

# COUNCIL MINUTES

June 11, 1998

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 June 11, 1998 at 7:30 a.m.

## COUNCIL PRESENT

Mayor Wayne Brown  
Jim Davidson  
John Giles  
Keno Hawker  
Bill Jaffa  
Dennis Kavanaugh  
Pat Pomeroy

## COUNCIL ABSENT

None

## STAFF PRESENT

C.K. Luster  
Vince Anderson  
Don Ayers  
Pauline Backer  
Wayne Balmer  
Denise Bleyle  
Steve Burg  
Tanya Collins  
John Gendron  
Linda Crocker  
Gerry Gerber  
Joe Holmwood  
Harry Kent  
Karen Kille  
Ron Krosting  
Dorinda Larsen  
Larry Lines  
Greg Marek  
Frank Mizner  
Keith Nath  
Ellen Pence  
Andrea Rasizer  
Tom Remes  
Jenny Sheppard  
Jan Strauss

## STAFF PRESENT (CONT)

Ursula Strephans  
Walter Switzer  
Doug Tessendorf  
Jamie Warner  
Mindy White  
Paul Wilson  
Larry Woolf  
Christine Zielonka  
Others

## OTHERS PRESENT

Judy Adams  
Lisa Bickel  
Kenneth Brunsdale  
J. Denton Dobbins  
Matt Koglmeier  
Gerald Lewis  
Victor Linoff  
Bruce Myerson  
Ron Peterson  
Kevin Theriot  
Carol Tipotsch  
Deborah Whitehurst  
Others

(Items on the agenda were discussed out of order but for purposes of clarity will remain as listed on the agenda.)

### 1. Review and consider position concerning group homes.

Community Development Manager Wayne Balmer provided the Council with brief background

information relative to the group home issue and discussed staff's recommendation that the Community Development Department delay action on this matter pending the receipt of additional information for review and consideration.

Mr. Balmer informed the Council that attorney Bruce Myerson, with the firm Steptoe & Johnson, who has represented the City in various cases, is present to provide input regarding this matter.

Mr. Myerson and his Assistant, Lisa Bickel, addressed the Council regarding this matter. Mr. Myerson stated that he has researched applicable Federal laws and the City's Zoning Ordinance and has spoken with representatives of the Administrative Office of the Courts which funds the program that is at issue and which administers the contract with the Youth Development Institute. Mr. Myerson added that he has also spoken with representatives of the Juvenile Court in an effort to better understand the process and has been in contact with neighborhood representatives.

Mr. Myerson referred to a handout distributed to the members of the Council and stated that there are three Federal laws which govern the City's ability to zone facilities such as the one currently under discussion: 1) the Fair Housing Act, 2) the Americans With Disabilities Act, and 3) the Rehabilitation Act. Mr. Myerson questioned whether the juveniles, who have been adjudicated sex offenders and who have been placed in this facility, are considered handicapped under the law and therefore entitled to the protections provided by these laws which prohibit municipalities from housing discriminations against people who are handicapped. Mr. Myerson stated that the Americans With Disabilities Act contains an exclusion in the definition of handicapped for individuals with sexual behavior disorders but added that the exclusion is not present in either the Fair Housing or Rehabilitation Acts.

Mr. Myerson stated that preliminary discussions with representatives of the Juvenile Court has indicated that it is likely that it can be demonstrated that an individual who is adjudicated as a sex offender would have a sexual behavior disorder. Mr. Myerson added that the investigation has also uncovered the fact that the youths also have emotional illnesses which are considered a handicap under all of the laws. Mr. Myerson expressed the opinion that the issue requires additional research in order to provide the Council with recommendations on the manner in which to best proceed with this matter.

Councilmember Kavanaugh commented that the situation constitutes a national issue and stated that Councilmember Walters and Community Development Manager Wayne Balmer attended a session of the National League of Cities and Towns in March of this year where this issue was discussed. Councilmember Kavanaugh added that more recently the League conducted an in-depth discussion of this issue.

Councilmember Kavanaugh commented that a solution under consideration is the amendment of the Fair Housing Act to enable the Act to co-exist with the Americans With Disabilities and the Rehabilitation Acts. Councilmember Kavanaugh noted that the League is actively pursuing this matter and is seeking amendments to the Fair Housing Act.

Councilmember Pomeroy stressed the importance of being responsive to the concerns of the neighbors.

