



HIGHLAND CITY COUNCIL MINUTES

Tuesday, September 19, 2023
Approved December 5, 2023

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

VIRTUAL PARTICIPATION

- ▶ YouTube Live: <http://bit.ly/HC-youtube>
- ✉ Email comments prior to meeting: council@highlandcity.org

6:30 PM SWEARING IN CEREMONY FOR RON CAMPBELL

Brittany Bills welcomed the newly appointed member of the City Council, Ron Campbell. He invited Gretchen Homer, Notary Public, to administer the Oath of Office to Mr. Campbell.

7:00 PM REGULAR SESSION

Call to Order – Mayor Pro-Tem Brittney Bills

Invocation – Council Member Kim Rodela

Pledge of Allegiance – Council Member Scott L. Smith

The meeting was called to order by Mayor Pro-Tem Brittney Bills as a regular session at 7:03 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Council Member Kim Rodela and those in attendance were led in the Pledge of Allegiance by Council Member Scott L. Smith

PRESIDING: Mayor Pro-Tem Brittney P. Bills (Mayor Kurt Ostler attending virtually)

COUNCIL MEMBERS

PRESENT: Brittney P. Bills, Ron Campbell, Kim Rodela, Scott L. Smith

CITY STAFF PRESENT: City Administrator Erin Wells, Assistant City Administrator/Community Development Director Jay Baughman, City Attorney Rob Patterson, Finance Director Tyler Bahr, City Engineer/Public Works Director Andy Spencer, Communications Specialist Brooklyn Wild, Fire Chief Brian Patten, Secretary Heather White, Civic Events Coordinator Robin Wise, Assistant Civic Events Coordinator Brenna Dobbins

OTHERS PRESENT: Jon Hart, Liz Rice, Mark Hafen, Doug Courtney, Wesley Warren, Jeremy Meldrum, Shawn Seager, Nate Woodbury, Bill Haines, Linda Haines, Brenda Ball, Kalista Buchanan, Jason Ball, Eileen H. Miller

1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

Doug Cortney addressed item four on the agenda, the request for an impact fee adjustment for Brandon Neish. He stated that he does not find the situation to be sufficiently rare to constitute unusual circumstances. If the owner were to record a conservation easement on the property, as is referenced in the staff report for the item, that would seem sufficiently outside the norm to constitute an unusual circumstance and he would support the adjustment in that case. If the Council chooses to adjust the impact fee, he strongly encourages a conservation easement be recorded. He then noted that with regard to agenda item seven, he sees some benefit to postponing the decision on that item until after the municipal election; he discussed the process for appointing an additional member to the Council and discussed the perception of voting on the controversial item when there is turnover on the Council. Postponing the issue until after the new year allows for the majority of the Council to be elected after having campaigned regarding the issue. The Mayor has told him that he did not think the developer could wait that long and appears that is the case since it is included on the agenda tonight. It is his understanding that the applicant will suffer material harm if the issue is not decided on their planned timeframe; the perception is that pushing the decision until the next year is tantamount to denying the request. With that being the case, he feels the City owes the applicant a decision; the request was made so late in the process because the applicant promised the applicant that alcohol sales would be allowed. This is due to confusion on the City's alcohol laws. He stated that while there are legitimate reasons for postponement, he urged the Council to vote tonight.

Wesley Warren stated he feels much the same as Mr. Cortney regarding the matter of alcohol sales; he agreed there are many good reasons to push the decision on alcohol sales, but his observation that many unfortunate things have happened lately in the movement of government, but he does not feel the applicant should be denied an action on their application. If the City passes upon the opportunity to receive the development the applicant is pursuing, that opportunity will be gone and cannot be regained. He urged the Council to fulfill their duties to respond timely to pending applications. He stated he knows that it is difficult to take action on applications given the recent vacancies on the Council, and there is a temptation to discount people who are serving a short term on the Council due to the process of filling those vacancies, but that is demeaning to the office and those that are seated on the Council should have their votes weighted the same.

Brandon Neish also addressed item seven; his family moved to Highland because it is a unique and special City that is different from towns nearby. If higher end restaurants wanted to serve alcohol in this area, but prohibition of alcohol sales on Sunday was what was keeping them from being successful, there would be rows and rows of restaurants sitting right on the border of Highland. However, that is not the case, and the Council must really ask themselves if this is a great deal of effort and time wasted on something that will not really matter in the future. He thinks this is a 'lose-lose' situation for the City; if the alcohol sales are approved and the business is successful, there will be increased traffic in the City, and some of those new motorists will be driving after consuming alcohol. Or, the development will fail and there will be vacant buildings that will detract from the City. He stated the optics of the situation are problematic as well; it will appear that the Council 'moved heaven and earth' to allow the developer to maximize profits on a speculative investment. He concluded that if the law is changed, he is extremely confident there will be a citizen's referendum on the matter and that seems like a lot of work for something that may not be positive for the City in the end.

Liz Rise stated she has conducted research on the logos that were posted by the developer applying for the alcohol amendment. One is for a restaurant called "Black Sheep" and she found a Black Sheep Bar and Grill in West Jordan and Holliday, and a Black Sheep Café in Provo that did not serve liquor. The Black Sheep Bar and Grill offers a 'drag night' event; if the City is going to allow liquor sales, it is necessary to consider what else that brings to the community. The other logo looks like that for the Blue Lemon, which has failed in its other locations. She is worried about the manner in which the developer has represented himself; she has conducted research and

cannot find evidence that either of them ever lived in Utah. The younger gentleman lives in Las Vegas and the older lives in California and that should be made clear to the people of Highland.

Jeremy Meldrum stated a couple of things from Ms. Rise's statement need to be corrected; the younger developer lives in San Diego, and he did live in Lehi a few years ago and still owns a rental property there. The older developer does live in California. He stated that he knows both of them well, but he is also against the change to the City's ordinance; he thinks it is naïve to think that a business will ask for an ordinance change to sell alcohol, but that they will agree to be closed on Sunday. He asked how the City can tell certain businesses they can sell alcohol, but others that they cannot, and the issue will only spread and will eventually lead to a request to be open on Sunday. He stated he feels the same as Mr. Neish about the issue; his family moved to Highland for a reason and because of the feeling it had. It is a special and different place and that is largely due to the City's laws on alcohol. It is crazy to mess with a good thing only in hopes of attracting a nice restaurant to the community.

2. PRESENTATIONS

a. Appreciation Award for Timothy A. Ball – Kurt Ostler, Mayor

Mayor Kurt Ostler will present an appreciation award to Timothy A. Ball for his service on the Highland City Council.

Mayor Pro-Tem Bills stated the Mayor and Council wished to honor Council Member Ball for his dedication and service to the City of Highland. She stated she will really miss Mr. Ball as a member of this body, and she thanked him and his family for all they have done for Highland. Mayor Ostler added that Council Member Ball has been a good friend to him, and many others and he will be sorely missed.

Mr. Ball cited a quote from Calvin Coolidge: "What we need is not more federal government, but better local government". He stated that he believes that members of Highland's government have accomplished something extraordinary, and he has grown to love, appreciate, and admire everyone he had the chance to serve with. He moves on from Highland with a heavy heart, but also with a happy heart because he knows he has developed lifelong friendships.

Mayor Pro-Tem Bills then stated that Mayor Ostler has asked that the agenda be rearranged, and that item six be considered next.

6. CONTRACT: AUTHORIZATION OF A CONTRACT WITH LEGISLATIVE EXECUTIVE CONSULTING, LLC *General City Management – Andy Spencer, City Engineer/Public Works Director*

The City Council will consider a contract with Legislative Executive Consulting, LLC for consultant services focused on grant and legislative support for a one (1) year term. The Council will take appropriate action.

City Engineer/Public Works Director Spencer explained on September 5, 2023 the Council discussed authorizing another year of contract with Legislative Executive Consulting, LLC. No final decision was made, but staff was directed to bring the contract to the Council for discussion and vote. He summarized the terms of the contract as follows:

- Legislative Executive Consulting will:
 - Assist the City in seeking an additional \$1 million in water grant funding.
 - Assist the City with additional funding opportunities.
 - Assist the City in potential legislative issues including: State land-use control, excessive development revenue restriction, parameters around Transportation Utility Fees.

Mr. Spencer concluded staff recommends approval of the contract based upon the perceived ability of Mr. Stewart of Legislative Executive Consulting, LLC to secure funding needed by the City.

Council Member Campbell inquired as to the likelihood of the City receiving any of the grant funding mentioned in the staff report without the assistance of Mr. Stewart. Mr. Spencer stated that the City has a current grant application submitted to the Governor's Office of Economic Opportunity (GOEO) and it would be very hard for the City to separate itself from other applicants without Mr. Stewart's assistance; because of Highland's median income, it is difficult to score high on grants that are income based or demographic based, but Mr. Stewart is able to help the City stand out.

