

NORTH OGDEN CITY COUNCIL MEETING MINUTES

October 11, 2022

The North Ogden City Council convened in a Council meeting at 6:01 p.m. on October 11, 2022, at the North Ogden City Office at 505 East 2600 North. The meeting was also on Zoom.

Recording can be found on YouTube:

<https://www.youtube.com/channel/UCriqbePBxTucXEzRr6fclhQ/videos>. Notice of time, place, and agenda of the meeting was posted on the bulletin board at the municipal office and posted to the Utah State Website on October 6, 2022. Notice of the annual meeting schedule was published in the Standard-Examiner on December 16, 2021.

PRESENT:	S. Neal Berube	Mayor	
	Ryan Barker	Council Member	(excused at 6:54 pm)
	Blake Cevering	Council Member	
	Jay D Dalpiaz	Council Member	
	Charlotte Ekstrom	Council Member	
	Phillip Swanson	Council Member	

STAFF PRESENT:	Jon Call	City Manager/Attorney
	Katie Gerard	Human Resource Manager/Deputy City Recorder
	Scott Hess	Planning Director
	Brandon Bell	Associate Planner
	Nate Davis	Building Inspector
	Jeremy Hindes	Lieutenant
	Bryce Nelson	Administrative Services Manager/Treasurer

VISITORS:	Sandy Cochran	Citrus Olsen	Chris Pulver
	Kevin Burns	Brad Dee	Marsha Dee
	Stefanie Casey	Madeline Robles	Julie Anderson
	Ashley McCann	Brenda Ashdown	Mike Alvord
	Eric Thomas (Planning Commission Chairman)		Crysta Povey
	Reed Miller	Susan Clements	Bob Buswell

Mayor Berube called the meeting to order. Council Member Dalpiaz offered the invocation and led the audience in the Pledge of Allegiance.

PRESENTATION

1. PRESENTATION BY WEBER COMMUNITIES THAT CARE

Madeline Robles, Weber Communities that Cares (CTC), extended an official invitation to the Mayor and Council to participate in a training event hosted by CTC. She discussed the mission of CTC, which includes a focus on substance abuse and suicide prevention in the community. The geographic area of focus for the Weber CTC is the Weber 'cone' of high schools and they work closely with educators and leaders in the local community. She hopes that by the end of the training, participants will understand the role of key leaders in the community and will have had a chance to provide feedback regarding the things they are seeing and experiencing in the community.

Mayor Berube thanked Ms. Robles for the information provided and stated that the City appreciates the efforts of the Weber CTC.

CONSENT AGENDA

2. CALL FOR CONFLICT OF INTEREST DISCLOSURE

Mayor Berube asked if any member of the Council had a conflict of interest to declare. No declarations were made by Council Members. Mayor Berube then disclosed a potential conflict; he is in the process of building a home and there is the potential for the ordinance considered in the meeting to regulate the height of retaining walls to come into play in his project. In the event of a tie vote on that issue, in which he would typically break the tie, he will likely recuse himself because of the potential for the ordinance to impact him personally.

3. DISCUSSION AND/OR ACTION TO CONSIDER AUGUST 16, 2022, CITY COUNCIL MEETING MINUTES

Council Member Ekstrom motioned to approve August 16, 2022, City Council meeting minutes. Council Member Dalpiaz seconded the motion.

Voting on the motion:

Council Member Barker	aye
Council Member Cevering	aye
Council Member Dalpiaz	aye
Council Member Ekstrom	aye
Council Member Swanson	aye

The motion passed unanimously.

ACTIVE AGENDA

4. PUBLIC COMMENTS

Brad Dee, North Ogden resident, addressed the agenda item regarding retaining wall standards. He recently built a home in North Ogden, and he has encountered an issue on his property relative to his retaining wall. He stated that he served as a Mayor of another city in the area for 10 years and he understands the importance of City ordinances, but he is trying to maintain harmony with his neighbors while keeping his retaining wall to a height of eight feet. He presented a photograph of the wall in his yard and has been told that the structure of the wall is not an issue; he had his wall engineered and it contains a lot of rebar to reinforce it. The issue he has encountered is one of aesthetic; the wall is in his backyard and is not seen by many, but it is over eight feet tall. An option is to place boulders at the bottom of the wall, but that will also become an area that will house rodents and grow weeds. He and his neighbors have discussed an option that would include placing foliage at the bottom of the wall. He stated that he would love to meet the City's ordinance but noted there are other properties in the community that are out of compliance with this ordinance, and nothing is being done about them. He stated that he would be willing to do whatever possible to meet the City's parameters, but he is very concerned about preserving his relationship with his neighbors. He asked that the Council consider allowing foliage at the bottom of the wall to obscure the view of it.

