

AMERICAN FORK CITY COUNCIL
AUGUST 1, 2023
WORK SESSION MINUTES

Members Present:

Bradley J. Frost	Mayor
Kevin Barnes	Council Member
Staci Carroll	Council Member
Rob Shelton	Council Member

Members Absent:

Clark Taylor	Council Member
Ryan Hunter	Council Member

Staff Present:

David Bunker	City Administrator
Camden Bird	Assistant City Administrator
Derric Rykert	Community Services Director
Patrick O'Brien	Development Services Director
Stephanie Finau	Deputy Recorder
Aaron Brems	Fire Chief
Cameron Paul	Police Chief
Cherylyn Egner	City Attorney
Anna Montoya	Finance Director
Susan Goebel-Canning	Public Works Director

Also present: Ernie John, Ben Ash (Arborist), Jason Thomson (Parks), Cheyenne Chaffin, and Austin Duke

The American Fork City Council met in a work session on Tuesday, August 1, 2023, in the City Administration Conference Room, located at 51 East Main Street, commencing at 4:00 p.m.

WORK SESSION

The purpose of the City Work Sessions is to prepare the City Council for upcoming agenda items on future City Council Meetings. The Work Session is not an action item meeting. No one attending the meeting should rely on any discussion or any perceived consensus as action or authorization. These come only from the City Council Meeting.

Mayor Frost opened up the meeting and reported that Council Member Taylor will not be in attendance and Council Member Hunter should be arriving shortly.

1. **Report by the City Arborist.**

Derric Rykert introduced Ben Ash, the new city Arborist who will be presenting on Urban Forestry and getting feedback on the city code from the council.

Ben Ash reported that his goal is to work towards creating an Urban Forestry code by mitigating between the city infrastructure and the urban forest which will help reduce the amount of city resources that will be utilized to resolve those conflicts and positively integrate the green infrastructures into the city assets.

- Clarification of tree ownership/responsibility Sec 12.16.040
- Pruning Clearance
- Planting specification
- Alignment with TCIA standards

Mr. Ash discussed the clarification of tree ownership. He stated that the existing code states that *the “park strips are supposed to be landscaped and should be maintained and kept maintained in a safe and well-kept condition by the said property owner.”* He added that there was a clause within the tree planting *“about maintenance, protection and removal section saying that the city has the right to prune and maintain those said trees with the public spaces, but that are property of the abutting property owners.”*

Mr. Ash proposed that they clarify clearly in the code to designate what is a non-public tree and a public tree, as well as what is a right-of-way or easement park strips, and what belongs to the property owners for the planting maintenance, care protection, assessment, and removal. He added that there should be a written agreement about the trees in the right-of-way that whoever owns it has the right to prune, remove for purposes pertaining to development infrastructure improvement and safety concerns. He also mentioned joint ownership stating that responsible parties will be held liable for all damage caused by said property.

Mr. Ash added that he didn’t want to put the hardship on the residents concerning large old trees that are not in conformity with the city code and that do not fit the spaces of the park strips. He stated that he wanted to add a clause that any tree 10” or greater in diameter or bigger than the park strip, those trees will be identified, and the city will assume ownership and responsibility for those, correcting them and to conform with city code. All other 10” diameter and smaller trees that are not conformed to city would belong to the property owners.

Mr. Ash reported that the city is responsible for preserving high value property if there is a large tree of value onset the property that has been growing, the city will take every effort to do what they can to preserve and mitigate damage to the tree when repairing or installing public utility infrastructure. If any property is damaged, the city will be responsible for replacing any turf, gravel, or planting landscapes.

Mayor Frost asked where does street sweeping come in and when does it become an obstacle? Mr. Ash replied that it would fall under *“Public Systems”*. The city would be liable to prune the trees for safety concerns or infrastructure improvement which is mentioned in the *Entity Owning* clause.

Council Member Shelton referred to Ms. Egner to ask if it would make sense to add the word maintenance to the code for capital improvement. He also asked about whether public utility easements are different than the right-of-way or is it in conjunction with it. Mr. Ash responded that he had put it with the right-of-way instead of trees.

Ms. Egner replied that if it is a public right-of-way that is different than a park strip because you couldn’t have a private roadway with a private park strip. There will still have to be requirements regarding tree height on a private right-of-way because fire trucks still need to be driven through there even if we are not maintaining it. She added that a park strip on a public right-of-way, for the purpose of maintenance, it can be a park strip because we want all the trees on the park strips

maintained. Ms. Egner added that changing ownership would be a bigger conversation and that would need to be a public right-of-way and not just a park strip.

