

Please Note – These minutes have been prepared with a timestamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.



PROVO MUNICIPAL COUNCIL

Regular Meeting Agenda

5:30 PM, Tuesday, November 14, 2023

Council Chambers (Room 100)

Hybrid meeting: 445 W. Center Street, Provo, UT 84601 or

<https://www.youtube.com/provocitycouncil>

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor Shannon Ellsworth

Councilor Bill Fillmore

Councilor George Handley

Councilor Travis Hoban

Councilor Katrice MacKay

Councilor David Shipley

Councilor Rachel Whipple

Mayor Michelle Kaufusi

Chief Administrative Officer Scott Henderson

City Attorney Brian Jones

Council Executive Director Justin Harrison

Conducting: Chair Katrice MacKay

Prayer – Norm Avery

Pledge of Allegiance – Councilor Ellsworth

Public Comment

Chair MacKay read the public comment preamble. After which she opened public comment.

Lowell Anderson, of Provo, said the deer population around the Foothill Neighborhood has significantly increased. With the increasing number of deer, there are now packs of coyotes and cougars, which have become more prominent in the neighborhood. He shared his concern for the surrounding residents and suggested the city hire expert hunters to thin the herd. He added that the meat could be donated to the Food and Care Coalition.

Jeff Kimball, of Provo, stated the deer herd is larger than ever. He also shared he is in favor of any safe and humane way to thin the herd.

Zach (unknown last name), of Provo Foothill Neighborhood, said he is in favor of thinning the herd.

Michael Coleman, of Provo, said he is supportive of thinning the herd.

Merrill Bateman, of Provo, stated something needs to be done to help the deer and help the families in the area. He recommended we act quickly and not wait until there is a catastrophe.

Stan Jensen, of Provo, stated this problem exists in other areas of the city as well, not just the Foothill Neighborhood.

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Chair MacKay discussed the Urban Deer Program that was around a couple of years ago that is no longer active. She shared her appreciation for those that provided comments and promised to take the issue to leadership to find a solution.

Brian Jones, City Attorney, said there were several changes to the required permit from the Division of Wildlife Resources that have made the program difficult to continue due to the restrictive regulations.

John Schmidt, of Provo, said he was surprised to hear that only one complaint had been made to the council. He shared an experience from October that the Police were involved in.

Chair MacKay clarified that the single complaint she spoke of was directed to the council, but there may be other complaints that have been received by other departments.

Bradley Day, of Provo, reminded the council that he brought a problem to their attention a few months prior regarding a trash service during early morning hours. He shared his disappointment that no change has taken place since then and requested some response and/or action from the city.

Jake Holdaway, of Vineyard, thanked councilmembers who have participated in the walk our way tour. He shared his desire to end the 130-year-old lawsuit to allow a trail to connect from Provo to Saratoga Springs. He said he is trying to understand the loan that the Lake Commission approved. He invited the council to a Lake Authority meeting that would be on Friday.

With no other public comments, Chair MacKay closed the public comment period.

Action Agenda

1. Employee of the Month [0:32:30](#)

Mayor Kaufusi shared her excitement to recognize another exceptional employee. She invited Brian Jones to present and highlight the employee selected from the Legal Department.

Mr. Jones recognized Karyn Walker as the November Employee of the Month. He read the following: "Karyn grew up in American Fork. She is a loving aunt who very much enjoys spoiling her nieces to no end. She is proud of her Native American heritage as a descendant of the Zuni tribe. She loves to travel especially to locations that involve time on a beach, having traveled most recently to Europe and the Cayman Islands. Karen loves K-pop, room temperature coke and yummy desserts. Karyn has been employed with the city since 2014, initially as a part time employee and then for the last seven years as the Executive Office Assistant, supervising the support staff involved in the criminal function of the City Attorney's office. She goes above and beyond in her own work and helps the entire team to be more successful. She is always willing to assist others when asked or needed. As a supervisor, she truly cares for the well-being of those she supervises as well as other coworkers. Karyn is well respected by her colleagues throughout the state. She currently serves as chair of the Utah Prosecutorial Assistance Association, helping to plan conferences and supply resources to train Utah's Prosecutorial Assistants. Karyn is a valuable member of the Provo City team and is an absolutely integral part of the City Attorney's office. She is a hard worker, fiercely loyal, a great friend and she is very deserving of this employee of the month recognition."

