

Heber City Corporation
City Council Meeting
05/05/2011

7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on May 5, 2011, in the City Council Chambers located at 75 North Main Street in Heber City, Utah.

Present: Mayor David R. Phillips

Council Members Nile Horner
Robert Patterson
Alan McDonald
Benny Mergist

Excused: Eric Straddeck

Also Present: City Manager Mark K. Anderson
City Recorder Paulette Thurber
City Engineer Bart Mumford
City Planner Anthony Kohler
Chief of Police Ed Rhoades

Others Present: Martin VanRoosendaal, Gordon Hancock, David Garfield, Steve Taylor, Robert Laird, Delynn Yeates, Shay Johansen, Scott Loomis, Janine Hodges, Mindy Kohler, Derek Kohler, Kathryn Berg, Wendy McKnight, Nadim AbuHaidar, Rick Kellogg, David Barber, George Rodrick, Bryan Bresnan, Mike Richardson, Justin Hatch, Tammy Thacker, and others whose names were not legible.

Pledge of Allegiance: Councilman Nile Horner

Prayer: Councilman Robert Patterson

Minutes: February 24, 2011, Special Meeting; March 3, 2011 Regular Meeting
March 17, 2011, Special Meeting; March 17, 2011, Work Meeting
March 17, 2011, Regular Meeting; April 7, 2011, Work Meeting

Councilman Patterson moved to approve the minutes as listed. Councilman McDonald made the second. No discussion. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused.

Mayoral Appointment – Treasurer Position: Mayor Phillips indicated Mindy Kohler had applied for the Treasurer position and he had interviewed her earlier in the week. Mayor Phillips recommended to the Council that Mindy Kohler be appointed City Treasurer.

Councilman McDonald moved to approve the recommendation of Mayor Phillips to appoint Mindy Kohler as the Heber City Treasurer. Councilman Patterson made the second. Councilman Mergist said he was glad to see Kohler in the front office as she was personable and often times the first person people saw when they interacted with the City. Councilman Horner agreed. Councilman Mergist recommended a step increase. Anderson said she would be moving from Grade 11 to Grade 16 as she and Mayor Phillips had negotiated compensation. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused.

OPEN PERIOD FOR PUBLIC COMMENT

No comments were received.

CONSENT AGENDA

Item 01: **Approval of 10.5 Acre Farm Lease Agreement for property east of the Heber City Cemetery with Trevor McPhie:**

Item 02: **Approval of Engineering Contract – Horrocks Engineers – 650 South Storm Drain Project:**

Item 03: **Request for Local Consent to serve alcohol at the Red Ledges Golf Course for a fundraising event on July 26, 2011 – Sponsored by Friends of Animals:**

Councilman McDonald expressed concern with item #3 and stressed they be conscious of minors.

Councilman McDonald pointed out the old contract with Jacobson was different than the proposed current contract because of property taxes, etc. Anderson explained that McPhie would be paying more than Jacobson did.

Councilman McDonald moved to approve the three items on the Consent Agenda. Councilman Patterson made the second. Discussion.

Councilman Horner asked if the City had asked for bids on the Engineering Contract. Mumford said he had gotten direction from the Council to proceed with that at a previous meeting. Councilman Horner asked about State bid. Mumford indicated because this was a professional service, there was not a bid process. Councilman Horner asked if Mumford was sure about that. Mumford said yes, he was sure. Discussion about the cost of this project being budgeted. Councilman Horner said he was not comfortable with this. Mumford explained the reason the Council said go ahead was because the County was anxious to do 650 South and the City had need to spend impact fee monies. Councilman Horner asked Mumford to check with the City Attorney to make sure as to the legality of not getting a bid for services.

Voting AYE: Robert Patterson, Alan McDonald and Benny Mergist. Voting NAY: Nife Horner. Councilman Straddeck was excused.

