

COUNCIL MINUTES

January 8, 1998

The City Council of the City of Mesa met in a Policy Session in the lower level conference room of the Council Chambers, 57 East 1st Street, on January 8, 1998 at 4:03 p.m.

COUNCIL PRESENT

Mayor Wayne Brown
Pat Gilbert
John Giles
Dennis Kavanaugh
Wayne Pomeroy
Claudia Walters

COUNCIL ABSENT

Joan Payne

STAFF PRESENT

C.K. Luster
Wayne Balmer
Neal Beets
Denise Bleyle
Sandra Brown
Jack Caroline
Dennis Compton
Linda Crocker
Luigi Digirolamo
John Gendron
Mike Hutchinson
Lars Jarvie
Barbara Jones
Richard Kasper
Harry Kent
Wayne Korinek
Dorinda Larsen
Jeff Martin
Frank Mizner

STAFF PRESENT (CONT.)

Ruth Anne Norris
Ellen Pence
Bryan Raines
Andrea Rasizer
Tom Remes
Becky Richardson
Mindy White
Christine Zielonka
Others

OTHERS PRESENT

Bev Hart
Keno Hawker
Joan Newth
Others

Mayor Brown excused Councilmember Payne from the meeting.

1. Discuss and consider establishment of a Housing Rehabilitation Revolving Load Fund.

Housing Director Jack Caroline distributed brochures relative to current housing programs to the members of the Council and briefly highlighted staff's recommendation that the City revise the current CDBG/HOME funded Rehabilitation Programs and create a Revolving Loan Program.

Mr. Caroline informed the Council that a majority of the City's current rehabilitation programs are grant programs and require no financial participation or repayment by the homeowner. Mr. Caroline added that once the funds are expended they cannot be retrieved and said that many of the low-income homeowners are able and willing to make payments towards upgrading and improving their homes. Mr. Caroline noted that on occasion, homeowners have refinanced their homes after the rehabilitation was completed and then acquired additional consumer debt. Mr. Caroline discussed the fact that staff is proposing that the City's current

rehabilitation programs be converted into Revolving Loan Programs which will have the effect of creating a 'revolving fund' that will allow the City to serve an increased number of low-income families and eventually reduce the amount of Federal funds required to maintain the programs.

Mr. Caroline added that the proposal would also allow homeowners to participate in improving their homes and said that this type of program is currently in use among a number of cities throughout the United States.

Councilmember Walters commended Mr. Caroline on the effort that was expended on the preparation of a thorough proposal.

In response to a question from Councilmember Walters, Mr. Caroline stated that no one would be denied assistance under this program and that everyone who is served now will continue to be served.

Mayor Brown and Vice Mayor Gilbert thanked staff for their presentation.

2. Discuss and consider establishment of an Airport Influence Area and Consideration of Notification and Sound Attenuation Regulations surrounding Williams Gateway Airport.

Community Development Director Wayne Balmer briefly discussed the importance of establishing an Airport Influence Area (AIA) to provide notification to purchasers of property who may be affected by noise, overflights, and general operating conditions of nearby airports.

Councilmember Kavanaugh complimented Mr. Balmer on the thorough background information submitted to Council for their review. Councilmember Kavanaugh stated that he supports Option No. 1 contained in the report, which states as follows: Pass a resolution recommending that the Williams Gateway Airport Authority (WGAA) proceed with a public hearing for designating an Airport Influence Area for Williams Gateway Airport and the process to amend the Zoning Ordinance and Uniform Building Code with regard to Airport Overlay Zoning and Noise Attenuated Construction Standards. This option would direct staff to schedule the required public hearings, and to prepare the necessary public notices and staff reports.

Mayor Brown indicated that the proposal is appropriate and thanked staff for their input.