Council Member Rodela stated that her private employment is with the Governor's Office of Planning Budget where she is a fiscal grants manager, and it is her job to determine how to get cities and counties across the State to take advantage of the many State and Federal grant programs available to them. There are many resources that city governments can take advantage of, and she is not a strong believer in hiring a consultant and paying him \$100,000 when there are already resources available to the City. She stated that Mr. Spencer is correct in his assessment of the City's income and demographics being a potential hinderance in terms of grant awards, but there are many grants that the City is eligible to receive without the support of a lobbyist.

Mayor Pro-Tem Bills asked Council Member Rodela if she believes there are any grants besides the grant through GOEO that Mr., Stewart could assist the City in securing. Council Member Rodela stated that she feels that the City would have a high chance of getting grants that it applies for. She asked if the City used Mr. Stewart to apply and lobby for the water meter grant, to which Mr. Spencer answered no. Mayor Pro-Tem Bills asked which City staff member is usually responsible for grant applications. Mr. Spencer stated it is typically him and one of the challenges he has faced is being aware of all grant programs. He is pro-grant funding, but without Mr. Stewart's assistance, he would not have known of the grant that the City received last year. He has also indicated that he has a 'plan B' if the City is not successful in receiving the grant, but he does not know the details of that plan.

Council Member Smith stated that when he was first elected to the Council, the City had a lobbyist, but that contract was terminated during tough financial times. In recent years the City has secured millions in grant funding and that has been very helpful in completing critical projects. However, he understands Council Member Rodela's concerns and needs to think more about the issue. He wondered if it is a conflict of interest for Council Member Rodela to discuss this issue given her employment with the Governor's Office.

Council Member Campbell stated that he respects Council Member Rodela's position and concern, but he also leans heavily on staff's recommendations, and he is supportive of extending the contract for that reason.

Mayor Ostler stated he had nothing to add.

Council Member Campbell MOVED that City Council APPROVE a contract with Legislative Executive Consulting, LLC in the amount of \$100,000 and AUTHORIZE the Mayor to sign the contract.

Council Member Scott L. Smith SECONDED the motion.

The vote was recorded as follows:

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| <i>Council Member Brittney P. Bills</i> | <i>No</i> |
| <i>Council Member Ron Campbell</i> | <i>Yes</i> |
| <i>Council Member Kim Rodela</i> | <i>No</i> |
| <i>Council Member Scott L. Smith</i> | <i>Yes</i> |
| <i>Mayor Kurt Ostler</i> | <i>Yes</i> |

The motion passed 3:2.

7. ACTION: POSTPONING THE ALCOHOL SALES TEXT AMENDMENT

Development & Municipal Code Update (Legislative) - Erin Wells, City Administrator on behalf of Mayor Kurt Ostler

The City Council will hold a public meeting to consider tabling a request by MNG Highland Development, LLC to amend Section 3-4351 Permitted Uses and Section 3-4352 Prohibited Uses in the Development Code in the CR Zone to allow for alcohol sales. MNG Highland Development, LLC, is also requesting to amend Section 5.12.020 Beer Sales in the Municipal Code.

City Administrator Wells explained on August 1, 2023, Council approved continuing this item for two months in order to garner public feedback. On August 15, 2023, staff and Council discussed a communications plan for this topic including an information session September 18, survey due date of September 30, and the item coming back to Council on October 17. On September 5, 2023, staff presented draft communications pieces to Council for feedback. The matter has been somewhat impacted by the resignation of two Council Members and the need to follow the process defined by State Law to fill those vacancies. Staff recommends Council weigh the options, current circumstances, public perception, currently publicized plans, and applicant process expectations when deciding whether or not to continue this item until January 2023 when the municipal election changes will be finalized. If Council chooses to postpone the item, staff requests direction on changes to the City's communications plans including the survey. With the uncertainty of final timing on the item, staff and the Mayor have decided to wait on printing the mailer and survey until after the decision on this item. As such, the soonest the item could now come back to Council is November 7.

Council Member Smith stated he wished to apologize to Council Member Rodela for questioning whether her private employment created a conflict of interest pertaining to the previous agenda item. Council Member Rodela stated no apology is necessary and she has previously confirmed that her employment did not constitute a conflict of interest. Council Member Smith then stated the matter of alcohol sales is controversial; he was ready to vote on the matter tonight, but he has also considered the fact that action on the matter could lead to a citizen's referendum. He referenced the resignation of Council Member Peterson and the fact that the City could not list her position on the municipal election ballot this year and noted that the City is only following State Law; however, sometimes State Law seems incorrect to residents, and he sympathizes with that. When something important is being considered, it is best to have those who have been elected by the residents vote on those changes; if the matter is postponed until the new year, there will be four elected officials and one appointed official voting on the matter. Since he has been a member of the Council, there have been four referendums and all of them have been successful; if this is referred, the matter will be placed on hold until it can be voted upon next November. He feels that delaying until January will not 'kill the development'; it will actually be worse for the development if citizens are able to gather enough signatures to pursue a referendum. He likes to hear what the residents have to say about issues such as this before making a decision.

Council Member Campbell stated that he sees his appointment as a legitimate process because he was voted into his position by Council Members who were elected by the people. This process has yielded many different appointments, including the appointment of a United States President. The City followed the process to a tee. Council Member Smith noted that the appointment included a coin toss.

Council Member Rodela stated that she has spoken with the developers about the issue; she explicitly asked them what will happen if the decision is postponed until January 2024, and they told her that they will 'go back to the drawing board' and this development will likely not happen. Since the Council told the developer that a vote would be taken on October 17, the developer notified all of their contractors and potential lessees that they could move forward by November 1. If the Council decides to delay the matter until January, the project will be lost. The reality is that the City has been working with these developers for two years and they have been told they

would be allowed to serve alcohol in restaurants. They had that understanding and the commitment of the Council and Mayor when their plat was approved. However, there was a misunderstanding on the part of the Council that there is an exception to the law for the area in which the property is located. She stated this is sad and it should not be that way. She believes in the election process as well, but she also believes that when someone is appointed to the Council, they are appointed by people who were elected by the people to make these types of decisions for the City. They are no less than someone who has been elected and Council Member Campbell's vote is just as good as the vote of those that have been elected. The same will be true for whoever is selected to fill Council Member Ball's spot. She has received so many emails from people who expected the matter to be voted on by October 17 and she is a bit disheartened that the surveys were not mailed out as promised in order for the Council to understand the opinions of the residents. The developers understood that the surveys were going to be mailed and that should not have changed because one person decided to add this item to the agenda tonight. She stated that people should have faith in the City Council that they will evaluate the results of the public survey and do what the majority of the public wants; the threat of the referendum was the whole reason the Council had supported a public survey. She does not think the vote should be postponed and she wants to follow the process that was previously defined.

Mayor Pro-Tem Bills asked if the applicant has been given due process on this matter. City Attorney Patterson stated the applicant filed an application for a code amendment; they were entitled to have a presentation before the Planning Commission and City Council, and they are entitled to a decision from the Council. The Planning Commission and Council heard the presentations of the applicant and there was even a motion made to approve what the applicant was asking for, but the motion did not carry. In his mind, that satisfies due process; however, that does not satisfy all the concerns of the developer and whether they should be afforded other considerations based upon expectations is a valid concern. However, the fact that the developer did not get the outcome they desired should not be interpreted as deprival of due process.

Mayor Ostler referenced Council Member Rodela's comments and offered an explanation as to why the public survey was not printed and sent out. He asked what percentage of resident responses the Council would need in favor of or against the changes in order to make a decision or change the ordinance. Council Member Rodela stated that she does not think that is an appropriate question for the Mayor to ask; she cannot make that decision right now. She would like to see how many people would respond to the survey or how many would attend a public meeting. She needs to be able to take into account what the majority of residents feel about the issue. She has not thought about the percentage she would need in order to make a decision, but she has thought about following the election process and putting off a vote so that a new Council can be elected is not something that any City Council should do. Mayor Ostler asked if the Council is concerned about receiving claims from residents that a person who is appointed to fill a vacancy should not vote on this issue; there is the potential for one of those people to just be a member of the Council for four meetings. Council Member Rodela stated she is not concerned about that; each applicant that applied for the vacancy is also applying to run for office, so each of them is accountable. She also knows each member of the Council and their desire to appoint someone who is able to jump into the situation, have an open mind, and look at the results of the survey and make a decision that is best for all Highland residents. The Council will not appoint someone who is only interested in being involved in one issue; she has faith in her fellow Council Members.

