

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Debbie McKean
Mark Preece

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
FAX (801) 292-6355
www.WBCity.org

City Recorder
Cathy Brightwell

City Engineer
Ben White

Public Works Director
Steve Maughan

CITY COUNCIL MEETING

THE WEST BOUNTIFUL CITY COUNCIL WILL HOLD AN OPEN HOUSE/
WORK SESSION AND MEETING ON **TUESDAY, AUGUST 19, 2014**
BEGINNING AT 6:30 PM IN THE CITY OFFICES AT 550 NORTH 800 WEST.

Open House/Work Session Agenda (6:30 pm)

Discuss Potential Special Assessment Area for Jessi's Meadow Subdivision

Invocation/Thought by Invitation

Pledge of Allegiance – Mark Preece

Regular Meeting Agenda (7:30 pm)

1. Accept Agenda.
2. Public Comment (two minutes per person) or if a spokesperson has been asked by a group to summarize their comments, five minutes will be allowed.
3. Public Hearing at 7:35 pm to receive public comment regarding a request from Rick Rose to vacate a portion of a public utility easement on the properties at 685 W 700 N and 697 W 700 N.
4. Consider Resolution #347-14, A Resolution Vacating a Portion of Rear Easement at 685 & 697 W 700 N.
5. Hearing to receive input from public safety personnel concerning converting to the public safety noncontributory retirement system.
6. Consider Resolution #348-14, A Resolution Converting the Public Safety Retirement System to Non-Contributory.
7. Consider Request from Alice Acres' developer to cut three 1 foot by 1 foot holes in 400 North.
8. Consider Ordinance #365-14, An Ordinance Amending the West Bountiful City Code to Adopt A Pipeline Franchise Ordinance.
9. Consider Ordinance #366-14, An Ordinance Amending the West Bountiful City Land Use Ordinance to Reinstate Exception to Zoning Specific Height Restrictions.
10. Consider Ordinance #364-14, An Ordinance Amending the West Bountiful City Code to Adopt a Re-Drafted Nuisance Ordinance.
11. Police Report.
12. Engineering Report.
13. Administrative Report.
14. Mayor/Council Reports.
15. Approval of Minutes from the August 5, 2014 City Council Meeting.
16. Executive session, pursuant Utah Code 52-4-205 (c) to discuss pending or reasonably imminent litigation.
17. Adjourn.

According to the American's with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the meeting should contact Cathy Brightwell, City Recorder, at (801) 292-4486.

This agenda was posted on the State Public Notice website, the City website, emailed to the Mayor and City Council, and sent to the Clipper Publishing Company on August 15, 2014.

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PUBLIC HEARING NOTICE

A public hearing will be held by the West Bountiful City Council on Tuesday, August 19, 2014 at 7:35 p.m. (or as soon thereafter as agenda allows) at the City offices, at 550 N 800 West.

The purpose of the hearing is to receive public comment regarding a request to vacate a portion of a rear yard public utility easement on the properties located at 685 W 700 N and 697 W 700 N, West Bountiful, Utah.

All interested parties are invited to attend. Written comments may be submitted prior to the meeting.

Cathy Brightwell
City Recorder

MEMORANDUM



TO: Mayor and City Council

DATE: August 13, 2014

FROM: Ben White, City Engineer

RE: Vacate Existing Easement and Grant new Easement at
685 W and 697 W 700 North (Moss Farm Lots 209 and 210)

Mr. Rose owns Lots 209 and 210 in the Moss Farm Subdivision. The lots were originally platted with a depth of approximately 100 feet. Since then, another 100 feet has been added to the rear of each lot. The issue is that even though the lots are now 200 feet deep, the rear yard easement that was recorded with the original subdivision runs right through the middle of the lot.

Mr. Rose has solicited each of the major utility companies to release any claim they may have on the easement. He received letters from Weber Basin, South Davis Sewer, Rocky Mountain Power, Century Link, Comcast and Questar.

South Davis Sewer is the only utility that placed restrictions on the release. The Sewer District wanted the common side yard easement between Lots 209 and 210 to extend all the way to the south property line.

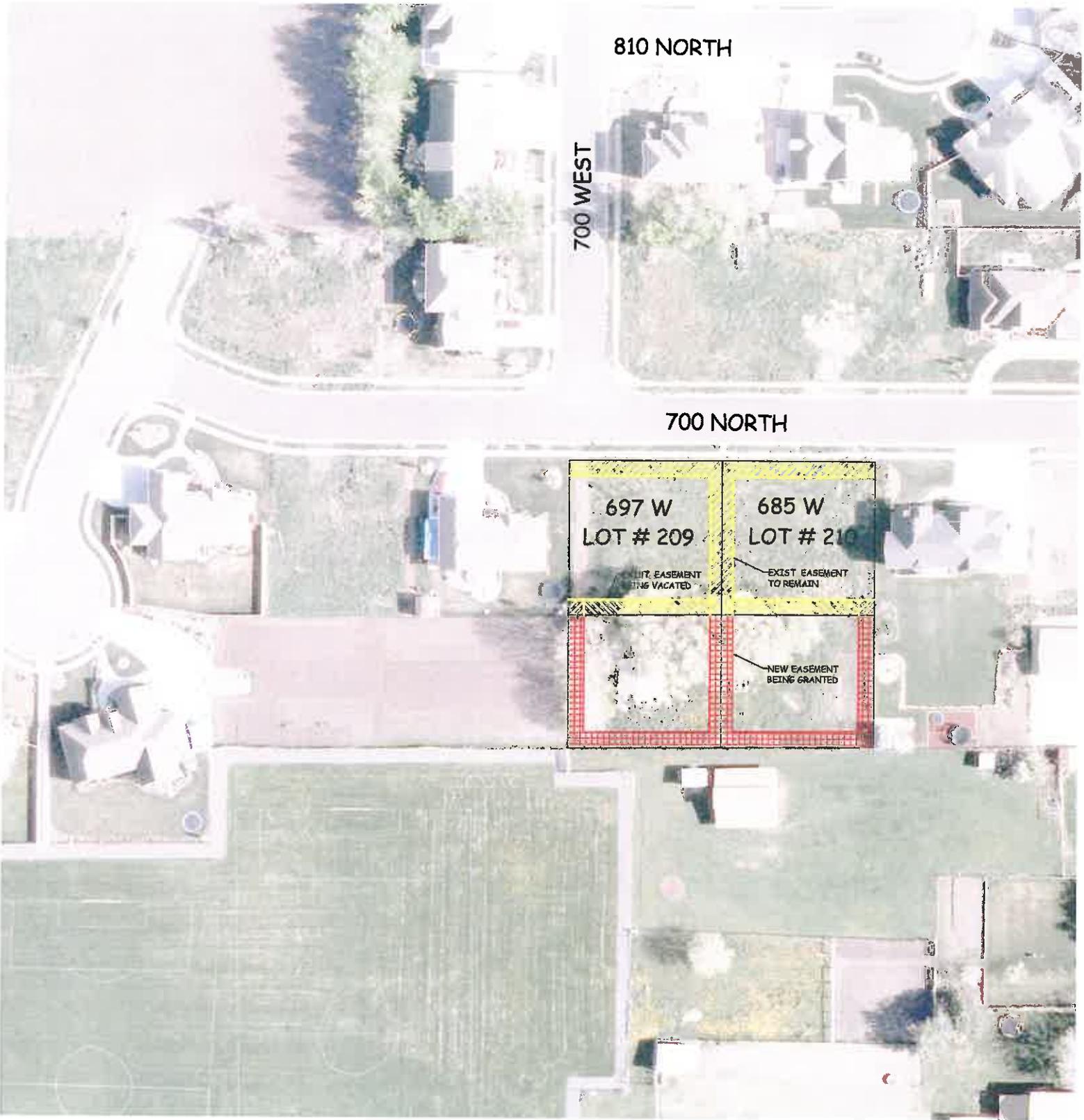
Staff does not foresee a problem releasing the rear yard easement in the location where it currently exists. Staff believes there is a value to the City to maintain an easement along the entire rear of the subdivision for purposes which are currently unforeseen.

Included with this memo is an

- Exhibit which identifies the existing easements, those to be vacated and the proposed easements
- A Resolution vacating portions of the Public Utility Easements on Lots 209 and 210 (The Resolution includes a document to record for each lot)
- Two Grant of Easement documents, which would grant new easements on the rear portions of Lots 209 and 210

Recommendation

It is staff's recommendation that the rear yard easements on Moss Farm Lots 209 and 210 be vacated contingent upon the granting of new rear and side yard easements for the same two lots per the attached Exhibit.



810 NORTH

700 WEST

700 NORTH

697 W
LOT # 209

685 W
LOT # 210

EXIST. EASEMENT
BEING VACATED

EXIST. EASEMENT
TO REMAIN

NEW EASEMENT
BEING GRANTED

WEST BOUNTIFUL CITY

RESOLUTION #347-14

A RESOLUTION OF THE WEST BOUNTIFUL CITY COUNCIL AUTHORIZING THE CITY MAYOR TO EXECUTE THE VACATION OF A PORTION OF REAR PUBLIC UTILITY EASEMENT LOCATED AT 685 W 700 NORTH AND 697 W 700 NORTH

WHEREAS, West Bountiful City has been petitioned by the above mentioned property owner to vacate and relocate a portion of the rear and side yard public utility easement for the purpose of building a house; and

WHEREAS, a public notice was published in the August 7, 2014 edition of the Davis County Clipper; and

WHEREAS, a public hearing was held on August 19, 2014 to receive public comment concerning the vacation of a portion of the easement.

NOW THEREFORE, BE IT RESOLVED by the City Council of the West Bountiful City as follows:

The West Bountiful City Council, having heard all arguments for and against the release of the utility easement, approves the release and hereby authorizes the City Mayor to execute the RELEASE OF EASEMENT for the properties located at 685 W 700 North and 697 W 700 North.

EFFECTIVE DATE. This resolution shall take effect immediately upon receipt of releases from the public utility agencies.

Passed and approved by the City Council of West Bountiful City this 19th day of August, 2014.

Ken Romney, Mayor

Voting by the City Council:	Aye	Nay
Councilmember Ahlstrom	_____	_____
Councilmember Bruhn	_____	_____
Councilmember Enquist	_____	_____
Councilmember McKean	_____	_____
Councilmember Preece	_____	_____

ATTEST:

Cathy Brightwell, Recorder

When Recorded Return to:
West Bountiful City
550 North 800 West
West Bountiful, UT 84087

RELEASE OF PUBLIC UTILITY EASEMENT AGREEMENT
685 West 700 North
Tax ID: 06-247-0217

THIS RELEASE OF PUBLIC UTILITY EASEMENT AGREEMENT (“*Agreement*”) is entered into effective _____, 2014 (the “*Effective Date*”), between WEST BOUNTIFUL CITY, a Utah municipal corporation (the “*City*”), and Rick L. and Joy L. Rose (collectively, “*Owner*”).

Owner owns certain real property located at 685 W 700 North, West Bountiful City, Davis County, State of Utah, which is more particularly described in the attached **Exhibit A** (the “*Property*”). The Property is subject to a public utility easement as depicted and described in the attached **Exhibit B** (the “*Easement*”). At Owner’s request, the City has adopted Resolution No. 347-14, a Resolution authorizing the City to release its interest in the Easement, conditioned upon Owner’s agreement to indemnify the City in accordance with the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RELEASE OF EASEMENT. The City disclaims, relinquishes, and releases any right, title, or interest it may have in and to the Easement, conditioned on the performance of Owner’s obligations under this Agreement.

2. OWNER’S ACKNOWLEDGMENTS. Owner acknowledges that certain public utilities may have interests in the Easement, and that the City’s release of the Easement does not automatically extinguish those interests. Owner is solely responsible for the use of that portion of the Property which was subservient to the Easement, as depicted and described in **Exhibit B** (the “*Easement Property*”), and will use the Easement Property at Owner’s own risk.

3. RELEASE AND INDEMNIFICATION. To the fullest extent allowed under applicable law, Owner hereby releases, and agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees, successors, and assigns from and against all liabilities, claims, damages, losses, suits, judgments, causes of action, costs, and expenses (including reasonable attorney and expert fees), arising out of: (a) Owner’s breach of this Agreement; (b) Owner’s use of the Easement Property; or (c) any act or occurrence on the Easement Property. With respect to Owner’s agreement to defend the City, the City will have the option of either providing for its own defense, or requiring Owner to undertake the defense of the City, either of which will be at Owner’s sole cost and expense.

4. DISCLAIMER OF WARRANTIES. The City makes no representations or warranties as to the availability of the Easement Property for any use intended by Owner, except to the extent of the release of the City’s interest in the Easement. The City will not be responsible for any injury to persons or property as a result of the design, installation, use, maintenance, or possession of improvements on the Easement Property.

5. MISCELLANEOUS.

a. **Covenants Run with the Land.** The covenants contained in this Agreement are covenants with respect to real property and will run with the land. Such covenants will be binding upon Owner's successors, assigns, agents, and legal representatives in the ownership or development of the Property. Owner, at Owner's expense, will record this Agreement or a memorandum of this Agreement with the Davis County Recorder.

b. **Severability.** The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the remaining provisions.

c. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter, and supersedes all previous or contemporaneous representations or agreements of the parties in that regard. No modification of this Agreement will be valid or binding unless made in writing and signed by both parties. Any waiver of any provision of this Agreement must be in writing and must be signed by the party waiving the provision.

d. **No Third-party Beneficiaries.** This Agreement is made for the exclusive benefit of the parties and their respective officers, employees, agents, attorneys, successors, heirs, and assigns. No other person or entity will have any interest under this Agreement or be classified as a third-party beneficiary.

e. **Enforcement.** In the event any party is required to bring a legal action to enforce the terms of this Agreement, the prevailing party in such action will be entitled to recover the party's costs and reasonable attorney fees.

IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date.

THE CITY:

WEST BOUNTIFUL CITY

Kenneth Romney, Mayor

Attest:

Cathy Brightwell, City Recorder

OWNER:

RICK L. ROSE

JOY L. ROSE

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On _____, 2014, Kenneth Romney and Cathy Brightwell appeared before me and, being by me duly sworn, did acknowledge that they are the Mayor and City Recorder, respectively, of West Bountiful City, and that they executed the foregoing instrument as duly authorized representatives of the City.

Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On _____, 2014, Rick L. Rose and Joy L. Rose appeared before me and, being duly sworn, did acknowledge that they are the owners of the Property referred to in the foregoing instrument and that they executed the foregoing instrument as the Owners' duly authorized representative.

Notary Public
|

EXHIBIT A
(Legal Description of the Property)

ALL OF LOT 210, MOSS FARM ESTATES PLAT B. CONT 0.24 ACRES ALSO: BEG AT THE SE COR OF LOT 210, MOSS FARM ESTATES PLAT B, BEING PART OF THE NE 1/4 OF SEC 24-T2N-R1W, SLB&M; & RUN TH S 85.57 FT TO THE S LINE OF LOT 4, EGGETT ACRES SUB; TH S 89°38'20" W 100.00 FT ALG SD LINE; TH N 85.72 FT TO THE SW COR OF SD LOT 210; TH N 89°43'37" E 100.00 FT TO THE POB. CONT. 0.196 ACRES TOTAL ACREAGE 0.436 ACRES

EXHIBIT B
(Depiction and Legal Description of the Easement)

Part of Lot 210 of the Moss Farm Estates Plat "B" Subdivision located in the Northeast Quarter of Section 24, Township 2 North Range 1 West, Salt Lake Base and Meridian on file in the Davis County Recorder's Office, being more particularly described as

Beginning at a point South 00°00'00" West 93.92 feet along the east lot line from the northeast corner of Lot 210 of the Moss Farm Estates Plat "B" Subdivision, West Bountiful City, Davis County, Utah and West 10.00 thence

South 89°43'37" West 80.00 feet;

Thence South 00°00'00" East 10.00;

Thence North 89°43'37" East 80.00 feet to the east lot line;

Thence North 00°00'00" East 10.00 feet along the east lot line
to the point of beginning.

When Recorded Return to:
West Bountiful City
550 North 800 West
West Bountiful, UT 84087

RELEASE OF PUBLIC UTILITY EASEMENT AGREEMENT
697 West 700 North
Tax ID: 06-247-0216

THIS RELEASE OF PUBLIC UTILITY EASEMENT AGREEMENT (“*Agreement*”) is entered into effective _____, 2014 (the “*Effective Date*”), between WEST BOUNTIFUL CITY, a Utah municipal corporation (the “*City*”), and Rick L. and Joy L. Rose (collectively, “*Owner*”).

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RELEASE OF EASEMENT. The City disclaims, relinquishes, and releases any right, title, or interest it may have in and to the Easement, conditioned on the performance of Owner’s obligations under this Agreement.

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3. RELEASE AND INDEMNIFICATION. To the fullest extent allowed under applicable law, Owner hereby releases, and agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees, successors, and assigns from and against all liabilities, claims, damages, losses, suits, judgments, causes of action, costs, and expenses (including reasonable attorney and expert fees), arising out of: (a) Owner’s breach of this Agreement; (b) Owner’s use of the Easement Property; or (c) any act or occurrence on the Easement Property. With respect to Owner’s agreement to defend the City, the City will have the option of either providing for its own defense, or requiring Owner to undertake the defense of the City, either of which will be at Owner’s sole cost and expense.

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a. **Covenants Run with the Land.** The covenants contained in this Agreement are covenants with respect to real property and will run with the land. Such covenants will be binding upon Owner's successors, assigns, agents, and legal representatives in the ownership or development of the Property. Owner, at Owner's expense, will record this Agreement or a memorandum of this Agreement with the Davis County Recorder.

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IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date.

THE CITY:

WEST BOUNTIFUL CITY

Kenneth Romney, Mayor

Attest:

Cathy Brightwell, City Recorder

OWNER:

RICK L. ROSE

JOY L. ROSE

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On _____, 2014, Kenneth Romney and Cathy Brightwell appeared before me and, being by me duly sworn, did acknowledge that they are the Mayor and City Recorder, respectively, of West Bountiful City, and that they executed the foregoing instrument as duly authorized representatives of the City.

Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

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Notary Public

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EXHIBIT B
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Beginning at a point South 89°43'37" West 10.0 feet and South 00°00'00" West 94.40 feet from the northeast corner of Lot 209 of the Moss Farm Estates Plat "B" Subdivision, West Bountiful City, Davis County, Utah thence

South 89°43'37" West 80.0 feet;

Thence South 00°00'00" East 10.00;

Thence North 89°43'37" East 80.0 feet;

Thence North 00°00'00" East 10.00 feet

to the point of beginning.

MEMORANDUM



TO: Mayor & Council
DATE: July 31, 2014
FROM: Duane Huffman
RE: **Public Safety Retirement System**

A bill adopted during this year's legislative session opens a window and requires that the City contemplate transitioning from the "contributory system" to the "non-contributory system" for our Tier 1 public safety employees. This memo briefly explains the differences between these systems, reviews a hearing requirement, and recommends that the City make the change to the non-contributory system.

Contributory vs. Non-Contributory

The Tier 1 (defined benefit) program of the Utah Retirement System originally allowed cities either to pay the full retirement costs (non-contributory system) or to split the cost between the city and the employee (contributory system). The contributory system's total rates are higher, but the city has the option to pay a smaller share. This year for public safety employees the costs are as follows:

FY 2015	City	Employee	Total
Contributory	22.75%	12.29%	35.04%
Non-Contributory	34.04%	-	34.04%

West Bountiful City has always belonged to the contributory system, but has paid both the employer and employee portions. At any time, the City could require the employees to contribute up to the 12.29%.

The other significant difference between the systems for public safety employees is the death benefit, in that the non-contributory system has a more favorable death benefit program.

Hearing with Officers

The bill that opens a 6-month window to allow West Bountiful to make the switch from the contributory to the non-contributory system also requires that the City hold a hearing with its public safety employees to hear their views on making any changes. Notice of this hearing must be mailed to the officers within 30 days of the hearing.

Recommendation

In my review of this issue, the only reason West Bountiful would have an interest in remaining with the contributory system is if the Council wanted to keep the option open of shifting a portion of the retirement costs to the employees. While I am generally in favor of keeping options available, the savings of making the change, along with the myriad of other options to shift costs if needed, lead me to recommend making the change.

Summary of Differences

Public Safety Contributory System vs. Public Safety Noncontributory System

	Public Safety Employees Contributory System	Public Safety Employees Noncontributory System
Retirement Final Average Salary	Average 3 highest years salary 2.5% per year for up to 20 years 2% per year of every year over 20 year	Average 3 highest years salary 2.5% per year for up to 20 years 2% per year of every year over 20 year
Contributions	There are required Employee and Employer contributions. The Employee contribution may be picked up by the Employer at the discretion of the Employer.	No Employee contributions. Employer must pay all required contributions.
Rates	Higher*	Lower*
Retirement Qualifications	65 with 4 years of service 60 with 10 years of service Any age with 20 years of service	65 with 4 years of service 60 with 10 years of service Any age with 20 years of service
Line of Duty Death Benefit • Division A • Social Security	Lump sum payment of \$1000 and an allowance equal to 30% of the deceased member's final average monthly salary.	Fewer than 20 years of public safety service credit - Same as Contributory System. 20 years or more of public safety service credit – The deceased member shall be considered retired with a calculated allowance and the spouse shall receive the normal retirement death benefit.
Death Benefit • Division A • Social Security	Fewer than 10 years of public safety service credit - Beneficiary(ies) receive a \$1,000 lump-sum payment or a refund of member contributions, whichever is greater. 10 or more years or public safety service credit - Spouse receives a \$500 lump-sum payment, plus a monthly benefit of 2% of the member's final average monthly salary for each year of service, up to 30% of the final average monthly salary.	Fewer than 10 years of public safety service credit – Same as Contributory System. Between 10 and 20 years of public safety service credit – Spouse receives a \$500 lump-sum payment, plus a monthly benefit of 2% of the member's final average monthly salary for each year of service, up to 30% of the final average monthly salary. 20 or more years of public safety service credit – The member is considered retired. Your spouse, at the time of death, will receive 65% of your monthly benefit.

*Please see the rate sheet provide at www.urs.org for your specific rates in each system.

Revised 07/23/14

WEST BOUNTIFUL CITY

RESOLUTION #348-14

A RESOLUTION CONVERTING TO THE PUBLIC SAFETY NONCONTRIBUTORY RETIREMENT SYSTEM

WHEREAS, Utah Code Annotated 49-15-204 allows the City until December 31, 2014 to convert to the Public Safety Noncontributory System; and

WHEREAS, the City Council held a hearing during their regular meeting on August 19, 2014 at which all public safety service employees were given the opportunity to be heard on the question of participating in this system; and

WHEREAS, the West Bountiful City Council finds that converting to the Public Safety Noncontributory System will benefit both city finances and retirement benefits offered to eligible public safety service employees:

NOW THEREFORE, BE IT RESOLVED by the City Council of West Bountiful City that effective immediately, the City hereby elects to convert to the Public Safety Noncontributory System.

EFFECTIVE DATE. This resolution shall take effect immediately upon passage.

Passed and approved by the City Council of West Bountiful City this 19th day of August, 2014.

Ken Romney, Mayor

Voting by the City Council:	<u>Aye</u>	<u>Nay</u>
Councilmember Ahlstrom	_____	_____
Councilmember Bruhn	_____	_____
Councilmember Enquist	_____	_____
Councilmember McKean	_____	_____
Councilmember Preece	_____	_____

ATTEST:

Cathy Brightwell, Recorder



MEMORANDUM

TO: Mayor and City Council

DATE: August 13, 2014

FROM: Ben White, City Engineer

RE: Alice Acres Subdivision – 400 North Asphalt Cut

Background

The Alice Acres Subdivision was approved on February 4th by the City Council. Since that time, the Developer has constructed the required improvements on 1100 West. The only remaining improvements to construct are culinary water services off of the 400 North water line.

The February 4th approval included three bore pits (holes) in the middle of 400 North right on top of our water line. From there, the Developer was to bore under the road to install the water services instead of cutting the asphalt and digging up the road. The Developer cannot get a contractor to bore the water services without first verifying the location and depth of the Weber Basin irrigation water line.

The City's Municipal Code (13.08.030) places excavation restrictions on newly constructed streets for a period of five years. Any cuts in the asphalt during the five year period must be approved by the City Council. As stated previously, the Developer has permission for the bore pits. He does not have permission for additional excavations to locate the irrigation water line.

Request

In order to verify the irrigation line depth, a one foot square hole would need to be cut into the asphalt directly on top of the pipe. After that, a vacuum truck would excavate down to the water line. The Developer is requesting permission to excavate three one foot by one foot holes in the westbound travel lane so the irrigation water line may be specifically located. The attached Exhibit was taken from the Alice Acres Subdivision Construction Drawings. The "SW" line is the Weber Basin pipeline. The large black squares are the approved asphalt cuts. The small black squares on top of the "SW" line are the currently requested asphalt cuts.

Options

The option presented to the developer for the water services was to cut the five services in and replace the entire asphalt from the first east service to the last west service. That may still be an acceptable option.

Staff does not believe that the construction of three one foot square holes to verify the secondary water pipe line location would significantly affect the long term performance of the road.

EX FENCE
TO BE REMOVED

EX DITCH
TO BE IN-FILLED

LOT 3
24,687 SQ. FT.
0.57 AC.

LOT 4
24,850 SQ. FT.
0.57 AC.

LOT 5
24,964 SQ. FT.
0.57 AC.

LOT 6
24,995 SQ. FT.
0.57 AC.

LOT 7
25,023 SQ. FT.
0.57 AC.

**REQUESTED
ROAD CUT
(TYP OF 3)**

CONST 4" SDR35
SS LAT @ 2% MIN GRADE
PER SOUTH DAVIS SEWER
DISTRICT STD.-TYP.