3. Further discussion and consideration concerning proposed development fees.

Assistant to the City Manager Bryan Raines requested input from the Council relative to a previous report they were provided outlining proposed development fees for the City of Mesa. Mr. Raines stated that input has been received from both the Arizona Multihousing Association and the Chamber of Commerce and discussed staff's intention to respond to a number of questions and issues raised by those groups. Mr. Raines noted that staff is recommending that this issue be placed on the agenda of the January 20, 1998 Regular Council Meeting for introduction, with final adoption at the February 2, 1998 Regular Council Meeting.

In response to a question from Vice Mayor Gilbert, Mr. Raines stated that in accordance with State law, development fee ordinances must be adopted 90 days prior to implementation. Mr. Raines added that the Council could delay action on this issue until the second Regular Council Meeting in March and still have sufficient time to adopt the fees to correspond with the adoption of the Fiscal 1998-1999 budget.

Vice Mayor Gilbert questioned whether the issue of development fees should be considered in conjunction with the proposed 1/4 cent sales tax. Vice Mayor Gilbert added that political implications that might affect

the implementation of the development fees and a possible 1/4 cent sales tax increase. Vice Mayor Gilbert expressed the opinion that additional expert opinions relative to the community's perception of the issue should be pursued.

Mayor Brown concurred with Vice Mayor Gilbert's remarks and stressed the importance of providing accurate information to the citizens relative to the proposed development fees and said that a public relations/education campaign should be developed to explain the issue. Mayor Brown stated the opinion that the issue of development fees should be tied into the sales tax issue and that both matters should be explained simultaneously. Mayor Brown recommended that the citizens be made aware of the importance of the monies generated by the proposed development fees and sales tax and the benefits that will be realized in the future as a result of both issues.

Councilmember Giles agreed with Vice Mayor Gilbert and Mayor Brown's comments and emphasized the importance of ensuring that information provided to the citizens is accurate. Councilmember Giles added that citizens should be provided adequate time in which to present their input relative to both the development fees and the proposed sales tax.

Councilmember Kavanaugh stated that although he supports staff's recommendations, he also agrees that a delay for the purpose of providing additional information to the citizens of Mesa is worthwhile and appropriate.

In response to a comment from Councilmember Walters, Mayor Brown indicated his intention to meet with major developers to discuss both sides of residential, industrial and commercial development and agreed that a specific program should be developed to present to citizens and concerned developers.

Councilmember Pomeroy stressed the importance of not delaying a Council decision on this issue for an extended period of time.

Mayor Brown thanked Mr. Raines for his input.

4. Discuss and consider adoption of an ordinance relating to fireplace restrictions.

Environmental Programs Director Christine Zielonka addressed the Council relative to a proposal to amend the City Code to restrict wood burning fireplaces and to require clean burning fireplaces in new construction. Ms. Zielonka stressed the importance of reducing local particulate pollution that is produced when wood or other solid fuels are burned in a device that is not clean burning.

Ms. Zielonka advised the Council that the proposed ordinance is based on a model ordinance that was passed by the Maricopa Association of Governments (MAG) Regional Council and noted that the town of Gilbert and the cities of Phoenix, Scottsdale and Tempe have adopted similar ordinances. Ms. Zielonka requested Council support.

Mayor Brown indicated that the City of Mesa should proceed with the adoption of the ordinance as proposed.

5. Discuss and consider adoption of an ordinance relating to leafblower restrictions.

Environmental Programs Director Christine Zielonka discussed staff's recommendation that the Council approve a proposed amendment to the City Code to restrict the use of gas or electric powered leaf blowers.

Ms. Zielonka reported that it is estimated that the average leafblower contributes approximately five (5) pounds of total particulates per unit per day.

Councilmember Walters expressed concern for homeowners who utilize leafblowers for landscaping their homes.