Council Member Smith stated he appreciates the concerns of Mayor Ostler as well as the comments made by Council Member Rodela. He stated it is impossible for him to know what percentage of survey responses he would need in order to vote on issue; he thinks surveys are great, but elections are better, and elections are the way the founding fathers gave people the opportunity to give their input in the constitutional republic. He suggested a survey because he wanted more information, but the election is so close, and he does not feel that postponing will be as problematic as was stated. The only thing that is being considered is if alcohol can be sold in restaurants and he does not think two months will make a big difference. He reiterated that if the Council makes a decision tonight, and that decision is referred, it will delay everything for at least a year until a special election can be held. He feels the best way to do it is through the election process. Oftentimes people are running for office

or seeking appointment based on a single issue. Council Member Rodela asked Council Member Smith if he has spoken with the developer, to which Council Member Smith answered no, but indicated that the developer is only interested in one thing and that is making money and they will say anything to get their application passed. He stated the developer has misled the City regarding some of the restaurants that are interested in locating in the development and what they offer, and people need to have time to do their own homework. He stated that if people want to have input on the matter, they can do so through the survey and the election, and he feels that the vote should be postponed for two months until after the election is held.

Mayor Pro-Tem Bills recognized an individual in the audience with a raised hand; she noted that there is no intent to accept public comment during this time regarding this item, but the Council did receive an email from the individual, Don Ruzika. Mr. Ruzika stated that he came to the meeting according to the Council's public meeting schedule. City Administrator Wells stated that the agenda for this item does not state that there will be a public hearing for this item. City Attorney Patterson agreed; unscheduled public appearances were noticed on the meeting agenda and that would have been the time for individuals to provide public input. Mayor Pro-Tem Bills stated she does not feel that public input would be appropriate at this time. She then addressed Mayor Ostler's question about the percentage that she would need to see in the survey results in order to influence her decision. She stated she agrees with Council Member Rodela and indicated she has not made a decision about the percentage she would need to see, because she feels it is appropriate to take into consideration all factors and all public comment the Council has received. One thing she feels very strongly about is that she feels each Council Member and the Mayor are acting very much accordingly to what they feel is the right thing to do. She noted that one of the comments that was made is that postponing the decision would be a slight to the applicant. She stated she is more concerned about slighting the residents of the City and if she will always defer to what she feels is best for the residents. She agreed the developer has been told a lot of things by City staff and the Council, but at the end of the day, the decisions that are made are not solely made by the Council and the developer has some responsibility for the final decision that is made. She noted the developer had full access to City Code before designing his project or proceeding with an application. There have been multiple situations recently where the claim has been made that incorrect information was provided by City staff or elected officials and while she would hope that it is always possible to provide complete and accurate information to residents, that will not always be the case and the final responsibility is upon each person to understand the rules and implications of the rules. She appreciates Council Member Rodela's comments that she does not believe a single Council Member would choose to appoint a 'single-issue' candidate to appoint to fill the vacancy and she thinks that is true as well. She does not wish to diminish Council Member Campbell's appointment, but there is a difference in the election to a position that has a term of at least two years versus an appointment for a very short term during which there may be just one controversial issue. It is very clear that this is an issue for the public and for candidates; before this application was filed, there were only four people who filed to run for three seats. However, there were 17 applicants for the vacancy and even more write-in candidates have filed to run. It is clear this is a dividing issue, and the Council should not ignore that. Because of that, she feels the right decision is to postpone the decision until January, with the understanding that the consequences may be negative.

Council Member Campbell stated that his concern is that the developers have proceeded based upon the information they received from staff; the development arena is very complex, and assurances have been given that they could serve alcohol. Following the discovery that the information provided by staff was not correct, the Council gave the developer assurances that the matter would be resolved by a certain date, but that continues to be delayed. He honestly believes that if the Council does not act on this issue quickly, the project will be lost. He also believes that if alcohol sales are not permitted, the project will not include a high-end restaurant. He feels the City has an obligation to keep its word relative to the timing of an action on this matter. Council Member Smith stated that the City has a great staff, but they are not elected and there has never been a Council in the history of Highland City that has approved alcohol sales; he is unsure why the applicant was told that he would be able to sell alcohol. The State of Utah changed their liquor laws, and Highland did not update its ordinances accordingly, so there became an issue of 'what is not prohibited is permitted', but he does not believe that is the case and he is disappointed that any member of staff told the developer they would be able to serve alcohol. He is sorry a

mistake was made, and he apologized to those impacted, but staff does not make the laws and did not check the Code. The Council is not obligated due to mistakes that are made, but they are obligated to follow the Code and the Code does not allow alcohol sales in that area. He reiterated it is his feeling that the decision should be postponed until the election is over and until a public survey can be sent and the results provided to the Council. He would be comfortable voting on the matter at the first Council meeting in January. Council Member Campbell stated he wished to be clear that he does not believe the Council owes the developer approval of alcohol sales; he is simply stating that the Council owes them a decision because this issue has been put off for several months. He believes the developers were genuine in the information they shared with him, and he feels the Council owes them a vote.

Council Member Rodela asked the Council to consider if they are willing to take on the burden of knowing that the decision made tonight will essentially keep them from voicing their thoughts and opinions on whether they want this project. She stated that a vote to delay will kill the project and that burden will be on those that voted to delay, and she will let the people know that. Council Member Smith asked if that is a threat. Council Member Rodela stated she will be transparent; she will let the people know the vote that was taken and the consequences of that vote. She stated that the majority of the people that have approached her have indicated this is something they want in the community, and she will let those people know that the vote that was taken killed the project.

Mr. Ruzika asked again for an opportunity to speak. Mayor Pro-Tem Bills asked if he has a comment about the process or about alcohol sales; she indicated she does not want to invite public input on alcohol sales. Mr. Ruzika indicated he wished to comment on the process to which he was allowed to speak. Council Member Smith alluded to the fact that this is a republic, not a democracy or bureaucracy. A republic means the people decide. A survey and a Council Member's decision based on that survey is concerning; if a Council Member is leaning towards voting yes on the issue if 51 percent of the respondents are supportive, that is a democracy. In a democracy, majority rules; in a republic that is not the case. The Council Members were elected to represent the residents and there are very unusual circumstances this year; as it stands, if the Council proceeds with a vote on this project, one-third of the City Council is unelected. The Council has the right to appoint someone to fill a vacancy, but that person is not an elected representative.

Mayor Pro-Tem Bills indicated she will accept additional public input about the process, but not about the issue of alcohol sales.

City Administrator Wells stated that the public survey and mailer is ready to go out; it was finished on Thursday evening last week, but there was discussion among the Governing Body about delaying the delivery of the survey. The intent was to send the survey to be printed on Friday and it would have taken a week to complete the printing and mailing process. Because there was some uncertainty about when this decision was going to be made, she and the Mayor jointly decided to hold off on sending the survey because she was not sure about what due date to include in the survey. If the decision was going to be put off until January, she was concerned the Council would worry about the validity of the survey results because they would have been three months old by then. The survey is ready to be sent to print tomorrow if that is the direction provided by Council tonight. She appreciated Council Member Smith's comments about the excellency of City staff; however, they do make mistakes and she feels badly when that happens. She takes personal responsibility for those mistakes and is always trying to do better. She believes what happens is that staff focused on the Municipal Code, which states beer sales are not allowed; staff and the developer had not looked at the development code, which states no alcohol sales are allowed in the area where the project is located.

Wesley Warren stated that elections are absolutely very important and elected officials are just as important. The Council is elected to make decisions that will impact the residents for decades and one of those decisions is to handle circumstances surrounding a vacancy on the Governing Body; the ramifications of that decision is not more or less than any other decision they have been elected to make.

Mayor Pro-Tem Bills stated she wished to respond to Council Member Rodela's comments; it would be much easier for her to suggest a decision on the matter of alcohol sales be made in order to prevent that issue from becoming an election issue. However, she is not willing to do that. She stated that Council Member Rodela indicated that she will tell people that the decision of the Council killed a project, but what she will tell people when they ask her who they should vote for is that she and Council Member Rodela have always worked well together, though they have not always agreed on everything. She stated Council Member Rodela has approached issues with integrity and made decisions based on what she feels is best for the City. It is her hope that Council Member Rodela would say the same about her and not turn this into a single-issue election. She stated when she met with the developer last spring, she told him that this issue will turn Highland residents against each other and that saddens her. She stated that Council Member Rodela can tell people that the Council's vote cost the residents a nice restaurant, but she does not feel she has a responsibility to the developer at this point, but she does have a responsibility to the Highland residents. She stated that she feels all Council Members have the residents' best interests in mind and there are many issues that will need to be addressed by the Council and assuming this is the only important issue is a mistake.