Susan Clements, North Ogden resident, announced there will be another community project this Saturday at Barker Park. Participants can join from 8:00 a.m. to 11:00 a.m. to plant wildflowers and prepare other areas for future plantings.

Chris Pulver, North Ogden resident, stated he one of Mr. Dee's neighbors and he does not have any issues with the structure of his wall because he understands that any wall can be built safely as long as it is properly secured. He has watched the wall be built and knows that it is properly reinforced and will not fail. He has come to understand the reasoning behind the City's ordinance providing a maximum wall height of eight feet; the rule is consistent with rules in other communities, and he understands that the eight feet measurement is to be applied to the finished height, meaning that a portion of the wall could be buried. He stated that he does not want rocks placed at the bottom of the wall because of the reasons cited by Mr. Dee. He stated that he would be satisfied if no action were taken to modify Mr. Dee's wall because it is not problematic to him. He would like to keep the current arrangement as is.

Reid Miller, North Ogden resident, stated he just returned from a trip to Des Moines, Iowa, and he was appalled by the price of gasoline when he returned to Utah, and especially in North Ogden. Gas prices throughout the country were approximately \$3.59, but in North Ogden the gas price is \$4.19. He asked if there is any way for the City, county, or state of Utah to decrease those prices. He stated North Ogden residents are paying \$.40 more per gallon than those in neighboring states.

5. **DISCUSSION AND/OR ACTION TO CONSIDER AN ORDINANCE TO REVISE THE RETAINING WALL STANDARDS TO ADD CLARIFYING LANGUAGE IN GRADING AND DRAINAGE STANDARDS**

Planning Director Hess explained the Planning, Engineering, and Building Departments regularly have questions and concerns over retaining walls in North Ogden City. These can be new walls constructed along with homes, or retaining walls required as part of a subdivision approval. Generally, the City's standards for retaining walls are able to be met by developers, home builders and homeowners. The basic standards are: walls up to 4 feet tall are permitted without engineering, rock walls 4 to 6 feet tall are permitted with engineering, and concrete or block retaining walls up to 8 feet tall are permitted with engineering. While most developments can conform to those basic regulations, there are times when special circumstances cause rock walls, retaining walls, and other hillside development to exceed the required standards in Title 11. Mr. Hess noted the City Engineer has proposed language be added to the Code to address cases where walls exceed the permitted height, or there are additional risks to life or property damage if a wall were to fail, in which case the City would like additional engineering be completed and approved as part of the public record. The additional risk analysis would clearly indicate who is liable in the case of a failure and would help assure that future homeowners understand what they are buying if they purchase a lot or home with a wall that represents a higher-than-average risk for failure.

Council Member Swanson stated that he has driven throughout the City to look at existing retaining walls to determine if there are several properties in the City that are not compliant with the City's current ordinance; Mr. Hess participated in that drive with him. They observed walls constructed of block, boulders, and concrete and there are others that are taller than the eight-foot maximum height. His question is the difference between placing a pile of dirt, bushes, or a pile of rocks at the base of the retaining wall; none of them add any type of structural integrity to the wall and all three may eventually be an eyesore without proper maintenance.

Mayor Berube inquired as to Mr. Hess's proposed solution to Mr. Dee's situation. Mr. Hess stated he believes the height of the wall must be reduced; in this particular case, the property owner was informed of these rules during the building permit process. This ordinance was not hidden from Mr. Dee, and he cited 'red-lined' notes on the building permit that communicate that the exposed height of the retaining wall could be no more than eight feet. He stated that there is nothing unsafe about the wall; it is an excellent retaining wall, but the issue is that it does not comply with the ordinance. He noted that amending the ordinance could address the non-compliance as well and he acknowledged that is a decision of the Council.

Mayor Berube invited input from Planning Commission Chair Thomas. Mr. Thomas stated the Commission has discussed this issue at length; the question of the City's role has been raised. Others have said that if the wall is engineered and is safe, the maximum height should not matter and is really just an issue of aesthetics. As such, the claim has been made that the City is limiting height for aesthetic reasons only. He stated the City is charged with striking a balance between safety and aesthetics and it is difficult to craft ordinances that address both and can be applied

consistently throughout the City. He stated that vertical cement walls are typically seen in smaller yards where there is not enough space to build a tiered rock wall. Concrete walls address concerns about weeds and rodents, and he acknowledged that beauty is in the eye of the beholder. He noted that safety should be the most important factor in this decision-making process and aesthetics should be secondary; that is the basis from which the Planning Commission formed their recommendation. They feel that an eight-foot maximum height is a logical height, and they did not want to place a burden on the City Engineer to consider requests for exceptions to those standards.

