



CITY COUNCIL AGENDA

Wednesday, October 14, 2015

NOTICE IS HEREBY GIVEN that the Herriman City Council shall assemble for a Meeting in the City Council Chambers, located at 13011 South Pioneer Street (6000 West), Herriman, Utah.

5:00 PM - WORK MEETING: *(Front Conference Room)*

COUNCIL BUSINESS

- A. Review of this evening's agenda
- B. Administrative Reports
 - 1. Employee Policy and Procedure Manual Updates – Travis Dunn, Human Resources Manager
 - 2. Planning Updates – Bryn McCarty, City Planner
 - 3. Development Issues/approach – John Brems, City Attorney
 - 4. City Hall Briefing – Brett Wood, City Manager
 - 5. Other Updates
- C. Adjournment

7:00 PM - GENERAL MEETING:

1. CALL TO ORDER

- A. Invocation and Pledge
- B. Mayor's Comments
- C. Council Recognitions

2. PUBLIC COMMENT: *Audience members may bring any item to the Mayor and Council's attention. Comments will be limited to two or three minutes. State Law prohibits the Council from acting on items that do not appear on the agenda.*

3. CONSENT AGENDA

- A. Consideration of a resolution designating and appointing election judges to serve in the Municipal General Election – Jackie Nostrom, City Recorder
- B. Approval of a resolution requesting the recertification of the Herriman Justice Court – John Brems, City Attorney

4. REPORTS, PRESENTATIONS, AND APPOINTMENTS

- A. Proclamation declaring November 16-20 as Utah College Application Week – Mayor Carmen Freeman
- B. Presentation from Parents Empowered - Tami Moody, Director of Administration and Communications
- C. Bonding Facts Presentation – Tami Moody, Director of Administration and Communications and Alan Rae, Finance Director

5. DISCUSSION AND ACTION ITEMS

- A. Discussion and consideration of an ordinance authorizing a text change amending 10-19-10 regarding lots on a Private Right of Way – Bryn McCarty, City Planner

- B. Discussion and consideration of a resolution approving A Deer Mitigation Program – Justun Edwards, Water Director
- C. Discussion and consideration of an ordinance authorizing a text change to Title 7, Chapter 9, Section 4, Street Tree Maintenance and Care – Blake Thomas, City Engineer
- D. Discussion and consideration of an ordinance approving a Water Impact Fee adjustment – Justun Edwards, Water Director
- E. Discussion and consideration of a resolution approving a Transportation Impact Fee reduction – Blake Thomas, City Engineer
- F. Discussion and consideration of an ordinance amending the street sign fee – Blake Thomas, City Engineer
- G. Discussion and consideration of an ordinance adding Chapter 4-5A regarding abatement of weeds, garbage and refuse, public nuisances, and illegal objects and structures – John Brems, City Attorney
- H. Discussion and consideration of an ordinance appointing a municipal inspector – John Brems, City Attorney

6. MAYOR AND COUNCIL COMMENTS

7. CALENDAR

A. Meetings

- October 22 – Planning Commission work meeting 5:30 p.m.
- October 28 – City Council work meeting 5:00 p.m.; City Council meeting 7:00 p.m.

B. Events

- October 22 – Meet the Candidates' Night 6:00 p.m.; Fort Herriman Middle School
- October 31 - Halloween

8. ADJOURNMENT

9. RECOMMENCE TO WORK MEETING (IF NEEDED)

10. CLOSED SESSION (IF NEEDED)

A. *The Herriman City Council may convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, pending or reasonable imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205*

11. SOCIAL GATHERING (No Action will be taken on any items)

A. Social gathering will be at McDonald's; 5108 West 13400 South, Herriman, UT

In accordance with the Americans with Disabilities Act, Herriman City will make reasonable accommodation for participation in the meeting. To request assistance, contact Herriman City at (801) 446-5323. Please Provide at least 48 hours advance notice of the meeting

ELECTRONIC PARTICIPATION

Members of the city council may participate electronically via telephone, Skype, or other electronic means during this meeting.