Council Member Rodela referenced Mayor Pro-Tem Bills' comments about having the residents' best interests in mind and asked her if she has read her emails. Mayor Pro-Tem Bills stated that she has read every single email and has tried to respond to all of them. Council Member Rodela stated that every email she has received leading up to tonight's meeting is a request that the Council not delay this decision any further.

Council Member Smith MOVED that City Council table the alcohol sales text amendment until first meeting in January 2024 and to give staff direction to print the survey, with a request that it be delivered to residents in October before the election.

Council Member Brittney P. Bills SECONDED the motion.

The vote was recorded as follows:

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| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Ron Campbell</i> | <i>No</i> |
| <i>Council Member Kim Rodela</i> | <i>No</i> |
| <i>Council Member Scott L. Smith</i> | <i>Yes</i> |
| <i>Mayor Kurt Ostler</i> | <i>Yes</i> |

The motion passed 3:2.

Mayor Pro-Tem Bills moved to item 11a on the agenda.

11a. Council Candidacy Vacancy Update - Erin Wells

City Administrator Wells indicated the Council has been asked why they are appointing individuals to fill vacancies on the Council rather than utilizing the upcoming election to select new Members. She noted the process for filling a vacancy is dictated by State Law and that City Attorney Patterson sent an email to the entire Council detailing that Law. She summarized the appointment process as follows:

- State law requires the City Council to appoint replacements after a vacancy: Utah Code 20A-1-510(1)(b): "...the Municipal Legislative Body shall, within 30 calendar days after the day on which the vacancy occurs, appoint a registered voter in the municipality who meets the qualifications for office ... to fill the unexpired term of the vacated office."
- If the Council does not appoint someone, the City Recorder notifies the Lt. Governor, who orders the council to appoint someone.

- Special elections are elections other than the normal municipal elections in November in odd-numbered years
- Special elections can be held only for specific reasons, including referenda, bonds, or city-provided internet or cable
- A vacancy cannot be filled by a special election.
- An election for a vacancy only occurs if the vacancy occurs prior to the candidate declaration period during a municipal election year. Then the council appoints someone to serve until the end of the year, and the appointee is replaced by the elected council member.

She then reviewed the list of names of those who have applied to be considered for appointment to fill the vacancy created by Council Member Ball's resignation; additionally, three individuals have filed to be considered as write-in candidates in the 2023 Municipal Election: Jon Lefrandt, Elizabeth Rice, and Wesley Warren.

Council Member Smith stated he knows the City followed State Code in appointing members to the Council, but he would like to encourage the State Legislature to consider Election Law amendments that would allow a City to fill a vacancy through an election, especially when the vacancy occurs in a municipal election year. He stated he is not disparaging Council Member Campbell and indicated he was legally appointed to fill the vacancy.

Council Member Campbell stated the type of law change Council Member Smith is suggesting can only be considered by the State Legislature and the City has no option but to follow current regulations. City Administrator Wells agreed and stated that the City could refer the matter to its lobbyist.

2b. Fling Budget – Robin Wise, Civic Events Coordinator

Robin Wise, Civic Events Coordinator, will report on the 2023 Highland Fling budget.

Robin Wise, Civic Events Coordinator, provided a report on the expenses and revenues for the 2023 Highland Fling celebration; revenues were lower than in 2022 and expenses were \$3,685 higher than in 2022. This is due to increased rental costs and sponsorship donations being lower than estimated. She thanked the Mayor and Council for their support and for spending a day in a booth at the Fling to answer questions from residents. The Council thanked Ms. Wise and the volunteers that supported the event; it was a great success.

3. CONSENT ITEMS

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. Approval of Meeting Minutes *General City Management – Stephannie Cottle, City Recorder*

Regular City Council Meeting – August 1, 2023

b. ACTION: Reimbursement Agreement with Williams View Development *General City Management – Andy Spencer, City Engineer/Public Works Director*

The City Council will consider authorizing a reimbursement agreement associated with the Williams View development. The Council will take appropriate action.

Council Member Smith stated inquired as to the reason that it is going to cost \$50,000 to pipe an irrigation ditch, which is the purpose of agenda item 3b. City Engineer/Public Works Director Spencer stated the length of the ditch to be piped is 1,400 feet and runs from 11200 South to Dry Creek; the cost is expensive, but is within the engineering estimate that was outlined for the project.

Council Member Smith MOVED that the City Council approve consent item 3a, the approval of meeting minutes from August 1, 2023, and item 3b, Reimbursement Agreement with Williams View Development.

Council Member Kim Rodela SECONDED the motion.

The vote was recorded as follows:

| | |
|---|------------|
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Ron Campbell</i> | <i>Yes</i> |
| <i>Council Member Kim Rodela</i> | <i>Yes</i> |
| <i>Council Member Scott L. Smith</i> | <i>Yes</i> |

The motion passed 4:0.

4. ACTION: IMPACT FEE ADJUSTMENT FOR BRANDON NEISH *Administrative - Rob Patterson, City Attorney*

The City Council will consider a request from Brandon Neish regarding the calculation of the pressurized irrigation impact fee requirement for his property located at 5944 West Chatham Circle. The Council will take appropriate action.

City Attorney Patterson explained this request comes from Brandon Neish, who owns a lot within Beacon Hills located at 5944 West Chatham Circle, Lot 3 Plat L, Beacon Hill, parcel number 35:731:0003. The lot is approximately 0.63 acres in size, or 27,526 square feet, and is adjacent to his home. Over one year ago, City staff became aware that the property at issue had been landscaped with sod and that an irrigation system had been installed. It appears the landscaping was installed between May and September of 2020. The irrigation system was connected to the PI line at Mr. Neish's adjacent property and home to the southeast. No impact fees or meter hookup fees were paid for the undeveloped lot prior to this landscaping or irrigation extension, and no approval from the City for this connection was requested or granted. City code requires each property to pay impact fees and have its own PI connection and meter. Staff sent notices to Mr. Neish regarding the need to correctly connect the lot with its own PI meter and the need to pay the meter fee and impact fee. Staff worked with Mr. Neish through the end of 2022 and informally agreed to resolve the meter, connection, and impact fees in the spring of 2023. The meter has been installed, but other issues are still outstanding; Mr. Neish has not yet paid the PI meter fee, disconnected the lot from the neighboring property's irrigation system, or paid the PI impact fee. The meter fee is \$607.51. Mr. Neish did begin paying the monthly charge for PI water usage of \$48.86 in October of 2022. The standard PI impact fee that would normally be assessed for a 27,526 square foot lot is \$14,038.26 (square footage multiplied by 0.51). Mr. Neish states that he does not want to landscape the northeast corner of the property, consisting of approximately 8,750 square feet of existing scrub oak, and he asks that the impact fee be reduced accordingly. This would reduce the impact fee by approximately \$4,475.76, for a total PI impact fee of approximately \$9,562.50. The final calculation of the impact fee would depend on the square footage of irrigable/non-irrigable property as determined by a survey. Under the City's PI impact fee enactment, "The Council may adjust either up ... or down the standard impact fees at the time the fee is charged in order to respond to an unusual circumstance in specific cases and to ensure that the fees are imposed fairly. The Council may adjust the amount of the fees to be imposed if the fee payer submits studies and data clearly showing that the payment of an adjusted impact fee is more consistent with the true impact being placed on the system." This is consistent with state law, which requires the City to have a mechanism by which impact fees can be adjusted in individual cases based on unique or individual circumstances. Utah Code § 11-36a-402(1)(c) - (d). This means the Council reviews the request for an adjustment to the PI fees as follows:

1. Determine whether Mr. Neish has demonstrated unusual circumstances.

2. Determine whether Mr. Neish has submitted "studies or data clearly showing that the payment of an adjusted impact fee is more consistent with the true impact being placed on the system."
3. If the request is approved, determine what conditions on approval are needed to protect the City.