In response to a question from Councilmember Pomeroy, Mr. Myerson stated the opinion that he will be able to provide the Council with recommendations in approximately one week.

Discussion ensued relative to the fact that objective evidence is required in order to render a decision, the fact that decisions which place the juveniles in the group homes are made with judicial involvement, the possibility of challenging the judicial process, conducting interviews with probation officers, and the importance of community safety.

In response to a question from Vice Mayor Giles, Mr. Balmer reported that the City of Mesa's Zoning Code, licensing provisions and regulatory provisions have adopted more specific definitions for the various types of citizens with disabilities that can be regulated within the community. Mr. Balmer pointed out that the City adopted ordinances and regulations which are virtually identical to those adopted by the City of Phoenix. Mr. Balmer noted that staff utilized handicapped and group homes for the handicapped definitions from the Fair Housing Act in an effort to duplicate the Federal legislation. Mr. Balmer noted that the cities of Tempe, Gilbert and Chandler adopted the same ordinance as Mesa.

It was moved by Vice Mayor Giles, seconded by Councilmember Pomeroy, that pending further Council action, staff be directed to hold in abeyance the current application and all future group home applications involving residents suffering from sexual behavior disorders and/or residents who may pose a threat to the safety of the community pending further research and consideration.

Councilmember Jaffa concurred with Vice Mayor Giles' remarks and stated the opinion that the City has a basic responsibility to act in a manner that will provide stability and ensure safety throughout our communities.

Carried unanimously.

Vice Mayor Giles clarified that the current Council action preserves the status quo while additional research is conducted to arrive at an appropriate course of direction.

It was moved by Vice Mayor Giles, seconded by Councilmember Jaffa, that staff also be directed to prepare, for the purpose of Council discussion, amendments to the Zoning Code that will revise the ordinance regarding group homes that provide treatment for sexual disorders and other disorders that may pose a threat to the community.

Carried unanimously.

Mayor Brown announced that he will allow the three prescheduled public opinion appearances and three speakers under items from citizens present to address the Council regarding this issue at this time.

\* Prescheduled public opinion appearances (maximum of three speakers for three minutes per speaker).

a. Hear from Matt Koglmeier regarding the recovery home issue.

Matt Koglmeier addressed the Council regarding this issue and stressed the importance of uniting as a whole to protect the citizens of Mesa from the possible dangers associated with the establishment of a group home for juvenile sexual offenders in residential neighborhoods throughout the City. Mr. Koglmeier concurred that immediate action must be initiated to ensure that the City's ordinances and laws are sufficient to protect the citizens from inherent dangers. Mr. Koglmeier commented that steps should also be initiated to ensure that the targeted youths are placed in an area and setting that will benefit them and assist them in their rehabilitation efforts.

b. Hear from Kevin Theriot regarding the Youth Development Institute.

Kevin Theriot presented the Council with five questions and answers relative to this matter which, in his opinion, indicate that adequate neighborhood protection and measures to gauge the effectiveness of groups homes have not been taken into consideration. Mr. Theriot expressed the opinion that placing groups of juvenile sexual offenders together does not encourage healthy behavior and requested that the Council initiate appropriate action to ensure the safety of the community.

c. Hear from J. Denton Dobbins, Jr. regarding the recovery home issue.

J. Denton Dobbins, Jr. addressed the Council relative to juvenile sexual offender group homes and advised that he is the co-founder and counsel for the Arizona Crime Free Multi-Housing Association. Mr. Dobbins stated that criminals are not a protected class and added that adjudicated youths should not be protected. Mr. Dobbins stressed the importance of adopting adequate legislation to protect the innocent youths and citizens of Mesa.

\* Items from citizens present (maximum of three speakers for three minutes per speaker).

Gerald Lewis, a neighborhood Block Watch captain, stated the opinion that the group homes are improperly supervised and that juvenile offenders should be held accountable for their actions. Mr. Lewis spoke in support of adopting an ordinance that will allow the City of Mesa to control and regulate group homes and thereby protect citizens throughout the community.

Kenneth Brunsdale informed the Council that he has previously worked in a State mental hospital for the criminally insane and is familiar with problems associated with sexual offenders. Mr. Brunsdale stated the opinion that group homes cannot adequately supervise the number of individuals assigned to each home and urged the Council to take into consideration the needs of the neighborhood and the safety of its citizens.