BORE 3/4" PE
CULINARY WATER
SERVICE LATERAL
& CONST WM
PER CITY STD.
TYPICAL OF 5

CUT & PLUG
EX PIPE 3 FT
BEHIND SIDEWALK

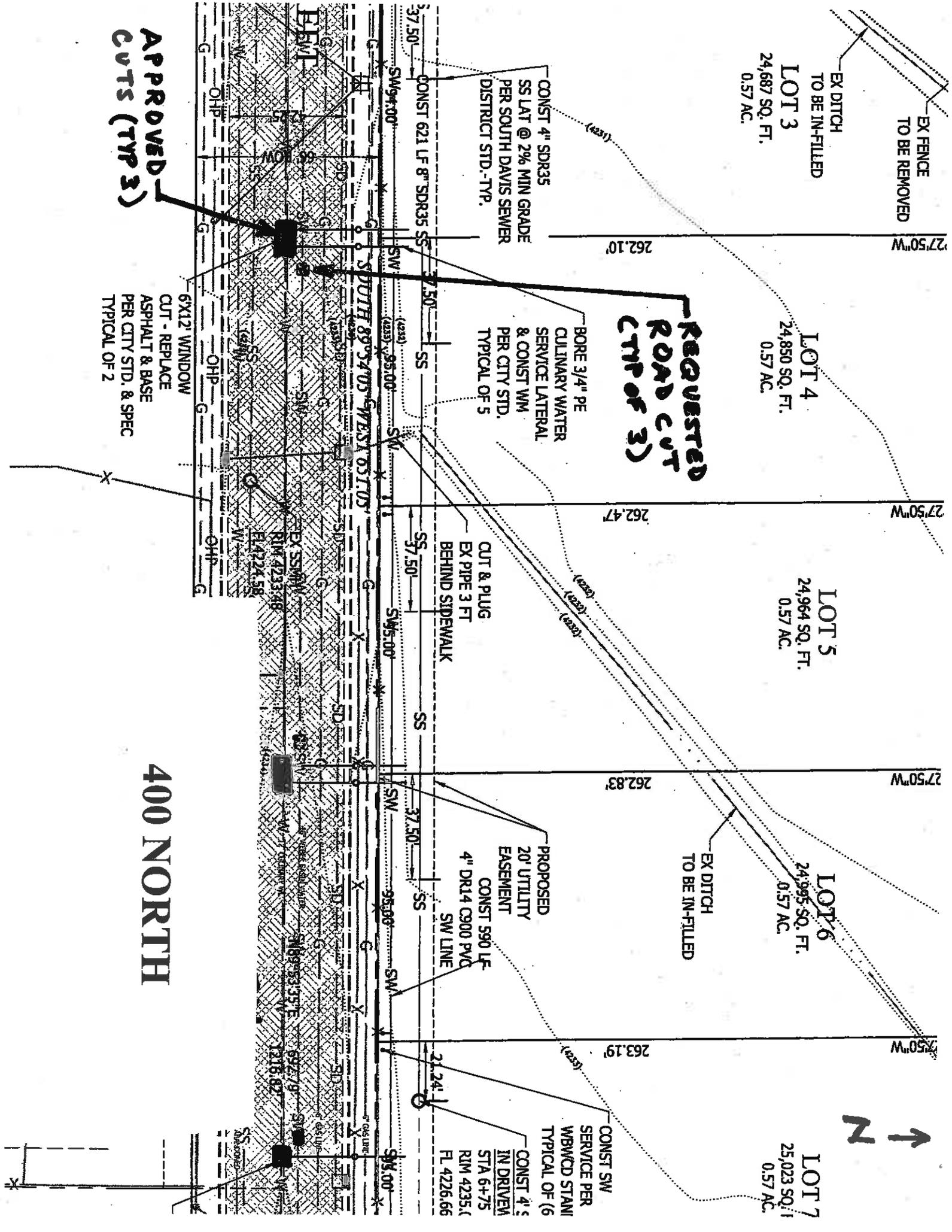
PROPOSED
20' UTILITY
EASEMENT
CONST 590 LF
4" DR14 C900 PVC
SW LINE

CONST SW
SERVICE PER
WBWCD STANI
TYPICAL OF (6)
CONST 4' x
IN DRIVEN
STA 6+75
RIM 4235.1
FL 4226.66

**APPROVED
CUTS (TYP 3)**

6X12' WINDOW
CUT - REPLACE
ASPHALT & BASE
PER CITY STD. & SPEC
TYPICAL OF 2

400 NORTH



MEMORANDUM



TO: Mayor & Council

DATE: August 14, 2014

FROM: Duane Huffman

RE: **Draft Pipeline Franchise Ordinance**

In reviewing the City's current ordinances, it is unclear how we would process or consider requests for the placement of pipelines in the city's streets or public rights-of-way by entities without franchise agreements. This is problematic because some pipelines may have a legal right to use the City's rights-of-way, such as those carrying oil, but we need a mechanism to ensure the City is treated fairly.

To fill this gap in the current ordinances, staff has drafted the proposed ordinance included with memo, which is based on a similar ordinance recently adopted by Bountiful City. It makes clear that even for pipelines that have a legal right to use the City's rights-of way, the City maintains control over the placement of the lines, and is entitled to fair lease payments for the use of the right-of way.

This proposed ordinance is unmodified from the draft that was presented and discussed at the August 5th, 2014 meeting.

WEST BOUNTIFUL CITY

ORDINANCE #365-14

AN ORDINANCE AMENDING THE WEST BOUNTIFUL CITY CODE TO ADOPT A PIPELINE FRANCHISE ORDINANCE

WHEREAS, Utah Code Annotated § 72-7, also known as the “Protection of Highways Act,” grants authority to the West Bountiful City Council to govern the excavating and installation of utilities and other facilities within the rights-of-way under its jurisdiction; and,

WHEREAS, the West Bountiful City Council desires to protect and regulate the use of the City’s rights-of-way by pipelines that do not provide direct local services to West Bountiful residents or businesses on a general or widespread basis; and,

WHEREAS, the West Bountiful City Council finds that the use of franchise agreements is the best way to protect the use of its rights-of-way:

NOW, THEREFORE BE IT ORDAINED BY THE WEST BOUNTIFUL CITY COUNCIL THAT THE CITY CODE BE AMENDED TO INCLUDE “CHAPTER 5.26 PIPELINE FRANCHISES” AS INDICATED IN THE ATTACHED EXHIBIT A.

All former codes or parts thereof conflicting or inconsistent with provisions of this Ordinance or of the Code hereby adopted are hereby repealed.

The provisions of the code shall be severable, and if any provision thereof, of the application of such provision under any circumstance is held invalid, it shall not affect any other provisions of this code or the application in a different circumstance.

This ordinance will become effective upon signing and posting.

Adopted this 8TH of August, 2014.

By:

Ken Romney, Mayor

Attest:

Cathy Brightwell, Acting City Recorder

Voting by the City Council: Aye Nay

Councilmember Ahlstrom	_____	_____
Councilmember Bruhn	_____	_____
Councilmember Enquist	_____	_____
Councilmember McKean	_____	_____
Councilmember Preece	_____	_____

Chapter 5.26 Pipeline Franchises

5.26.010. Scope

This chapter applies to pipelines that will be located inside the geographical limits of West Bountiful City without providing direct local services to West Bountiful residents or businesses on a general or widespread basis.

5.26.020. Franchise Required.

(a) Franchise issued by the West Bountiful City Council in the form of a Franchise Agreement is required to install any pipeline in a public street or public right of way or upon City-owned land, or to do any excavation or other construction work whatsoever in connection with such a pipeline.

(b) No person or entity shall locate pipelines in a public street or public right of way or upon City-owned land and/or do any excavation or other construction work whatsoever, without having in place a current Franchise agreement with the City. Any excavation, construction or other physical work done prior to the granting of a pipeline Franchise, or done inconsistently with any pipeline Franchise granted, is a class B misdemeanor, and is hereby declared to be a public nuisance which may be abated summarily or by legal action of the City.

5.26.030. Franchise Agreement.

The West Bountiful City Council is authorized to enter into a Franchise Agreement with an applicant as it deems in the best interests of the City and its residents, subject to the provisions of the West Bountiful City Code and applicable Federal and State law.

(a) If the proposed pipeline is not mandated by applicable Federal or State law, the City Council has the discretion to grant or deny the application as it deems appropriate.

(b) If the proposed pipeline is mandated by applicable Federal or State law, the City Council may in the Franchise Agreement attach such conditions as are necessary to protect the public interest, the citizens of West Bountiful, and to comply with the West Bountiful City Code and other applicable law.

(c) Franchise Agreement shall have a term of not less than five years but not greater than fifteen years.

(d) The term "Franchise" means the rights and obligations granted by the City to a Franchisee to lease, construct, maintain, use or operate a pipeline in the public streets and public rights of way

within the boundaries of the City, and upon City-owned lands within or beyond those boundaries. Any such authorization, in whatever form granted, does not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any other permit, agreement or authorization required in connection with operations on public streets, public rights of way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the rights of way.

(e) A Franchisee must comply with all provisions of the Franchise Agreement; all requirements of the West Bountiful Municipal Code, including Chapter 12.08, Excavation in Public Rights-of-Way; applicable construction codes; and other applicable federal, state, and local laws and regulations.

5.26.040 **Regulatory Approval Needed.**

(a) Prior to any installation or construction pursuant to a Franchise Agreement, the Franchisee shall obtain any and all regulatory approvals, permits, authorizations or licenses required by law from the appropriate federal, state and local authorities, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

(b) The Franchisee shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the pipeline. A Franchisee shall obtain any required permit, license, approval or authorization, including excavation permits and pole attachment agreements, prior to the commencement of the activity for which the permit, license, approval or authorization is required.

5.26.050 **Nature of Franchise Granted.**

(a) A Franchise does not convey title, equitable or legal, in the streets, rights of way or City-owned lands, to which it applies. A Franchise is only the right to occupy rights of way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased, except as may be expressly provided in the Franchise Agreement.

(b) Any pipeline Franchise granted is non-exclusive. Other Franchises may be granted to other entities.

(c) Franchise and Franchise Agreement are non-transferrable without the express written approval of the West Bountiful City Council, which approval shall not be unreasonably withheld.

5.26.060 **Compensation to the City.**

(a) The City finds that the City should receive fair and reasonable compensation for permitting persons and entities to use the streets, public rights of way and City-owned lands, including lease

compensation, reimbursement for actual costs incurred, and payment for staff time spent in the administration of such uses.

(b) As fair and reasonable compensation for any Franchise granted, a Franchisee shall pay to the City the following:

(i) Application Fee. In order to offset the cost to the City to review an application for a Franchise and in addition to all other fees, permits or charges, a Franchisee shall pay to the City, at the time of application, \$5,000 as a non-refundable application fee.

(ii) Lease Fee. A lease fee shall be set forth in the Franchise Agreement, which shall be compensation for the privilege and advantage of using the ground within the public streets, public rights of way, and City-owned lands. The Franchisee shall pay the Lease Fee annually in advance, due no later than January 15th of each year.

(iii) Reimbursement of Costs. The Franchisee shall reimburse to the City all costs actually incurred by the City in connection with the pipeline, the Franchise Agreement, and the ongoing supervision and administration of the pipeline and its construction and installation. This includes payments to third parties for consultation, services rendered, supplies required, and all management costs for the reasonable, direct and actual costs incurred in exercising authority over the public streets, public rights of way and City-owned lands. The Franchisee shall pay such costs within 45 days of being billed.

(iv) Reimbursement of City Staff Time. The Franchisee shall reimburse to the City the full cost of staff time spent in connection with the pipeline, the Franchise Agreement, and the ongoing supervision and administration of the pipeline and its construction and installation. This includes all management costs for the reasonable, direct and actual costs incurred in exercising authority over the public streets, public rights of way and City-owned lands. The Franchisee shall pay such costs within 45 days of being billed.

(c) No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

5.26.070 Compensation to Other Entities.

The Franchisee shall pay all costs incurred by other entities with existing facilities in the public streets and public rights of way for the removal, relocation, and/or replacement of those facilities in order to accommodate the installation of any pipeline and its appurtenances under a Franchise.

5.26.080 Power to Manage Public Streets and Public Rights of way.

(a) The City asserts full power to manage the public streets, public rights of way and City-owned lands, pursuant to common law and case law, the United States and Utah Constitution, the Utah Code, and the West Bountiful City Code.

(b) The City shall direct specifically where and how pipelines are to be located within the public streets, public rights of way and City-owned lands. This includes pipelines and all related appurtenances and support structures and work.

(c) All plans for work to be done within public streets, public rights of way and City-owned lands must be reviewed and approved in advance by the City. No excavation or construction work whatsoever shall be commenced until approval has been granted.

(d) All work within public streets, public rights of way and City-owned lands must be done in compliance with the plans approved by the City.

(e) The City shall have the right to oversee, regulate and inspect the construction, maintenance, and upgrade of the pipeline, and any part thereof. A Franchisee shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Franchisee to prove, in reasonable detail, to the satisfaction of the City at all times, that the Franchisee is in compliance with the Franchise.

(f) The Franchisee shall at all times maintain on file with the City, a full and complete set of plans, records and "as-built" hard copy maps (and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system) of all existing and proposed installations and the types of equipment and Pipelines installed or constructed in the public streets, public rights of way and on City-owned lands, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights of ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs.

5.26.090 Construction Work.

(a) Quality. All work performed by the Franchisee under the Franchise Agreement and the requirements of the West Bountiful City Code, including the construction, maintenance, repair, upgrade and removal of any pipeline, shall be performed in a safe, thorough and reliable manner using materials of good and durable quality, and shall be performed by qualified and licensed construction and maintenance personnel. All work and materials shall be in conformity with all applicable Federal, State and City law.

(b) Protection of Structures. In connection with the construction, maintenance, repair, upgrade or removal of a pipeline, the Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City and other entities. A Franchisee shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the rights of way of the City required because

of the presence of the pipeline. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Franchisee shall pay the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other public streets or public rights of way of the City involved in the construction, maintenance, repair, upgrade or removal of the pipeline that may become disturbed or damaged as a result of any work thereon by or on behalf of the Franchisee.

(c) Obstruction. In connection with the construction, maintenance, upgrade, repair or removal of a pipeline, the Franchisee shall not unreasonably obstruct the public streets or public rights of way without the prior consent of the appropriate authorities.

(d) Safety. A Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Franchisee shall comply with all applicable federal, state and local requirements.

5.26.100 Insurance.

(a) Prior to the execution of a Franchise, a Franchisee will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise.

