

Heber City Corporation  
City Council Meeting  
June 3, 2010

6:30 p.m.

WORK MEETING

The Council of Heber City, Wasatch County, Utah, met in **Work Meeting** on June 3, 2010, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips

Council Members Eric Straddeck  
Nile Horner  
Robert Patterson  
Alan McDonald  
Benny Mergist

Also Present: City Manager Mark K. Anderson  
Deputy City Recorder Michelle Kellogg  
Police Department Sgt. James Moore

**Presentation on Health Retirement Arrangement (HRA) – Jeremy Sewell – First West**

**Benefits:** Sewell passed out a health insurance comparison to the Council and indicated he wanted to speak about Health Reimbursement Arrangements (HRA) and Health Savings Accounts (HSA). He stated HRAs were made to help employers set aside a specified dollar amount to take care of claim utilization. Employers could purchase higher deductible plans and put the savings gained from the lower insurance premium into the account. Then when the employee had a claim, they could request reimbursement up to that specified amount. Key concepts of the HRA included: the arrangement would be completely owned by the employer, the employer would determine the dollar amount set aside for reimbursement, and the employer would determine what claims would qualify for reimbursement.

Some issues with HRAs included: because it was viewed by the IRS as a self-funding mechanism, it would be COBRA eligible. In effect, employees could request reimbursement up to 18 months after termination because of the COBRA requirements. Mayor Phillips asked if an employer could set a rule about claims after termination. Sewell said no. Councilman Straddeck asked if, for example, the Council set up an HRA with a claim limit of \$1,000, and an employee left the City and was on COBRA, would he only get reimbursed up to the \$1,000 limit or could

he get more. Sewell stated that in that example, the former employee would only be reimbursed up to the \$1,000 limit. Councilman Straddeck stated that for the 18 month period, the employer would be liable for \$2,000. Sewell explained after 12 months, the employer's responsibility would be terminated. Councilman McDonald stated HRAs were discriminatory because if one family used the \$1,000 for claims but another family didn't use any, the second family would not get that benefit.

Anderson said he sent an article to the Council that the trend was going towards HSA plans. Sewell stated the employer would see an increase in claim utilization with the HRA versus the HSA. HSA plans required the employee to be more responsible because the money was his.

Sewell proceeded to give some information on HSA plans. He said HSA plans worked better when the employer's goal was to curb utilization. An employer could raise the deductible on the HSA plan but the deductible wouldn't limit the employer's responsibility under the HRA plan. Councilman Straddeck asked if an employer could require that claim utilization begin only after the deductible had been met by the employee under an HRA. It was indicated those terms could be implemented. Sewell said that example would give the employee an incentive to meet the deductible.

Mayor Phillips asked if HSA plans were working to reduce costs. Sewell referred to the market study by Aetna in the distributed information. The study showed over 10% lower medical costs for HSA members than PPO members. For employers using HSA plans, they saw much more savings than PPO plans and HRA plans. Mayor Phillips asked if an employer put so much into an HSA, would it see that much savings in lower premiums. Sewell said a study would have to be done on that specific premium; but looking at it from a national point of view, the employers were more than likely to see savings. In Heber City, this year's renewal for health insurance was 5% lower than last year.

Anderson asked the Council to look at the City's premium rate for HSA versus PPO, and he indicated the costs for the employee were lower on the HSA premium. It was shown that an employee who chose family coverage for the PPO plan would absorb the extra costs by paying a higher premium. Anderson referred to the insurance quotes in the packet, looking at HSA premiums versus PPO. The HSA premium was much lower.

Councilman Straddeck asked if the City was required to fund every participant at the same level in the same year with an HSA plan. Sewell stated all employees had to be treated equally. Councilman McDonald said it was the employer's choice whether it wanted to fund anything at all. Mayor Phillips asked if the City could take away the PPO option to employees. Sewell indicated that for companies which provided one option only, the employer saw savings in future renewals. Anderson stated last year the employees paid the difference in premiums if they chose the PPO plan; the City paid the same rate per employee. Sewell indicated employees generally

had a hard time processing deductible changes. A change from \$500 to \$1,500 would be a hard transition. He recommended slowly raising the PPO deductible so employees could adjust while at the same time becoming more educated on the benefits of HSA plans. Councilman McDonald asked about putting a higher deductible on prescription cards and a lower deductible on the insurance. Sewell didn't think it would save more than a few percentage points. Discussion on employer contributions for HSA plans. Sewell indicated the employer could fund the HSA quarterly, monthly, or in segments.