CITIZEN COMMENT POLICY AND PROCEDURE

During each regular Council meeting there will be a citizen comment time. The purpose of this time is to allow citizen's access to the Council. Citizens requesting to address the Council will be asked to complete a written comment form and present it to Jackie Nostrom, City Recorder. In general, the chair will allow an individual two minutes to address the Council. A spokesperson, recognized as representing a group in attendance, may be allowed up to five minutes. At the conclusion of the citizen comment time, the chair may direct staff to assist the citizen on the issue presented; direct the citizen to the proper administrative department(s); or take no action. This policy also applies to all public hearings. Citizens may also submit written requests (outlining their issue) for an item to be considered at a future council meeting. The chair may place the item on the agenda under citizen comments; direct staff to assist the citizen; direct the citizen to the proper administrative departments; or take no action.

Certificate of Posting

I, Cindy Quick, the duly appointed, qualified, and acting City Recorder of Herriman City, Utah, do hereby certify that the above and foregoing is a full, true and correct copy of the agenda; it was emailed to at least one newspaper of general circulation within the geographic jurisdiction of the public body. The agenda was also posted at the principal office of the public body. Also posted on the Utah State Public Notice Website <http://www.utah.gov/pnm/index.html> and on Herriman City's website at www.herriman.org

Posted and Dated this 8th day of October 2015

Jackie Nostrom, CMC
City Recorder



STAFF REPORT

DATE: October 5, 2015

TO: The Honorable Mayor and City Council

FROM: Travis Dunn, Human Resources Manager

SUBJECT: Review Suggested changes made to the Policy Manual

RECOMMENDATION:

This is an opportunity to discuss recommended changes to ensure all views and ideas are taken into account. No official approval is requested at this time.

BACKGROUND:

A large part of City culture is defined by the Policy and Procedures Manual. As we continue to move the City forward, these updates will ensure expectations are set and available to staff.

DISCUSSION:

Section XIX- Leaves of Absence- This was previously reviewed but it was requested to track accruals by hours worked, accruals rates were the only update from the previous review.

Section VIII- Discipline

Section XII- Performance Evaluations

Section XIV- Salary Planning

ALTERNATIVES:

SECTION XII: PERFORMANCE EVALUATIONS

1. PERFORMANCE EVALUATIONS. Performance evaluations are used to communicate with an employee their current performance level, provide expectations, and set goals and objectives for the upcoming period.

A. Performance evaluations will consist of a review between the employee's supervisor and the employee using Herriman's Performance Evaluation system and criteria.

B. Employee evaluations must be conducted in a manner which will ensure fair treatment and an objective evaluation of employee performance.

C. Direct supervisors will be responsible for their employees' evaluations. Performance information may also be gathered from other City employees under the discretion of the supervisor.

D. There are certain fundamental principles which govern employee performance evaluations. City evaluations should contain the following:

(1) A review of the employee's job description. The job description and duties shall be reviewed by the employee and their supervisor.

(2) The evaluation of an employee's performance will be based on criteria directly related to their job duties described. Each employee should receive communication as to how their work contributes to the vision of the organization.

(3) Evaluations provide supervisors and employees with an opportunity to set individual and department goals critical to the development of performance plans and standards. Employees should be heavily involved in this process including: determining how goals will be measured, creating a target completion date and determining which resources will be required.

(4) Objectives must be clearly defined and understood by both employees and their supervisors. Employees should fully understand the knowledge, skills and abilities necessary for achievement and have periodic reviews and resources made available that are critical to the success of the employee and the organization.

(5) Employees should understand that they will be supported by their supervisors in pursuing the achievement of the mutually agreed upon objectives and standards. The supervisor should be open and make every effort to respond in a positive and encouraging manner. Employees should be given the opportunity to record remarks and give feedback on the performance evaluation process and the assessment received. Both employees and their

supervisors shall sign the performance review. If the employee refuses to sign the appraisal document, the supervisor will indicate this on the signature line along with the date and time, indicating that the employee refused to sign.

(6) Under no circumstances should employees be allowed to prepare their own performance evaluation. It is the responsibility of the employee's supervisor to prepare performance evaluations. There may be times when the employee will be asked to rate themselves as part of the evaluation but a self-evaluation will not take the place of the supervisor's evaluation.

2. PERFORMANCE PLANS. At any time, a supervisor may provide an employee a performance plan to outline department goals and objectives and communicate the employee's role to help complete department goals. These plans must be in line with department and City goals. Performance plans may also be used as part of performance improvement and setting job expectations.

