

Heber City Corporation
City Council Meeting
October 20, 2011

6:00 p.m.

WORK MEETING

The Council of Heber City, Wasatch County, Utah, met in **Work Meeting** on October 20, 2011, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips

Council Members Eric Straddeck
Robert Patterson
Alan McDonald
Benny Mergist

Excused: Nile Horner

Also Present: City Manager Mark K. Anderson
Deputy City Recorder Michelle Kellogg
City Engineer Bart Mumford
Planning Director Tony Kohler
Police Chief Ed Rhoades

Others Present: Sky Galli, Cory Bastian, John Crofts, Martin VanRoosendaal, II, William Bordy, Adrienne Mills, Joe Mara, Larry Newhall, Jeff Bradshaw, Anne Bernal, Matt Bernal, Jessica Andrus, Joel Andrus, Riley Hill, Shauna Hill, Darryl Glissmeyer, Ann Moulton, Byron Horner, Austin Horner, Kendra Johnson, Tom Melville, Jay Price, Becky Price, Jerry Duke, Ami Morales, Gabby Vazquez, and others whose names were not legible.

Mayor Phillips opened the meeting and excused Council Member Horner. He indicated Council Member Mergist wanted to make a statement.

Council Member Mergist's comments verbatim:

I've had an interesting last month and a half. We haven't had too many meetings. I haven't had any, I'd say, communications with my fellow Councilmen.

I've taken this opportunity to try and make some phone calls and do a little research and study forms of government, and I also went through the City and talked to some City officials, or different City officials; talked to some State officials; talked to a few of my friends back east and a lot of the citizens. I've had a lot of phone calls; I've had a lot of emails; I've had some really odd emails.

You know, Heber City is a funny kind of place. It seems to me there are, I'm going to say two minority factions exempt of the actual citizenry of Heber City. There is one faction that I've been getting communication from that would attempt to persuade me to let the City Administration run

unabated without the City Council being involved in any decisions that they make or anything they do; and I don't think that's fair.

On the other side, there's a small group of people that would seem to force me into a corner to do things that I don't think are right, with the sole purpose of eliminating a couple of employees in the City. I just don't want to participate in that. I've been a participant in some of that, and you know, it's one thing for City Councilmen to hold City employees' noses to the grindstone and make them accountable; It's another thing to cross the line to what I refer to as harassing the City employees. And I think, and I'll speak for myself, in the past two years I've gone overboard into the point of harassing City employees, in-particular our Public Works director and Mr. Mark Anderson. Mr. Anderson knows my view on the form of government that we have. I'm not a big fan of having a City Manager; I would like to go back to the way the system was before, where we have a strong Mayor and City Councilmen.

In the last couple of years we've made an attempt to pass City ordinances and do things to achieve a purpose that I don't think are right. Therefore, tonight, to cut to the chase, I'm going to withdraw my support for a Finance Director at this time; I'm also not going to participate in any ordinance changes to reduce the duties of any City employee including the City Manager; I'm not going to change any City ordinances or codes other than for clarification purposes only, and I can only speak for myself.

In trying to do what's trying to be done, I think we are trying to change the form of government that we have, and I don't want to do that. It's a slippery slope that we're going to head down if we do that; if we put City employees in the direct responsibility of the City Council we're going to have City employees living in fear of their jobs every election, wondering if they're going to have a job or not, or are these City Councilmen that we bring in, are they going to bring in other employees to take their place. Other than a City Manager answering to the City Council, I think that all the other employees should fall under that City Manager position. As far as a Finance Director, I'm not totally against one. I think it would be a good thing to have one. I think in this budget year I'm not going to support that; I'm going to withdraw my support, but I'm not against looking at it. I think it is something that would probably be handled on a part-time basis, and take those duties away from the City Manager so he's not having to fool with that type of thing.

So having said that; I don't know what needs to happen next Mr. Mayor, that's my position.

Those of you who know me, I'm not from the valley. I've lived here awhile; I have no agenda here; I've come to this decision on my own and with the help of people in Heber City. I can't tell you the amount of phone calls and emails I've had from people telling me that this is just not the time to create this type of position where we're in a fiscal pinch; where we're not hiring employees and we're not replacing employees that leave. Maybe in the future we can look at it again and do something differently. As far as for me, I'm just not going to participate in making a travesty of the type of government that we have. But, if I had the support to go back to the strong Mayor/City Council and eliminate the City Manager position I'd be fully on board with that; but I don't have that support. So I'm not going to pursue it any further. I appreciate the time that you guys have given me and we can move forward.