2. A resolution requesting recertification of the Provo City Justice Court by the Utah Judicial

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Council. (23-079) [0:36:55](#)

Motion: An implied motion to approve Resolution 2023-51, as currently constituted, has been made by council rule.

ReAnnun Newton, Justice Court Administrator, explained that this is a routine recertification that is required by the Utah Judicial Council every four years. She added that the Justice Court meets all qualifications and will be able to submit the recertification after the resolution is passed by the council.

With no questions or council discussion, Chair MacKay called for a vote.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Hoban, MacKay, Shipley, and Whipple in favor.

3. An ordinance amending Provo City Code regarding various administrative reports and other miscellaneous code updates. (23-025)

CONTINUED

4. A resolution approving the appropriation of \$1,313,300 in the Airport Fund from Airport Fund Balance. (23-006) [0:38:15](#)

Motion: An implied motion to approve Resolution 2023-52, as currently constituted, has been made by council rule.

Brian Torgersen, Director of Public Services, presented. He provided a summary of the current operations and performance status of the airport. He said the funds from the appropriation will be used for various projects and three additional full-time positions. The projects include a new security badging software system, a new parking toll system, space for the security badging office, new apron lighting, repavement of taxi lane eighteen, and signature gate and security.

Councilor Shipley asked Mr. Torgersen to speak about the parking toll system upgrade.

Mr. Torgersen explained the previous vendor selected had not performed as they anticipated. He said they upgraded the system to another vendor that is more widely used and offers local maintenance.

With no other questions or council discussion, Chair MacKay called for a vote.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Hoban, MacKay, Shipley, and Whipple in favor.

5. An ordinance amending Provo City Code Section 15.03.020 regarding general development standards 2024 updates. Citywide Application. PLOTA20230274 [0:46:15](#)

Motion: An implied motion to approve Ordinance 2023-45, as currently constituted, has been made by council rule.

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David Day, Assistant City Engineer, presented. He explained the text amendment changes include updating 2023 to 2024. He said twenty-eight pages of the 2024 Provo Standard Drawing Details were edited, two pages were added and three were removed. He added that six pages of the 2024 Provo City Public Works Department Development Design Standards were edited. He mentioned that the changes were from suggestions provided by contractors, engineers, and developers.

Chair MacKay opened the item for public comment. With none, and no council discussion, she called for a vote.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Hoban, MacKay, Shipley, and Whipple in favor.

Chair MacKay opened public comment for item 4 regarding the Airport appropriation. With none, she continued to item 6.

6. An ordinance amending Provo City Code section 14.34.480 regarding sidewalk cafes. Citywide application. PLOTA20230246 [0:50:05](#)

Motion: An implied motion to approve Ordinance 2023-46, as currently constituted, has been made by council rule.

Aaron Ardmore, Planning Supervisor, presented. He mentioned this item was discussed during the work session. The idea was to improve consistency and safety and clarify responsibilities. He reviewed the amendments and said it was recommended for approval by the Planning Commission.

Chair MacKay opened public comment. With none, and no council discussion, she called for a vote.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Hoban, MacKay, Shipley, and Whipple in favor.

7. An ordinance enacting the Agritourism Overlay Zone. Citywide application. PLOTA20230221 [0:52:15](#)

Motion: An implied motion to approve Ordinance 2023-47, as currently constituted, has been made by council rule.

Mr. Ardmore presented. He reminded the council that a rezone application was what started this process. He discussed the design standards of the proposed zone. He said it was recommended for approval by the Planning Commission.

Councilor Whipple asked about the definition of non-architectural metal.

Mr. Ardmore said the definition is not currently in code but will be added to title 14.

Councilor Whipple said she is uncomfortable passing something that uses a term that is not currently defined in code.

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Councilor Fillmore asked about the reason for removing the time restriction for on-site security.

Mr. Ardmore responded that staff felt like the hours of operation take care of the needed security unless there is an event with alcohol being served or amplified music being played.

Chair MacKay opened the item for public comment.

Barry Finch, of Provo, expressed his gratitude for the progress that had already been made. He shared his concern for the listed restrictions that are not necessary.