A. Supervisors should complete a written performance plan with their new employees as soon as practical when they are first hired and continue updating this plan as needed.

B. Performance planning is a continuing and collaborative process in which employees and their supervisors:

(1) Jointly identify objectives and goals.

(2) Define priorities and performance standards.

(3) Compare progress against expectations and revise the plan, when necessary.

C. The performance plan shall include prioritized goals and objectives with mutually acceptable performance standards.

3. PERFORMANCE STANDARDS.

A. Performance standards and expectations shall be established for each position and may be individualized for a specific employee. Employees shall participate in the establishment of performance standards and expectations relevant to their jobs.

B. Criteria will be based on job duties, skills and attributes required. There may also be additional criteria based on ability to meet the cultural expectations of the City. Although the standards may vary from time to time, they may include the following factors: Attitude and professionalism, Innovation, Initiative, Job knowledge, Technical skills, Decision making, Problem solving, Organization, Time management, Reliability, Communication, Teamwork, Supervision and Leadership.

C. Employees shall be advised of how they are performing in relation to established standards.

D. Performance evaluations are an ongoing process which requires that supervisor and subordinates meet periodically to discuss achievements, review performance and mutually agree on strategies to eliminate performance deficiencies. This ongoing process culminates in the written evaluation at the end of the annual performance evaluation period.

E. If improvement is needed, employees shall be made aware of the time frames and actions to be taken to improve performance and to increase the value of service.

F. Employees shall know what role their supervisors shall play in providing them assistance toward improved performance.

4. PERFORMANCE RATINGS.

A. Each employee evaluation shall provide an overall performance rating which can be equated to one of the following:

- (1) Poor. Performance does not meet the minimum standards.
- (2) Needs Improvement. Performance needs improvements in several areas.
- (3) Meets Expectations. Performance meets job expectations.
- (4) Exceeds Expectations. Performance frequently exceeds job expectations.
- (5) Excellent. Performance consistently exceeds job expectations.

5. PERFORMANCE PERIODS.

A. Probationary Employees.

- (1) Employees on probation shall have performance evaluations following the end of their probationary period.
- (2) The performance evaluations may be used to provide information to both the employee and management regarding the employee's performance.
- (3) Performance evaluations and the results of such evaluations do not obligate Herriman to a particular course of action relative to probationary employees, including but not limited to, salary adjustments and do not create any property/due process rights for probationary employees relative to their jobs/positions.
- (4) Employees on probation shall not receive salary adjustments.

B. Non-probationary Employees.

- (1) Performance evaluations will be completed at least annually.

(2) Although a salary adjustment never automatically follows a performance evaluation, the performance evaluation may be included as a component of any future compensation increase.

(3) Performance evaluations may be used in decisions concerning advancement, future training needs, performance related salary adjustments, and contested disciplinary actions.

6. CONFIDENTIALITY.

A. Completed performance evaluations received by Human Resources shall permanently remain in the employee's personnel file and become a part of the confidential information of that file.

B. Current supervisors and employees may review past evaluations under the direction of Human Resources.

SECTION XII: PERFORMANCE EVALUATIONS

1. GENERAL POLICY PERFORMANCE EVALUATIONS. Performance evaluations are used to communicate with an employee their current performance level, provide expectations, and set goals and objectives for the upcoming period.

A. Performance evaluations will consist of a review between the employee's supervisor and the employee using Herriman's Performance Evaluation ~~Form.~~ system and criteria.

B. ~~It is the policy of Herriman that e~~Employee evaluations must be conducted in a manner which will ensure fair treatment and an objective evaluation of employee performance.

C. Direct supervisors will be responsible for their employees' evaluations. Performance information may also be gathered from other City employees under the discretion of the supervisor.

~~CD. Goal setting is critical for the development of performance plans and standards. Goals define in broad terms the underlying purpose of a given activity or set of activities.~~

~~D. Objectives specify what should be achieved during an employee's employment with Herriman.~~

D. There are certain fundamental principles which govern employee performance evaluations. City evaluations should contain the following:~~There are certain fundamental principles which govern the establishment of goals, objectives, and performance standards.~~

(1) A review of the employee's job description. The job description and duties shall be reviewed by the employee and their supervisor.