Mr. Patterson noted this does not appear to be that unusual of a case. The lot is similar to many other lots and properties in Highland. Many lots in Highland have variations in elevation, topography, and remaining natural vegetation. Virtually all lots within Highland have paid the full impact fee when they connected to the City's PI system, which entitles them to fully use and landscape their lot. Impact fees are not based on the desires of the property owner, but the impact on the system. The City has previously approved adjustments to PI impact fees only where private bylaws or recorded restrictions on the plat or other instrument restricted the ability of the owner to landscape their property, and a private entity like an HOA would monitor the use of the property to ensure the landscaping was not expanded. No such restriction is present here. There is no plat restriction, conservation easement, CC&R, or HOA bylaw that restricts the landscaping or irrigation of any portion of the lot. There is no private entity that would monitor the use and landscaping of the property. The entire property is permeable ground. Nothing currently prevents Mr. Neish from landscaping and expanding his irrigation system in all portions of his property, which would result in new impacts to the City's PI system not compensated for by an impact fee. If the Council determines that the adjustment to impact fees should be approved, the City Council can impose conditions on the approval, such as the following:

- A. Mr. Neish apply for and pay all costs to survey the property and complete a plat amendment that records a conservation easement or other similar restriction on the lot that permanently prohibits all future development and landscaping of the portion of the lot claimed as non-irrigable. Such restriction be able to be removed only pursuant to a subsequent plat amendment, which would require City approval and payment of impact fees.
 - a. As a note, this would require a Mr. Neish to pay a \$550 plat amendment fee, the cost of the survey, and any additional recording fees Utah County may impose.
- B. Mr. Neish pay the meter fee, and the PI impact fee for the portion of the lot being landscaped.

Staff recommends the Council review the information provided by Mr. Neish and determine whether the property and circumstances justify a deviation from the City's normal impact fee assessment. If Council approves the deviation, staff recommends that the approval be conditioned on payment of all outstanding fees and a plat amendment that restricts future landscaping of the lot.

Council Member Smith stated that the City has been working hard to install PI meters throughout the City and he asked if meters have been installed in this area previously. City Engineer/Public Works Director Spencer answered yes, Mr. Neish has a meter on both of the properties in question, but the meters are not being used at this time because the City is waiting on finalization of the system to enable residents to view live meter readings for their PI usage.

Council Member Cambell asked if any approval granted to Mr. Neish relative to the percentage of the lot that will be landscaped will be carried forward if the property is sold to a new owner in the future. Mr. Patterson answered yes and indicated that requirement will be recorded on the plat for the property.

Council Member Rodela stated that the staff report indicates Mr. Neish began paying the monthly PI charges in October of 2022, but she asked if he was supposed to be paying monthly PI charges before that time. Mr. Patterson stated that it is his understanding that irrigation of the property began in September of 2020 when the landscaping was installed on the property, but he was not paying usage charges until October of 2022. Council Member Rodela asked if the City should also be trying to collect past due charges. Mr. Patterson stated the City has not assessed any past due charges; they started charging when the issue came to the City's knowledge.

Mayor Pro-Tem Bills stated the reason that he made this application is that the total cost the City has tried to assess is \$14,000; he was not aware he would be charged that fee. He bought the lot, which was an unsightly

weed patch and he thought he was doing a great service by landscaping the lot and improving it and he later learned of the fee. The fee is designed to cover permeable land, which is typically impacted by a house and other structures being located on the lot, but because he did not develop the lot, the fee is high. He stated he wishes to abide by the spirit of the law; he noted that he does not plan to touch the scrub oak and asked that be deducted from the lot size to determine permeable land, and charge the fee based upon the area that is being irrigated. This would still be a \$10,000 fee. He stated that Mr. Patterson's summary was excellent, but it is important to clarify that there was already a meter on the property and piping had been installed to allow for future connectivity of irrigation. Because that infrastructure was present when he bought the property, he assumed the fees had been paid and he was not aware that the fees had not been paid until the City brought it to his attention.

Council Member Smith asked Mr. Neish if he bought both lots at the same time, to which Mr. Neish answered yes. Council Member Smith asked if the former owners communicated whether they had or had not paid PI impact fees, to which Mr. Neish answered no and indicated that matter was not discussed. He stated that he has owned two homes in Highland previous to this property purchase, but those homes were already built, and the impact fees were paid as part of the building permit process. He stated if there had not been a meter on the property, he would have contacted the City and learned of the issue much sooner.

Mayor Pro-Tem Bills stated the difference between what the City has charged Mr. Neish and the amount that Mr. Neish is asking to pay is \$4,475. Mr. Neish stated that is correct. He noted that if he is required to perform a technical survey of the property to determine the permeable space, he would rather just pay the \$14,000 fee; but, if he is allowed to perform a GPS survey, which costs \$1,000, and use that for the purpose of the City, he is asking for the impact fee reduction. He stated that he would like the Council to consider rounding the permeable space of the land up to 19,000 square feet and base the impact fee on that; if a future owner wants to increase the irrigation area over 19,000 square feet, they could be required to pay the difference in the impact fee. However, it is likely that the permeable space would decrease if someone builds a home and other improvements on the site.

Council Member Smith asked Mr. Patterson if it would be allowed for someone to encroach into the conservation area that covers the scrub oak area. Mr. Patterson stated that the conservation area will be indicated on the plat and construction will be restricted in that area per the City's building permit process. However, there are a number of conservation easements on various lots throughout the City that have been inadvertently or intentionally encroached upon and the only safeguard against that type of activity is to regularly inspect those properties.

Mayor Pro-Tem Bills asked if the City would consider the scrub oak area in the calculation of a PI impact fee if this were a typical home construction situation. Mr. Spencer stated the City considers the total square footage of the lot and subtracts the impervious area from that amount and assesses the impact fee on the balance.

Council Member Campbell inquired as to the circumstances that should be present in order for the Council to decide to reduce the impact fee cost. Mr. Patterson stated the City is required by City and State Law to make adjustments to impact fees "in order to respond to an unusual circumstance in specific cases and to ensure the fees are imposed fairly". To approve the request the Council would need to find: Mr. Neish has demonstrated unusual circumstances with the property or the impact of the development activity; of Mr. Neish has provided studies or data that an adjustment is needed to ensure the impact fee is commensurate with the actual impact. Council Member Campbell stated he is having a hard time seeing this situation as an unusual circumstance; he asked how Mr. Patterson would define the term 'unusual circumstance'. Mr. Patterson stated that State Law does not provide a clear definition of that term; he stated an argument can be made on both sides. On Mr. Neish's side, perhaps it is unusual in that the City does not have many lots that are landscaped, but do not contain a home. Additionally, Mr. Neish is willing to agree to a conservation restriction, which would be an unusual characteristic for a lot without a home. However, on the City's side, this is not unusual because it is much like any other lot in Highland in that it is not deed restricted, does not contain wetlands, and does not have any conditions present that are restricting the development or landscaping of the lot.

Council Member Rodela asked if the meter fee has been paid. Mr. Patterson answered yes. Mayor Pro-Tem Bills then asked if this is an administrative decision; if it is administrative, the Council typically does not have much leeway in granting approval of something that deviates from the City Code. Mr. Patterson stated that legislative decisions must be based upon policy decisions and administrative decisions are governed by the Code; however, this is not administrative in the way of a typical land use code application. The Code does not dictate the unique circumstances that must be present in order for the Council to grant approval of the application and that is left for the Council to determine.

Council Member Smith stated he does believe this is an unusual situation; if he were buying this lot and found there was a pressurized meter present, he would have believed that impact fees had been paid just as Mr. Neish did. He stated he can understand where Mr. Neish is coming from. Mr. Patterson agreed; the Council could find that to be an unusual circumstance in order to approve the impact fee adjustment. City Administrator Wells added that the City installs connections to every lot when development occurs but does not necessarily charge the impact fee at the time that connection is installed. Council Member Smith stated that the City usually does not change impact fees until someone builds a home on a lot; he asked why the City is charging impact fees for this lot. Mr. Patterson stated that the PI impact fee is the only impact fee that is not directly related to building; the impact fee is charged in the event the City's PI system is being used to irrigate an area of land.

Council Member Smith asked when the City told Mr. Neish he was required to pay the impact fee. Mr. Patterson stated that the City learned of the issue in October of 2022 and informed Mr. Neish of the requirement at that time. Ms. Wells noted the issue was discovered when staff was preparing to install meters in the area surrounding the subject property.

Mr. Neish stated he is happy to pay the past due irrigation fees; he noted, however, that the impact fees were lower in 2020 when he purchased the lot, and he asked if the City could calculate the impact fee based upon the lower fee that was in place in 2020. Council Member Campbell stated that he would be willing to approve that adjustment if Mr. Neish is willing to pay for past due irrigation usage. Mr. Patterson stated that the impact fee calculation in 2020 was \$.43 per square foot; the total impact fee could be calculated based upon that fee. The plat amendment would need to come back to the Council for approval, unless Mr. Neish is willing to pay the impact fee for the entire lot. Mr. Patterson stated the total impact fee for the entire lot would be \$11,836.18 and that would not require any plat amendment or survey.

Council Member Ron Campbell MOVED that the City Council impose the impact fee rate to be paid at the rate charged in September 2020 and that the monthly PI usage fees be paid by the applicant back to September 2020.

Council Member Kim Rodela SECONDED the motion.