Mayor Brown thanked the speakers for their input and emphasized that the members of the Council are sensitive to their concerns and will work diligently to arrive at an acceptable solution to the problem. Mayor Brown urged the citizens to contact their congressional representatives regarding this issue.

1.1. Review items on the agenda for the June 15, 1998 Regular Council meeting.

All of the items on the agenda were reviewed by Council and staff with no formal action taken. There was specific discussion relative to the following agenda items:

5. Consider the following liquor license applications:

\*b. RAMNIK P. GANATRA, AGENT

In response to a question from Councilmember Hawker relative to this application, Tax and Licensing Administrator Larry Lines advised that the City of Mesa has ceased to perform food audits since the State became actively engaged in the auditing process. Mr. Lines added that the State could be asked to investigate any licensee which the Council believes warrants additional review.

Councilmember Hawker stated the opinion that justifiable reasons for the issuance of this license have not been provided and requested that this item be removed from the Consent Agenda. Mayor Brown advised that this item will be removed from the Consent Agenda.

6. Consider the following contracts:

\*1. Gilbert Road Wall and Cul-de-Sac Improvements, Southern to Broadway Roads.

Councilmember Hawker indicated that he has a potential conflict of interest in connection with the matter currently under discussion which he wanted recorded in the minutes of the meeting and because of such conflict of interest he would refrain from voting upon or otherwise participating in any manner in connection with same.

Mayor Brown advised that this item will be removed from the Consent Agenda.

7. Introduction of the following ordinances and setting June 29, 1998 as the date for the public hearing on these ordinances.

\*a Amending Section 10-13-18 of the Mesa City Code designating preferential lanes.

In response to a request from Councilmember Pomeroy, Transportation Director Ron Krosting provided a brief overview of this agenda item. Mr. Krosting explained that the proposed ordinance will assist staff in clarifying the usage of bicycle lanes.

8. Consider the following resolutions:

- \*a. Authorizing the City Manager to execute a Disposition and Development Agreement with the City of Mesa and the First United Methodist Church of Mesa, Inc.

In response to a question from Councilmember Kavanaugh, Redevelopment Director Greg Marek and Real Estate Services Director Doug Tessorf discussed the process that is followed by the City regarding group home relocations and the issuance of Council Use Permits.

Community Development Manager Wayne Balmer advised that the City follows the Federal guide to relocations.

(Councilmember Pomeroy was excused from the remainder of the meeting at 8:51 a.m.)

- 11. Consider the following cases from the Planning and Zoning Board and possible adoption of the corresponding ordinances:
  - d. Z98-30 1744 North Lindsay Road. This case involves conversion of a residence for use as a craft boutique.

Mr. Balmer stated that a number of residents in the vicinity would prefer that the area remain rural and are protesting the requested zoning change. Mr. Balmer noted that staff and the Planning and Zoning Board support the approval of the zoning request and added that because of the neighbors' protest, a  $\frac{3}{4}$  vote will be required to approve this case.

Carol Tipotsch, the applicant in this case, provided the Council with brief background information relative to her craft boutiques, Lavender & Old Lace, and indicated her willingness to work with the neighbors to improve the overall aesthetics of the neighborhood.

- \*h. Z98-34 Northeast corner of University and Stapley Drive. This case involves development of a grocery store retail center. W.A.M.P.A. and SRP, owners.

In response to a question from Councilmember Davidson relative to declaring a potential conflict of interest regarding this agenda item based on the fact that Councilmember Davidson is employed by Salt River Project (SRP), Environment Attorney Steve Burg indicated that City Attorney Neal Beets is pursuing the establishment of guidelines in this area and indicated that a conflict should be declared at the time discussion among the Council occurs.

- i. Z98-35 East of the southeast corner of Broadway and Higley Roads.

Mr. Balmer advised that the neighbors and representatives from Homes by Judi have resolved their differences and this item may be placed on the Consent Agenda.

Mayor Brown advised that this item will be placed on the Consent Agenda.

- k. Z98-39 The northeast corner of Southern Avenue and Val Vista Drive.

Mr. Balmer advised that the neighbors and the applicant have reached an agreement regarding this case and the matter may be placed on the Consent Agenda.

Mayor Brown advised that this item will be placed on the Consent Agenda.

2. Information concerning the proposed Five-Year Capital Improvement Program.

Budget Director Jamie Warner informed the Council that final adoption of the Five-Year Capital Improvement Program will occur on June 29, 1998.