APPOINTMENTS

Item 04: **Robert Laird – Wasatch Chevy’s Presentation to the Heber City Council:**
Representatives of the Wasatch Chevy Car Club presented a plaque to the Council and a check for \$500. They indicated they had a car show here in Heber every year—the show this year would be held on June 25. Anderson said they were a real good group to work with and that the Parks Department was always pleased the way they treated the property/grounds.

Item 05: **David Barber – Commemorative Air Force (CAF) Discuss Airport Museum Events on May 28:**

Barber introduced himself. He expressed appreciation to the City Workers for their help during Events held in previous years. He indicated that on May 28 another event was being planned which would include Craig Wirth, a public relations person, who would get the word out about this. He said they were also trying to get Jake Garn to this event and were also trying to keep local personnel in the loop. He continued that if the Council wanted something on the agenda to let him know and he would do his best to accommodate. Barber said they would kick off about 2:00 p.m. and have a movie about 6:00 p.m. in the hangar. He said the local high school had been contacted about the choir and band participating. He was anticipating that to happen at kick off with other live bands and local singers to also perform during the afternoon. The BYU swing dancers were also invited. He indicated persons that had military vehicles to display had been contacted as well as people who provided rides in aircraft. He indicated OK3Air was a partner with them in this event. He thought this would be a big event as he had names and contacts to all the veterans’ organizations in the State and with Craig Wirth’s announcements on TV, he felt this would be advertised very well. Barber suggested this would be one of the last possibilities to honor WWII Veterans because of their ages, etc. He said the local scouts would present the Colors.

Item 06: **Shay Johanson – Pentalon Construction – Requesting permission to begin building construction of the Elmbridge Development prior to the Acceptance of Public Improvements:**

Shay Johanson, representing Pentalon Construction, requested a variance to 15.08.035 which stated building permits would not be issued until all underground public improvements were completed. There was a roadway as part of the project just south of their project. They would like to get a building permit and start construction on the buildings at the same time as working on that roadway for public utilities. The City did have a cash bond from the developer for 100% of the cost of general improvements plus 10% retention and premium. So the City had more than enough money to guarantee that work was completed. Their construction time frame was 1 year from the time of receiving the building permit. So, the sooner they got going the sooner they got done. Not getting the permit right away forced a lot of construction into the winter. If they had the permit they could get a lot of the building construction done during good weather. Johanson felt this Code was probably written more to residential development where different contractors were responsible for different work. He pointed out the City had the authority, if the standards were not being met, to shut the project down. There were six buildings in the project. The occupancy and final inspections would not all be done at once. Here again the City had the option to not grant occupancy if the public improvements were not complete.

Mayor Phillips said the Council usually got recommendations from staff. He referred to Mumford's report. He said without the infrastructure installed, people could not convert their construction loans, etc. He suggested there was a motive for the Code as written. He wondered, though, as Johanson had stated that a development under one contractor might be considered differently. Mayor Phillips referred to Anderson's summary report. Anderson reviewed the pros and cons he had expressed in his summary report. He also gave some history and said he thought this was adopted when WalMart was in the process of getting their permits and working with other entities in that complex. Discussion about the size of the streets in Clover Meadows and the impact this would have on that neighborhood. It was felt access off of Highway 40 was the ideal for this development so the impact on the neighborhood would not be so great. However, he said he understood the issues of the developer having to construct in the winter versus the summer months. He encouraged the Council, if they felt inclined, to talk about some conditions in relation to this request because of the uniqueness of the project. Councilman Horner asked if they were putting the connection in to Highway 40. Johanson said they had started that already but to get it completed would be three or four months and in the meantime they could be putting in foundations. Johanson said there were major water and sewer lines in that very area of the road so they would still have to access through the subdivision. Mayor Phillips discussed the safety issues with using the subdivision roads. Councilman Mergist said he was not in favor of the request.

Scott Loomis, said this ordinance was a guarantee but to put this in dollars and cents the developer had put up 1 million dollars in cash plus the 10% retention (\$100,000) and 10% premium (\$100,000) which gave the developer an incentive to complete the project. He felt that from a financial standpoint, there was no risk to the City. He said they were just asking to do both infrastructure and foundations for the buildings at the same time which would subtract four or five months off the project.

