

Heber City Corporation
City Council Meeting
October 7, 2010

7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on October 7, 2010, in the City Council Chambers in Heber City, Utah.

Present:	Council Members	Eric Straddeck Nile Horner Robert Patterson Alan McDonald Benny Mergist
Excused:	Mayor	David Phillips
Also Present:	Deputy City Recorder City Engineer City Planner Police Department	Michelle Kellogg Bart Mumford Tony Kohler Chief Ed Rhoades

Others Present: Salvador Segura, Jill Segura, Mark Rounds, Mark Smedley, Wendy McKnight, Justin Hatch, Ryan Yardley, Joe Knudson, Suzanne Hansen, Brooks Harbertson, Kathryn Rhoades, Melanie Mainord, Eric Mainord, Bryan Bresnan, Tracy Taylor, Jenny Dorsey, Nann Worel, Mike Smith, Janene Hodges, Trudy Brereton, Martin Van Roosendaal, Wayne McDonald, Paul Berg, Xela Thomas, Zack Coker, Rick Kellogg, Tammy Mair, Mike Richardson, Jeremy Nelson, George Rodrick, Tammy Thacker, Jason Bradley, Jim Moore, Dan Bunnell, Cynthia Bradley, Crystal Beck, Jonell Fitzgerald, Al Yardley, Amber Beck and others whose names were not legible.

Mayor Pro Tempore Straddeck opened the meeting and excused Mayor Phillips.

Pledge of Allegiance: Councilman Horner
Prayer: Mayor Pro Tempore Straddeck

Minutes: Councilman McDonald moved to approve the minutes for the following meetings: May 20, 2010 Regular Meeting, August 19, 2010 Regular Meeting, September 2, 2010 Work Meeting, September 2, 2010 Regular Meeting. Councilman Patterson seconded the motion.

Councilman Horner felt the May 20th minutes were incomplete and had a few mistakes, and he requested that it be reviewed again after being corrected. Councilman McDonald amended the motion to approve all above listed minutes except May 20th. Councilman Patterson seconded the amended motion.

Voting Aye: Councilmen Straddeck, Horner, Patterson, McDonald and Mergist.

PUBLIC COMMENT

Jonell Fitzgerald from the Health Department approached the Council, saying she wanted to come back and give an update since her last presentation. She indicated Heber City had received the Healthy Community Award, and expressed appreciation to Heber City and Tony Kohler for making decisions that helped this come about. Kohler indicated the City got a flag, banner, and certificate as part of the award.

SPECIAL PRESENTATION

Al Yardley – Special Presentation To Chief Rhoades: Al Yardley indicated he represented the Department of Workforce Services. He introduced Amber Beck, who was over the Mountainland Region, and Joe Knudson, who worked at the local office in Heber. They wanted to recognize organizations that support veterans, and therefore wanted to let Chief Rhoades know how appreciated he was for supporting the two veterans who were currently deployed. Yardley indicated it was a sacrifice to back-fill the vacant spots while these men served their country. He then presented a plaque to Chief Rhoades.

Chief Rhoades stated the Police Department, consisting of 14 officers, was down four or five employees at times, and he appreciated the ones who filled in for them. Chief Rhoades received a standing ovation from the audience which included the officers, secretaries, and some of the spouses from his department.

APPOINTMENTS

Nann Worel - Peoples Health Clinic (PHC) Presentation: Jenny Dorsey introduced the Peoples Health Clinic and indicated the clinic was located in Park City and described the services it provided. She indicated the facility did not provide emergency services or dental care. Nann Worel, Executive Director, expressed appreciation to the people of Summit and Wasatch Counties for their support. She stated one out of nine people were currently without health insurance, and gave statistics on those that weren't insured. It was indicated this clinic saw people for many problems including infections, cancer, and chronic conditions. Worel stated many uninsured people put off visits because they didn't want to lose time on the job and they couldn't afford the medical care.

Worel continued that PHC was committed to providing quality care, keeping non-emergency patients from going to the emergency room, and providing a more cost-effective alternative for the uninsured. PHC collaborated with Summit County Health Department and now operated out of that building. It was indicated that currently 20% of patients come from Wasatch County, and 16% of that 20% come from Heber City. An office visit expense was \$79. That low cost was possible because of volunteer physicians, lab techs, fundraisers, etc. It was indicated there were also a few paid staff. Grants had been received from Summit County and Park City, thus helping to subsidize the cost to the patient, who was asked to pay a \$15 donation per office visit.