Parker Moses, of Provo, said he is the contractor for Mr. Finch. He mentioned that backyard weddings are increasingly popular in our city, but they are causing parking issues for neighbors. He shared that many event centers on farmland have cobblestone to eliminate the mud that gets in tires before leaving the parking lot. He said there is concern for safety if the road is paved because it could be slick from mud.

With no other comments, Chair MacKay invited council discussion.

Councilor Fillmore invited Mr. Ardmore to respond to the objections raised by Mr. Finch.

Mr. Ardmore discussed the reasons why staff felt most comfortable with keeping the requirements.

Councilor Shipley asked if the time restriction could be addressed.

Mr. Ardmore stated the hours of operation in the county regulation of their agritourism areas and said the hours listed were typical for neighborhood noise. He said he does not see any reason to change them. He added that people who live in the suburbs expect more quiet times than those that live downtown and are aware of the noise possibilities.

Chair MacKay said living close to the Seven Peaks Waterpark was difficult when they had events that would last until late hours of the night, especially for the young children who were not able to sleep with the loud noise.

Councilor Whipple asked if surrounding cities were looked at such as Wadley Farms in Lindon.

Mr. Ardmore admitted that he looked at others but not related to parking or noise.

Councilor Handley said he would feel more confident if more examples were given, either pro or con.

Councilor Shipley agreed with Councilor Handley. He said he would be interested in learning more about the requirements of other event centers in agritourism zones.

Motion: Councilor Handley made a motion to instruct staff to bring back examples of parking requirements in surrounding cities and states that are comparable in size. Councilor Whipple seconded.

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Chair MacKay said she is less worried about places like Jaker's in Springville because it is used only seasonally. She added that while expensive, the initial investment to construct a parking lot is nothing because it will coordinate with a building that will last decades.

Chair MacKay called for a vote on the substitute motion.

Vote: The motion was approved 5:2 with Councilors Ellsworth, Fillmore, Handley, Shipley and Whipple in Favor and Councilors Hoban and MacKay opposed.

Chair MacKay shared her concern regarding the distance requirements. She expressed concerns about the safety distance of fifty feet from buildings not regulated by occupancy and inspectors near an event hall hosting several hundred people, including children.

Motion: Chair MacKay made a motion to instruct staff to review the minimum distance requirements including comparisons to similar requirements in other cities. Councilor Shipley seconded.

Councilor Shipley added that the hours of operation are tied to the distance requirements. He said that if the distance is far enough, the hours of operation could be adjusted as the noise might not be of concern.

With no discussion on the motion, Chair MacKay called for a vote.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Hoban, MacKay, Shipley, and Whipple in favor.

Councilor Shipley shared concern over creating an overlay zone with too many restrictions where no one will use it. He said he is hoping to come back with many examples of success so we can model those requirements.

Councilor Whipple said when this was initially presented, the proposal included concessions beyond what Mr. Finch's security expert recommended. She added that the current staff recommendations align more closely with the expert's suggestions, which is a positive adjustment from the original, potentially burdensome proposal.

Motion: Councilor Handley made a motion to continue the item until the information from staff could be reviewed. Chair MacKay seconded.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Hoban, MacKay, Shipley, and Whipple in favor.

8. An ordinance amending the zone map of approximately 16.9 acres, generally located at 1069 N Geneva Rd, from R1.8 to R1.8(PD) and authorizing a related development agreement. Lakeview North Neighborhood. PLR220230104 [1:18:20](#)

Motion: An implied motion to approve Ordinance 2023-48, as currently constituted, has been made by council rule.

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Mr. Ardmore presented. He said before now, no one has taken initiative to subdivide these acres which could be related to the large transmission lines that run through the corridor. He said the plan includes two single family lots and the others would be twin homes. The Planning Commission concerns included the variety of housing models and the maintenance of open space, which are both addressed in the development agreement. He added that the development agreement also caps development at 58 units. He said the owner occupancy issue still needs to be addressed, but the staff and Planning Commission are recommending approval.

Councilor Shipley asked what the Planning Commission and Development Services staff recommended to support owner occupancy.

Mr. Ardmore said some examples include restrictions put forth through CCNR's, additional provisions added to the development agreement or notes recorded on the plat.

Councilor Hoban asked how the development agreement can be enforced after the development is completed.

Mr. Jones said the notes on the plat or the recorded CCNR would be included in the development agreement and would have to be executed prior to the certificate of occupancy being issued.