Vice Mayor Gilbert recommended that staff attempt to closely define leafblower uses in an effort to address concerns voiced relative to banning the equipment. Vice Mayor Gilbert also expressed concerns regarding increased landscaping costs which would occur should the Council vote to ban the use of leafblowers in the City of Mesa. Vice Mayor Gilbert stated the opinion that at a minimum, the blowing of leaves and debris into the streets should cease, and added that the Council should consider allowing leafblowers to be utilized in enclosed areas and for residential landscaping.

Ms. Zielonka indicated her intention to obtain additional information relative to this issue from surrounding cities for distribution to the Council.

Councilmember Kavanaugh stressed the importance of proceeding with this matter.

Mayor Brown expressed the opinion that adoption of an ordinance is not as critical as initiating specific air quality measures within the City of Mesa.

Vice Mayor Gilbert recommended that the issue of leafblowers be placed on the City's Web Page to solicit input.

Mayor Brown thanked Ms. Zielonka for her input.

6. Discuss and consider adjusting salaries for Mayor and Councilmembers.

Vice Mayor Gilbert expressed the opinion that the City may attract a larger number of qualified candidates for public office as a result of the proposed adjustment in salary for Mayor and Councilmembers. Vice Mayor Gilbert added that the current salaries are not appropriate for the responsibilities of the position and urged the Council to increase compensation levels.

Mayor Brown advised that he has contacted Mayors from surrounding cities and learned that the compensation listed for both Mayor and Councilmembers is in addition to added incentives such as the use of a City-owned vehicles and/or vehicle expenses and expense accounts.

Mayor Brown expressed the opinion that a citizen's financial situation should not limit his ability to run for office and stressed the importance of the Mayor and Council's presence at City Hall. Mayor Brown commented that in order to provide maximum service to the citizens of Mesa, the members of the Council must devote a significant amount of their time to the position. Mayor Brown stated that the positions of Mayor and/or Councilmember should not be limited to financially independent citizens. Mayor Brown emphasized that although he supports increased salaries for the members of the Council, he would not support an increase in the Mayor's salary until his term of office has expired.

Councilmember Walters commented on the extensive amount of time required to perform the responsibilities of the position of Councilmember and commented that she is fortunate that her job flexibility allows her to serve in this capacity. Councilmember Walters noted that Mesa is the 51st largest City in the United States

and compensation for the Mayor is \$19,000 annually. Councilmember Walters recommended that the Councilmembers who are currently serving in their positions receive an appropriate increase in salary, with the exception of Mayor Brown, who has indicated his intention to decline any increase in salary during his term in office.

Councilmember Pomeroy stated the opinion that the members of the Council serve because they have a sincere interest in the community. Councilmember Pomeroy added that the current salaries are inadequate and, at a minimum, should be on a par with the salaries of the members of the Tempe City Council. (See attachment.)

Councilmember Giles commented that although no one runs for public office for monetary reasons, everyone should be able to afford the opportunity of seeking positions on the Council. Councilmember Giles said that he does not want to initiate action that would benefit him personally, however, in his opinion, an increase in salaries in the future is warranted and appropriate. Councilmember Giles indicated that he supports an increase in compensation similar to Scottsdale's current Council compensation and said that the Mayor's salary should be significant based on the responsibilities and time demands of the position.

Councilmember Kavanaugh reported that 12 years have elapsed since the last increase in compensation for the members of the Council and expressed the opinion that an adjustment is overdue. Councilmember Kavanaugh pointed out that based on the number of hours spent by Councilmembers in carrying out their responsibilities, their average compensation is at the minimum wage level. Councilmember Kavanaugh added that a car allowance should also be considered and said that the Councilmembers' positions should remain part time while the Mayor's position should be full time.

Mayor Brown recommended that staff prepare an ordinance that would increase the salaries of both the Mayor and the members of the Council. Mayor Brown added that the proposed ordinance should contain language pertaining to the fact that the salary increases would be implemented in the future and that the Mayor and members of the Council would not benefit from the increases in salaries during their current terms in office. Mayor Brown added that should members of the current City Council be elected for additional terms in office, they would become eligible for the increase in compensation at that time.