Council Member Barker left the meeting at 6:54 p.m.

Mayor Berube facilitated discussion among the Council regarding the issue at hand; Council Member Swanson stated that in this case, he is most concerned about safety, and he would prefer to avoid legislating aesthetics. Mayor Berube agreed this is a safety issue and if a wall taller than eight feet can be engineered to ensure safety, he is unsure whether the eight-foot maximum height should be included in the ordinance. City Manager/Attorney Call stated it may be good to establish a setback for taller retaining walls in consideration of the Engineer's comments about life safety and property damage issues. Council Member Dalpiaz stated that he is worried about aesthetics because residents regularly contact City Council Members to complain about something that someone else has done on their property that is disturbing to them; opinions will always vary, and he is concerned about the possible removal of the eight-foot maximum wall height. Council Member Swanson stated that aesthetics is a personal opinion, and it is important for residents to recognize that some thing that they may not find beautiful is not located on their property and it is not up to them to determine if it should be allowed. He concluded that whatever decision is made, the Council needs to support it because it can be difficult for staff to enforce an ordinance without Council support. Council Member Ekstrom agreed; she does not like the City be put in a place of legislating beauty. She stated she will always support function over form and as long as something is safe, she can support it. She would love to pare down any City ordinance that infringes on a resident's private property rights.

Council Member Cevering expressed concern about potentially revisiting this matter in the future as development on the hillside continues; there will be instances where walls exceeding eight feet are needed and he would prefer to focus on the safety of those walls rather than sticking with a stringent maximum wall height. He would like to address the language of the ordinance further and he wondered if a joint work session between the Council and Planning Commission would be helpful. The Mayor and Council felt this would be a good idea and concluded it would be appropriate to table this matter tonight.

Council Member Cevering motioned to postpone until further notice to revise the retaining wall standards to add clarifying language in Grading and Drainage Standards. Council Member Ekstrom seconded the motion.

Voting on the motion:

Council Member Cevering	aye
Council Member Delpias	no
Council Member Ekstrom	aye
Council Member Swanson	aye

The motion passed 3 to 1.

6. DISCUSSION AND/OR ACTION TO CONSIDER A FRANCHISE AGREEMENT WITH ALL WEST/ UTAH INC.

City Manager/Attorney Call summarized the terms of a proposed Franchise Agreement with All West/Utah, Inc. The agreement mirrors other franchise agreements with other telecommunications service providers. He stated that if the Council is accepting of this agreement, he recommends that staff be allowed to place future agreements on a consent calendar for Council consideration without a full discussion.

Council Member Ekstrom motioned to approve Agreement #A15-2022 a Franchise Agreement with All West/ Utah Inc. Council Member Cevering seconded the motion.

Voting on the motion:

Council Member Cevering	aye
Council Member Delpias	aye
Council Member Ekstrom	aye
Council Member Swanson	aye

The motion passed unanimously.

7. DISCUSSION AND/OR ACTION TO CONSIDER AN AGREEMENT WITH BRANDEN MILES FOR CITY PROSECUTOR SERVICES

City Manager/Attorney Call explained for many years the City has utilized an outside prosecutor for its justice court cases. Staff would like to continue to provide this service through a third party and extend the contract as allowed under the original agreement. Staff is also recommending an increase of \$200 a month to the contract to \$1100 a month. Staff recommends approval of the agreement if the terms are agreeable to the Council.

Council Member Swanson motioned approve Agreement #A16-2022 with Branden Miles for City Prosecutor Services. Council Member Ekstrom seconded the motion.

Voting on the motion:

Council Member Cevering	aye
Council Member Delpias	aye
Council Member Ekstrom	aye
Council Member Swanson	aye

The motion passed unanimously.

8. DISCUSSION ON TEMPORARY OCCUPANCY AGREEMENTS

City Manager/Attorney Call explained that to date the City has provided five homeowners with temporary occupancy agreements so they can finalize their funding for a home and meet the rate lock deadlines. These agreements have been contingent on the homeowner depositing money to complete the outstanding issues along with a 60-day deadline. Since the beginning of these agreements, it is staff's opinion that it causes additional work and issues for those trying to enforce the agreements. We have also run into issues where people do not strictly comply with the agreements and staff is left trying to enforce a rule that the council or others do not necessarily support. From a staff perspective if everybody is trying to follow the same rules it becomes much easier to enforce and treat people fairly, because everybody is treated the same. These agreements have often times been seen as a way to provide people with special treatment. Staff recommends against the continued use of temporary occupancy agreements.