Council Member Shelton questioned the public utility easement on the park strip/sidewalk and depending on when it was built in the city, you have a 10' public utility easement in your front yard and a big tree is growing and disrupting the sidewalk but it is not on the park strip but inside the utility easement, would that be different than what is being discussed. Ms. Egner replied it is, because the tree is on the private owner's property. If it is causing an issue with the sidewalk that would be a separate issue. The tree would be hazardous and would fall under a separate section of the code.

Council Member Barnes said that the argument about who owns and who maintains the park strip has always been a problem. It belongs to the city, but property owners are expected to maintain it, which causes confusion and becomes problematic. Discussion amongst the council ensued about the maintenance of the park strips and timeline of how long residents get to fix the problem.

Council Member Shelton mentioned one of the members on the Beautification committee is adamant about her trees and shrubberies. The power company came through and was going to cut her trees too because it was above the height limit. She asked for 10 days to take care of it and ever since then she has maintained the trees' height. He added that it was a collaboration approach that the power company took with the property owner to resolve that and giving a "fix it" notice to find a solution that would be amiable to meet our code.

Council Member Carroll mentioned that the proposal is to have the city take ownership and responsibility of the large trees but with that maybe go to a "fix it" ticket first so the homeowner has a chance to remedy the situation themselves.

Jason Thomson responded that some of the trees are large and have been there for a long time and that the "fix it" ticket issued could cost between \$5,000 to \$10,000, which will upset the property owner. Council Member Shelton replied that the "fix it" ticket would allow a timeframe for the property owner to correct the problem before the city steps in to get the tree so it fits the standard of the code. He also mentioned that we let the property owner know that they can reach out to the city to discuss a solution.

Mr. Thomson replied that he needs direction on how to handle that, as they have been instructed by legal counsel that the trees on park strips are city trees, but then direction from the council member would want them to go to the homeowners first. Mr. Ash added that in a 10-day notice could be difficult to take care of the problem, especially if the city works with a certified company to come in and take care of it. It could be a couple of weeks before they come out and he proposed that for enforcement that upon getting a notice whether the tree is a public nuisance or a hazard, because of the safety concern, those trees must be taken care of within a 30-day period.

Council Member Carroll replied that the way the code is read there is no ticket of any kind and asked in what scenario they would be getting a ticket, such as small trees that in the future will get big and become a problem. Mr. Ash replied that any tree deemed to be a public nuisance would start the process that he or a code enforcement officer would notify homeowner that the tree needs to be taken care of, unless it's a big tree then it would be the city's problem.

Discussion amongst council members and Mr. Ash ensued regarding a 30-day notice (fix it ticket), trees that are a potential hazard and public nuisance, and how to work with homeowners in a more efficient manner.

Mr. Ash stated that he is doing an inventory to determine what trees are of highest priority in removing. Mr. Bunker added that if it is a hazardous tree that's causing safety issues or poses a threat then a fix-it-ticket will be issued to homeowner stating it needs to be addressed immediately.

Mr. Ash stated that he is pushing for more ownership to go toward residents instead of the city accepting ownership for them.

- Treat right-of-way like a leased property. Structures adhere to identified standards, if they do not, or out of compliance the tenant is responsible to correct the issue or be penalized.
- Leave ownership with adjacent property owners, requiring proper care and maintenance. This will increase opportunities for personal education regarding trees and proper trees for the forestry program.

He added that if the city claims ownership:

- They are in the right-of-way then the city owns all the landscaping within the parking strip and should therefore be responsible for the maintenance.
- Assumes liability since the city's liability is greater because street trees always have a high-risk rating due to increased occupancy rates with the target area.

Mr. Ash continued to discuss the liabilities of the trees and how and who would be responsible for the care and maintenance. Ms. Egner chimed in and pointed out that all of the city trees that are in our park strips, we can't tell the residents that it is their tree. She added that if somebody doesn't want to take ownership of something, we've always had an ordinance in place that states that property owners must maintain the park strip and to turn over ownership will be a complicated process.

Ms. Egner discussed the liabilities of the residents were to own and maintain the park strips depending on the size of the tree.

Council Member Shelton mentioned the Government Immunity Act that covers the sidewalk program and asked to what extent do we have a program in place and does the city still have one? Ms. Egner replied that if we have a program in place, it does create the defense of Government Immunity. Council Member Shelton suggested having a program in place to limit liabilities if there is a lawsuit.

Council Member Barnes brought up the raising of the sidewalks due to the trees. Ms. Egner replied that the city owns the sidewalk, but it is the responsibility of the property owner to maintain those in winter and shovel them.

Mr. Thomson asked if it's the city's responsibility to maintain the trees in the park strip and sidewalks. If a tree falls, regardless of if it is maintained or not, and it does damage the city may be liable, but there's no way we can put that in the city code.