Delynn Yeates said they had to bore underneath the highway. He explained that process. Another big thing they had to deal with was to traverse the little creek. He said once those problems were taken care of, they would then use the access off of Highway 40.

Councilman Patterson asked the difference in time. Johanson said three or four months. Councilman Mergist said granting this request would set precedence and said he was not inclined to grant it. Councilman Horner had concerns and said he was not in favor. He said his main concern was with the impact to the citizens in the subdivision as well as setting a precedent. He felt the Council needed to stick with the Code as written. Councilman McDonald said he was in the construction business so he understood. However, he did not think it was in the best interest of the City to grant a variance.

Delynn Yeates asked for some kind of negotiations which would give them a jump start. Councilman Horner said they could come back any time during the process and ask for the request again. Yeates suggested sending in a street sweeper every four or five days and asked if that would make a difference to the Council's decision. Councilman Patterson said that didn't take care of infrastructure. Yeates said it would give them a jump start on the foundations. Councilman Horner said they had to keep their materials on the premise so street sweeping would not matter. Mumford indicated they were just asking for footings and foundations, nothing vertical structures. Johanson said they felt they could have the footings and foundations in by the time the infrastructure was in. He said they knew they couldn't go vertical until the fire hydrant structure was in place. He said they would construct footings, foundations, sub-rough plumbing, floor slabs, and then they would stop. Councilman McDonald suggested if citizens complained, the Council would have to stop the travel through the subdivision.

Councilman Mergist moved to deny the request of Pentalon Construction who were requesting permission to begin building construction of the Elmbridge Development prior to the Acceptance of Public Improvements. Councilman Horner made the second. No further discussion. Voting AYE: Nile Horner and Benny Mergist. Voting NAY: Robert Patterson and Alan McDonald. Mayor Phillips voted NAY on the motion which put the request back on the table for the Council to discuss further.

Councilman Mergist expressed concern with safety issues for kids, noise, snow removal, etc. He suggested if they wanted to work something out with Mumford and bring it back to the Council another night that would be okay. There was discussion about Mumford's staff report and his recommendations as well as Anderson's staff memo. Councilman Mergist indicated he wanted the developers to put together a proposal and then come back to Council for further discussion.

Councilman Mergist moved that Pentalon Construction get together with the City and work out the issues discussed to see if a mutual agreement could be reached. He wanted discussion to include access off Highway 40 so the neighborhood was not impacted, see if the City could adjust/issue some kind of building permit that only allowed foundations only until infrastructure was complete and move forward from there. Councilman McDonald made the second. Mumford clarified the motion--consideration to allow a building permit for footings and foundations once a suitable access to Highway 40 was in place. Mumford said he would come back with a more defined recommendation. Councilman Horner talked about recent flooding. Johanson indicated they had to put in a culvert. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Item 07: **Approval of FAA Grant Application for Runway Painting and Globe and Sign Panel Replacement and Approval of Professional Services Agreement with Armstrong Consulting:**

Anderson said one of the challenges at the Airport was that the current approach had a minimum that was pretty high (2700/2800 feet above ground level) and restrictions at night. He said the FAA had responded to concerns expressed by pilots that regularly used the airport. It was pointed out the Airport Advisory Board felt this action was in the best interest of the airport so more planes had access and it also created a better business environment at the airport. Anderson said this grant would allow for repainting of the runway to facilitate a different approach--a lower precision approach. He said pilots would have a predetermined route via GPS until they could get down to a point they could see the airport. AbuHaidar said it was hash marks, numbers, etc., that were faded and hard to see. He said landing would be on Runway 4 and the approach would change. He said this would not change the designation of the airport or class of the planes that land. AbuHaidar said the approach had been changed about 1 ½ years ago. He said, too, that someone from the FAA had flown that approach and did not like it. Consequently, the FAA looked at posting this new approach so there was need for new precision markings. Councilman Horner expressed concern about planes flying lower than they did now. AbuHaidar said the approach would be over Deer Creek Reservoir and about 1 ½ miles out they either see the airport and land or not see it and take off.