Brooks Harbertson thanked the Council for letting PHC come tonight. He requested that during the next budget session, the Council consider helping this clinic financially. He also wanted word to get out so people would know where they could go for healthcare. Councilman McDonald asked if this clinic worked with the Wasatch County Health Clinic. Worel stated PHC was more of a safety net clinic; so it didn't overlap with other clinics, such as the Wasatch County Health Clinic, which provided immunizations, WIC, etc. PHC covered areas in healthcare that the County Health Services did not provide.

Chay Properties – Request For Commercial Condominium – 139 North Main Street: Paul Berg explained that a renter asked to own the office space in this building, and the only way to do that would be to condominium-ize the building. Councilman Horner asked why the Spicy Lady left that building. Berg indicated his understanding was that the owner decided to close and so the new owner started The Angry Bull restaurant immediately. Mayor Pro Tempore Straddeck asked what retail unit wanted to own its space. Berg said the business was called Wild Flower Linens, an event staging company, and the other space would be occupied by a photographer.

Councilman Mergist asked how the unit sales and future owners would be controlled when the unit was later sold. It was indicated that CCRs would state the rules for owners of that property. Councilman Horner asked if there were any foreseeable problems with condominiums like this one. Kohler stated there was only one notice for utilities, which the HOA would have to divide up between all the owners. Councilman Horner asked if the HOA fell apart, what would happen with parking, etc. Berg stated the owners would be responsible for common space, which included land maintenance and parking. Kohler explained that if the HOA failed, the parking and utilities would fail and the owners would not be allowed to stay in business. Councilman Mergist asked if the owners were moving forward with the work behind the building as well. Berg indicated that work would commence behind the building in the spring.

Councilman Patterson moved to approve Heber City Block 103 - Request for Commercial Condominium – 139 North Main Street. Councilman McDonald seconded the motion.

Voting Aye: Councilmen Straddeck, Horner, Patterson, McDonald and Mergist.

ACTION ITEMS

Ordinance 2010-08 - An Ordinance Amending 18.68.120 – Six foot Tall Fences In Proximity To A Street: Kohler stated a resident approached the Planning Commission about changing the ordinance, and the Planning Commission proposed an ordinance which would allow a six foot fence with a five foot setback from the sidewalk, instead of the current 30 foot setback requirement for a corner lot. Councilman Mergist indicated a five-foot setback could possibly leave that space untended. He wanted to see the fence next to the sidewalk. Councilman Horner agreed as long as safety issues were not affected. Councilman Horner wanted to also change the Code to have an eight foot fence height limit in back yards instead of the current six foot limit. Councilman McDonald stated that issue would need further study before he would feel comfortable voting on it.

Councilman McDonald moved to approve Ordinance 2010-08 - An Ordinance Amending 18.68.120 – Six foot Tall Fences in Proximity to a Street. Mayor Pro Tempore Straddeck seconded the motion.

Councilman Mergist indicated he didn't want to see people that weren't in compliance with the new ordinance to have to tear down their fences. Kohler hoped that whatever the Council passed, they would strongly support it. Smedley recommended the fences in noncompliance be grandfathered into the City Code. Councilman Horner asked Councilman McDonald to amend the ordinance to have zero setback and that people who wanted a higher fence would be able to come before the Council to request that. Mike Smith, a member of the audience, suggested language in the ordinance for back yard fence height limits to be a six foot fence from the highest point of the adjoining backyard.

Councilman McDonald withdrew the motion. Councilman Patterson moved to continue. Councilman Mergist seconded the motion.

Councilman Horner asked staff to include in a new draft of the ordinance the suggestion from Smith, the zero setback, and also that existing fences in violation to the Code be grandfathered in as compliant.

Voting Aye: Councilmen Straddeck, Horner, Patterson, McDonald and Mergist.

Ordinance 2010-09 - Amendment of the Heber City Zoning Restrictions – Lot 3 Block 114 - Property Owned By Luo Family LLC – 290 North 100 West: Mike Smith, realtor for the Luos, indicated the family was trying to sell three lots in Block 114 for mixed use and was requesting a zoning change for Lot 3. There was a restriction placed on this lot because the former owner wanted to appease the neighbors when he requested the zone change from residential to commercial. Councilman Horner asked if the Luo family wanted to change the no-build restriction that would prohibit building within 20 feet from 100 West. It was indicated this was their desire.