3. Discuss and consider a request to establish a local historic landmark overlay district for Irving School located at 155 North Center.

Redevelopment Director Greg Marek, Historic Preservation Committee Chairman Victor Linoff and Downtown Development Committee Chairman Ron Peters addressed the Council regarding this agenda item.

Mr. Marek briefly discussed a proposal requesting that the Council vote to establish a local historic landmark overlay district for the Irving School, located at 155 North Center Street, by rezoning the property from TCC to TTC HP. Mr. Marek noted that the building is currently owned by the City of Mesa and is occupied by the Mesa Arts Center.

Mr. Linoff informed the Council that the purpose of the historic landmark overlay district is to recognize and preserve Mesa's cultural, historical and architectural heritage. Mr. Linoff added that the zoning is intended to stabilize neighborhoods through the preservation of historic and cultural resources and maintenance of the existing environment, and to preserve the diverse architectural styles and patterns of development and design preferences that reflect phases of the City's history. Mr. Linoff stated that the district encourages complementary, contemporary design and construction.

Mr. Linoff advised that the proposed designation will assist efforts to place the Irving School on the National Register of Historic Places and emphasized the importance of preserving this landmark building.

Councilmember Kavanaugh commended those involved for their efforts to preserve historical buildings such as this within the City of Mesa and stated that he supports the proposed recommendations.

Councilmember Jaffa indicated that the Council is committed to preserving historical landmark buildings within the City of Mesa but stressed the importance of developing an overall proposal for the entire downtown area rather than one particular area or site at a time.

It was moved by Councilmember Jaffa, seconded by Councilmember Hawker, that discussion and

consideration of this item be continued to allow additional time to research and develop a proposal for an overall historic preservation plan for the entire downtown area.

Councilmember Hawker commented that although he agrees that certain historical buildings should be preserved, he has concerns regarding the fact that an historic building designation would have the effect of limiting the ability of the Council to render decisions regarding such buildings. Councilmember Hawker added that he has not had an opportunity to review the overall plans for this particular quadrant and agreed that a delay would provide additional time to research this matter.

Discussion ensued relative to the fact that a five-year comprehensive plan has been adopted by the City, and the fact that the designation will not prevent a building from being moved or demolished but will provide a one-month delay prior to the action taking place.

Mayor Brown indicated that he supports the historic landmark overlay district designation but said that he would be willing to delay action on this item to allow the newly appointed Councilmembers an opportunity to further review this matter. Mayor Brown stated that this item should be the subject of a future Council Policy Session.

Mayor Brown declared the motion carried unanimously by those present.

4. Hear a presentation and consider adoption of a Public Art Plan.

Arts Administrator Gerry Gerber introduced Deborah Whitehurst, representing the Freeman/Whitehurst Group, to the members of the Council. Ms. Gerber referred to a handout and slides displayed in the Council Chambers and briefly outlined the contents of a public art plan entitled "Imagine Mesa."

Ms. Gerber advised that the City of Mesa established a Public Art Plan by the adoption of Resolution No. 7037 and noted that the plan provides an approach to the program and recommendations for policies, procedures and special projects.

Discussion ensued relative to civic artists, a recommendation that Building a Healthier Mesa create an arts team to work with neighborhoods on neighborhood-based art projects, the fact that the Mesa Arts Center, through its class offerings, should utilize public artist/teachers to work with Building a Healthier Mesa art team and civic artists on neighborhood projects, art recommendations and priority site locations, the importance of community involvement, funding priorities, and proposed budgeting for the project.

Councilmember Kavanaugh commended Ms. Gerber and everyone involved for their efforts to develop a Public Art Program for the City of Mesa. Councilmember Kavanaugh stated that the plan will provide diverse opportunities to the citizens of Mesa.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Davidson, that staff's recommendations relative to the adoption of a Public Art Plan be approved.

Mayor Brown declared the motion carried unanimously by those present.

5. Discuss and consider scheduling a review of the Paz de Cristo Council Use Permit.

Neighborhood and Community Assistance Director Tanya Collins addressed the Council relative to this agenda item and referred to a staff report and recommendations distributed at the meeting.

