

City Council Meeting  
12/16/2010  
7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on December 16, 2010, in the City Council Chambers 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 Tony Kohler  
Chief of Police Ed Rhoades

Others Present: Salvador Segura, George Rodrick, Jason Bateman, Mike Richardson, Willa Motley, Dick Jenkins, Greg Ogden, Bill Sandoval, Taylor B. Thayer, John Tinsley, Perry Rose, Chance Morris, Tammy Thacker, Lynn Sulser, Shari Lazenby, Dave Kennamer, Martin Van Roosendaal, Marks Rounds, Darell Vernon, Myrna Vernon, Tracy Thayer, Dennis Roberts and Bryan Bresnan

Pledge of Allegiance: Councilman Benny Mergist

Prayer: Councilman Alan McDonald

Minutes: 09/30/2010 Special Meeting  
12/02/2010 Work Meeting 12/02/2010 Regular Meeting

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

*OPEN PERIOD FOR PUBLIC COMMENT*

Mayor Phillips invited anyone to express comments on anything not already on the agenda. No comments were received.

### *PUBLIC HEARING*

**Public Hearing – Ordinance 2010-14 – An Ordinance Amending Chapter 15.16 of the Heber City Municipal Code – Impact Fee (Tab 1):** Anderson read the Public Hearing Notice. Mayor Phillips opened the Public Hearing and invited anyone to address issues. No comments were made. Mayor Phillips closed the Public Comment portion of the Hearing. Mumford said he had a 25 minute Power Point Presentation to make and that he would go through it as quickly as possible. Mayor Phillips asked if there were changes from the meeting held a month ago. Mumford said the overall concept was the same—just numbers were refined—and now instead of summaries, the Council had the full text. He said the numbers in this document were still draft numbers and that the amounts for impact fees would change based on the audit report. He suggested they would have to make an additional presentation to the Council to present final monies at some point. Mumford suggested Center Street was the main holdup. Anderson said the City had just barely gotten the final accounting on Center Street and a revised billing from UDOT. However, Mumford had been working on the overall Master Plan update since April.

Mumford explained the outline of his presentation and said this document was the City's key in planning for the future facility needs (water, sewer, streets, storm drain, parks and cemetery,) of the City and that it consisted of three parts—Master Plan, Capital Improvements Program, Impact Fee Analysis. He said some cities have three difference documents but because they are so interrelated, Heber puts them into one document. (A copy of the Power Point presentation shown at the meeting is attached to these minutes)

**Population:** Mumford explained the population numbers used in this study had been taken from the Governor's Office of Planning and Budgeting. In the next 10 years it is projected that Heber will see a 4.82% growth. The projected population in 2030 was 22,607.

**Culinary Water System:** Mumford reviewed the Culinary Water System summary sheet which compared the 2003 Master Plan to the 2010 Master Plan. He said the comparisons showed that impact fees would be going down.

**Water System:** Willa Motley reviewed the map that showed proposed projects in relation to current water lines. Mumford discussed the slide relating to water shares and explained the plan was to have adequate water for development for the next five years. Councilman Horner asked about converting irrigation water to indoor use. Mumford said the State had a standard change application process and as the City identified there was a need for more water in the wells, he would prepare that application.

**Sanitary Sewer System:** The summary sheet was displayed. It was indicated the impact fee for Sanitary Sewer would drop significantly because most of the big projects had been completed and the sewer system was looking good. A map was shown of future/projected development of the sewer system.

**Street System:** Motley reviewed the Street System. She explained they did some changes to the nomenclature of the system. She said the impact fee would increase slightly because of roads being added and cost of construction going up. She indicated the major project in the future would be the connector road to Daniels. Another project was 300 West and the bypass road. Councilman Horner asked if a road was shown on the Master Plan would the City have to pay for it. Motley said if it was in an area of development the developer building that development would pay for the standard local roadway with the City making any upgrades unless the development showed the need for more than standard. A slide was shown of the proposed Street System.