In response to questions from Vice Mayor Gilbert, City Attorney Neal Beets advised that the proposed ordinance, if adopted, would not become effective until June 2000, in accordance with City Charter requirements.

Mayor Brown agreed with Councilmember Giles' recommendation that increased compensation levels be similar to those currently in effect in the City of Scottsdale.

In response to a question from Councilmember Kavanaugh relative to revising the City's current expense reimbursement policy, Mr. Beets noted that the City Charter allows the reimbursement of actual and necessary expenses and explained that an automobile allowance would require a City Charter revision.

Mayor Brown indicated that specific salary increase amounts will be discussed in the future and directed staff to prepare a draft ordinance for Council consideration.

7. Discuss and consider a proposal for the issuance of "no-point" tickets for speeders exceeding the speed limit by a specified limited range.

Councilmember Giles advised that he supports the photo radar program and noted that the program has been extremely effective. Councilmember Giles expressed the opinion that photo radar poses a number of unnecessary consequences, particularly for citizens who struggle to afford automobile insurance.

Councilmember Giles recommended that the Council consider continuing the current fines but eliminating points against a license which results in increased insurance rates. Councilmember Giles stated the opinion that the proposal would not hamper the effectiveness of the City's traffic safety program and, at the same time, would not create a hardship for individuals as far as their ability to afford liability insurance. Councilmember Giles commented that the City should inflict the least punitive method possible and stressed the importance of modifying behavior while remaining within appropriate limits.

In response to a question from Councilmember Kavanaugh, Councilmember Giles indicated that he envisions the issuance of no point tickets for normal drivers who suffer an occasional lapse in adhering to legal speed limits. Councilmember Giles indicated that he would support limiting the issuance of no-point tickets per person to once every 24-months.

Discussion ensued relative to the fact that the State law sets the parameters on license points, the fact that the City of Mesa would be requesting that the State agree to allow the City not to assess points on infractions that would otherwise require a penalty, and the possibility that the proposal may be challenged by insurance companies.

Councilmember Walters indicated her willingness to support the issuance of no point tickets on a one-time only per person basis.

Mr. Beets discussed the current study on photo radar being undertaken by Arizona State University researchers and stated the opinion that changing the variables at this point in time might undermine the credibility of the study.

Mayor Brown and Councilmember Pomeroy indicated that they do not support proceeding with this proposal.

Councilmember Walters commented that although she is interested in pursuing this issue, she agrees that introducing a new variable at this time would affect the ASU research which is currently underway. Councilmember Walters added that this issue be explored at a later date.

Vice Mayor Gilbert agreed that the program should not be pursued at this time and recommended that issues such as traffic safety improvement be pursued.

Councilmember Giles informed the Council that although he supports proceeding with the proposal, he will postpone raising the issue for a period of one year to allow the ASU researchers to prepare their report.

8. Discuss and consider a proposal for a City Charter amendment to not require a general election when the number of Council Candidates on the ballot is no more than two times the seats up for election. The number of primary top vote receivers equal to the available seats would be declared elected in the primary election.

Councilmember Giles stated the opinion that the City Charter should be amended to eliminate the requirement for a general election when the number of Council candidates on the ballot is no more than two times the seats that are up for election. Councilmember Giles noted that the number of primary election top vote receivers equal to the available seats would be declared elected in the primary election.

Vice Mayor Gilbert commented that candidates who participate in a general election are afforded an opportunity to do additional campaigning.

Councilmember Giles discussed costs associated with general elections and stated the opinion that the proposal will encourage candidates to increase their campaign efforts for the primary election.

Councilmember Pomeroy commented that during a previous election the candidate who received a larger number of votes at the primary election received the lowest amount of votes at the general.

Vice Mayor Gilbert indicated his willingness to work with Councilmember Giles on developing proposed City Charter language relative to this issue for future discussion and consideration.