Ms. Collins stated that staff has attended several meetings with Judy Adams, Chairman of the Kleinman Park Neighborhood Group, in an effort to address and resolve neighborhood concerns. Ms. Collins added that a successful meeting was recently held between the involved parties, including Father Dale from St. Timothy's Catholic Community, the sponsors of Paz de Cristo, Joyce Faith, the Director of Paz de Cristo and Human Services Coordinator Karen Kurtz. Ms. Collins reported that the group has agreed to work together to pursue a solution to the homeless situation in the neighborhood.

Ms. Collins informed the Council that staff is recommending that the Neighborhood and Community Assistance Office continue to actively seek public and private partnerships which will produce new ways to discourage the presence of homeless people in the Kleinman Park area. Ms. Collins added that the proposal will require the involvement of residents, the Mesa Police Department, social service agency outreach workers and assistance from both Paz de Cristo and St. Vincent de Paul dining rooms to hold their homeless guests as accountable as possible for their actions.

Ms. Collins advised that should the Council approve staff's recommendations, all parties involved have agreed that staff will appear before the Council within six to eight months after the opening of new men's shelter to present an updated report. Ms. Collins added that at that time Paz de Cristo will re-evaluate their operation as it relates to serving food to homeless people at their facility and the Council will once again review the Council Use Permit to determine whether additional adjustments are required. Ms. Collins informed the Council that in the interim, staff will continue to report to the Council on the status of the group's efforts to resolve neighborhood concerns.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Hawker, that staff recommendations relative to this agenda item be approved.

In response to a question from City Manager Charles Luster, Ms. Collins advised that the Council Use Permit, Ordinance No. 2769, must be amended.

Councilmember Kavanaugh amended his motion to direct staff to proceed with the process to amend the Council Use Permit as outlined in their recommendations.

Councilmember Hawker seconded the amendment to the motion.

Mayor Brown declared the motion carried unanimously by those present.

6. Further discussion and consideration concerning the construction and funding for the Main Street Streetscape Project.

Mayor Brown indicated that he had a potential conflict of interest in connection with the matter currently under discussion which he wanted reflected in the minutes of the meeting and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

Mayor Brown yielded the gavel to Vice Mayor Giles for discussion and action on this agenda item.

Mr. Luster advised that staff has developed a revised funding proposal for Council consideration and distributed copies of the revision. Mr. Luster commented that the Council has awarded a contract for the construction of the Main Street Streetscape Project but noted that funding was not provided. Mr. Luster reported that staff is recommending that the Council direct staff to proceed with the entire project, that the project be awarded as advertised, and that funding be provided as outlined. Mr. Luster discussed project phasing, financing and project scheduling. Mr. Luster added that Environmental Attorney Steve Burg has concurred that the City may utilize Highway User Revenue Funds (HURF) for a portion of the project.

Councilmember Kavanaugh commended Mr. Luster and staff for their efforts in developing an alternative funding project and stated that he supports the recommendations.

Councilmember Jaffa also complimented staff on their proposed recommendations.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Jaffa, that staff's recommendations relative to the scheduling and funding of the Main Street Streetscape Project be approved.

Upon tabulation of votes, it showed:

AYES - Davidson-Giles-Hawker-Jaffa-Kavanaugh  
ABSENT - Pomeroy  
ABSTAIN - Brown

Vice Mayor Giles declared the motion carried unanimously by those present and voting.

(With action on this agenda item completed, Vice Mayor Giles yielded the gavel to Mayor Brown.)

7. Acknowledge receipt of minutes of meetings of various boards and committees.

a. Historic Preservation Committee meeting held May 14, 1998.

b. Museum and Cultural Advisory Board meeting held May 28, 1998.

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Giles, that receipt of the

above listed minutes be acknowledged.

Mayor Brown declared the motion carried unanimously by those present.

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

Mayor Brown advised that there were no reports on meetings and/or conferences attended.

9. Scheduling of meetings and general information.

City Manager Charles Luster advised that the meeting schedule is as follows:

Thursday, June 18, 1998, 7:30 a.m. – Council Study Session

Thursday, June 18, 1998, Finance Committee Meeting - Immediately following the Study Session

Wednesday, June 24, 1998, 4:00 p.m. – Police Committee Meeting

Friday, June 26, 1998, 7:30 a.m. – Study Session

Friday, June 26, 1998, Fire Committee Meeting - Immediately following the Study Session

12. Adjournment.

Without objection, the Study Session adjourned at 9:55 a.m.

Carried uanimously.

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WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, 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 11th day of June 1998. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_ 1998

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BARBARA JONES, CITY CLERK