(b) No work shall be permitted in the public streets, the public rights of way or on City-owned lands until a construction completion bond, in a form and by an institution satisfactory to the City, has been provided by the Franchisee. This bond shall be a cash or surety bond in the amount of 100% of the total cost of the installation of the pipeline, the moving of other facilities to accommodate the pipeline, the closure, paving and restoration of the street, and all other costs associated in fulfillment of the requirements of the Franchise Agreement and applicable law, in the manner shown on the approved engineering drawings and in accordance with the City's specifications.

(c) The Franchisee and all work done by the contractors, subcontractors and agents of the Franchisee must be insured as to comprehensive general liability, and give evidence thereof, in an amount reasonably related to the scope of the work to be completed and the risks thereof, as required in the Franchise Agreement. Such amounts shall at a minimum be \$2,000,000 / \$2,000,000, but may be more as required by the City in the Franchise Agreement. The insurance must indemnify the City against all liability for personal and bodily injury, death, and damage to property arising from activities conducted pursuant to the Franchise. The City, its officials, employees and agents, shall be listed as additional insureds.

5.26.110 Indemnification.

The Franchisee shall indemnify West Bountiful City, its officials, employees and agents, from any and all liability whatsoever from activities conducted pursuant to the Franchise

MEMORANDUM



TO: Mayor & Council
DATE: August 14, 2014
FROM: Duane Huffman
RE: **Nuisance Ordinance**

Enclosed with this memo and on Tuesday's agenda for your consideration is a re-drafted nuisance ordinance. It is very similar to the draft reviewed by the Council at the June 3rd meeting, with the following changes:

- Technical changes made by Mr. Doxey as part of his legal review;
- Clarification that abandoned/junk vehicles must be viewable from a public place to constitute a nuisance;
- The removal of language stating that the City would focus enforcement on situations where at least 3 or more persons are affected;
- The insertion of language that allows the Neighborhood Preservation Officer the ability to extend the completion date even after an administrative citation has been filed.

In your review and consideration of this ordinance, I would ask that the Council give special thought to the following areas:

1. Implementation – As drafted, this ordinance gives the City many more tools in abating nuisances. For this to work, staff will need to exercise careful judgment and discretion, and the Council will need to place a high level of trust in staff.
2. Definitions of Nuisances – The definitions for nuisances have been drafted in such a way to give the City maximum ability to deal with issues as they come up, but they may also create expectations on behalf of residents who are displeased with certain neighbors or properties. The City will always have reasonable discretion in how/when to enforce this ordinance, and that discretion may not align with some expectations.
3. Monetary Fines – In an attempt to incentivize reasonable parties to abate nuisances, this ordinance allows for the implementation of monetary fines. I can assure you this tool will be wielded very carefully, but that aside, are you comfortable with the proposed fine level of \$100 per day?

Staff feels strongly that this ordinance, or a variation therefore, needs to be put in place to solve some longstanding problems, but I also want the Council to be comfortable and familiar with the new provisions. Based on the discussion at the Aug. 19 meeting, this ordinance may be adopted or brought back later with additional revisions.

WEST BOUNTIFUL CITY

ORDINANCE #364-14

***AN ORDINANCE AMENDING THE WEST BOUNTIFUL CITY CODE TO ADOPT A
RE-DRAFTED NUISANCE ORDINANCE***

WHEREAS, Utah Code Annotated § 10-8-84 and 10-8-60, 1953, as amended, allows the City to exercise certain police powers and nuisance abatement powers; and,

WHEREAS, Utah Code Annotated §10-11-1, et seq, authorizes the City to conduct inspection and cleaning of certain property and nuisances; and,

WHEREAS, the West Bountiful City Council finds that a comprehensive re-drafting of existing City Code on nuisance abatement is in order to provide for the safety, preservation of health, promotion of prosperity, improvement of community well-being, peace and good order for the inhabitants of the City:

NOW, THEREFORE BE IT ORDAINED BY THE WEST BOUNTIFUL CITY COUNCIL THAT "CHAPTER 8.12 NUISANCES" BE AMENDED AS INDICATED IN THE ATTACHED EXHIBIT A.

All former codes or parts thereof conflicting or inconsistent with provisions of this Ordinance or of the Code hereby adopted are hereby repealed.

The provisions of the code shall be severable, and if any provision thereof, of the application of such provision under any circumstance is held invalid, it shall not affect any other provisions of this code or the application in a different circumstance.

This ordinance will become effective upon signing and posting.

Adopted this 8TH of August, 2014.

By:

Ken Romney, Mayor

Attest:

Cathy Brightwell, Acting City Recorder

Voting by the City Council: Aye Nay

Councilmember Ahlstrom	_____	_____
Councilmember Bruhn	_____	_____
Councilmember Enquist	_____	_____
Councilmember McKean	_____	_____
Councilmember Preece	_____	_____

Chapter 8.12 NUISANCES

Sections:

8.12.010 Purpose

8.12.020 Declared nuisances.

8.12.030 Exceptions.

8.12.040 Definitions.

8.12.050 Enforcement provisions.

8.12.060 Voluntary Correction.

8.12.070 Administrative Citation.

8.12.080 Additional Remedies.

8.12.090 Habitual Nuisances.

8.12.100 Appeals.

8.12.010 Purpose.

The purpose of this ordinance is to provide a means to identify and abate nuisances within the City. The City needs the ability to abate nuisances in order to protect the health and safety of the public and the general welfare of the City and its residents, businesses and visitors. This ordinance provides for progressive enforcement measures to abate nuisances.

8.12.020 Declared nuisances.

A nuisance is defined in general as anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Every situation, conduct, or activity listed below constitutes a nuisance and may be abated pursuant to this ordinance. The listed examples are not exhaustive; a situation, conduct or activity not listed below, but coming within this general definition of nuisance shall also constitute a nuisance.

- 1) Drug Houses. Every building or premises where the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition of any controlled substance, precursor, or analog specified in Title 57, Chapter 37 of the Utah Code (Utah Controlled Substances Act) occurs.

- 2) Gambling. Every building or premises where gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11 of the Utah Code (Gambling) which creates the conditions of a nuisance.
- 3) Gangs. Every building or premises wherein criminal activity is committed in concert with two or more persons as provided in Section 76-3-203.1 of the Utah Code.
- 4) Party Houses. Every building or premises where parties occur frequently which create the conditions of a nuisance. Some of the factors the City may examine in determining whether a party house exists include:
 - a) An increase in the number of emergency response calls due to parties being held;
 - b) Any pattern of activity that suggests that parties, creating a nuisance as defined by this ordinance, are taking place;
 - c) Any pattern of activity which diminishes the quiet enjoyment of those buildings and premises around the alleged party house or which cause the immediate neighbors to fear for their safety or the safety of their family members due to the party activity.
- 5) Prostitution. Every building or premises where prostitution or the promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, Part 13 (Prostitution) of the Utah Code.
- 6) Weapons. Every building or premises where a violation of Title 76, Chapter 10, Part 5 (Weapons) of the Utah Code occurs on the premises.
- 7) Unsafe Condition. A condition that unreasonably or unlawfully affects the health or safety of one or more persons.
- 8) Fire Hazard. A fire hazard.
- 9) Noxious Emanations. Emanation of noxious or unreasonable odors, fumes, gas, smoke, soot or cinders.
- 10) Noxious Weeds. Noxious weeds located on vacant lots or other property, along public sidewalks or the outer edge of any public street, or weeds in any other location which constitute a fire hazard.
- 11) Refuse. Keeping or storing of any refuse or waste matter which interferes with the reasonable enjoyment of nearby property.
- 12) Stagnant Water. Polluted or stagnant water which constitutes an unhealthy or unsafe condition.
- 13) Improper Accumulations. Accumulation of soil, litter, debris, plant trimmings, or trash, visible from a public place.

- 14) Accumulation of Junk. Accumulation of used or damaged lumber; junk; salvage materials; abandoned, discarded or unused furniture; stoves, sinks, toilets, cabinets, or other fixtures or equipment stored so as to be visible from a public place. However, nothing herein shall preclude the placement of stacked firewood for personal non-commercial use on the premises.
- 15) Attractive Nuisances. Any attractive nuisance dangerous to children and other persons including, but not limited to, abandoned, broken, or neglected household appliances, equipment and machinery, abandoned foundations or excavations, or improperly maintained or secured pools.
- 16) Vegetation. Dead, decayed, diseased, or hazardous trees, weeds, hedges, and overgrown or uncultivated vegetation which is in a hazardous condition, is an obstruction to pedestrian or vehicular traffic, or which is likely to harbor rats, vermin or other pests.
- 17) Dust. Any Premises which cause excessive dust due to lack of landscaping, non- maintenance or other cause.
- 18) Improper Storage. The keeping, storing, depositing or accumulating on the premises or in the public right-of-way for an unreasonable period of time dirt, sand, gravel, concrete, or other similar materials, or maintenance of such material on public rights-of-way. Material stored as part of an active construction project shall not be considered a nuisance.
- 19) Garbage Can. The leaving of any garbage can or refuse container in the street, other than on collection day, for more than 24 hours after the collection day.
- 20) Construction Equipment. Construction equipment or machinery of any type or description parked or stored on property when it is readily visible from a public place, except while excavation, construction or demolition operations covered by an active building permit are in progress on the subject property or an adjoining property, or where the property is zoned for the storage of construction equipment and/or machinery.
- 21) Improper Sign. Improper maintenance of a sign; or signs which advertise a business that is no longer extant on the property.
- 22) Improper Parking or Storage.
 - a) Parking or storage of inoperative, unregistered, abandoned, wrecked, or dismantled vehicles, boats, trailers, or vehicle parts, including recreational vehicles, in the public right-of-way or on premises visible from a public place. Storage or parking that is specifically allowed by the City's land use ordinance shall not be considered a nuisance.
 - b) Parking or storage of registered vehicles, trailers, or boats in violation of City ordinance.
- 23) Hazardous Conditions. Any wall, sign, fence, gate, hedge, or structure maintained in such condition of deterioration or disrepair as to constitute a hazard to persons or property.

- 24) Graffiti. Graffiti which remains on the exterior of any building, fence, sign, or other structure and is visible from a public place.
- 25) Improper Maintenance. Maintenance of any building or structure in such condition as to be deemed defective or in a condition of deterioration or disrepair that is detrimental to the health, safety, or welfare of the occupants or the community including, but not limited to:
- a) Any building or structure which is unfit for human habitation, or which is an unreasonable hazard to the health of people residing in the vicinity thereof, or which presents an unreasonable fire hazard in the vicinity where it is located;
 - b) Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of City ordinances, or any use of land, buildings or premises in violation of City ordinances;
 - c) Any building that is abandoned, partially destroyed, or left in an unreasonable state of partial construction for a period of six (6) months or longer. An unreasonable state of partial construction is defined as any unfinished building or structure where the appearance or condition of the building or structure does not meet the requirements for finished buildings or structures as required by applicable City ordinances or building codes. The building or structure shall not be considered to be a nuisance if it is under active construction;
 - d) Any building having dry rot, warping, termite infestation, decay, excessive cracking, peeling, or chalking, as to render the building unsightly and/or in a state of disrepair;
 - e) Any building with missing doors and/or windows containing broken glass and/or no glass at all where the window is of a type which normally contains glass;
 - f) Any building exterior, wall, fence, gate, driveway, sidewalk, walkway, sign, ornamentation, or alley maintained in such condition as to render it unsightly or in a state of disrepair that is detrimental to the health safety or welfare of the occupants or the community generally; or
 - g) Any buildings or condition that violates any building, electrical, plumbing, fire, housing, or other code adopted by the City.
- 26) City Code Nuisances. Any violation of a West Bountiful City Code section that expressly declares a specific situation, conduct, or activity to be a nuisance.
- 27) Nuisance under State Law. Any thing or activity that is defined as a nuisance or public nuisance under State law, including under Section 76-10-801, 76-10-803, or 78B-6-1107 of the Utah Code, as amended.
- 28) Alcohol. Every property not licensed under applicable State law or City ordinance where any intoxicating liquors or alcohol are kept for unlawful use, sale, or distribution.
- 29) Inappropriate Conduct. Every property where there exists an environment which causes, encourages or allows individuals or groups of individuals to commit one or more of the following acts on the property or adjacent public place, including but not limited to:
- a) Illegally using or possessing any controlled substance, precursor, analog or possessing any item of drug paraphernalia.

- b) Illegally consuming intoxicating liquor or alcohol;
- c) Publicly urinating or defecating;
- d) By physical action, intentionally causing or attempting to cause another person to reasonably fear imminent bodily injury or the commission of a criminal act upon their person or upon property in their immediate possession;
- e) Engaging in acts of violence, including fighting amongst themselves;
- f) Discharging a firearm or explosive in violation of City ordinance or State law;
- g) Creating unreasonable noise which disturbs others;
- h) Intentionally obstructing pedestrian or vehicular traffic; or
- i) Soliciting acts of prostitution.

30) Dangerous Conditions. Any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; any tree, pole, smokestack; any excavation, hole, pit, basement, cellar, sidewalk, subspace, dock, or loading dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the City, in any one or more of the following particulars:

- a) By reason of being a menace, threat and/or hazard to the general health and safety of the community.
- b) By reason of being a fire hazard.
- c) By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.
- d) By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.

31) Parking on Landscaping. Parking in an area required to be landscaped by City ordinance.

32) Required Landscaping. Failure to install or maintain landscaping required by City ordinance.