Councilman McDonald moved to approve the FAA Grant Application for Runway Painting and Globe and Sign Panel Replacement and approve the Professional Services Agreement with Armstrong Consulting. Councilman Mergist made the second. No further discussion. Voting

AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused.

Item 08: **Review Recommendation from the Airport Advisory Board regarding the Extension of Hangar E Lease Agreement:**

Councilman McDonald reviewed that the minutes from the Airport Board discussed an agreement with square footage calculations and this agreement had a flat fee. Anderson said this fee as listed created a higher fee by \$.03. Councilman McDonald wanted it to be spelled out to either be a flat rate or a square footage fee. He also had concerns with liability insurance, page 13, which stated a minimum amount of insurance but it did not give an amount. AbuHaidar said the insurance rates were listed in the minimum insurance chart. Kathryn Berg said the chart was in the back of the Minimum Standard Rules and Regulation and they would be listed for each specific type of coverage. Councilman McDonald verified this was a new 30-year lease. Anderson said that was what was recommended by the Airport Advisory Board.

Anderson indicated the only thing not finalized was on page 18. Since most leases were at the time of construction, this was different because this hangar was constructed 15 years ago. He talked with Mark Smedley about a way to value this hangar at this time and if there was a way to establish a market value. He felt that was something that needed to be addressed. He asked if Council was comfortable with the rest of the contract, could Smedley and AbuHaidar determine the value that would determine depreciation. AbuHaidar said he felt a fair market value should be based on an appraisal at the time. Anderson said it was important to have a starting value. Councilman McDonald felt a fair market value was okay. It was determined the language would remain as proposed in the agreement. (fair market value of the hangar less depreciation based on straight line depreciation thirty years life expectancy)

Councilman McDonald moved to approve the lease agreement as outlined. Councilman Patterson made the second. No further discussion. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused.

Item 09: **Adoption of Tentative Operating Budget for Fiscal Year 2011-2012:**

Mayor Phillips explained the Council was required by law to adopt a tentative budget by this meeting. He indicated another budget meeting needed to be scheduled but that Councilman Straddeck would be out of town next week, as well. He explained that Councilman Horner and Councilman McDonald had left the last meeting prior to some things being discussed. Anderson said one thing he did not put in his memo was about the \$300,000 transfer from General Fund to Capital Improvement Fund. Anderson talked about some of the things Council had approved at the last meeting after Councilman Horner and Councilman McDonald left.

Mayor Phillips indicated that in the last budget meeting there was discussion about a PowerPoint presentation being created to explain and help the public understand the reasoning behind fees and property tax increases. Anderson questioned if no increases were adopted, when would the approved positions come on board. Councilman Mergist said the Council was not going to change their minds on the approved positions. Anderson talked about other issues that needed to be discussed in the next budget meeting. Councilman McDonald said he would not vote to raise property tax at this time. He said he understood this was a tentative budget that could be changed. Anderson said the Council had not yet reviewed the capital requests which would make a difference in the final budget. Mayor Phillips suggested the Council needed to look at several meetings in the next two weeks to finalize a few additional issues.

Councilman Patterson moved to approve the tentative budget. Councilman Mergist made the second. No discussion. Voting AYE: Robert Patterson and Benny Mergist. Voting NAY: Alan McDonald and Nile Horner. Mayor Phillips voted AYE to break the tie.

Item 10: **Review Proposed changes to the Heber City Personnel Policy – Grievance/Appeal Board makeup and Retirement:**

Anderson said the Council had expressed a desire to remove Councilmembers from the Grievance Board. He said he had sent out a request to other cities and received several responses and copies of different policies. Anderson talked about Ivins City's policy. He recommended a change from 3 employees and 2 Councilmembers to having a member of the Utah State Bar Administrative Law Judge / attorney as the committee with any appeal going to District Court.

Anderson said the City had been audited by the State Retirement System and they had made a couple of suggestions for amendments to the Personnel Policy. He said the audit went very well and they had only made the two suggestions for change in the Personnel Policy.