Mayor Phillips felt this was an appropriate time to address the Finance Director item on the agenda.

Ordinance 2011-14 – An Ordinance creating a Finance Director position and outlining duties of the position: Council Member McDonald read a prepared statement:

1. *Over the past few months the City Council has been updating its ordinances on the duties and powers of the City Treasurer, Recorder, and Auditor. Tonight, for those who have been asking why the Council is doing this, I hope to explain the reasoning behind these updates and why a Director of Finance is needed. First, the current City code has not been update with the new state code revisions, so in order to get the City in compliance with state code regarding the duties and powers on fiscal responsibilities and procedures, we needed to make the changes; second, the changes will lessen the burden on the City manager, and allow him to optimize his role managing the City ; third, we will have clear separation of the duties and powers of those handling tax payers money, and finally it will help safe guard our City by reducing our risk of a possible misuse of City funds.*

2. *Allow me to explain my first point; that the current City code has not been update with the current state code revisions. In a meeting with an assistant to the Attorney General of the State of Utah, the request came from her that the City of Heber needed to update their City codes to get in compliance with state code.*

As part of that request the Council has been going over the previous mentioned City codes dealing with the fiscal procedures of the City. The City's current fiscal system allows for personnel to perform dual duties, something the state has asked us not to do. In fact the state code says; that the City auditor, which is the Budget officer of the City, cannot counter sign the City's checks, which we are currently doing. I repeat; this is in violation of the state code. Section 10-6-143

Furthermore, the City's code concerning the Treasurer, Recorder, and Auditor makes reference to several sections of the Utah state code that no longer exist. These references and our current descriptions of these positions are therefore inaccurate, obsolete, and require updating. The state has made a few changes in regards to these positions since our City code was last rewritten, and, as a result, the City Council is required to make these changes to our own City code. The powers, functions, and duties of these positions are described in great detail in the Utah Uniform Municipal Fiscal Procedures Code. As to the City Treasurer, Recorder and Auditor, the duties, functions, and powers of these positions have no connection to the type or form of government the Municipality is operating under. There is a specific, standard protocol that the State of Utah expects all Municipalities to follow. By updating our own codes, we have adhered to the Utah Uniform Municipal Fiscal Procedure codes. If there is anyone in disagreement with what has been passed by this Council regarding these updates, I would advise them to voice their concerns to the Utah State Legislators who wrote that code. The Heber City Council is simply being compliant with the State Code pertaining to Fiscal Procedures by making these updates.

3. *I would like to ask, 'How many of the City Council members have actually read the full Utah Municipal Fiscal Procedures Code?' I would advise you all to do so if you have not, because it makes what we are discussing here very clear. **You may also be interested to know that over the past few months you have read parts of it in the ordinances that have dealt with the City T and R.** The Utah Municipal Fiscal Procedures Code defines the City budget officer as the Auditor of the City. As you read the state code on the duties, functions, and powers of the City treasurer, the City recorder, and City Budget officer or auditor, it is very apparent that the cities are required to have complete and total separation of powers and duties for those handling*

taxpayer money. These new measures concerning the roles of the City Treasurer, Recorder, and Auditor establish a separation of powers that echoes the checks and balances system found in the United States Constitution. For instance, the code states that the City recorder/City auditor and City treasurer cannot assume the duties of each other. In other words, it is unlawful to make one person responsible for the handling of all City funds. In essence, the separation of duties implements an appropriate level of checks and balances upon the activities of individuals. As a security principle, the Separation of Duty's primary objective is the prevention of fraud and errors. This objective is achieved by dividing the tasks and associated privileges for a specific business process among multiple users. A person in a position with multiple functional roles has the opportunity to abuse those powers. Therefore a system of protection is necessary in these circumstances. A government system of checks and balances, with a separation of duties, provides protection for citizens and City resources in situations where the powers involved have the potential for abuse.