8.12.030 Exceptions.

- A. Weeds Not Constituting a Nuisance or Fire Hazard. Weeds on real property not in close proximity to buildings or not creating a nuisance or fire hazard may be exempted, upon advice and concurrence of the fire marshal, from the weed control requirements of this title. Such properties would include, but not be limited to, areas considered wetlands or in a pristine state and contributing to the habitat of non-injurious animals.
- B. Large Lots Requiring Fire Breaks. If the City determines that the large size of the property makes the cutting of all weeds impractical, the City may issue an order limiting the required cutting of weeds to a firebreak of not less than fifteen (15) feet in width around any structures and around the complete perimeter of the property. In determining such an exception, the City shall consider

the size of the property, the topography of the property, the proximity of the weeds to structures on other property, the accessibility to the property by others, any conditions which could contribute to increased fire hazards, and the seriousness of the weed problem.

8.12.040 Definitions.

Unless the context requires otherwise, the following definitions shall be used in the interpretation and construction of this code:

"Abate" means to repair, replace, remove, destroy, correct or otherwise remedy a condition which constitutes a nuisance by such means, in such a manner and to such an extent as the Neighborhood Preservation Officer determines is necessary in the interest of the general health, safety, and welfare of the community.

"Completion Date" means the date by which the Responsible Person must abate a nuisance. The Completion Date is originally set by the Neighborhood Preservation Officer in the Voluntary Correction Agreement or in the administrative citation. The Hearing Officer may modify the Completion Date.

"Emergency" as used in this section means a situation, which, in the opinion of the Neighborhood Preservation Officer, requires immediate action to prevent or eliminate an immediate threat to the health or safety of a person or property.

"Habitual Nuisance" means any property located within the City that generates repeated responses from law enforcement officials because of nuisance related activities. Excluding calls for drug or party houses, any property that generates three (3) or more calls for nuisance related activities within an eighteen (18) month time period shall be deemed a "habitual nuisance." Any property that generates two (2) or more calls for nuisance related activities within an eighteen (18) month time period to abate any drug or party conditions as set forth in this chapter shall be deemed a "habitual nuisance."

"Hearing Officer" means a person designated to hear appeals pursuant to this ordinance. The Hearing Officer shall be appointed by the Mayor and with the consent of the City Council. Unless the Mayor directs otherwise for good cause, the appointee should be an administrative law judge or other legally trained professional who resides outside the City.

"Neighborhood Preservation Officer" means a City employee assigned to enforce this ordinance, including any police officer.

"Owner" means any person who, alone or with others, has title or interest in any building or premises, with or without accompanying actual possession thereof. For the purpose of giving notice, the term Owner also includes any person in physical possession of the building or premises.

"Premises" or **"Property"** means a building or structure and the land on which it is located, or vacant land, whether occupied or not. If the context so requires, **"Property"** may also mean personal property.

"Public Place" means an area generally visible to public view and includes alleys, bridges, driveways, parking lots, parks, plazas, sidewalks, streets, and buildings open to the general public, including those that serve food or drink or provide entertainment.

“Responsible Person” means the person or entity responsible for correcting or abating a nuisance pursuant to this ordinance. The Responsible Person includes the property owner and any person who causes or, with the right to control, use, or occupy the property, permits a nuisance to occur or remain upon property in the City. This includes but is not limited to the owner, lessor, lessee, and other persons entitled to control, use or occupy the property where a nuisance occurs. In cases where there is more than one Responsible Person, the City may proceed against one, some or all of them, jointly and severally.

8.12.050 Enforcement provisions.

- A. In addition to all other enforcement actions outlined in this ordinance, any private person directly affected by a nuisance may bring a civil action to abate or enjoin a nuisance, or for damages for causing or maintaining the nuisance. The civil action may be brought pursuant to this ordinance or State law.
- B. The Responsible Person is responsible for abating nuisances pursuant to this ordinance. Any person, whether as owner, agent, or occupant, who creates, aids in creating, or contributes to a nuisance, or who supports, continues, or retains a nuisance, is responsible for the nuisance and is therefore a Responsible Person pursuant to this ordinance. Every successive owner or tenant of a property who fails to abate a continuing nuisance upon or in the use of such property caused by a former owner or tenant is responsible therefor in the same manner as the one who first created it.
- C. The city administrator shall have the primary responsibility for carrying out the provisions of this chapter. The administrator may designate any other city employee as a Neighborhood Preservation Officer.
- E. Neighborhood Preservation Officers shall be responsible for inspecting and examining premises within the City for the purpose of determining the existence of violations of this chapter. These persons shall have the authority to enter at reasonable times those premises which exhibit a reasonable cause to believe a violation exists in order to inspect or perform the duties imposed by this chapter. If the premises are occupied at the time of inspection, the Neighborhood Preservation Officers shall present their credentials to the occupant and shall request entry. If entry is refused, the inspectors shall have recourse to the remedies provided by law to secure entry.

8.12.060 Voluntary Correction

Except in the case of an emergency or when the Neighborhood Preservation Officer is unable to locate or determine the identity of the Responsible Person, the procedures outlined in this section apply whenever the Neighborhood Preservation Officer determines that a nuisance exists.

- A. **Contact.** Before taking other steps to abate the nuisance, the Neighborhood Preservation Officer shall make a reasonable attempt to secure voluntary correction or abatement of the nuisance by:
 - 1. Contacting the Responsible Person, where possible;
 - 2. Explaining the nuisance;
 - 3. Requesting the Responsible Person to abate the nuisance; and
 - 4. Agreeing to terms with the Responsible Person to abate the nuisance.

- a. Verbal agreement. The Responsible Person and the Neighborhood Preservation Officer may agree verbally as to what actions must be taken to abate the nuisance. Failure to abide by the verbal agreement can result in further action being taken, as outlined in this section.
- b. Voluntary Correction Agreement. The Responsible Person and the Neighborhood Preservation Officer may memorialize the terms of their agreement as set forth in this section.

B. **Voluntary Correction Agreement.** If the Neighborhood Preservation Officer and the Responsible Person agree to terms for abating the nuisance, they may enter into a Voluntary Correction Agreement. The Voluntary Correction Agreement is a contract between the City and the Responsible Person in which the Responsible Person agrees to abate the nuisance within a specified time and according to specified conditions. The Voluntary Correction Agreement shall include the following terms:

- 1. The name and address of the Responsible Person;
- 2. The street address of the nuisance, or a description sufficient to identify the building, structure, premises, or land upon or within which the nuisance is occurring;
- 3. A description of the nuisance;
- 4. The necessary corrective action to be taken, and a date or time by which correction must be completed;
- 5. An agreement by the Responsible Person that the City may inspect the premises as may be necessary to determine compliance with the Voluntary Correction Agreement;
- 6. An agreement by the Responsible Person that the City may abate the nuisance and recover its costs and expenses to abate the nuisance, as well as a monetary fine pursuant to this ordinance from the Responsible Person, if terms of the Voluntary Correction Agreement are not met;
- 7. An agreement by the Responsible Person acknowledging that he/she waives the right to appeal the Neighborhood Preservation Officer's finding that a nuisance exists and waives the right to appeal the specific corrective action required in the Voluntary Correction Agreement; and
- 8. An agreement by the Responsible Person that failure to comply with the Voluntary Correction Agreement may be grounds for criminal prosecution.

The Neighborhood Preservation Officer may grant an extension of the time limit for correcting or abating the nuisance if the Responsible Person has shown due diligence or substantial progress in correcting or abating the nuisance but unforeseen circumstances render abatement under the original conditions unattainable. If the Responsible Person complies with the terms of the Voluntary Correction Agreement, the City shall take no further action against the Responsible Person related to the nuisance described in the Voluntary Correction Agreement unless the nuisance recurs.

C. **No Agreement.** If the Neighborhood Preservation Officer and the Responsible Person cannot agree to terms for correcting or abating the nuisance, the Neighborhood Preservation Officer may

still abate the nuisance using one or more of the procedures set forth in this ordinance or provided by other applicable law.

8.12.070 Administrative Citation.

- A. **Administrative Citation.** When the Neighborhood Preservation Officer determines that a nuisance exists, and is unable to secure voluntary correction pursuant to this chapter, the Neighborhood Preservation Officer may issue an administrative citation to the Responsible Person. The Neighborhood Preservation Officer may issue an administrative citation without having attempted to secure voluntary correction under the following circumstances:
1. When an emergency exists; or
 2. When the Neighborhood Preservation Officer is unable to locate or determine the identity of the Responsible Person.
- B. **Content of Administrative Citation.** The administrative citation shall include the following:
1. The name and address of the Responsible Person;
 2. The street address of the nuisance or a description sufficient for identifying the building, structure, premises, or land upon or within which the nuisance is occurring;
 3. A description of the nuisance;
 4. The required corrective action;
 5. The Completion Date and a notice that the City may abate the nuisance and charge the Responsible Person for all abatement costs if the Responsible Person does not correct the nuisance before the Completion Date;
 6. The time for appealing the administrative citation to the Hearing Officer and the procedure for filing an appeal;
 7. A statement indicating that no monetary fine will be assessed if the Neighborhood Preservation Officer approves the completed, required corrective action prior to the Completion Date; and
 8. A statement that the City may abate the nuisance and assess costs and expenses of abatement and a monetary fine against the Responsible Person if the correction is not completed by the Responsible Person and approved by the Neighborhood Preservation Officer before the Completion Date.
- C. **Service of Administrative Citation.** The Neighborhood Preservation Officer shall serve the administrative citation upon the Responsible Person, either personally or by mailing, certified, return receipt requested, a copy of the administrative citation to the Responsible Person at the Responsible Person's last known address. If, after due diligence, the Responsible Person cannot be personally served within Davis County and an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the administrative citation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

D. **Extension.** The Neighborhood Preservation Officer may grant an extension of the time limit for correcting or abating the nuisance if the Responsible Person has shown due diligence or substantial progress in correcting or abating the nuisance but unforeseen circumstances render abatement under the original conditions unattainable..

8.12.080 Additional Remedies.

The City may take one or more of the following actions against any Responsible Person who fails to comply with the terms of a Voluntary Consent Agreement, an administrative citation, or an order of the Hearing Officer:

- A. Abatement by the City.
 - 1. The City may abate a nuisance when:
 - a. The terms of a Voluntary Correction Agreement have not been met;
 - b. The requirements of an administrative citation have not been complied with, or, if the administrative citation is appealed to a Hearing Officer and the terms of the administrative citation are amended by the Hearing Officer, the terms of the Hearing Officer's order have not been complied with;
 - c. The condition is subject to summary abatement as provided for in subsection 2, below; or,
 - d. The abatement is done pursuant to Chapter 11 of Title 10 of the Utah State Code, as amended.
 - 2. Whenever a nuisance is occurring which constitutes an immediate and emergent threat to the public health, safety, or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the Responsible Person as soon as reasonably practicable after the abatement.
 - 3. Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject to abatement. The City may seek, but is not required to seek, such judicial process as it deems necessary to effect the removal or correction of such condition.
 - 4. During an abatement proceeding, any personal property constituting a nuisance, as defined by this chapter, may be confiscated as part of the abatement process. Any property that has been confiscated by the City as part of an abatement will be held pending the resolution of the nuisance. The owner of the abated property may recover the property upon showing that the nuisance has been corrected or that substantial efforts, as determined by the Neighborhood Preservation Officer, have been made to correct the nuisance. The property owner shall pay the cost of storage of the property. If, 90 days after the property is confiscated, the property owner fails to claim the confiscated property, after complying with the requirements of Section 77-24a-5 of the Utah Code, as amended, the City may dispose of the property as provided by law, including by sale at

auction, and seek to collect the cost of storage from the property owner and any other remedies as provided by law.

5. The costs, including incidental expenses, of correcting or abating the violation shall be billed to the Responsible Person and shall become due and payable to the City within ten (10) days of actual receipt of the bill (within fifteen days of the mailing date if the bill is mailed). The term incidental expenses includes but is not limited to:
 - a. Personnel costs, both direct and indirect, including attorney fees and costs;
 - b. Costs incurred in documenting the violation;
 - c. Hauling, storage and disposal expenses;
 - d. Actual expenses and costs incurred by the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and
 - e. The costs of any required printing and mailing.

B. Monetary Fine.

1. The Responsible Person shall pay the City a monetary fine for each day the nuisance continues after the Completion Date. The nuisance shall be considered to continue until the Neighborhood Preservation Officer approves the Responsible Person's actions to correct or abate the nuisance. The amount of the monetary fine shall be as follows:
 - a. One Hundred Dollars (\$100.00) per day for each day during the first week that the nuisance remains uncorrected or unabated after the Completion Date;
 - b. Two Hundred Dollars (\$200.00) per day for each day thereafter until the nuisance is corrected or abated according to the terms set forth in the administrative citation.
2. The monetary fine shall be cumulative and may not be waived by the Neighborhood Preservation Officer. Payment of a monetary fine pursuant to this section does not relieve the Responsible Person from the duty to abate the nuisance as required by the Voluntary Consent Agreement or the administrative citation. The monetary fine constitutes a personal obligation of the Responsible Person. Any monetary fine assessed must be paid to the City within ten (10) calendar days from the date of mailing of a notice from the City that the fine is due.
3. The City Attorney or his designee is authorized to take appropriate action to negotiate the amount of the monetary fine, collect the monetary fine, determine the time period in which the fine shall be paid and take any other action necessary to resolve the fine. In determining the time period in which to pay, the City Attorney or his/her designee may take into consideration the number of days between the required Completion Date and the actual Completion Date, Neighborhood Preservation Officer input, and the Responsible Person's cooperation.
4. The City may also collect reasonable attorney fees and costs incurred in collecting the monetary fine where allowed by law.