Councilman McDonald's opinion was to get rid of the HRA consideration. Councilman Horner asked if Anderson had received feedback from the County on its health insurance. Anderson indicated that information was in the packet from last week's meeting. He explained the differences, of which one was higher out-of-pocket expenses. The County currently offered two different plan options.

Councilman McDonald suggested converting all employees to the HSA plan, and making that the only option available. Mayor Phillips asked if there was a target amount for savings on health insurance. Anderson stated the department heads preferred having both options available to employees and having the employees pay the higher fee for the PPO option. Councilman Horner thought there would be a greater savings in next year's insurance renewal if the only option was the HSA plan. Anderson indicated a savings would occur only if the HSA promoted fewer claims.

Councilman Horner wanted to see the City go to one option, the HSA, and it would pay 100% of the premium for a single or family, and go to \$1,500 deductible, but there would be no contribution to the HSA from the City. Councilman Straddeck thought for the long-term benefit to the City, it would make sense to put all employees on the HSA. After some discussion, Councilman Horner said with his proposal the City would save \$11,000, and the employee would see the savings in his paycheck.

Councilman Patterson asked if there was any benefit to the employees. Anderson said no, only to the City. Councilman Patterson thought that was too much taken away from the City employees. Councilman McDonald suggested coverage for the employee only. Councilman Horner stated the County and State governments only pay for the employee. Anderson said that was contrary to the information the Wasatch County personnel director gave him.

Councilman Straddeck asked if the City went to the HSA plan as the only option, with the current contributions, would it cost the City more. Anderson said that was the estimated figure in the budget. Councilman Straddeck suggested moving all employees to the HSA plan and fund it as it currently funded. In future years, the City could see savings. Anderson said the impact on

that proposal would be the employees' paycheck would go down to absorb the rate increase, and the high prescription users would see higher out-of-pocket costs.

Councilman Horner liked his proposal better and said the City needed to save that \$11,000. Councilmen McDonald, Straddeck, and Horner favored the idea of all employees being moved to the HSA plan. Councilman Patterson wanted both health insurance options available to the employees. Councilman Horner said either option would cost employees but the savings to the City might help save jobs.

Anderson said the employees would still be whole if the City contributions to the HSA accounts continued. Councilman Straddeck said the other thing the HSA plan would do was give the City the option of treating employees uniformly in the future: by raising the premiums or reducing the contributions. Discussion on savings.

Councilman Mergist and Councilman Horner agreed to proceed with Councilman Straddeck's proposal.

**Veterans Monument:** Mayor Phillips indicated he had told Ralph Lugton the Council would discuss the monument more after the budget was firmed up. Mayor Phillips talked about forming a committee and beginning a fundraising program. Lugton's concern about the monument was that every veteran should be recognized. Lugton stated he would come before the Council soon.

**Discuss Cancellation of the July 1<sup>st</sup> City Council Meeting:** Councilman Straddeck stated he would be out of town. All were in favor of cancelling the meeting.

**Other Budget Issues – Consolidation of Public Works and Parks:** Anderson referred to a letter he emailed to the Council this afternoon regarding the proposed termination of Stephen Tozier.

Councilman Horner moved to go into closed session to discuss pending litigation, sale of real estate, personnel, and a letter received from an attorney. Councilman McDonald seconded the motion. Voting Aye: Councilmen Straddeck, Horner, Patterson, McDonald and Mergist.

Councilman Patterson moved to adjourn the closed session. Councilman McDonald seconded the motion. Voting Aye: Councilmen Straddeck, Horner, Patterson, McDonald and Mergist.

Anderson indicated he could not feel good about terminating Tozier. Tozier had made improvements when reprimanded, and had shown a willingness to follow directions. Anderson said he was willing to consolidate departments, and if the Council gave him a budget, he would make it work.

Councilman McDonald asked if there was any legal backing to the fact that Anderson wouldn't have to follow the direction given by the Council. Anderson said the Council adopted the budget and it was Anderson's job to implement it.