(2) The evaluation of an employee's performance will be based on criteria directly related to their job duties described. Each employee should receive communication as to how their work contributes to the vision of the organization.

(3) Evaluations provide supervisors and employees with an opportunity to set individual and department goals critical to the development of performance plans and standards. Employees should be heavily involved in this process including: determining how goals will be measured, creating a target completion date and determining which resources will be required. ~~(3)~~

~~Participatory Goal Setting. In setting goals and objectives of employees, the employees' supervisors should seek to involve employees in the process.~~

(4) Objectives must be clearly defined and understood by both employees and their supervisors. Employees should fully understand the knowledge, skills and

abilities necessary for achievement and have periodic reviews and resources made available that are critical to the success of the employee and the organization.~~Outline Results to Be Achieved. There should be room for flexibility. The employee's supervisor should discuss with the employee how much will be done, when it needs to be completed, and what resources will be required.~~

(5) Employees should understand that they will be supported by their supervisors in pursuing the achievement of the mutually agreed upon objectives and standards. The supervisor should be open and make every effort to respond in a positive and encouraging manner. Employees should be given the opportunity to record remarks and give feedback on the performance evaluation process and the assessment received. Both employees and their supervisors shall sign the performance review. If the employee refuses to sign the appraisal document, the supervisor will indicate this on the signature line along with the date and time, indicating that the employee refused to sign.

~~(5) Relate to Organizational Objectives and Goals. In the process of initially formulating performance plans, each employee should be provided with the larger picture and how their work contributes to the organization. This is the responsibility of each supervisor.~~

~~(6) Define Objectives. Objectives must be clearly defined and understood by both employees and their supervisors. There must be clear agreement on resources to be made available, periodic reviews and other related control activities.~~

~~() Give Support. Employees should understand that they will be fully supported by their supervisors in pursuing the achievement of the mutually agreed upon objectives and standards. () Under no circumstances should employees be allowed to prepare their own performance evaluation. It is the responsibility of the employee's supervisor to prepare performance evaluations.~~

~~() Employees shall have the right to prepare relevant comments to accompany their evaluations.~~

(6) Under no circumstances should employees be allowed to prepare their own performance evaluation. It is the responsibility of the employee's supervisor to prepare performance evaluations. There may be times when the employee will be asked to rate themselves as part of the evaluation but a self- evaluation will not take the place of the supervisor's evaluation.

Comment [TD1]: If an employee creates a goal that is not in line with the City, I want some flexibility here for the manager to not support certain goals.

2. PERFORMANCE PLANS. At any time, a supervisor may provide an employee a performance plan to outline department goals and objectives and communicate the employee's role to help complete department goals. These plans must be in line with department and City goals. Performance plans may also be used as part of performance improvement and setting job expectations.

Comment [TD2]: I see this as more of our top 5.

A. ~~When time and circumstances permit, s~~Supervisors should complete a written performance plan with their new employees as soon as practical when they are first hired and continue updating this plan as needed. ~~prior to their assignment to their work station. When circumstances do not permit, supervisors should complete a written performance plan with their new employees as soon as possible given the existing constraints.~~

B. Performance planning is a continuing and collaborative process in which employees and their supervisors:

- (1) Jointly identify objectives for the next performance evaluation period and goals.
- ~~(2) Define priorities and performance standards for the next performance~~
~~(2) period.~~
- (3) Compare progress against expectations and revise the plan, when necessary.

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C. The performance plan shall include prioritized goals and objectives, with mutually acceptable performance standards, ~~and a prioritization of goals and objectives.~~

~~D. Both employees and their supervisors shall sign the performance plan. The employee shall receive a copy from the employee's supervisor, who shall retain a copy.~~

Comment [TD3]: We don't currently do this.

3. PERFORMANCE STANDARDS.

A. Performance standards and expectations shall be established for each position and may be individualized for a specific employee ~~each employee.~~

Employees shall participate in the establishment of performance standards and expectations relevant to their jobs.

B. Criteria will be based on job duties, skills and attributes required. There may also be additional criteria based on ability to meet the cultural expectations of the City. Although the standards may vary from time to time, they may include the following factors: Attitude and professionalism, Innovation, Initiative, Job knowledge, Technical skills, Decision making, Problem solving, Organization, Time management, Reliability, Communication, Teamwork, Supervision and Leadership.