Ms. Egner replied that the difference is shoveling snow off the sidewalk that is something we can actively go around and enforce. She added that it comes down to having an enforcement mechanism in the code.

Discussion about ownership and maintenance ensued in detail on who and when the responsibility will fall on depending on the situation and how it can be incorporated in the code.

Mr. Ash commented that he still would like the ownership of the park strip to go to the residents but is fine if it doesn't but would like to be able give a 30-day period to the residents to prove that in 3 months there will be proof that some type of work will be happening before the city maintains it.

Mr. Thomson stated that the frustration with the employees when dealing with homeowners is one home's park strips splits in half with the neighbor and the homeowner calls us to come remove the tree, the neighbor gets angry. Mr. Thomson added that residents fear that they must pay to have trees removed but then there are residents who love the trees on the park strips and don't want the trees removed.

Mr. Ash commented they must consider what it takes to replace sidewalks and trees as well as the value of trees that will be lost and the contribution that it brings to that area. That may not be something the city can fully calculate, but he can try and put a number to the value of the tree.

Mr. Bunker commented that 700 North is a major collector, and the city has spent a lot of money requiring the right-of-way along the corridor. Every situation is different. What is evaluated for that area may not fit a different area, so they must be careful. Council Member Carroll agreed about being specific on situations because it is hard to write code for eventualities. Council Member Shelton suggested he would like to see some sort of policy formed on the staff level.

Mr. Ash shared some specific examples where he did a compare the analysis and how he was able to save 6 of the 7 trees.

Discussion ensued amongst staff and council about snow on sidewalks, curb/gutter options and trees on homeowner properties close to the sidewalk.

Mr. Rykert confirmed with the council that moving forward, if trees are deemed for removal, that responsibility would be on the city to remove them if they are out of compliance based on the current city code. What should staff do if residents complained? Council Member Shelton acknowledged and agreed with Mr. Rykert as long as a "fix it" notice was given and collaborating with the neighbor or homeowner.

Mr. Rykert commented that they will look at all options on how to treat existing trees and if they are not up to code and if it calls for removal, the city will prune them accordingly and then all new builds and new construction anything in compliance is the responsibility of the homeowner to maintain and care for moving forward.

Mr. Ash asked the council what they are willing to put forth for the trees and forestry of American Fork. By the end of the day how much value do we lose in the city and the space we want to create by doing so. Council Member Carroll suggested replacing trees, giving residents a cost of two trees that they can plant in their yard. Mr. Rykert replied that they can work on

primer programs. Mr. Bunker commented that some cities order a lot of trees, and the left-over trees sell them to the public and at the time we can move remove the hazardous tree and residents can have a tree credit for free.

2. Open Public Meeting and Legal Confidentiality training.

Ms. Egner went over legal confidentiality and what is required of the council. She stated that all meetings have to be open to the public unless they are specifically allowed to a closed meeting which is under limited circumstances. Workshops, executive sessions, and site visits would be considered a meeting if there is quorum present. She discussed chance meetings are okay if no city business is being discussed amongst the quorum present. There is limited ability to enter a closed session, such as collective bargaining, eminent litigation, and lease sale or purchase of real property. Ms. Egner mentioned there are no motions or voting, just consensus on something to move forward.

Discussion amongst the council about consensus versus voting in a closed session and that things discussed in that meeting cannot be discussed outside of the closed meeting only to those who were in the meeting. Ms. Egner mentioned that if there was a discussion about the closed meeting outside of it, it is a Class B misdemeanor.

Ms. Egner discussed *Conflict of Interest*. She mentioned interest in business entity doing business within the city. It is a one-time only, you need to formally disclose in writing to the mayor and announce it on the public record.

She also reported rejecting any cash gifts unless it's a campaign contribution and disclosed in writing and in a public meeting. If there's a specific conflict on any issue, and then just because you can participate does not mean you should participate.

Council Member Shelton felt it was helpful to go back and listen to recorded meetings where there has been a concern or an item on the agenda that was controversial of what was said. He expressed his appreciation for the planning meeting and how they use A.I. to transcribe their minutes. He shared that it would be helpful to keep in compliance all of the different subcommittees that exist and it is stored in a recorded cloud that the City Recorder can tap into.

Mr. Bunker commented that the tough part of that is the A.I. doesn't pick up everything and you still have to work on the minutes. He mentioned that if a speaker doesn't speak clearly or in the mic it jumbles up.

Mayor Frost added that there are a lot of good things we can learn from what other cities are doing and adapt to using new technology.

3. Adjourn.

The meeting adjourned at 5:40 pm.



Stephanie Finau, Deputy Recorder