Councilor Whipple referenced the report of action from the Planning Commission that mentioned forwarding two concerns to the council, owner occupancy and the natural spring. She wanted to make sure the developer is aware and has a plan of how to address these concerns. She asked what addressing the natural spring looks like.

Mr. Ardmore explained a necessary setback would be required to prevent flooding.

Councilor Whipple confirmed the spring is not an amenity, but for safety the setbacks needed to be in place. She asked for an explanation of what the open space would be used for and what the plan is to maintain it.

Garrett Seely, representing the Weights who own the property, said they planned around the spring and would not build basements to prevent flooding. He discussed a manifold system that will collect water and direct it to an appropriate place. He said the plan is to maintain open areas as they are for wildlife and the weeds will be kept down around sidewalks and roads. He added that the surrounding residents were happy to hear that space would be left as is.

Councilor Handley asked Mr. Seely for his opinion about owner occupancy.

Mr. Seely explained that these will be sold individually.

Andy Flam, Mr. Seely's partner and co-applicant, said they are selling to a builder who will sell all homes individually. He added that there is no way for them to control what happens to the homes one or two owners down the road.

Chair MacKay responded and said with a CCNR, it could be required that the home be owner occupied for one year after sale.

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Both Mr. Seely and Mr. Flam said they would be fine with that stipulation.

Chair MacKay shared her likes for this development. She asked if the current landowner would inhabit one of the single-family lots.

Councilor Handley confirmed that the requirement for owner occupancy will be required for one year. He also echoed Chair MacKay's comments.

Councilor Whipple said she is delighted that the plan keeps almost half as open space is huge asset and is more desirable.

Chair MacKay asked Mr. Jones if anything needed to be done to add the owner occupancy requirement.

Mr. Jones said there are two approaches that the council could take. He said the first option is to continue item and ask staff to redraft the development agreement to include language around owner occupancy. He said the other option is to make substitute motion and move to approve item as written contingent on the items desired in the agreement.

Chair MacKay opened public comment. With none, she closed public comment.

Motion: Chair MacKay made a substitute motion to approve the item as written contingent upon the representation of the development agreement to include the homes are for sale products with CCNRs that require owner occupancy for one year. Councilor Handley seconded.

Councilor Hoban asked if the CCNRs would be enforceable or if they could be removed by future homeowners.

Mr. Jones responded that there are no guarantees in these kinds of agreements. He added that since the certificate of occupancy cannot be issued without the CCNRs in place, it would take the votes of most of the homeowners to remove them.

Mr. Ardmore confirmed that the spring would be addressed by the applicant by not building basements and building a manifold to direct water.

Chair MacKay called for a vote on the substitute motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Hoban, MacKay, Shipley, and Whipple in favor.

9. An ordinance amending the zone map of approximately 13.06 acres, generally located at 3410 W Center Street, from A1.10 to AI and authorizing a related development agreement. Fort Utah Neighborhood. PLRZ20220089 [1:45:00](#)

Motion: An implied motion to approve Ordinance 2023-49, as currently constituted, has been made by council rule.

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Mr. Ardmore presented. He discussed the current zoning of the parcels and provided an overview of what the developer had planned for the parcel. He said the development agreement addresses some of the concerns brought up by staff and the Planning Commission including the use of open space and future trail networks.

Councilor Shipley asked about the flight pattern over this area.

Mr. Ardmore said his understanding is this parcel is currently within the flight pattern. He added that he did not feel comfortable addressing other questions.

Bill Peperone, Director of Development Services, explained the plans for the runways and mentioned the timeframe of the changes are unknown. He added that right now, the parcel is under a flight path but that could change as the airport expands and grows.

Chair MacKay opened the item for public comment. With none, she called for council discussion.

Councilor Shipley said he hoped for a different project for this area that included river amenities without a warehouse. He mentioned that this area is ideal for housing options due to its scenic beauty. Additionally, he expressed a preference for transforming it into a residential space.

Councilor Fillmore asked what amenities the developer had planned with respect to the river.

Norm Avery, developer, said they plan to include three outlook areas, one picnic area, and three workout areas.

Chair MacKay sympathized with Councilor Shipley.

Councilor Ellsworth shared she wishes our code would implement orienting parking lots away from natural spots along river.

Councilor Whipple asked if the parking lot would be available for use from the public. She shared her liking of trails being connected to stores and public places for those that use it to commute.