4. Although compliance with state code should be sufficient reason to make these changes, there are others. For example, creating the position of the D of F will relieve the City Manager from the heavy burden of performing two intense full-time jobs. It will give him the time he needs to effectively manage the City. Recently the City Manager was unable to perform a financial analysis of the water and sewer departments, and as a result the City had to hire someone to fulfill his responsibility. He is clearly overworked. We need a full time City manager and a full time Budget officer, and our current City manager has so many responsibilities that he is only capable of performing part time work in his assigned position. In order to reduce the burden of unrelated duties, and optimize the role of the City Manager, a new position will be created. These changes will allow the City to hire a Financial Director that will be responsible for the budget. He or she will make sure that department projects remain on budget as work progresses. The Financial Officer will act as a purchasing agent, will maintain the general books, provide financial advice to department heads and employees, manage the City's debt obligations, and prepare and conduct financial analysis of the City departments.

5. The roles of City Manager and Financial Director are completely separate positions and it is important that the cities keep them that way. We currently have ONE employee handling the City's money from beginning to end. Our City Manager acts as the City business manager, auditor, the City's budget officer, and financial officer. He is also the City's purchasing agent and is being allowed to counter sign the checks he authorizes. It is not the CM's fault that he has been assigned all of these tasks; it is the fault of the City Council that did not and has not corrected the crossover of his duties. The current system is not a sound business policy for the City to follow. Successful businesses divide the responsibilities regarding business transactions to effectively reduce the potential for fraud, and so should government. This is often called "segregation of duties." This ensures that no single individual is given too much responsibility. "No employee should be in a position to both perpetrate and conceal irregularities." (Prof. Carol Brown Of SHSU)

It is clearly unreasonable to allow City personnel to perform dual powers and duties when dealing with taxpayer money. Allowing such a system leaves the City open and exposed to criminal activity and misconduct such as the embezzlement of funds. The state wants us to avoid any actual or perceived conflicts of interest. There should not even be a possibility that misconduct can occur. Unfortunately, however, our current system allows for these potential criminal possibilities, and this is why we must change our system, not only to be in alignment with State code, but with common sense!

6. *Our system for protecting the taxpayer's money needs an upgrade. Just like with your home computer, it is important to use the best possible security protection system to protect yourself from any hackers and viruses that could possibly destroy your system. We need to upgrade our security system. Some have asked "why do we need to change things when we have had no scandal? Let's just leave everything as it is; we have not had a break down in the system... YET." The answer is the word... 'YET' and it is foolish to think it will never happen. We must ask ourselves if it is really worth the risk to leave the City exposed when we can take just a few protective measures now to avoid a disaster. I am not insinuating that we currently have fraudulent or dishonest employees who wish to embezzle City funds. The reality is that we live in an imperfect world and people make mistakes, and we must safeguard the City from the possibility of misconduct. I believe it is far better to err on the side of caution to protect the City from harm, rather than to risk disaster simply because "it's the way we've always done it."*

7. *I have been trying to fully understand the gravity of the situation we are in, and in this pursuit, I have been speaking with professional auditors who are over small and large corporations. I have explained to them that the City manager makes the decision to proceed with an objective and then gives authorization to pre-audit checks to cover the purchases he has approved, and then counter signs the checks for the purchases he authorizes. Finally, when the checks come back in, he audits the expenses of the checks. These professional auditors roll their eyes and make statements like, "This would work if you were a sole proprietorship, but you are not, you are structured as a corporation" or "you are foolish to have in place such procedures" and "you are on a path that will lead to major fraud and embezzlement." Now, to be clear, I am not saying that this is what is now occurring or that it has occurred in the past, BUT the risk of these things happening is very HIGH. By separating the roles of City Manager and Financial Director, these changes protect both the City and the City Manager.*

8. *We know that Mark is a highly qualified CPA and accountant. We don't question his abilities or his qualifications or his integrity; we question the way the system is organized. There is blatant crossing over of important fiscal powers and duties with his current role as City manager, City auditor, purchasing agent, and financial officer. We are not in compliance with the Utah Uniform Municipal Fiscal Procedures Code in regards to the City manager's duties and are placing the City, its citizens, and its resources in a position of unnecessary risk by keeping this inherently flawed system in place.*