Mayor Berube stated that he is supportive of staff's recommendation. Council Member Swanson noted that this matter was advertised as a discussion item, but he addressed Council rules, which allow for action to be taken on any item that is advertised on the agenda. Mr. Call stated that is correct.

Council Member Swanson motioned to immediately stop allowing Temporary Occupancy Agreement Permits. Council Member Ekstrom seconded the motion.

Council Member Ekstrom acknowledged that building a home is very difficult, but it is important for everyone to follow rules and she feels it is smart on the part of the City to discontinue this practice.

Voting on the motion:

Council Member Cevering	no
Council Member Delpias	aye
Council Member Ekstrom	aye
Council Member Swanson	aye

The motion passed 3-1.

9. COUNCIL DEPARTMENT REPORTS:

a. COUNCIL MEMBER CEVERING - POLICE

Mayor Berube stated that Police Chief Quinney is out of town and Council Member Cevering was unable to contact him; as such, his report will be deferred.

b. COUNCIL MEMBER EKSTROM – PUBLIC WORKS

Council Member Ekstrom provided an update on the status of ongoing infrastructure projects in the City. She then noted that the secondary water system will be shut off on October 14. The scheduled burn at the green waste pit has been cancelled because the burn permit was denied. She concluded that the Public Works Department is holding a meeting next week regarding snow plowing for the upcoming winter months and any recommendations regarding snow removal will come to the Council.

10. PUBLIC COMMENTS

Brad Dee, North Ogden resident, stated that he has a temporary occupancy agreement with the City and when he signed the agreement, he deposited \$3,500 with the City to allow him to cover a portion of his retaining wall with dirt and rock. Based on the Council's decision regarding temporary occupancy agreements, he is concerned about the status of his money and whether he will have water at his property.

Mayor Berube asked Mr. Dee if he is compliance with the temporary occupancy agreement he signed. Mr. Dee stated he believes he is; he deposited money with the City to allow him to address the wall height so that he is in compliance with the City's ordinance. Mayor Berube asked City Manager/Attorney Call the same question; it is his recollection that occupancy will not be granted if a specific matter of non-compliance is not being addressed. Mr. Call stated that the intent of the agreement was to obtain financing, but the language in the agreement states that the home will not be occupied during the term of the agreement. Mayor Berube asked what paragraph of the agreement that language is in. Mr. Dee stated that his agreement states that it provides for conditional occupancy of the building while obtaining financing. He stated that he paid the City \$3,500 thinking that the issue would be resolved, but the water to his home has been turned off twice in two days. He asked if he is expected to vacate his home and live in a hotel until the matter is resolved. Mayor Berube asked Mr. Call to cite the section of the agreement that states the home is not to be occupied. Mr. Call stated that the section 1.b.i of the agreement states "property owner shall complete all building permit punch-list items prior to occupying the home". Mr. Dee stated that he paid \$3,500 while the City is in the process of making a decision about maximum retaining wall heights. He stated that he has run this matter by five different attorneys and all of they agreed he should have permission to live in the home. He stated that he was told that what he needed to do was place dirt and rock at the base of his

wall to ensure compliance with the ordinance and he is willing to do that, but he needs to know if that will ensure compliance. Mayor Berube stated that matter was postponed; he asked the Council if they would like to enforce the agreement that Mr. Dee entered into with the City.

Council Member Swanson stated that he would rather not enforce the agreement until there is a clear understanding of the Council's position on the ordinance governing retaining wall heights. There are many questions about the ordinance, and he is aware of another property fairly close to Mr. Dee's property where the owner was granted occupancy, though their vertical concrete retaining wall is not compliant with the same ordinance that Mr. Dee is struggling with. In Mr. Dee's instance, he feels a good faith effort has been made to comply with the ordinance, but the Council has yet to decide on what will be enforced. Mayor Berube stated that the building permit was applied for and issued while the ordinance restricting retaining walls to eight feet was in effect; that is what staff was attempting to enforce. Additionally, there is an agreement in place that states that the resident will not occupy the home until these issues are resolved. He stated the Council has the ability to override that agreement, but it concerns him when someone signs an agreement and fails to abide by the terms of the agreement. Council Member Swanson reiterated another home nearby was not held to the same rules as are being imposed on Mr. Dee. Mayor Berube agreed but noted that two wrongs do not make a right. Mr. Call stated that staff will not be offended if the Council makes the decision to allow Mr. Dee to occupy the home. He added that he has personally measured the portion of the neighboring property's wall that is above the finished grade, and it measured 96 inches; the issue with the wall height was created when the downhill neighbor landscaped his yard and exposed more of the wall. He believes the wall met the ordinance when it was constructed.