Councilor Fillmore asked why this parcel was changed from residential to commercial.

Mr. Avery noted that the rise in airport traffic, changes in flight patterns, and increased noise levels make it less suitable as a residential choice.

Mr. Ardmore added that this parcel is isolated, surrounded by the river and two arterial roads. He said there is not a lot of connectivity to other neighborhoods.

Keith Morey, Economic Development Director, stated this area has clear boundaries with the river and arterial roads. He emphasized the demand for commercial spaces and said there are not many options on the west side. He also shared reasons why this would be a good development from a tax revenue standpoint.

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Councilor Fillmore thanked Mr. Morey for his input and shared his desire to support economic development within the city.

Councilor Shipley mentioned that there are designated zones in the surrounding areas specifically set aside for airport industrial purposes. He also explained why he would be voting against this item.

Councilor Handley shared his thoughts on the parcel's ability to have a corridor large enough for the public to enjoy if this was zoned as residential.

Councilor Whipple shared her recollection of the safety parameters that would be put in place if it were residential. She said there are not as many safety concerns if it is an industrial building.

Councilor Shipley expressed a differing opinion, stating that he does not think industrial buildings offer a higher level of safety compared to residential buildings. He pointed out that industrial buildings in other cities may not be the most aesthetically pleasing or secure.

Councilor Hoban stated we need homes more than we need another warehouse and said he is more supportive of residential based on the current housing need. He said revisiting the General Plan might be a good idea.

Chair MacKay asked what the current zone is.

Mr. Ardmore said the current zone is agricultural, but the General Plan calls for it to be airport related.

Councilor Fillmore suggested continuing to gather more information or provide more certainty.

Councilor Handley indicated that he believed the conversation regarding this matter had already occurred, and the only obstacle remaining was the development agreement.

Mr. Ardmore verified that in 2022, a decision was made to modify the General Plan, shifting from residential to airport industrial in anticipation of a project like the current one. He also mentioned that this is the initial application for the rezoning since that decision.

Mr. Avery said that they are working with the adjacent property to provide connections in a few areas.

Heath Johnston, developer, confirmed that there is a new project moving forward on the property to the west after the previous one fell through. He said that while they are hoping the council will pass the item to align with the General Plan change, the developers have strived to keep as much open space for the public to enjoy.

Chair MacKay recalled that the neighboring property was considering mixed-use development, including the addition of food establishments. She inquired whether the consideration of mixed use was explored for their property.

Mr. Johnston explained that their space would be utilized for the transportation of goods, benefiting from the convenient proximity to the airport and freeway.

Chair MacKay asked if there is anything dictating the distance for public use along the river.

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Mr. Ardmore said floodplain distance requirements are in code and said the standard is one hundred feet.

Mr. Johnson included that the parking spaces on the north side were intentionally added for public use, ensuring minimal impact on the business. He mentioned that these spaces could serve individuals who wish to drive to a location and connect to the trail for recreational purposes.

Councilor Whipple asked how wide the trail is. She also asked how much airport traffic is shipping goods as opposed to passenger travel and if a change in use was anticipated.

Mr. Avery responded that the trail is ten feet wide, and it is included in the development agreement.

Mr. Peperone said he did not have an answer to Councilor Whipple's second question.

Councilor Ellsworth asked for clarification on the maps found online and the timeline of approving the General Plan.

Mr. Ardmore responded that the 2023 General Plan and the General Plan amendment were moving forward at the same time, but one did not get updated. He promised to see that the map found online would be corrected.

Councilor Handley said it would be unfair to the developers to have wasted this last year under the guidelines that we provided to them that the zone would be airport industrial. He added that they followed the request to provide public access to the river.

Councilor Shipley suggested the council vote on the item.

Councilor Hoban said a lot has changed in the last year regarding the housing market and confirmed he would still support housing for this property.

Mr. Morey pointed out to the council that the river was redirected to the North for the June Sucker program, emphasizing that this section of the river would undergo changes in its environment in the future.

Chair MacKay called for a vote.

Vote: The motion was approved 4:3 with Councilors Fillmore, Handley, MacKay, and Whipple in favor. Councilors Ellsworth, Hoban, and Shipley opposed.

Adjournment

The meeting was adjourned by unanimous consent at approximately 7:43 p.m.