**Storm Drain:** Motley indicated that instead of building a City-wide Storm Drain System, the Engineering Department was looking now more to individual ponds since that system was working so well—they had pretty much done away with a City-wide system. However, they were proposing to implement a 5-year Storm Water Management Plan. Councilman Horner said he wanted to learn more about that System and said, too, he wanted to know why there was thinking of doing away with the City-wide plan. Motley indicated that to do a City-wide plan, the City would have to purchase large amounts of land and build a large piping system. Councilman Horner wondered what would be used in place of a City-wide plan. Motley said the Ditch System. He asked what would happen when the Pressurized System took over. Motley said the City would not do away with the Ditch System even when the Pressurized System took over. Motley indicated the State was monitoring water quality now more than before. She said the City was taking baby steps to comply with what the State requirements were and as long as the City was working towards the requirements, the State would work with the City. An overhead was shown on future proposed drain systems.

**Pressurized Irrigation:** Mumford indicated this Section was new and would require an impact fee for new growth plus a utility fee for Central Heber residents only to pay for the infrastructure. Councilman Horner said he was not in favor of this and indicated this was something the Council had on their “parking list” (future discussion items) and now it seemed the decision had been made for the Council by the Engineering Department. Mayor Phillips disagreed and said this proposal was not final and there would be a lot of discussion prior to adopting the new Master Plan.

**Parks and Trails:** Mumford discussed the slide and indicated the impact fee would increase by \$2.

A slide was then shown on what the proposed cost was for proposed improvements. A slide was also shown on the summary of impact fees—what they were currently and what was proposed. Mumford said the overall fees would be less than what had been paid in the past. Mumford explained the State had changed the reporting process in relation to fees--before there was a 20-year window and now the reports had to be on 5-year periods.

Councilman McDonald said he had talked with Mumford earlier in the morning to get his questions answered. He requested that this information be put on the website for public review. He discussed other issues about governmental exemption, etc. and how that would be paid if there were exemptions.

Mayor Phillips recommended that nothing be put on web site until the Council had made its approval. Councilman Patterson agreed. No further comments from the Council. Mayor Phillips asked again for public comments. There was none. Anderson suggested at our next work meeting the Council schedule a work meeting to try and finish this up.

#### *APPOINTMENTS*

**Greg Ogden – Presentation of Fiscal Year 2009/2010 Audit Results (Separately Bound Materials):** Ogden expressed appreciation to the Council for being allowed to present his audit report and meet with them tonight. He said the smaller of the two books presented was his Management Letter Finding. He said the only “Finding” he found this year was that he himself assisted in drafting the financial statements. He said Heber City had reduced the number of “Findings” from prior years. Ogden reviewed the larger of his two booklets-the financial statements and said that would be his focus tonight. He reviewed pages 12, 13 and 14 and said they were the only pages that presented all of the funds of the City together and were broken down into governmental type activities or business type activities. He explained the business type activities were like the water, where a fee was charged for services provided to the community. Ogden said the key number was the unrestricted net assets which told how much the City had available for use for any purpose. He said the day-to-day operations of the City could be covered with those funds and any other improvements the City needed to make. He said in those funds there was about \$3,000,000 in governmental funding and \$3,200,000 in business-type activities. He said those were really good amounts and showed a good balance for a city the size of Heber. He reviewed page 13-14 which showed the cost necessary to provide the services for each of the departments within the City. Those amounts told how much it cost to run the particular departments. They showed positive numbers and also showed the City was charging enough to cover the cost of services. There was discussion about operating revenues not being sufficient but with impact fees calculated into those, it made the amount charged sufficient. Anderson talked about his on-going discussion with the Council about the cost of services and the included depreciation costs which then might cause that number to be negative. Ogden agreed. Councilman Horner felt that was a discussion for another time. Councilman Horner

asked if building and selling airport hangars was a business. Ogden responded by pointing out in his report where they were reported and said it was in the business section. Councilman Horner then said the City was competing with private enterprise as far as the airport hangars. Councilman McDonald discussed the negative number on page 17. Councilman Horner wanted to know what funds were transferred to where. Ogden said it showed that information on footnote 14 on page 40.