- C. **Civil Actions.** The City may bring a civil action to abate or enjoin the nuisance, or for damages for causing or maintaining the nuisance (including the cost, if any, of cleaning the subject property). The civil action may be brought pursuant to this ordinance or other applicable law.

- D. **Criminal Actions.** Criminal actions may be initiated by criminal citation from the Neighborhood Preservation Officer if such officer is also a Police Officer.
 - 1. Any person who maintains or assists in maintaining a nuisance is guilty of a Class C misdemeanor. No person shall be prosecuted under this subsection (1) unless the Neighborhood Preservation Officer first attempted to obtain voluntary correction as provided in this ordinance.
 - 2. If the alleged nuisance is also a violation of a provision of City Code (other than this nuisance ordinance) or State law, the Responsible Person may be charged under the specific provision of City Code or State law, even if the Neighborhood Preservation Officer did not first attempt to obtain voluntary correction as provided in this ordinance.
 - 3. Any person who knowingly obstructs, impedes, or interferes with the City or its agents, or with the Responsible Person, in the performance of duties imposed by this ordinance, or a decision and Order issued by the Hearing Officer, or a Voluntary Correction Agreement, is guilty of a Class B misdemeanor.

- E. **Abatement by Eviction.** Whenever there is reason to believe that a nuisance under section 8.12.020(A-F) is kept, maintained, or exists in the City, the City Attorney or any resident of the City, or any person or entity doing business in the City, in his or their own names, may maintain an action in a court of competent jurisdiction to abate the nuisance and obtain an order for the automatic eviction of the tenant of the property harboring the nuisance. The eviction shall take place as specified in Utah law.

- F. **Non-exclusive Remedies.** The City may take any or all of the above-mentioned remedies (administrative, civil, or criminal) to abate a nuisance and/or to punish any person or entity that creates or causes a nuisance or, with the right to control, use, or occupy property, allows a nuisance to exist on the property. The abatement of a nuisance does not prejudice the right of the City or any person to recover damages or penalties for its past existence.

8.12.090 Habitual Nuisances.

- A. **Penalty for Habitual Nuisance.** Any property determined to a habitual nuisance shall be subject to a fine of \$500.00 per day.

- B. **Notice of Nuisance.** A building or property may not be declared a habitual nuisance nor may the \$500.00 fine be collected unless notice to the Responsible Person has been given. Notice that a property may be declared a habitual nuisance shall be stated on the face of an administrative citation or through some other documentation delivered to the responsible person. The notice shall state that future responses to the property may result in the property being declared a habitual nuisance, subject to a fine.

8.12.100 Appeals.

- A. **Grounds.** Any person receiving an administrative citation may appeal the administrative citation to the Hearing Officer. Only the following issues may be appealed to the Hearing Officer:
1. The person charged in the administrative citation as the Responsible Person, is not the Responsible Person as defined by this ordinance.
 2. The condition described as a nuisance in the administrative citation is not a nuisance as defined by this ordinance.
 3. The method required by the administrative citation to abate the nuisance is inappropriate or is not the most cost-effective method of effectively correcting or abating the nuisance.
 4. The time period given to abate the nuisance in the administrative citation is unreasonable.
 5. The Neighborhood Preservation Officer refused to approve a corrective action that met the requirements of the administrative citation.
 6. The Responsible Person claims that the requirement(s) of the administrative citation violates his/her constitutional rights.
- B. **Filing.**
1. A person desiring to appeal an administrative citation must file a notice of appeal at the City Hall within ten (10) days of being served with the administrative citation or within fifteen (15) days of the mailing date if the administrative citation is mailed. A person who has made corrective action in response to an administrative citation, which corrective action the Neighborhood Preservation Officer refused to approve, may appeal within ten (10) days from the Completion Date if that person has grounds to appeal under subsections A(4) or A(5) of this section.
 2. The notice of appeal shall clearly and concisely set forth all the reasons for the appeal. The Hearing Officer shall examine the notice of appeal to determine whether a valid appeal has been stated. If the appellant has not stated a valid cause for appeal, as set forth in Section 8.12.100.A, or if the appellant has failed to show by a preponderance of the evidence, that the appellant has an appealable issue, the appeal shall be denied and no hearing shall be held.
 3. If the appellant has not shown due diligence and/or substantial progress in correcting the nuisance or has made no attempt to correct the nuisance, the filing of an appeal will not stop the accrual of any fines.
 4. If the appellant has filed an appeal, the filing of such appeal will not prevent law enforcement officers from responding to the property on reports of new nuisance violations.
- C. **Hearing.** The hearing before the Hearing Officer shall be informal according to rules and procedures established by the Hearing Officer. The appellant may, but is not required to, bring an attorney or other representative to assist the appellant. The appellant and the Neighborhood Preservation Officer may each call witnesses at the hearing. The Hearing Officer may, with or without the parties present, visit the site of the alleged nuisance. If the Hearing Officer allows the

parties at the site visit, both parties must be given the opportunity to be present. The Hearing Officer shall schedule the hearing within thirty (30) days of when the notice of appeal is filed with the City.

D. Burden of Proof.

1. In appellant's notice of appeal, the appellant shall have the initial burden of proof to demonstrate by a preponderance of the evidence that the appellant has stated a legitimate grounds for an appeal based upon reasons as set forth in Section 8.12.080.A.
2. If the appellant has timely filed an appeal and a hearing has been scheduled, the burden then shifts to the City to show by a preponderance of the evidence that a nuisance does exist.
3. The determination of the Neighborhood Preservation Officer as to the need for the required corrective action shall be accorded substantial weight by the Hearing Officer in determining the reasonableness of the corrective action.
4. Authority of Hearing Officer. The Hearing Officer shall have authority to affirm or vacate the administrative citation, or to modify or waive specific provisions of the administrative citation. If the appellant fails to attend the hearing, the Hearing Officer shall affirm the administrative citation. The Hearing Officer shall not vacate the administrative citation unless he/she finds that no nuisance exists. The Hearing Officer shall modify the administrative citation if he/she finds that a nuisance exists, but that one or more of the requirements of the administrative citation is improper or inappropriate. A requirement is improper if it is contrary to this ordinance. A requirement is inappropriate if the Hearing Officer finds that there is a better means of resolving the problem or that the proposed solution is inappropriate given the nature or severity of the problem. When determining whether to waive or modify a requirement of the administrative citation, the Hearing Officer may also consider:
 - a. Whether the appellant responded to the Neighborhood Preservation Officer's attempts to contact the appellant and cooperated with efforts to correct the nuisance;
 - b. Whether the appellant has shown due diligence and/or substantial progress in correcting the nuisance;
 - c. The financial ability of the appellant and the amount, if any, that the appellant has benefitted financially by maintaining the nuisance;
 - d. Any other relevant factors.

If the appellant appeals the Neighborhood Preservation Officer's refusal to approve appellant's corrective action, the Hearing Officer shall visit the site and determine if the appellant complied with the requirements of the administrative citation.

- E. Order.** The Hearing Officer shall issue a written Order to the appellant and the City notifying them of his/her decision. The Order shall include the Hearing Officer's findings of fact and ultimate decision. If the Hearing Officer modifies or waives provisions of the administrative citation, the Order shall specify which portions are modified and how they are modified. The Hearing Officer

shall mail a copy of the Order to the appellant and the City within five (5) working days of the close of the hearing.

- F. **Appeal to District Court.** Either the City or the appellant may appeal the Hearing Officer's Order by filing a petition for review of the Order. The petition must be filed in District Court within thirty (30) calendar days from the date the Hearing Officer's Order was mailed to the appellant. The petition may be based only on the ground that the Hearing Officer's order was arbitrary, capricious, or illegal. The Hearing Officer shall transmit to the reviewing court the record of its proceedings, including any minutes, findings, orders and, if available, a true and correct transcript of its proceedings. If, in the opinion of the District Court, there is a sufficient record to review the Hearing Officer's Order, the Court's review is limited to the record provided by the Hearing Officer. The District Court may not accept or consider any evidence outside of the Hearing Officer's record unless the evidence was offered to the Hearing Officer and the Court determines that it was improperly excluded. If, in the opinion of the District Court, there is not a sufficient record to review the Hearing Officer's Order, the Court may call witnesses and take evidence. No petition or appeal may be filed in District Court unless the Responsible Person first appeals to the Hearing Officer pursuant to the terms set forth in this ordinance.

MEMORANDUM



TO: Planning Commission

DATE: July 3, 2014

FROM: Duane Huffman

RE: **Re-Instatement of Former Supplementary Regulations Related to Exceptions to Height Limitations**

It appears that during the process of dividing out what was then the “Supplemental Regulations” chapter of the land use ordinance, a long-standing provision related to exceptions on height limitations was inadvertently omitted from the commercial and industrial zones. This memo (a) reviews the background of how this section was omitted and (b) provides a recommendation that it be re-instated for the commercial and industrial zone.

Background

1. History of the Section

In reviewing the West Bountiful City Ordinances, since at least 1965 an exception on zoning specific height restrictions has existed. This exception has existed in the “Supplemental Regulations” of the various codified versions of the City Ordinances.

1965 Version (10-12-4B)

“Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylight, towers, steeples, flagpoles, chimneys, smokestacks, water tanks, wireless masts, theater lofts, silos or similar structures may be erected above the height limits herein prescribed, but no space above the height limit shall be allowed for the purpose of providing additional floor space.”

1981 Version (10-4-13), 1993 Version (9-14-10); 2001 Version (17.44.100)

“Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylight, towers, steeples, flagpoles, chimneys, smokestacks, water tanks, wireless or television masts, theater lofts, silos or similar structures may be erected above the height limits herein prescribed, but no space above the height limit shall be allowed for the purpose of providing additional floor space, nor shall such increased height be in violation of any other ordinance or regulation of the City”

2. History of the Omission

In 2011 the West Bountiful City staff began working with the Planning Commission and the City Council to portion out sections of the “Supplemental Regulations” chapter to other specific chapters within the land use code. The memos and the minutes from the meetings make clear that the purpose of this action was to make the code more reader friendly, minimizing the number of chapters a reader would need to review to understand the regulations on any given issue.

The first ordinance to divvy out Chapter 17.44 was first discussed at the planning commission in April 11, 2011, and a public hearing was held on May 10, 2011. It appears from the minutes of that meeting and subsequent reports made at the City Council meetings, the discussion focused around side yards, fence heights and issues related to property length/width ratios. The City Council considered approved the ordinance at their June 21, 2011 meeting. The minutes from that meeting show a clear focus on the residential and agricultural zones.

The second ordinance to divvy out Chapter 17.44 was in 2012. Staff discovered that the 2011 ordinance did not in fact actually delete chapter 17.44, as had been intended. Further, at least one section from 17.44 had not been moved to any new chapter (it related to gas pumps). A public hearing was held on May 8, 2012, and the City Council adopted the ordinance to finally delete Chapter 14.44 at the meeting on June 5, 2012.

While in Chapter 17.44, the exception to height restrictions applied to all zones; however, throughout the processes in 2011 and 2012, this section was interested only into the zoning chapters for residential and agricultural uses. **At no point in the record of staff notes, Planning Commission minutes, City Council minutes, or public hearing notices was it stated that the purpose of these actions was to perform a substantive change by removing exceptions to height restrictions.**

Recommendation

As the long-standing language related to exceptions to height limitations clearly had language related to commercial and industrial uses, and as the record provides no evidence that anyone involved or the noticed public were aware that this exception was being omitted from commercial and industrial uses, I respectfully recommend that the Planning Commission schedule a public hearing to consider a recommendation to the City Council on re-instating this exception for the commercial and industrial zones.

WEST BOUNTIFUL CITY

ORDINANCE #366-14

AN ORDINANCE AMENDING THE WEST BOUNTIFUL CITY LAND USE ORDINANCE TO REINSTATE EXCEPTIONS TO ZONING SPECIFIC HEIGHT RESTRICTIONS

WHEREAS, Utah Code Annotated § 10-9a, also known as the “Municipal Land Use, Development, and Management Act,” grants authority to the West Bountiful City Council to make changes to its Zoning Ordinances; and,

WHEREAS, it appears that during the process making technical revisions to the land use ordinance in 2012, a long-standing provision related to exceptions on height limitations was inadvertently omitted from the commercial and industrial zones; and,

WHEREAS, the West Bountiful City Planning Commission held a public hearing on August 12, 2014 to consider a recommendation that the provision related to exceptions on height limitations be reinstated; and,

WHEREAS, following the public hearing, the West Bountiful Planning Commission unanimously voted to recommend to the City Council that the language in question be reinstated:

NOW, THEREFORE BE IT ORDAINED BY THE WEST BOUNTIFUL CITY COUNCIL THAT THE FOLLOWING LANGUAGE BE INSERTED INTO CHAPTERS “17.26.040 BLENDED USE DISTRICT”; “17.28.060 COMMERCIAL NEIGHBORHOOD DISTRICT”; “17.32.060 COMMERCIAL GENERAL DISTRICT”; “17.34.070 COMMERCIAL HIGHWAY DISTRICT”; “17.36.060 LIGHT INDUSTRIAL DISTRICT”; AND “17.40.060 INDUSTRIAL GENERAL DISTRICT” OF THE WEST BOUNTIFUL CITY CODE:

“17.XX.XXX Exceptions to Height Limitations

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylight, towers, steeples, flagpoles, chimneys, smokestacks, water tanks, wireless or television masts, theater lofts, silos or similar structures may be erected above the height limits herein prescribed, but no space above the height limit shall be allowed for the purpose of providing additional floor space, nor shall

such increased height be in violation of any other ordinance or regulation of the City.”

This ordinance will become effective upon signing and posting.