9. *Some have questioned why we are creating a D of F position with the economy in its currently fragile state, and how we are going to pay for this new position. These are valid questions and concerns for which there is an answer. I am happy to inform you that the State of Utah gave the City a large increase in our sales tax revenues of over 100K, which will come in every year. The money from the increased revenues of state sales tax will pay for of the salary of the D of F. Therefore, the vast majority of the funds needed to pay for the D of F are already in place and no significant burden will be placed on our financial system to fund the D of F position.*

Council Member McDonald stated he was in full support of the Finance Director position. Mayor Phillips indicated the State Code said the auditor couldn't sign checks. His understanding was that an auditor was an outside professional contracted once a year by the City. Mayor Phillips also clarified the Mayor also had the authority to sign checks. Council Member Straddeck stated he was not in favor of this position particularly in this budget year. He thought there were numerous comments by Council Member McDonald that were designed to create

fear, but he knew there were multiple checks and balances in the City to protect itself. Council Member Straddeck added there was a budget shortfall, not extra revenue for this position. If additional part-time help was needed, Anderson could have that. Council Member Patterson agreed and stated he was never in favor of the Finance Director position, nor was he in favor of ordinance changes. Mayor Phillips asked if one employee handled the City money from beginning to end. Anderson stated the Treasurer handled the cash receipts, the AP clerk processed checks, Lynsee North, Accounting Clerk, reconciled the bank statements, and Anderson signed checks as well as the Treasurer, and Mayor Phillips on occasion. Anderson suggested having the auditor do a report on internal controls for the Council. He also stated he was not the only City Manager in the state that handled the finances. Anderson indicated today was the closing day for applications for the Finance Director position. From the direction received tonight, he would send a letter to those applicants indicating the position would no longer be filled.

John Crofts – State of Utah – Natural Flood Insurance Program Coordinator – Review Draft Ordinance 2011-12 – An Ordinance Amending Chapter 18.108.100, Flood Protection and Adopting Chapter 18.109, Flood Damage Preventing Ordinance – Heber City

Municipal Code: Anderson indicated in the packet was the proposed Ordinance that would protect the City in the case of a flood in the area. The Ordinance was drafted by FEMA and FEMA would like it incorporated into the City Code. He stated there had been ongoing discussion concerning residents being able to get flood insurance if they didn't live in a flood plain. Council Member McDonald stated every building in the City was in a flood zone; that the map covered everything. He indicated there was a website that he would like linked to the City's website, where residents could look to see which zone their homes were located in.

Croft stated people could Google "FIRMette" to see the risk area they lived in. Some would be within the 1% flood hazard area, also known as the 100 year flood zone, but outside that area, FEMA did not require flood insurance. Heber City participated in the Flood Insurance Program. Homeowners' insurance did not cover floods, but would have to be purchased separately. FEMA had another website - www.floodsmart.gov. This website would tell a person the replacement cost if the water was one foot, two feet, etc., in the house. It also listed agents in the area that sold flood insurance.

Council Member McDonald stated by putting this Ordinance in place, the City would be in compliance with the State. Croft complimented staff on compliance and for never having been on probation or suspension. Those entities on suspension would not be able to be members of the National Flood Insurance Program, and without that membership, lenders wouldn't give mortgages. Council Member McDonald stated there was an emergency plan and there was a regular plan. Croft indicated this was not an emergency program, but a full program. Mayor Phillips asked Kohler if the City had links on its website to these maps. Kohler indicated they were on the City and County sites. Croft stated Heber was getting a new floodplain map March 15th, and would be required to adopt this new Ordinance. He stated that laws were set up to protect us.

Council Member McDonald asked if Mumford was the administrator, to which Mumford indicated he was. Council Member McDonald stated the City needed to make sure the buildings stayed in compliance. Croft indicated outside the 1% flood hazard area, the rules were easier to handle. He also stated the Ordinance now in place was the State minimum which was the Federal minimum. Kohler stated the Planning Commission recommended the City minimum requirement

to be one foot above basement level. Draft Ordinance 2011-12 was to be moved forward to the next City Council Regular Meeting.