Councilman McDonald moved to approve an additional sentence to the end of 13.9A. (Public Safety Employees must work a minimum of 20 hours per week to qualify for retirement benefits.) Councilman Patterson made the second. No discussion. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald, and Benny Mergist. Councilman Straddeck was excused.

Councilman McDonald indicated he had concerns with suggested changes to 13.25.

Discussion about the proposed changes to the grievance process. Councilman Mergist asked if this would eliminate appearing before the Council. Councilman Horner wanted the Council to be involved. Discussion about executive sessions. Councilman McDonald wanted to separate possible conflict of other department heads and/or employees but wanted Council involved. Councilman Horner said on termination he was fine going to a third party because if the

employee didn't like that decision he/she should come to the City Council. Councilman Mergist said he felt the Council should be the final Board of Appeal.

Councilman Horner said he did not want to vote tonight. He said he wanted the length of time that an employee had to file a grievance to be stretched out--30 or 45 days. Mayor Phillips said the more time elapsed, the harder to get accurate facts. Councilman Mergist suggested 14 days. He also thought there might be State Statutes that had to be considered. Mayor Phillips asked Anderson to find out if State Statutes applied to some types of grievances (such as sexual harassment) and not to other types. Councilman Mergist agreed the longer it was drug out, the chances of inaccuracies increased.

Councilman McDonald moved to table the grievance process issue allowing the Council additional time to read the proposed changes and give Anderson time to do research in the State code. Councilman Horner made the second. Lt. Bradley suggested that regardless of what the Ordinance dictated, the Appellate Court would still be able to hear the issue. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused.

Councilman McDonald moved to approve proposed changes to 13.25 as outlined. Councilman Mergist made the second. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused.

Mayor Phillips wanted Anderson to check with State Statues as far as time frames. Councilman Mergist asked if a sexual harassment case would fall under the guidelines of grievance or more under the realm of the police. Lt. Bradley said regardless of grievance there would be a very strong civil case against the supervisor and the City. Mayor Phillips said regardless, if a case ended up in court, the City would be questioned if the City policies were followed.

Item 11: **Discuss remaining issues with Police Officers providing Contracted Police Services – Review proposed policy for Contracted Law Enforcement Services:**

Mayor Phillips asked if Smedley was still in the process of getting some answers. Anderson said Smedley visited with the Attorney General Office last week and was in the process of putting those comments in writing.

Councilman McDonald indicated he was in favor of secondary employment for the police; however, he had concerns with the proposed agreement. He wanted to see two agreements separating secondary employment for the officer outside of Heber City Corporation and secondary employment with the City involved as the payroll mechanism.

Mayor Phillips said we do not have a policy that says the police can't do police officer work outside their City hours. He continued the City had a defacto policy for years that our police officers could work events in their uniform and drive the City vehicles doing police officer duties outside their work hours. Councilman Horner said what they had done in the past is in the past. Councilman Horner suggested if the police officers wanted secondary employment, they could not wear the police uniform. However, if they were doing police work under an Interlocal Agreement, the money had to go through Heber City and consequently it would not be secondary employment. Mayor Phillips said it would be if they were outside their duty hours. Councilman McDonald said the Council had to keep these instances separated so there was no chance of a lawsuit. Anderson said he had questions about compensation rates.

Lt. Bradley talked about policies all over Utah that stated a police officer could work outside their regular hours and wear their uniform. However, Heber City's Police Department had a policy already in place since June 2010 stating that was not the policy of Heber City. Councilman McDonald felt the proposed agreement still had holes and flaws because it was mixing secondary employment with employment via the City payroll.

Councilman Horner did not think by law the City could have two different wages or pay scales. Lt Bradley felt this proposed agreement corrected the issues. It was felt the title should be something other than secondary employment to eliminate confusion and in the Police Department's policy now it differentiated by using the words outside employment versus outside overtime. Mayor Phillips said he thought it was good to see police out in the cars in the community. Councilman Horner said if the Police Officers were wearing their uniform or driving the City's vehicles, they were on duty.

