



City Council Report

Date: November 7, 2022
To: City Council
Through: Scott Butler, Assistant City Manger
From: Ken Cost, Police Chief
Ed Wessing, Assistant Police Chief
Subject: Amending Title 6, Chapter 1 of the Mesa City Code (Police Regulations – General Offenses) by adding a new Section 22 entitled “Interfering with a Peace Officer” prohibiting the interference of a peace officer in the discharge of their official duties or refusing to obey any lawful order issued by a peace officer engaged in their official duties. (Citywide)

Purpose and Recommendation

Adopt an Ordinance amending Title 6, Chapter 1, of the Mesa City Code (Police Regulations – General Offenses) by adding a new Section 22 entitled “Interfering with a Peace Officer” making it a class 3 misdemeanor 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 their official duties.

Background and Discussion

Peace officers in Mesa have seen an increase in police interference in recent years, including incidents that involved filming officers from close proximity. The Mesa Police Department is committed to protecting 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.

Most cities/towns in the Phoenix area, including Phoenix, Tempe, Scottsdale, Chandler, Gilbert, Glendale, Goodyear, Peoria, and Maricopa have a local code prohibiting a person from interfering with law enforcement activities. These local codes have been in effect for years and have not been ruled unconstitutional.

Mesa does not currently have a city code prohibiting police interference. However, there are two city codes, specifically, Mesa City Code 8-6-27 and 6-4-10 that prohibit interfering with those that enforce livestock and large animal regulations, and animal control regulations.

In July 2022, the Mesa Police Department, similar to other jurisdictions, began encrypting its radio traffic and delaying release by one hour. This has helped decrease

the number of police interference incidents. However, there is still a need to reduce these incidents.

A.R.S. § 13-2402, Obstructing Governmental Operations, prohibits obstructing governmental operations if, by using or threatening to use violence or physical force, such person knowingly obstructs, impairs or hinders the performance of a governmental function by a public servant acting under their official authority or the enforcement of the penal law or the preservation of the peace by a peace officer acting in their official capacity. “Physical force” is defined as force used upon or directed toward the body of another person and includes confinement. While effective when a person uses or threatens to use “violence or physical force,” this statute is not applicable to situations where a person obstructs police operations and does not use physical force. The proposed Ordinance, like most other local codes, does not require physical force to be enforced.

On July 6, 2022, the Arizona Governor signed HB2319 which would have made it a class 3 misdemeanor to film police officers within 8 feet with some exceptions. On September 9, 2022, the U.S. District Court (Arizona) enjoined HB2319 from going into effect on the grounds that it was unconstitutional. The proposed Ordinance does not suffer from the problems HB2319 has and is substantially similar to other local codes in Arizona that have not been ruled unconstitutional. In addition, the proposed Ordinance instructs officers and the public that words and recording alone do not constitute hindering, resisting, delaying, obstructing or preventing official duties of a peace officer for purposes of this Ordinance.

On September 24, 2022, A.R.S. § 13-2413 became effective making it a 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. While effective at “crime scenes,” this statute fails to address civil violations such as traffic stops, civil city code violations, and non-criminal matters. The proposed Ordinance could be used when peace officers in the discharge of their official duties for criminal and civil enforcement, and other official duties.

This Ordinance will allow officers to protect the integrity of investigations and their safety while still allowing for expression of constitutionally protected rights.

Alternatives

Leave Mesa City Code Title 6, Chapter 1 unchanged.

Fiscal Impact

There is no cost to the Mesa Police Department or City of Mesa to amend Mesa City Code Title 6, Chapter 1.

Coordinated With

The City Attorney’s Office