**Mayor Phillips read the following prepared statement:** Going back some years, the City Council (of which I was a member) realized there were problems in the Public Works Department. On top of things not getting done and the lack of accountability of what was being done and by whom, there was a feeling by the Council that staffing was probably one or two employees over what it needed to be. Lack of direction, supervision, and strong personalities ruled the day in Public Works.

Heber City contracted with the University of Utah to conduct an organizational review of the Public Works Department from top to bottom. Over several months, they reviewed the programs, interviewed employees, and made several suggestions for needed changes in Public Works. Staffing (which was thought to be over by one or two employees) was shown to actually be one or two employees under what it needed to be.

The City Council interviewed applicants for a Director of Public Works, and Steve Tozier was selected to fill the position. He started in April 2005 (five years ago). His goal (among others) was to implement the findings of the study (record-keeping, job assignments, accountability and work records, feedback, etc.) He has done this, and he continues to run a good department.

I state this based on what is being done, feedback from the public, and feedback from many of his employees and my own observations of what goes on in Public Works. I talk with employees in Public Works, I stop occasionally when I see them working on projects in the community. I have observed Steve Tozier working with his employees, side-by-side, in emergency situations.

It is fair to say Steve Tozier started out with the deck stacked against him. Employees who didn't want to accept direction made it difficult on him, but he stuck to the issues and followed the direction of the City Council/City Manager. Some employees left for better paying jobs. Two employees were reprimanded after being interviewed by the entire City Council/City Manager. They left employment with Heber City of their own volition. Records began to be maintained, etc. Steve Tozier took the blame for everyone that left whether he was a factor in their leaving or not. As time passed, improvements in the department were noted.

In August 2008, based on a couple of complaints from Public Works employees, the City Manager and I (with the concurrence of the Council) sat down with each employee in Public Works to ask them pertinent questions and listen to them. We then visited with Steve Tozier and shared these same questions, and received his feedback. Following that, Steve Tozier came before the City Council in October 2008 and the issues were laid out. He was given certain

direction in running his department which the Council wanted to see implemented. Steve Tozier accepted that direction and has made changes in his department. Steve Tozier has a record of accepting direction from the City Manager and Council.

If he is not performing according to the direction the Council wants him to perform, he deserves an opportunity to know where he is falling short, and time to correct any deficiencies. This is nothing less than each of us would want for ourselves.

From our interviews with each employee in Public Works, it was clear that Steve had strong support in the department from the majority of the employees. I believe that same support continues today.

Steve's management style is a little different and those on the Council who know him realize that. However, he takes direction from the City Manager and Council, and has made changes where changes are directed. That is important to keep in mind.

May 1, 2010 Council budget meeting: Councilman Horner proposed to combine Parks/Cemetery Department with Public Works, fire Steve Tozier, and make Mark Rounds the department head. Councilmen Mergist and McDonald agreed. Robert Patterson was not in attendance at the meeting. Councilman Straddeck heard this for the first time at that budget meeting and wanted time to look into the matter and get some facts.

Concerns: Steve Tozier is not an "at will" employee and the City Council is not empowered to terminate him, or move an employee into that position. What is the rationale for firing a department head that is successfully performing his duties? Is this the message we want to send to our employees of the City? (e.g. Employees with satisfactory work records can be singled out by the City Council for termination without following the performance improvement plan outlined by the City's personnel manual) Where was the due-diligence in making this decision? Two members of the City Council hadn't even been apprised of what was proposed in the May 1st meeting. What is the rationale in firing Steve Tozier and moving Mark Rounds into that position? What kinds of Council discussions have transpired since the proposition was first raised? If Steve Tozier is not performing his duties satisfactorily, what are those duties or issues in which he is failing, or which need improvement? What opportunity has he been given to correct any perceived deficiencies?

Classified employees are afforded by our personnel policy the opportunity to improve their performance and maintain their positions. Steve Tozier isn't being given that chance. The reasons for terminating him haven't even been stated.

If this were a matter of budget, the City Council should tell the City Manager how much funding they want cut from the combined departments and let him work out a solution to accommodate those directions. That makes it a funding issue, not a personnel issue.

How was it determined to move Mark Rounds into the Public Works Director position? How was it determined that the skill-sets of Mr. Rounds' are superior to those of other employees within the City who may desire to be considered for this position?