Ogden discussed the percentage of funds the State allowed for reserve and said the City was in compliance this year and within the percentage scale. He referred to page 19 and said that all departmental budgets were under spent. He commended the City for watching that and not allowing any department to overspend.

Ogden pointed out the footnote on page 37 in relation to the debt of the City. He said the City was in good shape as far as debt. He said he did not see that often and that for a city the size of Heber, there was not much debt. He commended the City for that and pointed out that was something the citizens were always concerned about.

Ogden thanked Anderson and his staff. He said they were professional people and he appreciated their willingness to support him as he did the audit. Mayor Phillips thanked Ogden for his report. Anderson said there were a lot of people involved with the financial records of the City and that he appreciated his good staff.

**Perry Rose – Ride Security – Discussion on City Policy Allowing Police Officers to provide Private Security (Continued from 12/02/2010 meeting) Tab 2:** Rose indicated he and those with him were glad to be here. He said in his opinion all those in uniform here tonight did an exceptionally good job and he considered them all his friends. Rose introduced his partner Bill Sandoval and John Tinsley, owner and qualifying agent for Centurian Security in Utah County. Rose said that he and Tinsley sat on the Department of Licensing – Contract Security Board in Salt Lake City. He said that Tinsley was also attending in order to gather information to use in proposed legislature that is being looked at by both the House and Senate that dealt directly with the issues he would bring forth tonight.

Rose said the problem in a nutshell was this: Pride Security did not want to have to compete with the City and their employees to do business in the City. They felt the ground had to be well marked. They also felt they had been mistreated and some laws were violated. They had previously visited with Mark Anderson about the issues and warned him that if it happened again, they would take further action. It did happen again and consequently, they were before the Council tonight.

On February 21, 2009, Pride Security signed a contract with Heber Valley Railroad to do contract security during the Thomas the Train event. They showed up on May 19 and that ran through

May 25. He said they did an exceptional job for the Train during that event. He continued that on about the 19<sup>th</sup> Ed Rhoades, Chief of Police of Heber City, was upset that Pride was awarded that contract and talked with Craig Lacey and with other employees of the Train standing around. He was upset because it was commonly known the Heber City Police Department employees did that security earning extra income. He said these monies were paid directly to the officers.

Rose talked about the rumors that Pride Security was going to hound the City because it was suggested that everyone was violating laws. He said not all those rumors came from Pride—in fact not one came from Pride. He said they would support everything that was said in this meeting tonight and back it by State Statute. He challenged the City Council to do its own investigation. He said if there was a complaint against the City Manager, the City Manager should not do the investigation—if a complaint was against the Chief of Police, someone other than the Chief should do the investigation.

Rose continued that Utah law did not give police officers the right to do a security business without a business license nor did the local Code. So let us say we believe that law enforcement officers could do a business without a license and go out and get a job and represent themselves as a contract security company. They still have to have a business license to operate in Heber City. Since that had not happened, that was a Class D Misdemeanor. Utah State law, in regard to contract security companies, requires liability insurance. Rule 15663302D- Qualification, Licensure and Liability Insurance for contract security companies. Rose read from these references: Subsection 58-1203-2, 58-1301-3 and 58633021J1 which related to liability insurance. Rose said he did not understand this requirement until he started his own business four years or so ago. Rose said Heber City was sued before (he knew because he was part of the suit) and there were a couple other actions against the City ongoing now. He suggested the individual officers couldn't afford the liability claims or attorney fees--the City would have to pay--the City would have to bear the liability costs and the City's insurance would bear the costs. He continued that if the officers were working in a City uniform, representing a police officer and using City equipment, the City was liable.