The vote was recorded as follows:

| | |
|---|------------|
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Ron Campbell</i> | <i>Yes</i> |
| <i>Council Member Kim Rodela</i> | <i>Yes</i> |
| <i>Council Member Scott L. Smith</i> | <i>Yes</i> |

The motion passed 4:0.

5. ACTION: APPROVAL OF THE HIGHLAND TRAFFIC CALMING AND PEDESTRIAN SAFETY MANUAL *General City Management - Andy Spencer, City Engineer/Public Works Director*

The City Council will consider approving the Highland Traffic Calming and Pedestrian Safety Manual. The Council will take appropriate action.

City Engineer/Public Works Director Spencer explained on January 3, 2023, the Council directed City Staff to proceed with a contract with Wall Consulting Group (WCG) in preparing a Traffic Calming and Pedestrian Safety Manual. Throughout this past year, the Council and City staff have worked with WCG, with input received through public, toward the goal of adopting a manual and policy concerning traffic calming and pedestrian safety. The manual has been refined based upon this input and is now ready for implementation. On June 6, 2023, the Council held a work session to discuss the manual and to provide the Wall Consulting Group (WCG) with further directions and information. On September 5, 2023, the Council held a follow-up work session to discuss the changes to the manual following direction provided on June 6 and in subsequent one-on-one meetings with the Council. Staff recommends the approval and implementation of the Highland Traffic Calming and Pedestrian Safety Manual.

Council Member Smith thanked Mr. Spencer and the individuals from WCG that worked closely with the Council to craft a Manual that takes their concerns into account; he feels the final product is very good and will assist the City in addressing the concerns of residents.

Mayor Pro-Tem Bills asked the status of the neighborhoods that have already applied for some form of traffic calming. Mr. Spencer stated that once this manual is adopted, the City will begin working with them. There are two temporary speed bump projects underway, and they should be completed within a month.

Council Member Campbell referenced one of the manual highlights: "Provides an evaluation criteria through which concern areas can be scored. Areas with the highest scores will receive the improvements ahead of lower scoring areas." He asked if staff will take into consideration the thousands of dollars that could be spent on evaluation for a request for something that may only cost a few hundred dollars. Mr. Spencer stated that the scoring criteria in the manual considers the highest needs; City staff wants to use the budget available to accomplish the most needs possible. There will be some ability of the staff to consider the scenario presented by Council Member Campbell.

Mayor Pro-Tem Bills asked if any of the funding from the Open Space Fund will be appropriated to traffic calming. City Administrator Wells stated staff is currently evaluating funding remaining in the Open Space Fund and will present a budget amendment to the Council in the future.

Council Member Kim Rodela MOVED that City Council APPROVE the resolution adopting the Highland Traffic Calming and Pedestrian Safety Manual and the associated \$25 application fee.

Council Member Scott L. Smith SECONDED the motion.

The vote was recorded as follows:

| | |
|---|------------|
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Ron Campbell</i> | <i>Yes</i> |
| <i>Council Member Kim Rodela</i> | <i>Yes</i> |
| <i>Council Member Scott L. Smith</i> | <i>Yes</i> |

The motion passed 4:0.

8. RESOLUTION: CANCELLATION OF MUNICIPAL ELECTION *General City Management - Rob Patterson, City Attorney*

The City Council will hold a public meeting to consider the cancellation of the 2023 municipal general election. The Council will take appropriate action.

This item was removed from the agenda as there are now write-in candidates for the election.

9. EXPEDITED ITEMS

a. PUBLIC HEARING/RESOLUTION: Sale of Additional Wimbleton Open Space Property *Legislative - Andy Spencer, City Engineer/Public Works Director*

The City Council will hold a public hearing and consider the approval for disposing of additional open space owned by Highland City in the Wimbleton subdivision. The Council will take appropriate action.

City Engineer/Public Works Director Spencer explained that following the Council direction on July 18, 2023, the City hired a surveyor to survey all utilities that run through the open space throughout the Wimbleton subdivision. Based on these surveys, the public works, engineering, and planning departments have come up with recommendations for what the Council should not sell if the Council decides to dispose of additional open space. Staff's recommendations are based on the policy criteria that states, "property should not be disposed of if there are potential future City needs for the property" and "if property adjacent to a trail is disposed of, the City must be able to maintain ownership of the trail with a five-foot buffer on both sides of the trail". These final recommendations are largely consistent with the direction given by Council in the July meeting and the City staff understands the individuals purchasing the property are satisfied with the options presented. Staff recommends the approval of land disposal in the Wimbleton subdivision based upon Council direction provided on July 18, 2023. The sale of property will have a minor positive impact on the City's revenues for the current fiscal year. The sale price will be per the Council's established square foot purchase price. Mr. Spencer provided a clarification regarding the property being purchased by Mr. Hafen; the Council voted to allow the purchase of the property directly abutting Mr. Hafen's backyard, but when staff met with him, he requested to combine that parcel with the additional parcel to the north of his property into one legal description. He stated the Council has essentially approved half of parcel four, but the total of parcel four is part of the recommendation before the Council tonight.

Council Member Rodela inquired as to the purchase price. Mr. Spencer stated the cost per square foot is \$4.71 as approved by the Council in January of 2023. This cost was based on the value of average sample properties.

Mayor Pro Tem Bills opened the public hearing at 9:24 pm.

Mark Hafen stated that he applied to buy his property in December of 2022 and the price per square foot at that time was \$3.14. The total area that he is interested in purchasing at this time was not available in 2022. He asked that his purchase be grandfathered under the previous value in 2022, he noted he is surprised the price per square foot increased so dramatically.

Council Member Smith stated he would support the purchase price of \$3.14 per square foot because Mr. Hafen intended to purchase at that price.

Council Member Rodela stated she would be interested to know when the other property owners expressed the intent to purchase their properties as well. Mr. Spencer stated he does not believe he could find that information in a timely manner this evening. City Administrator Wells stated that the purchases before the Council tonight are essentially new property purchase transactions; she understands the argument for Mr. Hafen's property, but

she believes the other property transactions should be based upon the 2023 price. Council Member Smith stated that the price per square foot increased dramatically from 2022 to 2023.

Mayor Pro Tem Bills closed the public hearing at 9:32 pm.

Mr. Spencer stated he knows that Mr. Timothy also expressed the intent to purchase in 2022, but the others applied in 2023. The Council indicated they are comfortable approving the transactions with purchase price based upon the year that the buyers expressed the intent to purchase. City Attorney Patterson suggested that the motion include a deadline for the purchase agreement to be executed in order for them to access the prices approved tonight.

Council Member Kim Rodela MOVED that City Council APPROVE the resolution designating the specified parcels as orphaned properties within the Wimbleton subdivision thereby allowing for the sale of the properties to the adjacent property owners, noting that as it pertains to Parcel 4, the City will retain the sewer easement shown on the survey as an encumbrance to the land as a condition of the property sale, with two additional stipulations:

1. *The purchase fee is determined by the date that the applicant submitted an application*
2. *Applicant has 6 months to execute the purchase agreement*

Council Member Smith SECONDED the motion.

The vote was recorded as follows:

| | |
|---|------------|
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Ron Campbell</i> | <i>Yes</i> |
| <i>Council Member Kim Rodela</i> | <i>Yes</i> |
| <i>Council Member Scott L. Smith</i> | <i>Yes</i> |

The motion passed 4:0.

10. DISCUSSION: GENERAL PLAN UPDATE REQUEST FOR PROPOSAL DOCUMENT *General City Management - Jay Baughman, Assistant City Administrator/Community Development Director*

The City Council will discuss the Request for Proposals (RFP) document that will be issued to solicit bids from qualified firms to partner with Highland in updating its General Plan. The Council will take appropriate action.

Assistant City Administrator/Community Development Director Baughman explained funding was allocated in the FY 2024 budget for a General Plan update; the City will be partnering with a firm that specializes in General Plan updates, selected through an open bidding process. A Request for Proposals (RFP) document has been prepared by staff and the Planning Commission has reviewed the document and provided feedback. The purpose of this agenda item is to give the Council an opportunity to provide feedback on the document; he invited feedback tonight or via email before September 26. The RFP will be posted on September 28 on the Utah procurement website until November 1. He briefly discussed the creation of a selection committee to review the RFP responses.

The meeting recessed at 9:39 pm and reconvened at 9:49 pm.

11. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

b. Alpine Highway Fence – *Council Members Brittney P. Bills and Scott L. Smith*

City Administrator Wells reported on a proposal to create a City grant fund for the Alpine Fence project:

- \$100,000 City grant fund available
 - ~25% of a bid received by homeowners
 - Homeowners eligible for \$21.78 per linear foot of fence
 - Reimbursement grant
- In order to receive funds:
 - Homeowner contract or do work themselves
 - Do a survey prior to installation
 - Obtain a fence permit
 - Acknowledge it's the homeowners fence moving forward
 - Installed by December 2024

Council Member Smith reviewed the history of the Alpine Fence, including questions about ownership of the fence, for the benefit of the write-in candidates who were present at the meeting. He feels that the City is responsible to help the residents because they have been somewhat misled by the City regarding their ability to replace or repair sections of the fencing on their property.

Ms. Wells indicated that the matters yet to be resolved include:

- Adopt a unified Theme Wall standard for Alpine Highway?
- Which side of the fence to work from?
 - City side
 - UDOT Traffic control/bonding needed
 - Would likely need to repair City landscaping
 - Homeowner side
 - Potential damage to homeowner landscaping
- Any changes to proposal?

The Council engaged in high level discussion with staff regarding their ideas and suggestions responsive to the questions asked by Ms. Wells.

Mayor Pro-Tem Bills invited input from a representative of the neighborhood impacted by the Alpine Fence, Nate Woodbury.

Mr. Woodbury stated there is a discrepancy on the cost of the fence; the neighborhood committee spoke with the Council about the large cost of the project and suggested that it be broken into thirds; one-third could be done each year for the next three years. The \$100,000 from the City would go towards the first third. Council Member Smith stated he does not believe the City has the money to dedicate \$100,000 each year for three years. Mr. Woodbury stated that \$100,000 is only 20 percent of the total project cost if the intent is for all homes to be completed in one year. He stated that it was Council Member Smith's proposal to phase the project over three years. Mayor Pro-Tem Bills indicated that the Council cannot commit future City Council's for these types of projects.

The Council, Mr. Woodbury, and staff engaged in high level discussion and debate regarding the appropriate level of commitment for the City on this project and the type of fencing that should be installed to replace the

existing fence; Ms. Wells indicated she feels she has enough information to proceed with developing a recommendation for fencing that will meet the definition of a theme wall to the Council at a future meeting.

Mayor Ostler stated that he is concerned about deciding on a project scope that will place a heavy financial burden on the homeowners. Mr. Woodbury stated that the bid that he obtained includes a precast concrete fence, digging to install the fence, and installation of the fence. It does not include hauling away the old fence or the dirt that is excavated as part of the installation of the new fence. He stated he and others would be comfortable with a stucco fence rather than a precast fence. Mayor Pro-Tem Bills indicated she would love to hear other ideas for the new fence. The Council agreed and indicated they would like more discussion at a future meeting.

The City Council then determined the following items will be discussed in the next meeting rather than tonight.

- c. **Financial Report** - *Tyler Bahr, Finance Director*
- d. **PI Long Term Financial Obligations** - *Tyler Bahr, Finance Director*
- e. **Graffiti** - *Erin Wells, City Administrator & Andy Spencer, City Engineer/Public Works Director*
- f. **Lehi DR Horton Agreement** - *Andy Spencer, City Engineer/Public Works Director*
- g. **Building Use Policy** - *Jay Baughman, Assistant City Administrator/Community Development Director*
- h. **Future Events & Meetings**
 - September 26, Planning Commission Meeting, 7:00 pm, City Hall
 - October 3, City Council Meeting, 7:00 pm, City Hall
 - October 11, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
 - October 17, City Council Meeting, 7:00 pm, City Hall
 - October 24, Planning Commission Meeting, 7:00 pm, City Hall
 - November 7, City Council Meeting, 7:00 pm, City Hall
 - December 5, City Council Meeting, 7:00 pm, City Hall

Council Member Smith stated he has been approached by a Mr. Armstrong who is looking to move into the neighborhood near the golf course; when he was looking into options of expanding his home, he discovered a corner of his property is owned by the City. There are no utilities in the area, and he is asking for a sponsor from the City Council to recommend that the City sell the property. City Attorney Patterson stated that he has heard of this situation, and he asked if the Council wishes to proceed with considering this property independent of other areas of the City. Council Member Smith stated he is willing to consider it on its own. City Engineer/Public Works Director Spencer provided a bit of information on the Armstrong property and suggested that a formal survey is needed to determine actual boundary lines and the impact of selling the land. He stated he is willing to meet with Mr. Armstrong to review any survey work he has already had performed.

ADJOURNMENT

Council Member Scott L. Smith MOVED to adjourn the regular meeting and Council Member Ron Campbell SECONDED the motion. All voted in favor and the motion passed unanimously.

The meeting adjourned at 10:19 pm.

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on September 19, 2023. This document constitutes the official minutes for the Highland City Council Meeting.



Stephannie Cottle, CMC
City Recorder



**6:30 PM SWEARING IN CEREMONY
FOR RON CAMPBELL**

Call to Order - Mayor Kurt Ostler

1



**Welcome to the Highland
City Council Meeting**

September 19, 2023

Please Sign the Attendance Sheet

2



7:00 PM REGULAR SESSION

Call to Order - Mayor Kurt Ostler
Invocation - Mayor Kurt Ostler
Pledge of Allegiance - Council Member Scott L. Smith

3



UNSCHEDULED PUBLIC APPEARANCES

Time set aside for the public to express their ideas and comments on non-agenda items.

- Please state your name clearly.
- Limit your comments to three (3) minutes.

4



PRESENTATION

a. Appreciation Award for Timothy A. Ball - *Mayor Kurt Ostler*

5



**AUTHORIZATION OF A CONTRACT
WITH LEGISLATIVE EXECUTIVE
CONSULTING, LLC General City
Management**

Item 6 - Action
Presented by - Andy Spencer
City Engineer/Public Works Director

6

Prior Council Direction

- On Sept. 5, 2023 the Council discussed authorizing another year of contract with Legislative Executive Consulting, LLC. No final decision was made, but staff was directed to bring the contract to the Council for discussion and vote.

7

Contract Summary

- Legislative Executive Consulting will:
 - Assist the City in seeking an additional \$1M in water grant funding.
 - Assist the City with additional funding opportunities.
 - Assist the City in potential legislative issues including: State land-use control, excessive development revenue restriction, parameters around Transportation Utility Fees.

8

Motion to Approve

I move that City Council APPROVE a contract with Legislative Executive Consulting, LLC in the amount of \$100,000 and AUTORIZE the Mayor to sign the contract.

9

Motion to Deny

I move that City Council DENY a contract with Legislative Executive Consulting, LLC

10

POSTPONING THE ALCOHOL SALES TEXT AMENDMENT *Development & Municipal Code Update (Legislative)*



Item 7 - Action
Presented by - Erin Wells, City Administrator on behalf of
Mayor Kurt Ostler

11

Prior Council Direction

- August 1 - Council continued the item for two months to gain public feedback
- August 15 - Council and staff discussed communication plans
 - September 18 - Information Session
 - September 30 - Survey Due Date
 - October 17 - Council Item
- September 5 - Continued Council/ staff discussion on item & plans listed above

12

City Council Changes

- August 14 – Councilmember Sarah Petersen Resignation
 - September 12 – Ron Campbell appointed
- September 12 – Councilmember Tim Ball Resignation
 - October 3 – Seat to be filled

13

Timeline Options

- November 7
 - Soonest they survey could be printed and distributed to give residents time to respond and staff time to compile results
- January date TBD
 - 2024 City Council

14

Items for Consideration

- Council circumstance
- Public perception altering plans
- Applicant expectations
- Etc.

15

Direction Needed

- Timeline on application decision
- If January, communications plans update
 - Timeline
 - Content/editing

16

Motion to Approve

I move that City Council table the alcohol sales text amendment until January 2024.

17

Alternate Motion

I move that City Council table the alcohol sales text amendment until November 7, 2023 City Council meeting.

18



COUNCIL CANDIDACY VACANCY UPDATE

Item 11a - Communication
Presented by - Erin Wells
City Administrator

19

Vacancy Filling Process

- State law requires the city council to appoint replacements after a vacancy: Utah Code 20A-1-510(1)(b): "...the municipal legislative body shall, within 30 calendar days after the day on which the vacancy occurs, appoint a registered voter in the municipality who meets the qualifications for office ... to fill the unexpired term of the vacated office."
- If the council does not appoint someone, the city recorder notifies the Lt. governor, who orders the council to appoint someone.
- If the council continues to not appoint, the governor appoints

Special Election

- Special elections are elections other than the normal municipal elections in November in odd-numbered years
- Special elections can be held only for specific reasons, including referenda, bonds, or city-provided internet or cable
- A vacancy cannot be filled by a special election.
- An election for a vacancy only occurs if the vacancy occurs prior to the candidate declaration period during a municipal election year. Then the council appoints someone to serve until the end of the year, and the appointee is replaced by the elected council member.