What thought has been given (I ask because none of the Council has brought this up) to how this might affect the Public Works Department, morale of employees, and morale of other employees working for Heber City?

Please ask yourselves "Is this really in the best interest of the citizens of Heber City which you represent?" If we terminate an employee with special skills and knowledge which Steve Tozier possesses, and find ourselves having to contract for certain needs because the expertise is gone, how do we square that with the public?

In the employee appeals process, this and other information will be brought to light. Mr. Tozier is entitled to depose employees, the City Council, Mayor, City Manager, and other concerning their knowledge of this entire situation, background, and feelings and understanding on issues surrounding this matter.

Has anyone on the Council talked to Mark Rounds about this matter, and indicated he would be promoted into Steve Tozier's position? I think that is a fair question to ask. **This ended Mayor Phillips' prepared statement.**

Mayor Phillips stated he wasn't trying to change or sway the Council's opinion, but wanted to make sure things were done right. Councilman Horner said he appreciated that. He said at the last regular Council meeting, the City Attorney, Mark Smedley, said the Council had every right to have a reduction in force, and they were done all the time in these economic times. The reason for the direction to terminate Tozier was to balance the budget. From the beginning, Horner sought to implement the reduction and consolidation based on seniority. Rounds had seniority in a supervisory role over that of Tozier. Councilman Horner stated Anderson's opinion that both were qualified. Anderson clarified that he thought both men were good but had different qualifications. Councilman Horner said by State Code, the City had to keep the employee with the most seniority.

Councilman McDonald asked if either Tozier or Rounds had any certificates or degrees to run water and sewer. It was indicated Rounds did not, and Tozier was not certified for Utah, but he had been certified in Idaho. Anderson stated those certifications were not required for the job.

Mayor Phillips clarified the City Manager had the right to terminate Steve Tozier, not the Council. Councilman Horner stated Anderson's job was to follow the Council's direction. As an at-will employee, Anderson was insubordinate for not complying with the Council.

Councilman Mergist said he would disagree with Councilman Horner. Mergist remembered Smedley indicating Anderson had all rights to terminate who he saw fit in order to meet the budget requirements. The Council could give direction but Anderson had the final say. To insinuate insubordination on Anderson's part was a stretch. There were directions from the Council that Anderson must comply with, but this was not one of them. Councilman Mergist indicated if this course was to be pursued further, the process should take more time.

Mayor Phillips stated if Tozier's termination was a budget issue, Anderson could find other areas within those departments. Councilman Mergist said he had spoken with Public Works employees. He had good working relationships with both Tozier and Rounds. He had looked at the tenure and skill sets of each. His reasoning for the consolidation was that Heber was still a small city. He thought if the recommendation of due process had not been done, he wanted to talk with legal counsel to see what could be done to accomplish that.

Councilman Horner said he had seen this done with other budgets and thought there was a big difference between termination and a reduction in force. He didn't feel like it was best for the City to cut \$100,000 in any other way except by a reduction in force. He didn't want to cut services, but cutting Tozier and consolidating departments would have the least impact on the City.

Councilman Straddeck asked if Councilman Horner was 100% certain it was State Statute that required that tenure rule. Councilman Horner said yes, if both employees were equal in classification and certificates. Mayor Phillips wanted to contact a labor law attorney to verify that. Councilman McDonald wanted to find out some things as well and appreciated Mayor Phillips' comments. Mayor Phillips stated he had to express his concerns of how this issue looked and felt.

Councilman Horner said the City was trying to combine administration, not employees, so as not to affect services. Councilman Mergist stated for the record, as a personal concern, a vendor had contacted him and said proceedings were beginning for litigation against him personally, by an employee of the City, and also statements were being prepared against him, attacking him personally.

Anderson said he was looking for direction. Councilman McDonald said he needed to talk with an attorney, so for now, things were on hold. Councilman Straddeck asked Councilman McDonald to share the information as he acquired it.

Anderson asked if he needed to find \$100,000 from another source or leave it in the budget and amend it on June 17<sup>th</sup>. Councilman Horner said to leave the budget as it was and the Council could amend it on June 17<sup>th</sup>.

With no further business, the meeting was adjourned.

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Michelle Kellogg, Deputy City Recorder