Janine Hodges. She said in the past she had worked with RAGNAR and for 20 years worked other events. She said they could not hire security but had to hire police. The one area she felt concerns with on the proposal was if there was an emergency and they could leave--that would be a huge concern. She said most cities charge a larger wage than what the officer gets regularly. Also most cities charge a flat rate for cars and radios.

Councilman McDonald said there were some tweaks that needed to be made, especially to #7. Lt. Bradley indicated RAGNAR was within a month and the train event was coming up this month. He said the Police Department was asking for some flexibility and they would like to start using the proposed agreement until perfected. Councilman Horner said for right now the only body to set the fee was the Council. Lt. Bradley suggested taking the average wage and add time and car fees and taxes. Councilman McDonald wanted something different with Interlocal Agencies. Anderson said he thought this would work, the cost just had to be determined.

Councilman McDonald said the only way he would allow the City's officer to work Day out with Thomas would be as officers on duty. Councilman Horner said he did not see the need for police officers at Thomas. He felt if there was an issue that came up that warranted an officer, the officer would be down there just like anything else. He felt security was the way to go. He would not be in favor in allowing them to work for the train. Councilman Horner said his thinking was if it was RAGNAR, there was no question in his mind that a security company could do that. He said he did not want to compete with the private sector. Lt. Bradley said in the daytime when there were a lot of people there, Lacey wanted police officers but at night he could use security people.

Lt. Bradley said he needed direction for the next month's events. He felt language could be cleared up. He said they just wanted to be able to take care of events.

Councilman Patterson said the proposed policy was fine. Councilman McDonald had concerns with liability to the City. He wanted to scratch #7. Any mention of secondary employment should be changed. He suggested a possible special event contract of law enforcement services. Anderson said with regard to compensation the City in most cases would want to cover the cost of wages plus benefits. He did not want the City to pay out more than received. Discussion about minimum regulations. Councilman Mergist suggested taking the highest waged employee and using that as the base. Then whoever was working pay them their rate and any extra go into a special fund but have flexibility with some entities. Councilman Mergist suggested a special event pay. Anderson thought that was a possibility.

Councilman McDonald asked if the Council had any comments about Pride Security. He wanted to move forward. Councilman Patterson said he did not want reprimands.

Councilman Horner read a statement. (See attached copy)

Mayor Phillips commented that the City had followed a policy which had been in effect for many years and when talking personnel issues, these people (Anderson and Rhoades) needed the same respect as anyone else. He felt strongly the comments just read by Councilman Horner should have been in Closed Session and not in a public forum. Councilman McDonald then read his statement (See attached copy)

At 10:17 p.m., Councilman Horner moved to go into Closed Session to discuss any action the Council might want to take in relation to the discussion held and written statements read relating to policies being broken. Councilman McDonald made the second. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused. Those going into Closed Session: Mayor David Phillips; Councilmen Straddeck, Horner,

Patterson, McDonald, and Mergist; and City Recorder Paulette Thurber. The Council returned to Open Session at 11:00 p.m.

Anderson asked if there was clear directions for the employment of the Police Officers as he wanted to make sure the fee covered the cost. He thought it should be more like \$50 or \$60 dollars per hour. The Council said charge \$60 and pay the officers \$50. Councilman Horner said there was a definite need for police presence at RAGNAR for traffic control but thought the Council needed to look hard at the train request to see if it was really necessary to have an officer during that event. Councilman Mergist felt with all that was going on, the City should tell the train not this year but to seek security somewhere else. He did not want the City to provide any service this year. He continued "Lets back away from that one and move ahead with RAGNAR." Councilman Horner agreed. Councilman Patterson said he was in favor of giving the train a day-time police presence. Councilman Mergist said if the train wanted to hire security, let them. If police wanted to step up police presence during that time, then that was fine also.

As there was no other business, the 05/05/2011 Heber City Council meeting adjourned.

Paulette Thurber, City Recorder