Sky Galli – Grease Interceptor – Dickey's BBQ Pitt: Mayor Phillips stated the City Engineer had indicated there were problems with grease accumulation in the City sewer lines. Galli stated he had asked Mumford what to do about this problem because he was on a strict budget. He indicated he would like to put a grease trap under the sink, in ground. The City policy was to require restaurants to put it outside the building, but Galli indicated that process would cost several thousand dollars more than his preferred method.

Mumford stated the issue was fats in the sewer system. The standard equipment was like a septic tank installed outside, and could be easily inspected. Mayor Phillips asked if it could be installed inside. Mumford said based on the size, it would not be optimal. When somebody new came in to start up a business, the City required him/her to separate the systems and use this equipment. In the past, restaurants used grease traps and they were not effective. For example, the sewer below the Snake Creek Grill took the City 60 hours to clean out. He indicated it was the City's experience that under-the-sink grease traps didn't work, but the standard equipment required by the City did not have problems.

Council Member Mergist asked if the City was required to inspect the grease traps. Mumford indicated that Heber City did not have an inspection process. Mayor Phillips asked what the benefits were of having the system underground. Mumford explained it was harder to bypass an underground system. It would also be easier to inspect an outside system. He stated if a grease trap was properly maintained, it would work. But the standard specified equipment would always work. Mumford recommended an outdoor grease trap.

Mayor Phillips asked Galli if he understood the City's concern about the grease. Galli stated he understood and explained Dickey's BBQ had a checklist of requirements that had to be performed each day, one of which was to clean the grease trap. Mayor Phillips asked if the sewer clogged up, would Galli be responsible for unclogging it. Galli agreed that it would be his responsibility to clean the clog. Cory Bastian explained the grease trap process. He agreed with Mumford that having a system outside allowed for easier inspection, but the size of the trap had much to do with problems. If a trap was sized correctly, there should be no problem with maintenance.

Council Member Patterson asked how large an outside system was. Mumford said the smallest was 1,000 gallons. Bastian stated the optimal size trap for this restaurant was 45 gallons per water flow minute. Mumford stated that type of trap would be fine if it was maintained. He indicated if the City had the resources for inspections, more restaurants would be in compliance. Council Member Patterson asked if any businesses had the standard equipment. Mumford stated they did and they didn't have any problems. Council Member Straddeck asked if the City had to clean out the sewer lines when problems arose. Mumford stated the Public Works employees that worked with the sewer had to check the lines every two to three months because the sewer kept filling up with grease.

Council Member Patterson asked Galli what the cost would be for purchasing standard equipment required by the City. Galli said a system and installation would cost \$14,000-\$20,000. The in ground under-the-sink trap would cost \$3,000. Mayor Phillips asked about in ground versus above ground systems. Mumford stated in ground would be optimal. Mayor Phillips asked why the City required the system to be outside. Mumford indicated there was a major grease

problem in the sewer system. If the outside equipment was not maintained, the sewer would back up into the restaurant, forcing compliance. Bastian stated the inside system had a baffle, so it would back up into the sink as well.

Galli explained there was no dishwasher in the building. His restaurant would only be using paper plates, plastic utensils, and plastic cups. The building had a three compartment sink. Mumford thought if enforcement was increased, under-the-sink grease traps would be allowed. He indicated this issue was a policy question. Other businesses would come in to retrofit a building and would want to go the cheaper route as well. Council Member Straddeck asked Mumford if the benefit of having the system outside would be that there was no way to comeingle the two systems. Mumford stated if the trap was inside above ground, it would be easy to comeingle. If it was in-ground, it would be possible but not as easy. It was asked if both systems would work as effectively outside. Bastian said yes. He was concerned the larger tank might be a problem because of the sizing issue. Council Member Straddeck asked if a smaller trap could be considered. Mumford stated an optimal size should be obtained for this restaurant. Council Member McDonald asked Galli to work with Mumford. Mayor Phillips stated Mumford wanted the system to be outside. He asked Mumford if he could concede to inside in ground. Council Member McDonald and Council Member Mergist wanted to go with Mumford's recommendation. Council Member Patterson stated he would agree to an inside system. Council Member Straddeck stated if the overriding priority was to look after the City sewer system and the safety of the City systems, go with the standard equipment requirement. Mayor Phillips stated the Council empowered Mumford to make a final decision.