21

20

Write-In Candidates

- Write-in Candidates
 - Jon Lefrandt
 - Elizabeth Rice
 - Wesley Warren
- Write-in candidates will not have their name printed on the ballot. Ballots will be printed with three spaces to allow voters to fill in and vote for up to three write-in candidate names.
- Stickers/labels not permitted for write-ins. Names must be accurately and legibly written in the spaces provided.

22



PRESENTATION

a. Fling Budget - *Robin Wise, Civic Events Coordinator*

23

CONSENT ITEMS (5 minutes)

- 3a. Approval of Meeting Minutes: August 1, 2023 *General City Management*
- 3b. Action: Reimbursement Agreement with Williams View Development *General City Management*

24

Motion to Approve

I move that the City Council approve consent item 2a, the approval of meeting minutes from August 1, 2023, and item 2b, Reimbursement Agreement with Williams View Development.

25



IMPACT FEE ADJUSTMENT FOR BRANDON NEISH *Administrative*

Item 4 - Action
Presented by - Rob Patterson
City Attorney

26

Resident Request

- Branden Neish requests an adjustment to decrease the amount of PI impact fees being assessed for a currently landscaped and irrigated but otherwise vacant lot he owns.

27

Prior Council Direction

- The City Council has not previously addressed this item.
- On August 2, 2022, the City Council considered a request to reduce PI impact fees in Bull River where an HOA limited the amount of allowable non-native landscaping. The Council approved the request subject to a recorded agreement requiring the owners to provide documentation of HOA approval of the landscaping plan and requiring the owners to pay additional impact fees if that plan was ever altered.

28

Staff Recommendation

- Staff recommends that the Council review the information provided by Mr. Neish and determine whether the property and circumstances justify an adjustment to decrease the City's normal impact fee assessment.
- If Council determines that an adjustment is warranted, staff recommends that the approval be conditioned on payment of the adjusted impact fee amount and a plat amendment to permanently restrict development or landscaping of the lot

29

Vicinity Map

- 5944 W Chatham C
- Parcel 35:731:0003
- Lot 3, Beacon Hill th Highlands Plat L

30



Background

- City imposes impact fees on new development so new growth pays for its fair share of its impact on the City's systems
- City PI impact fee is assessed when there is new development activity that impacts the PI system, and the impact fee is typically imposed in connection with a building permit
- The vacant lot does not have any construction and no building permit has been sought for it
- The vacant lot does have its own separate meter and PI connection already installed

31

Background

- Vacant lot was partially landscaped in September 2020 and was irrigated using its existing meter and private irrigation system
- Staff became aware of the landscaping and water usage in 2022 and sent notices requesting that the PI impact fee and PI usage fee be paid for the lot
- Mr. Neish began paying the PI usage charge for the vacant lot in October 2022, but he requested adjustments to impact fees

32

Lot Landscaping

- Lot 27,526 sqft
- Landscaped area 18,750 sqft
- Non-landscaped Area: 8,750 sqft



33

Fees

- No meter fee due (installed earlier)
- PI usage fees already being paid
- Original impact fee (sqft x .051): \$14,038.26
- Requested impact fee (less 8,750 sqft): \$9,562.50
- Difference of \$4,475.76

34

Legal Standard

- City is required by city and state law to make adjustments to impact fees "in order to respond to an unusual circumstance in specific cases and to ensure the fees are imposed fairly"
- To approve the request, the Council would need to find:
 - Mr. Neish has demonstrated unusual circumstances with the property or the impact of the development activity
 - Mr. Neish has provided studies or data that an adjustment is needed to ensure the impact fee is commensurate with the actual impact

35

Possible Conditions of Approval

- If the Council approves the request, staff recommends the council impose the following conditions:
 1. Mr. Neish apply for and pay all costs to survey the property and complete a plat amendment that records a conservation easement or other similar restriction on the lot that permanently prohibits future development and landscaping of the non-irrigated portion of the lot, with such restriction able to be removed only with City approval and payment of additional impact fees
 2. Mr. Neish pay the adjusted impact fee based on survey

36

Motion to Approve

I move that City Council approve the request to adjust impact fees for Lot 3, Plat L of Beacon Hills Subdivision, subject to the conditions recommended by staff. [Council may specify additional or different conditions].

37

Motion to Deny

I move that City Council deny the request to adjust impact fees for Lot 3, Plat L of the Beacon Hills Subdivision, finding that there are not unusual circumstances associated with this lot that justify adjusting the PI impact fee assessment and that insufficient data and studies have been submitted to justify adjusting the PI impact fee assessment. [Council may specify additional or different findings supporting the decision].

38

APPROVAL OF THE HIGHLAND TRAFFIC CALMING AND PEDESTRIAN SAFETY MANUAL *General City Management*



Item 5 – Action
Presented by – Andy Spencer
City Engineer/Public Works Director

39

Prior Council Direction

- On Sept. 5, 2023 the Council held a work session to discuss the updated Traffic Calming and Pedestrian Safety Manual.

40

Manual Highlights

- The Traffic Calming and Pedestrian Safety Manual:
 - Provides for both passive and active traffic calming.
 - Defines the traffic calming and pedestrian safety devices that are acceptable for use in Highland City.
 - Defines the application process and establishes a \$25 fee.
 - Provides an evaluation criteria through which concern areas can be scored. Areas with the highest scores will receive the improvements ahead of lower scoring areas.

41

Motion to Approve

I move that City Council APPROVE the resolution adopting the Highland Traffic Calming and Pedestrian Safety Manual and the associated \$25 application fee.

42

Motion to Approve

I move that City Council APPROVE the resolution adopting the Highland Traffic Calming and Pedestrian Safety Manual and the associated \$25 application fee.

43

CANCELLED



CANCELLATION OF MUNICIPAL ELECTION

General City Management

Item 8 – Resolution
Presented by - Rob Patterson
City Attorney

44



SALE OF ADDITIONAL WIMBLETON OPEN SPACE PROPERTY

Legislative

Item 9a – Expedited: Public Hearing/Resolution
Presented by - Andy Spencer
City Engineer/Public Works Director

45

Prior Council Direction

- On July 18, 2023 the Council reviewed four additional parcels in the Wimbleton subdivision and provided direction to staff to prepare documents for the disposal of the additional orphaned properties.

46

Parcels



47

Motion to Approve

I move that City Council APPROVE the resolution designating the specified parcels as orphaned properties within the Wimbleton subdivision thereby allowing for the sale of the properties to the adjacent property owners, noting that as it pertains to Parcel 4, the City will retain the sewer easement shown on the survey as an encumbrance to the land as a condition of the property sale.

48



GENERAL PLAN UPDATE REQUEST FOR PROPOSAL DOCUMENT

Item 10 – Discussion
Presented by – Jay Baughman
Assistant City Administrator/Community Development Director

49

General Plan Comprehensive Update

- Money was allocated in the FY 2024 budget for a General Plan update
- The City will be partnering with a firm that specializes in General Plan updates, selected through an open bidding process
- A Request for Proposals (RFP) document has been prepared by staff
- The Planning Commission has reviewed

50

General Plan Comprehensive Update

- The Planning Commission has reviewed the RFP and given feedback
- City Council now has an opportunity to provide feedback on the document
 - Now at the meeting
 - Via email by September 26
- RFP will be posted on September 28 on the Utah procurement website until November 1

51



ALPINE HIGHWAY FENCE

Item 11b – Communication
Presented by – Brittney P Bills and Scott L. Smith
Council Members

52

Proposal Summary

- \$100,000 City grant fund available
 - -25% of a bid received by homeowners
 - Homeowners eligible for \$21.78 per linear foot of fence
 - Reimbursement grant
- To receive funds:
 - Homeowner contract or do work themselves
 - Do a survey prior to installation
 - Obtain a fence permit
 - Acknowledge it's the homeowners fence moving forward
 - Installed by December 2024

53

Questions to Be Resolved

- Adopt a unified Theme Wall standard for Alpine Highway?
- Which side of the fence to work from?
 - City side
 - UDOT Traffic control/bonding needed
 - Would likely need to repair City landscaping
 - Homeowner side
 - Potential damage to homeowner landscaping
- Any changes to proposal?

54



FUTURE EVENTS & MEETINGS

- September 26, Planning Commission Meeting, 7:00 pm, City Hall
- October 3, City Council Meeting, 7:00 pm, City Hall
- October 11, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- October 17, City Council Meeting, 7:00 pm, City Hall
- October 24, Planning Commission Meeting, 7:00 pm, City Hall
- November 7, City Council Meeting, 7:00 pm, City Hall
- December 5, City Council Meeting, 7:00 pm, City Hall

Item 11h - Communication