and team members; various safety and Code training undertaken by the volunteers; and other requirements that the volunteers were required to meet as set forth by the City.

Discussion ensued relative to the fact that each volunteer is required to complete and submit full liability waivers, which are kept on file at the City; that the volunteers wear safety vests and photo ID badges during each Sign Sweep event; that the volunteers sign Volunteer Agreements indicating that they are representing the City in a professional manner and will not confront violators in the field; that the volunteers are instructed to only remove temporary signs on sticks, metal prongs or poles located in City rights-of-way; and that signs on business sites, private property and political or directional signs must not be removed during the Sweeps.

Mr. Villa further indicated that the team leader is responsible for organizing the time and date of the Sign Sweeps. He stated that the volunteers use their own vehicles and work in teams of two during the events. Mr. Villa added that once the volunteers have collected the bandit signs, they are delivered to the City's sign yard.

Ms. Albright continued with the presentation and explained that at the end of every Sign Sweep, the team leader reports the number of signs that have been collected to the Volunteer Coordinator. She also noted that the volunteers continue to collect signs throughout the month and do not limit their activities to the Sign Sweep events. Mr. Albright added that the collected signs that have a value of more than \$25 (i.e., professionally printed signs) must be kept in the City's sign yard for 30 days.

Further discussion ensued relative to the fact that the volunteers have collected 7,034 bandit signs throughout the community; that 32 volunteers are currently participating in the program and have logged in approximately 160 hours, which represents a value to the City of over \$3,000; that the materials collected during the Sweeps are 100% recyclable; and that the monthly Sign Sweeps are saving the equivalent of one Code Compliance Inspector spending 50% of his time performing similar duties.

Ms. Albright also reported that the volunteer team, which is interested in expanding the program, has begun to keep track of additional information to help with possible prosecution. She explained that the information includes the type of sign, (i.e., what is being advertised) and the name and phone number of the company/entity that the sign belongs to. Ms. Albright stated that as of last week, the City sent out 16 courtesy notices advising those violators that they were posting illegal signs and would be cited if they continued to do so.

Committeemember Kavanaugh inquired whether it would be appropriate for staff to publish on the City's web site the names of businesses that have violated the City's sign code or whether staff would have to delay such notification until the entities were convicted. He cited, by way of example, Monterrey Tile, which is located in Gilbert, and has posted thousands of illegal signs in Mesa.

City Attorney Debbie Spinner responded that although she does not believe the City has ever published the names of entities prior to a conviction, she suggested that the City might be able to reflect, for instance, the number of signs that the volunteer team has collected from a particular business or entity.

Committeemember Kavanaugh stated that Ms. Spinner's suggestions might assist the community and put certain businesses on notice that the City has issues with them.

Ms. Albright noted that although the success of the program is due to the efforts and hard work of all the volunteers, she wished to recognize the dedication and service of the following individuals: Code Compliance Officer II Jay Close, Volunteer Coordinator Katie Brown, and Volunteer Grady VanNoy.

Nate Caine, a Mesa resident, commented that he would like to participate in the Volunteer Bandit Sign Removal Program, but is precluded from doing so because the City does not offer health insurance to the volunteers. He expressed support for the City prosecuting the sign violators and concurred with Committeemember Kavanaugh that Monterrey Tile litters his neighborhood every weekend with hundreds of signs. Mr. Caine also suggested that the City create an informational pamphlet that the volunteer team could distribute to local businesses and homeowners associations to inform them of their rights regarding bandit signs.

Deputy City Manager Kari Kent informed the Committee that she and Ms. Albright previously discussed the concept of moving ahead with the development of an informational component that would educate property owners relative to what they can and cannot do concerning the removal of bandit signs. She stated that it would also be appropriate to include similar information on the City's web site.

Chairwoman Higgins thanked staff for the presentation.

4. Adjournment.

Without objection, the Community & Neighborhood Services Committee meeting adjourned at 9:56 a.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Community & Neighborhood Services Committee meeting of the City of Mesa, Arizona, held on the 27th day of August, 2009. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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(attachments – 3)

Advertising Restrictions

1. False, misleading or deceptive
2. Relates to an illegal activity
3. Is explicit sexual materials, obscene by City standards, or is material harmful to minors
4. Advertises the use of alcohol or tobacco products
5. Depicts violence and/or anti-social behavior
6. Includes language which is obscene, vulgar, profane or scatological
7. Relates to instruments, device and items, products or paraphernalia which are design for use in connections with specified sexual activities
8. The City shall have the right to utilize all unsold advertising space at sole discretion

Potential Benefits

- Installation of more shelters and amenities
- Provide a new revenue source
- Vendor pays for capital installations
- Cleaning and maintenance by vendor
- Additional shelters increased use and ridership
- Unused advertising space can be used by the City

Potential Risks/Drawbacks

- Visual clutter
- Negative community response
- Possible long-term maintenance responsibility
- Considerations for additional costs:
 - Staff resources (Engineering, Real Estate, Transportation)
 - Ongoing management of the program