Councilman McDonald asked for the history of this restriction. Smith explained the former owner wanted an L-shaped strip mall and the neighbors protested. Smith believed that through architectural landscaping, the area could be made beautiful and private. Councilman Horner asked what a potential buyer wanted to put there. Smith indicated the buildings would have retail on the bottom and residential above. A berm would be placed along 100 West, 4 foot high with proper landscape architecture. Smith thought the original restriction was excessive. Councilman Horner asked Kohler what the Council could do to protect the citizens. Kohler stated the twenty foot language had been stricken and language was added to say some kind of landscape architecture would be added to the frontage.

Mayor Pro Tempore Straddeck asked how confident Kohler was that the Council had the authority to change this restriction. Kohler indicated no change would ever please everybody but the City needed to do what was right. He pointed to Checker Auto and Walgreens as examples of including the citizens in keeping their properties nice and private, adding trees along the property lines, etc.

Mark Smedley stated the Council could make the ordinance very particular when drafting the ordinance. He indicated language could be added that stated approval would be given conditioned upon adherence to agreed upon landscaping.

Councilman Horner moved to approve Ordinance 2010-09 - Amendment of the Heber City Zoning Restrictions – Lot 3 Block 114 -Property Owned By Luo Family LLC – 290 North 100 West with recommended language by Mark Smedley that any approval be conditioned by the adherence to the restriction (which would be put in) and approval by the Council. Councilman Mergist seconded the motion.

Voting Aye: Councilmen Straddeck, Horner, Patterson, McDonald and Mergist.

Resolution 2010–07 - Define How Council Compensation Is Shared: Councilman McDonald felt all the Council members should be treated equally as far as compensation was concerned since some members received significantly more compensation than others because of being on compensated boards. He proposed that the Council approve this Resolution with some changes. He wanted the language added “payable to the Heber City Council Fund and placed directly in the City’s General Fund under the account of the Heber City Council Fund. The distribution of the Fund’s balance will be divided equally among its members on a monthly basis or whenever the City Council may determine from time to time”. Councilman McDonald also wanted the last sentence of the first paragraph removed since the members would be paid monthly. It was indicated all Council members would receive W-2s on that compensation at the end of the year.

Councilman McDonald moved to approve Resolution 2010–07 - Define How Council Compensation is Shared with the added language he had proposed. Councilman Horner recommended saying the compensation would be distributed equally among the members **and** may be changed at any time. Smedley was consulted and it was determined Councilman McDonald’s language was sufficient. Councilman McDonald added to the motion that it would take effect November, 2010. Councilman Horner seconded the motion.

Councilman Horner clarified that the money would be received by the City and distributed among the five Councilmen equally, and a W-2 would be given on all compensation received at the end of the year. Councilman McDonald also indicated he wanted a quarterly report. Councilman Patterson asked why Councilman McDonald wanted this Resolution. Councilman McDonald stated he didn’t have a choice on which board he was on and he did just as much work on his assigned boards as Councilman Patterson and Mayor Pro Tempore Straddeck did on the paying boards. Mayor Pro Tempore Straddeck stated he was not in favor of this proposal because it was trying to create equality, but the Council members were not equal. There were many differences in his opinion. For example, he wondered how Councilman McDonald, who took a four day trip, expenses paid for by the board, would divide up the expenses he used for that trip between the remaining Council members. Councilman McDonald stated he took off four days of work that he didn’t get paid for, and said if there was a question on the motion a vote would immediately take place. After some discussion, it was decided a vote needed to be taken on whether or not to continue discussion.

Voting in favor of stopping discussion: Councilmen Horner, McDonald and Mergist.
Voting against stopping discussion: Mayor Pro Tempore Straddeck and Councilman Patterson.

The discussion was stopped.

Voting Aye on Resolution 2010-07: Councilmen Horner, McDonald and Mergist. Voting Nay: Mayor Pro Tempore Straddeck and Councilman Patterson.

Councilman McDonald stated he was under the impression that Tab 5, Appointive Authority, should not have been taken off the agenda without his consent since he had been the one to request it. Smedley thought a courtesy call would be nice when items were removed from the agenda, but he did not know if it was policy that the requestor had to be the only one able to take off the item. He thought since the agenda was noticed without that item, people who might have wanted to attend the meeting for that reason would not be here because they didn't think it would be discussed. Smedley also said Mayor Phillips was interested in this issue, and because he might have to vote on the issue, it should wait until a future meeting. Smedley indicated any vote on this issue would have to be unanimous by the five Council members.