Council Member Dalpiaz stated that he feels the decision made by the Council regarding temporary occupancy agreements was that no future agreements will be authorized; he feels Mr. Dee's agreement can remain in effect and he is comfortable allowing Mr. Dee to occupy his home. Mayor Berube stated he is comfortable with such a position but suggested that the Council implement a timeframe for compliance.

Council Member Cevering motioned to override Temporary Occupancy and allow Mr. Dee to move into home and that he must comply with the ordinance within 60 days from the date Council makes a decision on retaining wall heights. Council Member Dalpiaz seconded the motion.

Voting on the motion:

Council Member Cevering	aye
Council Member Dalpiaz	aye
Council Member Ekstrom	aye
Council Member Swanson	aye

The motion passed unanimously.

Chris Pulver, North Ogden resident, thanked the Mayor and Council for their thoughtful deliberations tonight; he is proud to live in a City where fairness is very important to its leaders.

Brenda Ashdown, North Ogden resident, addressed the Council's approval of the City prosecutor agreement. She noted that she thought it was the job of the City Attorney to handle City prosecution. Mayor Berube stated that Mr. Call acts at the City Manager/Attorney and is responsible for day-to-day operations of the City. He consults with the Council regarding legal matters. The City prosecutor actually works in the Justice Court and prosecutes offenses, and that is generally not the City Attorney's responsibility in the City of North Ogden. Ms. Ashdown thanked the Mayor for that clarification.

11. MAYOR/COUNCIL/STAFF COMMENTS

Council Member Swanson stated he would like to visit with Mr. Call about the measurement of retaining walls in Mr. Dee's neighborhood.

Council Member Cevering stated that he was contacted by a resident who visited Oaklawn Park over the weekend; apparently the handicapped parking stalls are not clearly marked and there were no handicapped stalls available. There was an elderly person who is in a wheelchair who needed access to the park and when a person parked in one of the handicapped stalls was asked to move her vehicle, she refused. He asked that City staff visit the area and ensure that the stalls are clearly marked to prevent this issue from occurring again. He then stated that he was contacted by another resident about a \$100,000 survey of businesses in the community. Mayor Berube stated that resident was referring to a survey done of the North Ogden plaza; the funding was granted by the Wasatch Front Regional Council (WFRC) and the contract is being advertised for companies that can perform the scope of work. Council Member Cevering then stated that he would also like an explanation as to why a neighboring property near Mr. Dee's home was granted occupancy if his retaining wall does not comply with the ordinance. Mayor Berube reiterated that Mr. Call measured that wall, and it did comply.

Mayor Berube stated that he and all Council Members regularly receive emails from residents about issues in the community and he reminded the Council to send those emails through Mr. Call to ensure a response from the City. If Mr. Call is struggling to respond to an email, he will reach out to the Council for direction. He stated consistent communication from the City is important.

Mr. Call referenced past communication from Dr. Shupe, owner of the animal hospital located on north Washington Boulevard; he believes all of Mr. Shupe's concerns about the impact of the Washington Boulevard construction project on his property have been addressed. There was one outstanding utility issue on the property that is still being resolved.

He then noted that the City received a lawsuit relating to an individual who injured themselves on one of the City's storm drains/gutters in the City and that suit is being handled by the City's insurance company.

Mayor Berube reported that a citizen committee has been assembled to handle the City's Cherry Days Celebration; they will be making recommendations to the Council regarding several components of that celebration.

12. ADJOURNMENT

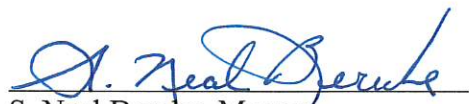
Council Member Ekstrom motioned to adjourn the meeting. Council Member Cevering seconded the motion.

Voting on the motion:

Council Member Cevering	aye
Council Member Dalpiaz	aye
Council Member Ekstrom	aye
Council Member Swanson	aye

The motion passed unanimously.

The meeting adjourned at 7:57 p.m.


S. Neal Berube, Mayor


Susan L. Nance, CMC
City Recorder


Date Approved