Rose said Heber City did not have a contract with Heber Valley Railroad in 2010. Pride Security filed a GRAMA request and found there was no contract. He said there was not even a Police Secondary Employment Agreement in place. Rose showed a typical contract and reviewed that. He said the contract he got from the main City office building and the one from the Police Department were different. Rose said that on the form he got from the Police Department, bullet #8 stipulated that if equipment (vehicle) was used a \$50 fee would be paid to the employee per 8-hour shift or portion thereof. The form he got from the main City office building said \$100 would be paid for the operation costs of the vehicle.

Rose showed a schedule for Thomas the Train for 2010. It had hand written notes on it and showed the times the officers were assigned to do security. However, the schedule he received

via the GRAMA request was a nice typed clean copy. He continued that on the schedule he received via the GRAMA request had typed on the bottom of it that police vehicles were not required other than to patrol inside the event. Rose said that every time they drove by the officers were in the cars, cars were running and laptops were being used even though there was supposedly no need for police cars to be used. Rose questioned why the differences in the schedule he received via GRAMA and the other he had in his possession.

Rose went over the Secondary Employment Agreement he had gotten via his GRAMA request. It said employers were not to interfere with or restrict the officer in any way in performing the duties of a police officer. Officers will function only in a police capacity and cannot enforce employer's rules. Enforcement actions will only be taken on violations of law or breeches of the peace or similar. He suggested if that document was signed they were acting as law enforcement people and were tied to the City. Rose went over Rule 156-63-8502 DOPL Rules-State of Utah-Unprofessional Conduct states that unprofessional conduct included: making any statement that can reasonably cause another person to believe that private security officer functions as a law enforcement officer or other function of this State or any of its political subdivisions or any agency of the Federal Government. He suggested the Police Department had to follow this rule per State Statute and if they acted as security, it was unprofessional conduct. He said again during their 2010 security of Thomas the Train they were sitting in their vehicles using their computers—however, it wasn't their fault—they were told to do it. He suggested it was leadership giving wrong direction. "It's not that Ed is a bad Chief." However, it needed to be addressed. He said he wanted change.

Rose discussed Rule 58-63-304 Exemption for Licensure. In addition to 58-1307, this rule applied. Peace Officers had to be employed by a licensed security companies to do security—not Heber City Corporation, not Chief Rhoades but a licensed security company. Rose said he checked tonight before the meeting to see if Ed Rhoades owned a contract security company. There was not a contract security company owned by Ed Rhoades or Heber City or any one of the officers here. He found one officer that worked for Heber City who also is a licensed security officer who worked for Pride Security part time. Rose said when he worked for Pride, he could not wear his Heber City police uniform or represent that he was an officer of the City. Rose suggested the City was allowing the officers to work as security under the guise and it was wrong and unfair to small businesses. He also felt if the community was questioned, they would not want the liability. Rose said there was a proposed change being brought before the Utah State Legislature that would address these issues. He said the Utah Chiefs Association and the Utah League of Cities and Town were part of this and supported a change. He said they understood the liability issues.

Bill Sandoval - Thanked the Council for the opportunity to speak tonight. He presented this scenario: A police officer comes to the Council and suggests he work as a police officer in a security capacity and then other police did not have to be called if a confrontation took place

because the police were already there. Sandoval said that was against State Statute. He wanted to make the Council aware of this problem. A police officer cannot work individually as a security person unless he was actually employed by a security company--when you allow your employees to work as security, it was against the law.

Councilman Horner asked if they had made anyone on staff aware of this law before tonight. Sandoval said over a year ago they approached Anderson about this issue and he was told if it happened again, Pride Security would take further action. Since it happened again, they were here to make the Council aware. Sandoval explained again that an individual officer could perform security if they were hired by the event company and paid by them and had their insurance. However, they could not do it as a representative of the City.