Councilman Horner stated he was tired of getting the runaround. They were elected as Council members to vote on things they thought were best for the citizens. Now, having the majority didn't mean anything if staff could twist the law and the policies to get the things done that only staff wanted. He thought that the policy should be the policy. The Heber City Code stated the Mayor could only vote on two things and this issue wasn't one of them, so the Mayor shouldn't vote on this. Councilman Horner thought staff was trying to circumvent the law on having the Mayor vote. He indicated he was once told by Smedley that the State Code was a guideline and the City could add to or subtract from it. He was angry that he sat on the Council and couldn't voice the concerns of his constituents.

Mayor Pro Tempore Straddeck stated the item was not on the agenda and it would need to be noticed to continue. Councilman McDonald said the Council members should go by the City Code on when the Mayor votes. Councilman Horner asked why this item was removed from the agenda. Councilman Patterson stated he and Mayor Phillips had requested it be taken off because they both thought Mayor Phillips had a right to vote on the item.

Tracy Taylor asked, as a taxpayer, what was on the agenda and why. Councilman McDonald stated that there was a proposed ordinance that gave Council members equal opportunities to serve on all the boards and rotate the board assignments. It got taken off by Mayor Phillips and Councilman Patterson without notifying Councilman McDonald, the requestor of this item.

DISCUSSION/ACTION ITEMS

Resolution 2010-05 - A Resolution To Amend The Purchasing Policy As It Relates To Change Orders: Councilman McDonald stated he had no problem with the way the Resolution now read.

Councilman Horner moved to approve Resolution 2010-05 - A Resolution to Amend the Purchasing Policy as it Relates to Change Orders. Councilman McDonald seconded the motion.

Mumford asked for clarification on Item D. He wanted to know what “if possible” meant. Councilman McDonald stated the authorization would still be given but the Council would like an “after the fact” notification if it was not possible to notify them beforehand. Mumford suggested changing the wording to add after Council “at the next regularly scheduled City Council meeting.” Mumford stated he could report to the Council and place an asterisk next to any of the items where change orders occurred. Councilman McDonald stated that report could be given in the monthly reports.

Mayor Pro Tempore Straddeck asked if the Council was solving a problem by having this ordinance in place. Councilman McDonald stated the problem was that in the past there were no limits placed on change orders. This ordinance would keep the Council informed. Councilman Horner said he thought it was a start to solving a problem but it wouldn’t solve all the problems. He perceived there were problems with change orders on Center Street because it cost the City \$155,000. Mayor Pro Tempore Straddeck stated when the Council considered an ordinance change, he tried to assess whether it would solve a problem.

Councilman Horner amended his motion to include the changes suggested by Mumford. Councilman McDonald seconded the amended motion.

Voting Aye: Councilmen Horner, McDonald, Mergist. Voting Nay: Mayor Pro Tempore Straddeck and Councilman Patterson.

Ratification - Ordinance 2010-06 - An Ordinance Adopting Section 15.05.010 – Status Verification System For Physical Performance Of Service Contracts (continued from the previous meeting): Councilman McDonald stated he and Smedley went through this ordinance and it was now more restrictive than the Federal and State laws concerning this issue. He felt if it were challenged, the City Attorney would be able to defend it.

Mumford asked if he had to verify all contractors and their employees or just get a form from the contractor. Smedley indicated subcontractors would give affidavits to the contractor. The City would provide the contractor a contract, which the contractor would have to return, verifying his employees’/subcontractors’ citizenship. If the City found out at any time the contractor was not in compliance, he would be penalized. When asked about the penalties, Councilman McDonald stated the contract would be cancelled and the non-compliant contractor would have to absorb all the costs, attorney fees, and damage against the City that went along with the cancellation of the contract. Mumford asked who would implement the penalties, and if the City was the one that had to be the referee that would take the non-compliant contractor to court. It was indicated that the City would have to investigate and go after the penalty. Smedley hoped the enforcement would be narrow, but staff or the Council would have to verify the authenticity of the contract.

Councilman McDonald moved to approve Ordinance 2010-06 - An Ordinance Adopting Section 15.05.010 – Status Verification System for Physical Performance of Service Contracts as written. Councilman Mergist seconded the motion.

Voting Aye: Councilmen Straddeck, Horner, Patterson, McDonald and Mergist.

With no further business, the meeting was adjourned.

Michelle Kellogg, Deputy City Recorder