~~BC~~. Employees shall be advised of how they are performing in relation to established standards.

~~CD~~. Performance evaluations are an ongoing process which requires that supervisor and subordinates meet periodically to discuss achievements, review performance and mutually agree on strategies to eliminate performance deficiencies. This ongoing process culminates in the written evaluation at the end of the annual performance evaluation period.

~~DE~~. ~~If improvement is needed,~~ ~~Ee~~ employees shall be made aware of the time frames and actions to be taken to improve performance and to increase the value of service.

~~EE~~. Employees shall know what role their supervisors shall play in providing them ~~with~~ assistance toward improved performance.

~~F. Under no circumstances should employees be allowed to prepare their own performance evaluation. It is the responsibility of the employee's supervisor to prepare performance evaluations.~~

~~G. Employees shall have the right to prepare relevant comments to accompany their evaluations.~~

4. PERFORMANCE RATINGS.

A. Each employee evaluation shall provide an overall performance rating which can be equated to one of the following:

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5. PERFORMANCE PERIODS.

A. Probationary Employees.

- (1) Employees on probation shall have performance evaluations following the end of their probationary period.
- (2) The performance evaluations may be used to provide information to both the employee and management regarding the employee's performance.
- (3) Performance evaluations and the results of such evaluations do not obligate Herriman to a particular course of action relative to probationary employees, including but not limited to, salary adjustments and do not create any property/due process rights for probationary employees relative to their jobs/positions.

(4) Employees on probation shall not receive salary adjustments.

B. Non-probationary Employees.

(1) Performance evaluations will be completed at least annually.

(2) Although a salary adjustment never automatically follows a performance evaluation, the performance evaluation may be included as a component of any future compensation increase.

~~(3) An employee on a Performance Improvement Plan is not eligible for any salary adjustments.~~

(3) Performance evaluations may be used in decisions concerning advancement, future training needs, performance related salary adjustments, and contested disciplinary actions.

6. CONFIDENTIALITY.

A. Completed performance evaluations received by Human Resources shall permanently remain in the employee's personnel file and become a part of the private-confidential information of that file.

B. Current supervisors and employees may review past evaluations under the direction of Human Resources.

~~B. Performance evaluations may be used in decisions concerning advancement, future training needs, performance related salary adjustments, and contested disciplinary actions.~~

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B. Non-probationary Employees.

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(2) Although a salary adjustment never automatically follows a performance evaluation, the performance evaluation may be included as a component of any future compensation increase.

(3) Performance evaluations may be used in decisions concerning advancement, future training needs, performance related salary adjustments, and contested disciplinary actions.

6. CONFIDENTIALITY.

A. Completed performance evaluations received by Human Resources shall permanently remain in the employee's personnel file and become a part of the confidential information of that file.

B. Current supervisors and employees may review past evaluations under the direction of Human Resources.

SECTION VIII: DISCIPLINARY ACTION

1. GENERAL POLICY. The City herein may reserves the right to discipline employees for the causes hereinafter as set forth herein.

(A) These administrative procedures have been established for the handling of disciplinary measures when required. In general, discipline will be imposed using progressive discipline; ~~whereby + however~~ the use of progressive discipline, ~~however~~, is strictly within the discretion of management.

~~MM~~management reserves the right to impose any level of disciplinary eaction, up to and including termination, that is appropriate to the conduct and is consistent with previous discipline imposed by Herrimanthe City. ~~measures as it deems appropriate for any conduct, whether it involves express violations of the law, ordinances, policies, regulations, executive orders, directives, or otherwise. The level of discipline applied is based upon the severity or frequency of the conduct at issue along with the impact of the action(s) on the City.~~ It is the policy of Herriman that management will inform its employees about what is expected at work, what constitutes employee misconduct, and what the employee's rights are, if disciplined.

Comment [TD1]: This is repeated below.

B. It is the responsibility of all employees to understand and observe rules of conduct necessary for the proper operation and professionalism of Herriman the City's government. ~~Administrative procedures have been established for the handling of disciplinary measures when required. All such measures shall follow a presentation of charges to the employee.~~

~~C. Disciplinary action may be imposed for misconduct.~~

~~D. Written documentation concerning employee disciplinary action imposed will become a part of an employee's Personnel Record.~~

Comment [TD2]: This is repeated below.