Rose talked again about liability insurance and who would be liable and responsible. His scenario was: Alan McDonald Cabinet shop had some theft problems. Could he hire a police officer or someone other than a police officer to stay in his building overnight and try and solve the problem? Yes, he could do that but who would then be liable if a confrontation took place. He said the liability issue was the issue. Rose summed it up as misappropriation of public funds. Rose said police were police 24 hours a day by State Statute. If they saw a crime and didn't act on it, that was a crime in itself. Rose talked again about the different organizations (Chiefs Association and Sheriffs Association) working together to bring forward some changes to the current laws. Rose said it killed him to bring this forward because he had worked for the City for 20 years. However, business was business and he was tired of competing against the City. He said it was unfair and felt there had been misappropriation of public funds and public property which was a felony. He asked the Council, who ran the City, when they would do what they needed to do to get these guys under control and tell them they were not going to allow this practice any more. He encouraged the Council to look up the laws for themselves or get an investigator.

Rose summarized. He sat down with the City Manager and told him the City was in violation in May 2009 after the Chief went down to the train and complained. He said Anderson was a smart man and knew that people should not be allowed to make money off the City.

Anderson acknowledged he had met with Rose. He acknowledged it was not appropriate to solicit. To his knowledge, after that time there was no solicitation involved but rather the Railroad had called the Chief of Police to see about security. Rose asked why. Anderson said Rose would have to talk to Craig Lacey about that. Rose said he had not talked with Lacey but had talked with the employees and they indicated because of political pressure they were intimidated and afraid the City would be upset if they didn't do the security for the train. Rose maintained that political pressure was the reason he was not allowed to bid on the 2010 Thomas the Train security. He said it was even recorded on voice mail from the Heber Valley Railroad sales staff that the 2010 Thomas the Train security was not going out to bid because they had to

hire the Heber Valley Police Department. So he felt the solicitation was continued from the year before.

Councilman Horner said Anderson might acknowledge it was not appropriate but it still happened because Craig Lacey called and wanted to use the police officers again. Councilman Horner wondered if it didn't raise some red flags when Lacey wanted to use the police officers again. Anderson said Chief Rhoades came to him and said Lacey wanted to use the police officers again and Anderson asked him if he had talked with Lacey since the year before. The Chief indicated no. Anderson said it was fair to expect that the officers were entitled to any security job. He said that typically there would be a secondary employment agreement signed but in this case there was not. Anderson suggested that in light of what Rose had brought forward the policy needed to be reevaluated and things needed to be addressed.

Rose said it was important that the individual officers and the Chief of Police understood what kind of liability they were under if they worked without liability insurance to support them. He said the following criminal acts/codes that were violated by the Chief of Police and Mark Anderson: 76-8-201 conduct, 76-8-410 doing business without a license, 76-8-404 making a profit from and misusing public money, 76-8-402 misuse of public funds, and 76-8-109 failure to disclose conflict of interest. All were misdemeanors except one which was a felony. He said he was not suggesting they needed to be charged—he didn't want that to happen. He said that because of what had happened, the State was looking at Heber City hard even though it was happening all over the State. Rose said the State, Utah Leagues of Cities and Towns, Chiefs Association, Sheriffs Association and the Legislature were looking at what had happened in Heber and were looking at the laws involved and would be making some changes.

Councilman Horner asked Rose to confirm that this was going on all over the State. He said he was disheartened mostly because of prior knowledge. Rose said he wanted those people having prior knowledge to be reprimanded. Mayor Phillips said the Council would look into this but prior knowledge in and of itself was not wrong. He continued that if it was prior knowledge of the police being hired to work for the Railroad and act as policemen it wasn't against the law-- Rose said so himself. Mayor Phillips indicated there was a lot to look into and acknowledged it was a thin line. There were issues that Rose brought up: level playing field, use of car, liability issues—but this was happening all over the State. Mayor Phillips said we were not trying to judge anyone here tonight, but wanted to get the problems solved. Rose said he would be of as much help to the City as possible. He wanted to work together. One of the things the State liked being discussed was police/sheriff departments and security agencies working together because in an emergency that was what would happen anyway. Rose said they would like the Council to get back to them on misappropriation of funds and other violations so they would know where they should go from here. Councilman McDonald asked for copies of the laws that were violated.

