



OFFICE OF THE CITY CLERK

PUBLIC SAFETY COMMITTEE

October 27, 2022

The Public Safety Committee of the City of Mesa met in the lower-level meeting room of the Council Chambers, 57 East 1st Street, on October 27, 2022, at 8:30 a.m.

COMMITTEE PRESENT

David Luna, Chairperson
Mark Freeman
Kevin Thompson

COMMITTEE ABSENT

None

STAFF PRESENT

Scott Butler
Holly Moseley
Jim Smith

Chairperson Luna conducted a roll call.

1. Items from citizens present.

There were no items from citizens present.

2-a. Hear a presentation, discuss, and provide a recommendation on proposed amendments to Title 6 (Police Regulations), Chapter 12, of the Mesa City Code, entitled "Offensive, Excessive and Prohibited Noises".

Assistant Chief Ed Wessing introduced Police Legal Advisor Geoffrey Balon and displayed a PowerPoint presentation on proposed amendments to the Mesa City Code. (**Attachment 1**)

Assistant Chief Wessing stated the proposed amendment restructures the current ordinance language and provides clarity to the community, officers, and prosecutors. He pointed out the challenges of enforcing the noise ordinance under the existing code. He noted the intent is to create similarity with other local municipalities and to be mindful of the urban area, businesses, and industries within Mesa. (See Page 2 of Attachment 1)

Assistant Chief Wessing outlined the proposed code language and identified enforcement factors considered. (See Page 3 of Attachment 1)

Mr. Balon stated the current and proposed language contain similar prohibitions. He provided examples of noise exemptions and indicated changes to activities permitted under the zoning code would now have factors to consider. He noted landscape maintenance and landscaping at golf courses and private parks between 5:00 a.m. and 8:00 p.m. is now exempted. (See Pages 4 through 6 of Attachment 1)

In response to comments from Committeemember Freeman, Assistant Chief Wessing stated the proposed amendments would allow officers to enforce unreasonable sound in residential areas before 10:00 p.m. He pointed out the difficulty of enforcement under the current code prior to 10:00 p.m. He explained voluntary compliance is offered as a first choice to violators; and if the officers return, a citation may be issued.

Responding to a question from Chairperson Luna, Mr. Balon confirmed an entity hosting a special event could receive an exemption by obtaining a Special Use Permit (SUP). He noted the event would be subject to limitations based on the event type.

In response to an additional question from Chairperson Luna, Assistant Chief Wessing stated officers often respond to special events that did not obtain an exemption or permit. He reported that in these situations, the event could be shut down and officers will educate the event holders on the requirement to get a special event permit or request a temporary exemption.

Mr. Balon noted the City Manager may require the SUP applicant to provide event notice to the surrounding properties.

Responding to an inquiry from Chairperson Luna, City Attorney Jim Smith stated language was added allowing the approved SUP to extend the time past 10:00 p.m.

In response to a question from Committeemember Freeman, Mr. Smith stated there is an uncodified section of the code which allows the City Manager or designee to grant a temporary exemption for unique situations, including harvesting and farm activity during specific hours. He noted the City Manager could grant a standing exemption without a request.

In response to a question from Committeemember Thompson, Mr. Smith explained the intent is to mirror other cities and separate the zoning code from the police code. He indicated best practice would be to allow the City Manager to grant an exemption for these unique situations.

Mr. Balon outlined current and proposed language regarding penalties. (See Page 7 of Attachment 1)

It was moved by Committeemember Freeman, seconded by Committeemember Thompson, that the recommendations on the proposed amendments to Title 6 (Police Regulations), Chapter 12, of the Mesa City Code entitled "Offensive, Excessive and Prohibited Noises" be forwarded to the full Council for discussion and consideration.

Upon tabulation of votes, it showed:

AYES – Luna-Freeman-Thompson
NAYS – None

Carried unanimously.

2-b. Hear a presentation, discuss, and provide a recommendation on a proposed amendment to Title 6 (Police Regulations), Chapter 1 (General Offenses), of the Mesa City Code, by adding a new section 22 entitled, "Interfering with a Peace Officer".

Assistant Chief Wessing and Mr. Balon displayed a PowerPoint presentation regarding proposed amendments to the Mesa City Code. **(See Attachment 2)**

Assistant Chief Wessing stated the code addition refers to interfering with the lawful operations of a police officer. He indicated peace officers in Mesa had seen an increase in police interference in recent years, including incidents that involved filming officers from close proximity. He remarked that, unlike other cities, Mesa does not have a local code prohibiting a person from interfering with law enforcement activities. He explained in July 2022, the Mesa Police Department (MPD) began encrypting its radio traffic and delaying the release by one hour, which helped decrease the number of police interference incidents; however, there is still a need to reduce these incidents. (See Page 2 of Attachment 2)

Assistant Chief Wessing commented the goal is to protect the integrity of investigations and the safety of officers while still allowing for the expression of constitutionally protected rights, including the filming of officers. He stated that voluntary compliance is ideal and always the best outcome, but local law enforcement is sometimes needed. (See Page 3 of Attachment 2)

Assistant Chief Wessing reviewed the proposed language, adding the language is similar to neighboring cities whose ordinances have been in effect for many years and have not been enjoined or ruled unconstitutional. (See Page 4 of Attachment 2)

Assistant Chief Wessing confirmed the MPD supports citizens constitutionally protected right to film police officers in public. He pointed out a section of House Bill (HB) 2319 which prohibited police officers from being filmed within eight feet, which the City found to be problematic, and officers were prohibited from enforcing that section as it was later deemed unconstitutional. He noted A.R.S. §13-2413 regarding a person knowingly disobeying a reasonable verbal order and interfering with a crime scene investigation. (See Page 5 of Attachment 2)

Responding to comments by Committeemember Thompson, Assistant Chief Wessing explained that every investigation is unique and to place a rigid measure for all incidents would not be appropriate. He stated officers are trained to allow lawful order on the front end by removing an individual to continue with the investigation. He emphasized the importance of protecting those at risk. He described the referenced amendment as a helpful tool for officers while providing protections to those involved.