By:

Ken Romney, Mayor

Attest:

Cathy Brightwell, City Recorder

Voting by the City Council:	Aye	Nay
Councilmember Ahlstrom	_____	_____
Councilmember Bruhn	_____	_____
Councilmember Enquist	_____	_____
Councilmember McKean	_____	_____
Councilmember Preece	_____	_____

WEST BOUNTIFUL CITY POLICE DEPARTMENT

Todd L. Hixson
Chief of Police

550 North 800 West
West Bountiful, Utah 84087
Office 801- 292-4487/Fax 801 - 294-3590

Kenneth Romney
Mayor

West Bountiful City Council Report August, 2014

Statistics reported are for the month of July only; the other information reported is collected between council meetings reports.

Reserve Officer Program

We hope to find at least two reserve police officers during the current hiring process.

Alcohol Officer Program

We anticipate filling one of the vacant alcohol enforcement positions during this hiring process.

Crossing Guards

School starts August 25, 2014. We will be holding our annual crossing guard training on August 21, 2014.

Personnel

Officer Robbins has resigned from his position with West Bountiful.

Officer Harold Altene has been assigned back to patrol.

Officer Lance Wilkinson will be assigned as the new detective after we have filled the vacant position left by Matt Robbins.

EMPAC

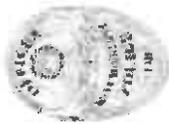
EmPAC meeting is scheduled for August 20, 2014 at 1730 hours.

General Information

Staff meeting was held on July 31, 2014.

The police officer posting closed August 15, 2014 at 5:00pm.

Public Works Director Steve Maughan and I have worked together on the Urban Deer complaint on 400 North. After speaking with the complainant and Utah Division of Wildlife the deer were trapped and relocated to a more suitable location.



West Bountiful Police Department

Department Summary

7/1/2014 to 7/31/2014

Arrests	16	
Taken Into Custody	16	100.0%
Activities	1,133	
Admin	161	14.2%
Assist	135	11.9%
Community Relations	16	1.4%
Deaths	1	0.1%
Fires	1	0.1%
Investigation	52	4.6%
K-9	21	1.9%
Patrol	126	11.1%
Property	5	0.4%
Security	348	30.7%
Service Call	66	5.8%
Suspicious Activity	25	2.2%
Traffic	166	14.7%
Vehicle Accident	10	0.9%
Shift Time and Percent Accounted	1105 hr. 39 min.	56.2%

Reports	195
CITATION REPORT	41
INCIDENT REPORT	85
OFFICER INFORMATION	66
POLICE VEHICLE IMPOUND	3
	21.0%
	43.6%
	33.8%
	1.5%

Department Summary

Crime Offenses

51

ANIMAL CONTROL	4	7.8%
ASSAULT	2	3.9%
BURGLARY	3	5.9%
DAMAGE PROPERTY	3	5.9%
DANGEROUS DRUGS	7	13.7%
FAMILY OFFENSE	1	2.0%
FRAUD	3	5.9%
PUBLIC PEACE	1	2.0%
STOLEN PROPERTY	1	2.0%
STOLEN VEHICLE	1	2.0%
THEFT	7	13.7%
TRAFFIC OFFENSE	8	15.7%
WARRANT SERVICE	10	19.6%

Accidents

9

Citation Violations

68

Fix it	11	16.2%
Misdemeanor	7	10.3%
Traffic	28	41.2%
Warning	22	32.4%

1 **West Bountiful City** **PENDING** **August 12, 2014**
2 **Planning Commission**

3 **Posting of Agenda** - The agenda for this meeting was posted on the State of Utah Public Notice
4 website and the West Bountiful City website, and sent to Clipper Publishing Company on
5 August 8, 2014 per state statutory requirement.

6 **Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday,**
7 **August 12, 2014, at West Bountiful City Hall, Davis County, Utah.**

8

9 **Those in Attendance:**

10

11 **MEMBERS PRESENT:** Chairman Denis Hopkinson, Terry
12 Turner, Alan Malan, Mike Cottle, Laura Charchenko, and Corey
13 Sweat-alternate.

14

15 **MEMBERS/STAFF EXCUSED:**

16

17 **STAFF PRESENT:** Duane Huffman (City Administrator), Ben
18 White (City Engineer), Cathy Brightwell (City Recorder) and
19 Debbie McKean (Secretary).

20

21 **VISITORS:** Mayor Romney, Conrad Jensen, Todd Smith
22 (SDFD), Megan and Rodney Anderson, and Ethan Tucker.

23

24 The Planning Commission Meeting was called to order at 7:30 p.m. by Chairman. Laura
25 Charchenko offered a thought by Robin Williams.

26 **I. Accept Agenda**

27 Chairman Hopkinson reviewed the agenda. Terry Turner moved to accept the agenda as
28 presented. Alan Malan seconded the motion. Voting was unanimous in favor.

29 **Business Discussed:**

30 **II. Presentation by Holly Frontier regarding equipment heights.**

31 A memorandum was included in the Commissioner's packets dated August 8, 2014 from Ben
32 White regarding Holly Presentation. Planning Commission requested Holly present additional
33 information regarding equipment height related to air quality.

34 Conrad Jensen of Holly Corp. was invited to the microphone to present a power point
35 presentation on the following issues:

- 36 • Oil-gas refining 101. (*Fractionators and Furnaces*) Why equipment is the height that it
37 is? *Height could range from 50 to 200 feet depending on what is being separated in the*
38 *fractionators and what the tower purpose is.*
- 39 • What types of equipment emit a water vapor and what has emissions? (*FCC, Cooling*
40 *Towers*)
- 41 • Safety Flares (*main safety device for the refinery which relieves pressure off of*
42 *equipment*)
- 43 • Emission stack height design (*based on several conditions such as physical limitations,*
44 *dispersion of pipe gas, etc.*)
- 45 • Refinery emissions: existing and proposed (*current permit works toward significant*
46 *reduction in emissions and pollutants*) (*Example Sulfur Dioxide by 60% and nitrogen*
47 *oxide by 70%*)

48 Chairman Hopkinson inquired about power outages and if they have improved over the years to
49 reduce power outages that would affect Holly. Mr. Jensen responded that it has greatly
50 improved.

51 Alan Malan asked about current CO2 emissions. Mr. Jensen responded that when all the
52 pollutants are considered CO2 would be increased but others would be reduced. He will get the
53 exact numbers back to the Commission. Cap for emission 1,000 tons/year.

54 Kelly Enquist inquired about the desired stack heights.

55
56 **III. Public Hearing to receive public comments regarding adding language back into the**
57 **West Bountiful Municipal Code that was omitted from commercial and industrial zones in**
58 **2012 that provides exceptions to height limitations.**

59
60 **ACTION TAKEN:**

61 **Laura Charchenko moved to open the public hearing at 8:19 pm to hear input from the**
62 **public regarding adding language back into the West Bountiful Municipal Code that was**
63 **omitted from commercial and industrial zones in 2012 that provides exceptions to height**
64 **limitations. Terry Turner seconded the motion and voting was unanimous in favor.**

65
66 **Public Comment:** *No public comment was made.*

67
68 **ACTION TAKEN:**

69 **Terry Turner moved to close the public hearing at 8:20 pm. Alan Malan seconded the**
70 **motion and voting was unanimous in favor.**

71

72 **IV. Consider ordinance amendment to reinstate supplementary regulations related to**
 73 **exceptions to height limitations.**

74 Commissioner packets included a memorandum from Duane Huffman dated July 3, 2014
 75 regarding re-instatement of former supplementary regulations related to exceptions to height
 76 limitations. Information in the memorandum included the following:

- 77 • Reason for the amendment
- 78 • History of the Section
- 79 • History of the Omission
- 80 • Recommendation from staff

81 Duane Huffman addressed the Commission informing them that three years ago items in the
 82 supplementary section of Title 17 were divided out. There was an oversight left out from the
 83 previous ordinance related to height limitation exceptions. This ordinance applies to all zones.
 84 It currently exists in the other zones, but was left out of the industrial/commercial zones.

85 Chairman Hopkinson would like to see Ben White and a Holly Representative bring some
 86 modeling of stack heights (relative to a 200 foot stack on a regular day) so they can see what the
 87 impact would be on our neighborhoods.

88 Commissioners were in agreement to forward the recommendation to the City Council for
 89 approval.

90

91 **ACTION TAKEN:**

92 **Alan Malan moved to forward to the City Council a recommendation to reinstate the**
 93 **height exception language that had been in Section 17.44.100 into the commercial,**
 94 **industrial and blended use zones. Laura Charchenko seconded the motion and voting was**
 95 **taken by roll call.**

96 **Mike Cottle- Aye**

97 **Terry Turner- Aye**

98 **Laura Charchenko- Aye**

99 **Alan Malan- Aye**

100 **Denis Hopkinson- Aye**

101

102 **V. Consider Conditional Use Application from Megan Anderson/Katrina Tucker to**
 103 **operate a day care center, Children's Learning Center, at 850 West 600 North**

104 Commissioner's packets included a memorandum dated from Ben White/Cathy Brightwell in
 105 regards to a Conditional Use Permit for Children's Learning Center Day Care. Memorandum
 106 included the following:

- 107 • Staff concerns regarding access to property for Public Safety vehicles. Applicant has
108 worked with the Fire Marshall to resolve most of those concerns.
- 109 • Applicant has received a positive inspection from the Health Department.
- 110 • Applicant is in the process of obtaining a State license for Day Care services.
- 111 • Applicant has received signatures from all but two surrounding neighbors.
- 112 • Applicant is working on obtaining a background check that is required before licensing
113 is granted by city to do business.
- 114 • A list of recommended conditions proposed by staff before approval of application.

115 Packet also included a Conditional Use Application, an aerial view site map the property and
116 access to property, the business license application, signatures for surrounding property owners,
117 and a licensed family group food evaluation.

118 Commissioner comments included the following:

- 119 • Alan Malan asked what type of van would they be using and wanted them to check what
120 the State requirements are for licensing to do such. He would like something on 8th West
121 that has their address. SDFD requires that address marker and it will be put into place.
- 122 • Laura Charchenko was satisfied if the fire department is satisfied.
- 123 • Terry Turner is happy that fire department is satisfied and that there will be no parking
124 issues.
- 125 • Mike Cottle wanted to know if the address sign need to be reflective.

126

127 Todd Smith (SDFD fire inspections) took the stand and noted that all safety and security issues
128 were satisfied upon the second inspection. He concurred with City Staff and Commissioners that
129 an address sign is needed on the main road. The gate did not fulfill all of the requirements. Mr.
130 Smith is not sure if the road can handle the fire equipment, but Mr. White will check it out.

131 Chairman Hopkinson asked Megan Anderson to take the stand. He asked what the flow of
132 traffic would be. Ms. Anderson responded that the children would be picked up and taken home
133 and so no traffic would be flowing through the area. Age accommodations will range from 6
134 month old to 13 years old.

135 A 20 foot gate will be on the east side for fire protection access. Width on the west side dirt road
136 has not been measured because access will be on the east side. Requirements have been fulfilled
137 for that access on the east by SDFD.

138 Cathy Brightwell noted that in the memorandum there are a list of conditions that need to be
139 included in the motion made this evening for approval of their business that should be contingent
140 upon those conditions being met, including state licensing requirements. Business license will
141 not be issued until all conditions are satisfied. Ms. Brightwell reminded the applicants that no
142 employees other than those living in the dwelling can be employed.

143

144

145 **ACTION TAKEN:**

146 **Laura Charchenko moved to approve the Conditional Use permit for Megan Anderson**
 147 **and Katrina Tucker for Children’s Learning Center Day Care at 850 West 600 North**
 148 **after considering items listed in Section 17.60.040 (D) and with the following conditions:**
 149 **Applicant must meet all conditions imposed by the South Davis Metro Fire**
 150 **Department, the Utah Department of Health including but not limited to a background**
 151 **check, provide a copy of its State Day Care license prior to beginning operation, fence**
 152 **outdoor area attached to the home for children to play, persons who are not a resident**
 153 **of the dwelling shall not be employed to work on the premises, daycare center shall not**
 154 **involve the use of more than the equivalent of 15% of the main floor area of the**
 155 **dwelling, no signage advertising the Day Care will be visible from the exterior of the**
 156 **building or visible from the streets, reflective signage is required to make address**
 157 **visible to public safety vehicles, and Day Care must meet any license requirements**
 158 **needed to transport children. Alan Malan seconded the motion and voting was**
 159 **unanimous in favor.**

160 Mike Cottle asked what safety measures are being taken to keep the pool safe. Mr. Anderson
 161 answered that the pool area is fenced in and locked with child proof knobs and the pool is
 162 covered with a locked and secure system.

163

164 **VI. Staff Report**

- 165 • Ben reported that we received extra water this evening but it has produced limited
166 damage.
- 167 • Gas leak on 1000 North with neighborhood evacuation at 7:30 am.
- 168 • 400 North bridge will be removed in February with a 90 day work period.
- 169 • 800 West will be closed tomorrow and part of the next day. 800 West north of Pages will
170 be paved early next week.
- 171 • Olsen Farms began construction this week.
- 172 • Alice Acres are done on 1100 West but not 400 North.
- 173 • Chase property is looking great with the curb and gutter.
- 174 • Cathy Brightwell reported that City Council will be hiring Jake Taylor as a FT in Public
175 Works.
- 176 • Application for finance clerk closed last week with 32 applicants. Interviews are being
177 conducted this week.
- 178 • We welcome Cathy Brightwell as our City Recorder.
- 179 • Commission sang Happy Birthday to Kelly Enquist.