9. Discuss and consider a proposal to allow freeway landmark monument signs

Community Development Director Wayne Balmer advised that this issue is on the agenda in response to continued requests from the development community to erect large, free standing signs that can be viewed from the freeway.

Councilmember Kavanaugh spoke in opposition to approving this request and noted that First Lady Johnson worked diligently 32 years ago to rid the country of visual pollution.

Mayor Brown stated that the members of the Council present at the meeting unanimously oppose this issue.

10. Scheduling of meetings and general information.

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

Friday, January 9, 1998, 7:30 a.m. - Council Study Session

Mr. Luster advised that Fire Chief Dennis Compton is now an official resident of the City of Mesa.

11. Adjournment.

Without objection, the Policy Session adjourned at 6:50 p.m.

WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

Attachment

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Policy Session of the City Council of Mesa, Arizona, held on the 8th day of January 1998. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 1998

BARBARA JONES, CITY CLERK

ATTACHMENT

MAYOR AND COUNCIL MONTHLY SALARIES

January 1997

<u>City/Town</u>	<u>Mayor</u>	<u>Council</u>
Phoenix	\$3,125	\$1,500
Tucson	\$2,000	\$1,000
Mesa	\$1,600	\$ 800
Glendale	\$1,500	\$ 750
Tempe	\$2,259	\$1,130
Scottsdale	\$2,800	\$1,350
Chandler	\$ 900	\$ 600
Yuma	\$ 375	\$ 300
Peoria	\$ 700	\$ 400
Gilbert	\$ 800	\$ 400
Apache Junction	\$ 600	\$ 400

June 1997:

Gilbert	\$1,300	\$ 900
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OPINION

City Attorney's Office

to: Mayor and City Council
from: Neal Beets
subject: Salary Increases
date: Monday, January 5, 1998

A few months ago we touched on the subject of Mayor and Councilmember salary increases. Under Section 202 of the Mesa City Charter, the Council can increase salaries by adopting an ordinance. The legal question came up about when such a salary increase took effect. Could a salary increase be effective only *after* incumbents were reelected following the passage of the salary increase ordinance? Or could a salary increase take effect during the middle of a Councilmember's term?

Based on the language of the City Charter and a 1990 Opinion by the State Attorney General, I believe a salary increase ordinance becomes effective - both as to incumbent Councilmembers as well as newly elected Councilmembers - no sooner than six months after passage of the ordinance increasing Council salaries, or before the Councilmembers elected at the next succeeding regular City Council election take office the first meeting in June, whichever occurs later. The City Council election need not involve the reelection of an incumbent before that incumbent qualifies for the salary increase. As explained below, incumbents *can* qualify for a salary increase in the middle of their term.

Section 202 of the City Charter says

The Council may by ordinance change the compensation of the Mayor or Councilmembers, but any ordinance increasing such salaries shall not become effective within six (6) months or prior to the commencement of the terms of the Councilmembers elected at the next succeeding regular election.

The Charter does not prohibit incumbent Councilmembers from receiving a salary increase in the middle of their term. The Charter does create a qualification for incumbents to receive a salary increase: The salary increase must have a delayed effective date of at least six months. (Note, that for the first 30 days of the six month waiting period, voters could gather signatures forcing a referendum election on the salary increase ordinance at the next succeeding City election.) Moreover, the salary increase cannot take effect until new Councilmembers are seated in June

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following the next succeeding City election. That way all Councilmembers, incumbents and the new group of elected Councilmembers, receive the salary increase at the same time.

It is true that the Arizona Constitution generally forbids the compensation of public officers from being increased or diminished during their term of office. Ariz. Const. art 4, part 2, section 17. However, that same section of the Constitution contains an exception for multimember public bodies whose members' terms are staggered such as on a city council. Based upon this exception to the Constitution, and his reading of two Arizona Supreme Court cases, the Arizona Attorney General concluded that "a city council member may *receive* a salary increase in the middle of the council member's term..." AG Op. I90-094 (emphasis added) (opinion attached).