Review RFP's – Water, Pressurized Irrigation, Sewer, Storm Drain Rate Analysis –

Discuss Selection of Consultant: Mayor Phillips stated there was a recommendation to form a committee consisting of the City Council. Council Member McDonald suggested keeping the Council off of the committee until a final decision had been reached. Anderson suggested empowering the committee to select a consultant. Mayor Phillips clarified that Council Member McDonald was in favor of having staff review the proposals and bring suggestions to the Council. All Council members agreed to this suggestion.

Council Member McDonald stated the City was considering the cash based method and utility based method. From his studying, he preferred the utility based method, which was structured yearly. He wanted to remove the cash based method and just consider the utility based method. Council Member McDonald indicated he went to a class for five weeks and learned about both methods. It was his opinion that the utility based method was the best system to look for. Anderson stated the scope of work required both methods to be considered. Council Member Straddeck stated the whole purpose of the study was to understand and study both. Anderson indicated the most common method was the cash based method.

Council Member Mergist asked to receive the warrants before each City Council meeting, so the Council would have time to review them and approve them at the Council meeting. All agreed.

Discuss Results of the Compensation Study – Obtain Council Direction based on results of

Study: Anderson stated at the last meeting Mike Swallow presented his findings for proposed pay grades as well as a compensation range he recommended. Anderson took his minimum, mid-range and maximum pay range and put in a scale, then he put in the scale with the COLA, the third sheet was the difference between the first two sheets. He stated the next sheet was the differences were annualized. The Compensation Study identified 14 people whose grade level

should change. Anderson indicated the last sheet took the least cost implementation, finding the step closest to each employee's current pay. Some showed a reduction in pay to move from the same grade. Anderson stated he would not recommend anybody's pay be reduced, but change it at the next adjustment. This sheet recommended everyone being on a step in the pay scale. To maintain the integrity of the compensation system, he would recommend this. He wanted to know if or when the City Council would want to implement some of the recommendations from the study. Mayor Phillips stated the final cost of \$17,000 for this option would result in nobody losing money, underemployed employees would be brought up to the normal pay range, and everyone would be on a step.

Council Member Mergist stated on one page in the study, two employees were recommended to receive pay increases. Anderson asked if a new pay scale should be adopted. Council Member McDonald was in favor of keeping the old pay scale and advancing the few underpaid employees. Council Member Mergist agreed. Anderson stated those employees would not be on a step with those increases if a new pay scale was not adopted. Council Member Mergist asked to meet at a separate time for this discussion. It was agreed to meet at 4:30 p.m. on November 3rd. Mayor Phillips asked if the increase would be retroactive as of July 1, 2011. Council Members Straddeck, McDonald, and Patterson agreed to the raises from now forward. But it was agreed if the Council wanted changes as a whole, going back to July 1st to implement them.

Review Proposed Capital Improvement Projects List to be submitted to the Mountainland Association of Governments (MAG) to Update Heber City's Consolidated Plan: Anderson stated there was a list of projects that the City anticipated doing within the next year to five years. If the City wanted help with projects, the items needed to be on the list. He outlined the process for obtaining grants: The City needed to have a public hearing in November, the CDBG application would then be submitted by the first part of December, and a survey would also need to be done to see if the project met CDBG criteria. Anderson asked the Council to make any changes they saw fit, so the project list could be adopted. Council Member Mergist asked if these projects were only proposals, and not for approval. It was indicated they were proposed projects only. Council Member McDonald requested the new roof on the Social Hall be on the one year plan. He also asked what the City's cost would be on the airport project. It was determined the City would pay 5% of the \$85,000 cost. Mayor Phillips stated the City needed to go forward with a project that would qualify for a CDBG grant. Council Member Mergist asked if there was infiltration to the water tank roof. Mumford thought that was a possibility. Council Member Mergist asked how often the water changed. Mumford indicated in the winter it would sit a while but was chlorinated. Anderson stated he would move the time frame on the Social Hall roof to one year. Mayor Phillips requested the list to MAG only include those things that would qualify. It was indicated the Council would have to approve the final list.

Discuss the Current Process of Putting Agenda Items on the Regular Meeting Agenda: Council Member Straddeck asked to move to next agenda.

With no further business, the meeting was adjourned.

Michelle Kellogg, Deputy City Recorder