## *ACTION ITEMS*

**Alternate Work Schedule – Proposed Implementation:** Anderson reviewed the proposed implementation of the Alternate Work Schedule. He said that at last meeting some of the challenges were talked about. He said he had met with department heads and also some of the people in the departments. Councilman Mergist suggested the majority of the employees wanted to stay on a 4-10 schedule but the Public Works Department realized the dark and cold hours were not conducive to a 4-10 schedule in the winter. Anderson said he had met with all of the park/cemetery department and their desire was to work 4-10 because they already adjusted their schedule for overtime (Friday/Saturday) burials. Anderson proposed this work schedule become effective the first week in January. Councilman McDonald indicated he wanted departments to stay consistent.

Councilman Patterson moved to implement the Alternate Work Schedule as summarized by the City Manager. Councilman Mergist made the second. Councilman Horner wanted to poll the citizens. Councilman McDonald suggesting trying this for six months. Voting AYE: Robert Patterson, Alan McDonald, and Benny Mergist. Voting NAY: Nile Horner. Councilman Straddeck was excused.

**Police Department – Discussion on creating a Lieutenant Position (Tab 3):** Chief Rhoades thanked the Council for their time. He said he understood the City was in a mid-budget situation which made this a more difficult possibility. An overhead was reviewed. Chief Rhoades said it was important that the structure of the Police Department be changed. He said he had a sergeant that was being paid as a sergeant but doing chief duties. Chief Rhoades gave a history of staff numbers since his employment in 1998. Councilman McDonald asked about the standard number of officers per 1000 population. Chief Rhoades talked about the difference in East coast, West coast and other demographics. He said Heber had about .7 officers per thousand. He said when everything was factored in Heber City was about .25% instead of the .45% national average for uncommitted patrol time.

Chief Rhoades indicated he wanted to put in place the proposed structure because the 2011/2012 economy would be better and growth would increase. He felt this proposed structure was needed now and needed to be addressed today. He said this proposed scenario would raise two people—a sergeant to a lieutenant and an officer to a sergeant.

Councilman Mergist said there was more bang for the buck with one lieutenant and three sergeants and if he had his very wish. it would be lieutenant and three sergeants, backfill with one and when officers returned from deployment have 14 officers in the Department.

Chief Rhoades said his proposal tonight was for a lieutenant and two sergeant positions. He said in the next budget year he would be asking for another sergeant and to backfill one officer.

Mayor Phillips talked about being midyear in the budget process. He questioned if this proposed position would be paid with new monies from somewhere or if the Council needed to find monies within.

Councilman McDonald said his priority was safety and that Chief Rhoades had his support. Councilman Mergist agreed. Councilman Horner wanted to know where the budget stood. He said he had no problem with lieutenant and backfilling to two sergeants but was concerned with the budget. Anderson said he would have financial statements at the next Council meeting for the Council to review. Councilman Horner indicated he wanted to give the police what they needed, if possible. Mayor Phillips pointed out the supervisory issue in the Public Works Department was 1 to 14. Anderson suggested the issue of supervisor-to-worker ratio was an organization-wide problem and wanted the Council to see the whole picture. Councilman Mergist said security of the community was a priority with him. Councilman Horner suggested this should be looked at during upcoming budget meetings. Anderson said he wanted to look at paying the people the City already had on staff better wages before adding additional bodies.

Councilman McDonald moved to create the position of lieutenant and keep with two sergeants at this time. He moved to create the position of lieutenant, fill that position within the current organization, and backfill the sergeant position within the current organization. Councilman Mergist made the second. Voting AYE: Nile Horner, Alan McDonald, and Benny Mergist. Voting NAY: Robert Patterson. Councilman Straddeck was absent.

**Approval of the 2011 Holiday Schedule (Tab 4):** Councilman Patterson moved to approve the 2011 Holiday schedule as printed and reviewed. Councilman Mergist made the second. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Councilman Straddeck was excused.

As there was no further business the Heber City Council meeting of December 16, 2010, was adjourned at 10:17 p.m.

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Paulette Thurber, City Recorder