Committeemember Freeman emphasized the importance balancing the first amendment with officer safety. He stressed the need to protect the crime scene, the community, and the residents. He noted the priority of ensuring policing ordinances are up to date.

It was moved by Committeemember Thompson, seconded by Committeemember Freeman, that the recommendations on the proposed amendments to Title 6 (Police Regulations), Chapter 1 (General Offenses), of the Mesa City Code, be forwarded to the full Council for discussion and consideration.

Upon tabulation of votes, it showed:

AYES – Luna-Freeman-Thompson
NAYS – None

Carried unanimously.

3. Adjournment.

Without objection, the Public Safety Committee meeting adjourned at 8:53 a.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Public Safety Committee meeting of the City of Mesa, Arizona, held on the 27th day of October 2022. I further certify that the meeting was duly called and held and that a quorum was present.



HOLLY MOSELEY, CITY CLERK

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(Attachments – 2)

City of Mesa

City Code Update

Title 6, Chapter 12

Offensive, Excessive, and Prohibited Noises

October 27, 2022

Assistant Police Chief Ed Wessing
Geoff Balon, Police Legal Advisor



Noise Ordinance

- **Restructure to clean-up language**
- **Create similarity with other municipalities**
- **Mindful of urban area, and the businesses and industries that operate within Mesa, including aeronautical and industrial.**

Suggested Language: General Prohibition with Factors

- **Violation to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any loud, unnecessary, or unusual sound or noise that disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person.**
- **Factors to Consider:**
 - **Volume and intensity of noise and background noise**
 - **Proximity of the source to residential structures**
 - **Nature of zoning from which the sound or noise emanates**
 - **Recurrent, intermittent, or constant**
 - **Time of day, especially between 10:00 p.m. and 6:00 a.m.**
 - **Whether enhanced by electronic or mechanical means**
 - **Whether can be controlled without unreasonable effort or expense to the creator**

Current Code

- Prohibits unreasonable noise coming from:
 - Vehicles
 - Animals
 - Sound amplification systems in or on vehicles
 - Property
 - People

Suggested Code

Same or Similar Prohibition



Current Code

- Allows temporary exemptions to be granted by the City Manager after considering 7 factors.
- Responsible Parties
 - Owner or property manager when the person responsible for an activity that violates the Code cannot be found.
- Enforcement
 - Police Department and any other City Department designated by the City Manager may enforce

Suggested Code

- Clarifies how to submit an exemption request and where it is filed if granted



Suggested Language: Penalties

- **Changes fines (Within 24 Months)**
 - **First Offense**
 - **Current: \$250**
 - **Suggested: No less than \$250 & up to \$1500**
 - **Second Offense**
 - **Current: \$500**
 - **Suggested: No less than \$500 & up to \$2500**
 - **Third Offense**
 - **Current: \$2500**
 - **Suggested: No less than \$750 & up to \$2500**
- **Adds Habitual Offender**
 - **Class 1 misdemeanor if a person violates on 3 separate dates within 12 months.**
 - **Fine no less than \$500 and up to \$2500**



Questions ?



City of Mesa

City Code Addition

Title 6, Chapter 1, Section 22

Police Interference

October 27, 2022

Assistant Police Chief Ed Wessing
Geoff Balon, Police Legal Advisor



Background

- **Peace officers in Mesa have seen an increase in police interference in recent years, including incidents that involved filming officers from close proximity.**
- **Most cities/towns in the Phoenix area have a local code prohibiting a person from interfering with law enforcement activities.**
- **Mesa does not currently have a city code prohibiting police interference.**
 - **MCC 8-6-27 prohibits obstructing those enforcing livestock and large animal regulations**
 - **MCC 6-4-10 prohibits interfering with those enforcing animal control regulations**
- **July 2022: Mesa Police Department, similar to other jurisdictions, began encrypting its radio traffic and delaying release by one hour.**
 - **Helped decrease the number of police interference incidents.**
 - **There is still a need to reduce these incidents.**

Goal of New Ordinance

- **Protect the integrity of investigations and safety of officers, while still allowing for expression of constitutionally protected rights, including filming of officers.**
- **Voluntary compliance is ideal and always the best outcome, but enforcement of a local law is sometimes needed.**

Proposed Code Language

It is unlawful for any person to willfully hinder, resist, delay, obstruct or prevent a peace officer in the discharge of their official duties, or refuse to obey any lawful order issued by a peace officer engaged in the discharge of their official duties. A person shall not be in violation of this section based on using words alone.

- **Language similar to Gilbert, Chandler, Tempe, and Glendale whose ordinances have been in effect for many years and have not been enjoined or ruled unconstitutional.**

Recent Legislation

- **HB2319 (2022)**
 - **Illegal to film police officers within 8 feet with some exceptions.**
 - **September 9, 2022: U.S. District Court (Arizona) enjoined HB2319 from going into effect on the grounds that it was unconstitutional.**
 - **Proposed ordinance does not suffer from the problems HB2319 has.**
- **A.R.S. 13-2413 (Effective September 24, 2022)**
 - **Class 2 misdemeanor for a person to knowingly disobey a reasonable verbal order to remain off the premises of a possible crime scene or otherwise interferes with a peace officer's crime scene investigation.**
 - **Effective at "crime scenes" but fails to address civil violations such as traffic stops, civil city code violations, and non-criminal matters.**



Questions ?