180

181

182

183 **VII. Approval of Minutes of July 8, 2014.**

184

185 **ACTION TAKEN:**

186 **Alan Malan moved to approve of the minutes dated July 8, 2014 as presented. Laura**
187 **Charchenko seconded the motion and voting was unanimous in favor among those**
188 **members present.**

189

190 **VI. Adjournment**

191

192 **ACTION TAKEN:**

193 **Laura Charchenko moved to adjourn the regular session of the Planning Commission**
194 **meeting. Mike Cottle seconded the motion. Voting was unanimous in favor. The meeting**
195 **adjourned at 9:08 pm.**

196

197

198

199 The foregoing was approved by the West Bountiful City Planning Commission on August 26, 2014, by
200 unanimous vote of all members present.

201

202 _____

203 Cathy Brightwell – Deputy Recorder

204

1 Minutes of the West Bountiful City Council meeting held on **Tuesday, August 5, 2014** at West
2 Bountiful City Hall, 550 N 800 West, Davis County, Utah.

3
4 Those in attendance:

5
6 **MEMBERS:** Council members James Ahlstrom, Kelly Enquist, Debbie McKean, Mark
7 Preece (Mayor Pro Tem)

8
9 **STAFF:** Duane Huffman (City Administrator), Steve Doxey (City Attorney), Chief Todd
10 Hixson, Ben White (City Engineer), Cathy Brightwell (Acting City Recorder/ Secretary)

11
12 **EXCUSED:** Mayor Kenneth Romney, Council member James Bruhn

13
14 **VISITORS:** Alan Malan, Corey Sweat, Darrell Child, Brian Child, Darin Palmer, Ryan
15 Hatch, Travis Garton, Lyle Kurz, Carl Parker, Natalie Miller, Michelle Coyle

16
17
18 Mayor Pro Tem Preece called the work session to order at 6:10 pm.

19
20 1. Liability and property insurance options

21
22 Duane Huffman introduced three providers who will each make a presentation of proposals
23 they have made to the City for liability and property insurance options.

24
25 **Utah Local Government Trust**

26 Darren Palmer, Ryan Hatch, and Travis Garton represent Utah Local Government Trust and
27 described attributes of the Trust.

28 Ryan Hatch gave a general overview explaining the Trust was founded in 1972, is exclusive
29 to Utah local government, has 550 members, insures in some form 87% of cities statewide, and the
30 Board is comprised of elected officials. He said for general liability coverage, they insure 201 cities.

31 Travis Garton provided an overview of their coverage. He explained they are the City's
32 current liability provider and also provide our workman's compensation coverage.

33 Darren Palmer believes there is safety in numbers. The Trust enjoys a 99.6% retention rate
34 through good service and cost effectiveness. He talked about cost stability; in all lines there has
35 been an increase of only 1.3% for West Bountiful in the last 5-6 years, while paying out \$16k in
36 claims to West Bountiful.

37
38 **Olympus**

39 Darrell & Brian Child, representing Olympus Insurance, a member of the Association of Public
40 Entities Risk Management Group (APERMG), complimented the City for taking a look at this large
41 expense. They explained they are well experienced with a significant presence regionally with
42 organizations and the public sector.

43 They stated their proposal meets the quality test and provides carrier security with stable
44 pricing. They have top rated companies who understand local government and work with them for
45 long term continuity. Carrier partners are carefully selected with local claim service and long term

46 commitments. They explained that they evaluate risks before proposed rates are determined and that
47 West Bountiful is in a preferred risk group based on management operations and claims history.

48 They provide service to Bountiful, South Davis Sewer District, Davis County, West Jordan
49 and Cedar Hills.

50

51 **URMMA**

52 Carl Parker-Risk Manager and Lyle Coons-Claims Manager provided an overview of Utah Risk
53 Management Mutual Association (URMMA). URMMA has a unique structure. You can get
54 insurance anywhere, but they want to avoid loss before it occurs.

55 Their service is based on prospective premiums. Member cities pay claim costs back over
56 five years with a provision in place to protect against large claims. There is a cap at 125% of the
57 base premium (\$33K), large claims can be paid back over 10 years.

58 They are proud of their transparency – you know exactly what you are paying for. Every one
59 of their member organizations is represented on the board, so needs are accommodated. They
60 provide local claims service, and because they are a small group, someone will always be available
61 to deal with West Bountiful’s unique needs.

62 They provide service to Centerville, Farmington, Layton, Brigham City and eighteen other
63 cities.

64

65 General Questions – Council member Enquist asked about issues with swing sets in parks. The
66 Trust responded that they focus on risk management and onsite inspections; they identify things that
67 may need attention. URMMA said the U.S. Product Safety Commission has recommended changes
68 regarding swing sets, such as larger space allotments.

69

70 The work session ended at 6:55 p.m.

71

72 -----

73

74 Mayor Pro Tem Preece called the regular City Council meeting to order at 7:30 pm.

75

76 Invocation/Thought by Kelly Enquist

77 Pledge of Allegiance - James Ahlstrom

78

79 **1. Accept Agenda**

80

81 **MOTION:** *Debbie McKean moved to approve the agenda as written. Kelly Enquist*
82 *seconded the Motion which PASSED by unanimous vote of all members*
83 *present.*

84

85 **2. Public Comment**

86

87 No comments.

88

89 **3. Consider request by Natalie Miller to have live music at City Park on August 16, 2014,**
90 **from 6:30 to 8:30 pm for a birthday party.**

91

134 Council member Ahlstrom asked for clarification about the difference between this
135 resolution and the one approved in May of this year. Duane Huffman explained that the earlier
136 Resolution did not include residences outside the City limits. This Resolution gives these customers
137 a similar reduction in their culinary water rates.

138
139 **MOTION:** *Debbie McKean moved to adopt Resolution #344-14, Clarifying Rates*
140 *for Residential Water for Residences Outside City Limits. James*
141 *Ahlstrom seconded the Motion which PASSED by unanimous vote of all*
142 *members present.*

143
144 The vote was recorded as follows:

145 James Ahlstrom – Aye
146 James Bruhn – Excused
147 Kelly Enquist – Aye
148 Debbie McKean – Aye
149 Mark Preece – Aye

150
151

152 **7. Consider Resolution #346-14, A Resolution Allowing the Mayor to Enter Into Public**
153 **Improvements Reimbursement Agreements.**

154 Duane Huffman introduced the item and said the issue is not up for decision tonight; a
155 resolution has not been prepared. Ben White described the patchwork of curb/sidewalk
156 infrastructure throughout the City. Due to the gaps, some properties could experience storm water
157 drainage problems. One particular property on Pages Lane (Horrocks) would benefit from
158 curb/gutter, and the owners have recently requested a building permit for a new detached garage, and
159 the City can use this request to require the installment of curb/gutter. In wanting to be sensitive to
160 residents' ability to pay for required improvements, staff has considered recommending that the City
161 cover the up-front costs and allow the property owner to pay it to the City over time. However, the
162 high costs associated with overall storm water improvements in front of the Horrocks property have
163 given staff pause in moving forward with any recommendation.

164 Council member McKean expressed concern at requiring residents to install new
165 improvements in front of existing properties, and asked if there was some way the City could budget
166 some money each year to begin filling in these gaps. She also expressed concern with having the
167 City act as a bank, noting that it can be difficult to keep track and collect the owed funding.

168 Council member Enquist noted concern that something like a new garage could trigger a
169 requirement usually associated with new homes. He also suggested that without the improvements in
170 front of the Horrocks, someone could make an argument that the City is directing storm water onto
171 the property.

172 Council member Ahlstrom agreed that two separate issues exist: the first as to whether the
173 City should help by carrying the costs in some cases, and the second as to whether the City should
174 participate in the costs in filling some gaps. He agrees that it would be good to have some City
175 participation in costs, but there would need to be strong criteria to determine who receives the
176 assistance and at what level.

177 Duane said that staff would come up with and bring back some scenarios regarding how the
178 city could budget to participate in improvements each year and the type of criteria that could be

179 used, including requiring matching funds from property owners. He will also put on the to-do-list a
180 review of the ordinance that can require improvements on condition of a building permit.

181

182 **8. Discuss draft ordinance related to pipeline franchises.**

183 Duane described the various types of franchise agreements and the funds collected when
184 granting the franchise. For example, telecommunication providers remit a telecommunication tax
185 and energy utilities remit the municipal energy tax. However, if someone comes in with a pipeline
186 who is not serving customers, the City's current ordinances do not address how that should be
187 handled. State law likely gives these types of pipelines some legal rights to come through, but we
188 can be compensated for use of our streets and exercise reasonable control. This draft ordinance
189 creates a process for approving pipeline franchise agreements in these situations, and would provide
190 the City with better control on the placement of the line and compensation for the use of the rights-
191 of-way. Council members did not express any concerns with the draft, and asked that it be placed on
192 the next agenda for consideration of approval.

193

194 **9. Discuss City's participation in public safety retirement systems.**

195

196 Duane Huffman began by noting a mistake in the staff memo included in the packet - the
197 table in the memo should have listed the contributory system as the one where there is both an
198 employee and City portion. He went on to explain that a window has been opened to make a change
199 for public safety employees' retirement system coverage. For some reason, years ago the City
200 decided to be and remain in the contributory system, but has always paid all the premiums.
201 Changing to non-contributory would save the City money and provide officers a better death benefit.
202 He shared we are one of only four cities still on contributory system.

203 The recommendation is to switch to non-contributory. Chief Hixson said he has talked with
204 most of his officers and they do not have problems with the proposal. If they have questions, we can
205 have a retirement representative come talk to our officers to explain all their benefits. If we decide
206 to make a change, we are required to have a public hearing for all officers.

207 Duane clarified this proposal only applies to police officers. He will set a hearing for the
208 officers and have a resolution ready for the next meeting.

209 **10. Engineering Report**

210

211 Ben White gave an 800 West road construction update. He said they plan to pave mid next
212 week if it doesn't rain. There are still some water line tie overs to be done in the Pages Lane
213 intersection that will cause intersection closure and water shut-offs. The entire intersection will be
214 paved when they finish. Work will begin on the north portion of 800 West, above Porter Lane, next
215 week.

216 Seal coating will finish up this Thursday, weather permitting. Dirt is going in to Birnam
217 Woods Park; we hope to get enough that when drainage goes in we will be able to grade it nicely.
218 UDOT started working on our water line on 500 South last night.

219

220

221 **11. Administrative Report**

222
223 Duane Huffman shared the status of filling the City's two open positions. The public works
224 interviews are being completed and we hope to have a recommendation on Friday. The finance clerk
225 position closes on Thursday. We will review applications on Friday and get interviews scheduled as
226 soon as possible. Council member McKean will participate in the interviews and the Mayor is
227 always invited. Council member Ahlstrom asked if this position will be the same as Heidi's when
228 she left. Duane responded that Heidi was initially hired as a finance clerk and her role expanded
229 over time. We have advertised for a finance clerk not a Finance Director and plan to pay about
230 \$40k.

231
232 **12. Mayor/Council Reports**

233
234 James Ahlstrom said he talked with someone from the Knights of Columbus and after their
235 recent charitable golf tournament at Lakeside, he was asked why the golf course doesn't offer swag,
236 such as t-shirts, hats, free rounds of golf, etc. to give away. It would bring in business. Duane said
237 he will talk with Paul Holden to get more information about the specific tournament details.

238
239 Mark Preece talked about the Long Drive; he said he asked the guy who ran it to bring a
240 promotional budget proposal to Council in the future because it brings money to the City.

241 Sewer District is getting a push from the State to lower the levels of things being released
242 which would force them to build a new sewer plant which would cause rates to go up.

243
244 Debbie McKean said she and Duane met with Ms. Sun, West Bountiful Elementary school
245 principal. She is trying to get a grant from Lowe's for new playground equipment and wants us to
246 help and/or contribute. Duane suggested we might be able to offer in kind services, such as back-
247 hoe work, etc.

248 Arts Council appreciation dinner will be at Lakeside on Thursday at 6:30 pm. Council
249 members are invited.

250 She added that she talked with the Chief about a Volunteer recognition award. She suggested
251 CERT's participation in the gas leak at the Commons might be a good project to submit. She will
252 forward the information to the Chief.

253 Newsletter articles are due on Friday. She said a Citizen gave her an idea for newsletters. It
254 is to have a 'My West Bountiful' section that includes blurbs/interviews on the sidewalk. We could
255 stop people and ask them things like, "What do you like about West Bountiful?" She thinks it could
256 be fun.

257
258 Kelly Enquist asked how we are doing on our water allocation. Ben White responded that it
259 is running about normal.

260 He said the new benches look great on the trail at the Park and he complimented Rocky when
261 he saw him.

262 He also congratulated Cathy Brightwell on her appointment as Recorder.

263
264
265
266

267 **13. Approval of Minutes from the July 15, 2014 City Council Meeting.**
268

269 **MOTION:** *Debbie McKean moved to approve the minutes from the July 15, 2014*
270 *meeting as corrected. Mark Preece seconded the Motion which*
271 *PASSED by unanimous vote of all members present.*
272

273 **14. Adjourn**
274

275 **MOTION:** *Kelly Enquist moved to adjourn this meeting of the West Bountiful City*
276 *Council at 9:00 pm. James Ahlstrom seconded the Motion which*
277 *PASSED by unanimous vote of all members present.*
278

279 -----

280
281 *The foregoing was approved by the West Bountiful City Council by unanimous vote of all*
282 *members present on Tuesday, August 19, 2014.*
283

284
285 _____
286 CATHY BRIGHTWELL (CITY RECORDER)