The rationale for the Arizona Supreme Court cases seems to be that it is unfair for some members of a multi-member body to receive more or less compensation than others, when they are doing essentially the same job. *See County of Maricopa*, 52 Ariz. 19, 24, 780 P.2d 989, 994 (1964). Examples of multi-member public bodies with staggered terms include the Arizona Supreme Court itself, the Maricopa County Superior Court, the Arizona Corporation Commission, county boards of supervisors, school board members, and city and town councils. All of these public bodies have members whose terms are staggered, yet who perform essentially the same function within their public body. Therefore, under the Constitution, they may receive the same compensation for performing their duties even if this means an incumbent's salary increases during the middle of the incumbent's term to keep up with the salary for newly elected or appointed members of that body.

Under these circumstances, where members serve staggered terms and perform essentially the same functions, the Arizona Supreme Court has invoked that clause of the Constitution, quoted above, allowing incumbents in mid-term to receive a salary increase at the same time as a new member of that body receives a salary increase.

Almost twelve years ago, in 1986, when the Mesa City Council last increased the salary for the Mayor and Councilmembers, the ordinance adopted by the Council expressly *excluded* incumbent Councilmembers from the increase until after they had specifically been reelected at a subsequent election. This resulted in some City Councilmembers making more money than others for performing the same public service and the same job. However, that action in 1986 was taken before the State Attorney General issued his 1990 opinion saying that incumbent city council

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members *may* receive a salary increase in the middle of the council members' term under the Arizona Constitution.

In conclusion, according to the state Attorney General's Opinion and two state Supreme Court cases, there is no legal impediment to increasing the salaries of the Mayor and all other Councilmembers at the same time - incumbents as well as newly elected Councilmembers. Any increase, however, must follow the adoption of the salary increase ordinance by at least six months and occur no sooner than the June installation of new Councilmembers at the next succeeding City Council election.

Let me know if you have any questions.

c: C.K. Luster, Mike Hutchinson

Office of the Attorney General of the State of Arizona

Re: I90-094 (R90-135)

1990 Ariz. AG LEXIS 95

October 22, 1990

The Honorable Bob Denny
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

You asked whether article 4, part 2, section 17 of the Arizona Constitution permits a sitting member of a city council to receive a salary increase approved prior to the beginning of a new term.

Article 4, part 2, section 17 in relevant part provides:

nor shall the compensation of any public officer, other than a justice of the peace, be increased or diminished during his term of office; . . .

Accordingly, on its face, Article 4, part 2, section 17 permits a sitting city council member to receive a salary increase at the beginning of a new term.

Also, we conclude that city council members who are in middle of their terms may receive an increase of salary if the following provisions of article 4, part 2, section 17 apply:

provided, however, that when any legislative increase or decrease in compensation of the members of any court or the clerk thereof, or of any board or commission composed of two or more officers or persons whose respective terms of office are not coterminous, has heretofore or shall hereafter become effective as to any member or clerk of such court, or any member of such board or commission, it shall be effective from such date as to each thereof.

The Arizona Supreme Court has said that this constitutional provision added in 1930 was adopted "for the express purpose of insuring that all members of a court, board, or commission composed of more than one person, who were doing in substance, the same work, should at all times receive the same salaries." **County of Maricopa v. Rodgers**, 52 Ariz. 19, 25, 78 P.2d 989, 991-992 (1938). The provisions of article 4, part 2, section 17 have been applied to the acts of a city council See **Davis v. Hale**, 96 Ariz. 219, 225, 393 P.2d 912, 916 (1964).

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Therefore, we conclude that a city council member may receive a salary increase in the middle of the council member's term, provided the increase meets the conditions of article 4, part 2, section 17 of the Arizona Constitution, or at the beginning of a new term.

BOB CORBIN, Attorney General

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