~~E. Copies of an employee discipline action may be purged as set forth in this paragraph. Copies of minor discipline (i.e., warnings and reprimands or suspension of two days or less) actions may be purged two years from the date of imposition of the disciplinary action, provided there is no similar disciplinary actions that have occurred or are pending within such two-year period, or if there is no major discipline (i.e., suspension for more than two days without pay, involuntary transfers from one position to another with less remuneration, or discharge) that has been imposed in the previous five years. All other discipline is ineligible for purging.~~

Comment [TD3]: We should not purge files in case a similar occurrence come up again and we need to show a pattern.

C. It is the responsibility of the manager to communicate to employees when they are not meeting expectations or when their actions or inactions there has been a violation of policy that may result in discipline. Managers are ultimately responsible to manage their employees and be responsible for the disciplinary process.

D. Generally, Human Resources will usually provide assistance and support to managers who have an employee involved a counselor and a support in the disciplinary action process. Human Resources will should mitigate risk and evaluate the situation and the risk involved and provide recommendations for the proposed level of disciplinary action to be imposed. e-imposed action required

E. The City Manager has final decision making rights to determine the level of discipline imposed.

2. TYPES OF DISCIPLINARY ACTION. HerrimanThe City may impose any level of discipline described below-disciplinary actionThe level of, up to and including termination that is appropriate to the conduct and is consistent with previous discipline imposed by Herrimanthe City. disciplinary action used will be based on severity and/or repetativeness of the action. Management reserves the right to use any level of disciplinary action it deems necessary and feels is warranted.

A. Verbal Coaching. Whenever grounds for disciplinary action exist, a manager may discipline an employee utilizing Verbal Coaching. Verbal Coaching isis an informal-lower level of recorded disciplinary action and provides a manager the opportunity to verbally coacheach and counselan employee regardingen minor matters or violationspolicy corrections or minor improvement(s) of meeting expectations. At this level-The manager is responsible to follow up, provide feedback, and give-and support to an employee involved insubject to verbal coachingcorrect actions for an employee.

(1) Managers are responsible to keep personal notes of conversations where verbal coaching was utilizedprovided and expectations were set. If further disciplinary action is warranted these notes maywill be used to show expectations were communicated to the employee.

(2) The personal notes and any documentations regarding verbal coachingThis level of coaching usually will not be put into an employee's personnel HR file.

A. B. DocumentedB. Documented Verbal Warning.- Whenever grounds for disciplinary action exist, a manager may discipline an employee utilizing a Documented Verbal Warning. The Documented Verbal Warning is an initial warning for an issue of significance usually-or as a component of progressive discipline of a smaller issue(s) not corrected. more severe than verbal coaching. This level may also be warranted for continued minor issues previously addressed.

(1) Managers are responsible to provide documentation with the issues that need to be addressed using this level of through the disciplinary form.

(2) Managers will usually conduct Documented Verbal Warning the meeting and review the issue(s).

(3) Human Resources may also be asked to attend these meeting as needed. or if there is a concern a difficult situation may arise.

(4) Employees will be provided with a copy of the Documented Verbal Warning disciplinary form as evidence issues were address. Employees will be asked to sign the supervisor copy of the form. but may refuse. If an employee refuses to sign the document, it will be noted on the supervisors copy that a copy of the warning was given to the employee and the employee refused to sign.

(5)-A copy of the Documented Verbal Warnings and supporting document, if any, will be placed in These documents will be added into an employee's personnel and may be used file as evidence and support if further violations issues occur.

(1) Whenever grounds for disciplinary action exist, and the employee's supervisor or department director determines that more severe action is not immediately necessary, shall be verbally communicated to the employee.

(2) Whenever possible, sufficient time for improvement should precede additional disciplinary action.

B.C. Written Reprimand. Written Warning.- Whenever grounds for disciplinary action exist, a manager may discipline an employee utilizing a Written Warning.

A Written Warning is a formal notice of disciplinary actions and provides a manager the opportunity to formally notify the employee of documented warning for a more serious violations and establish expectations. infraction against policy or expectations. Written Warnings are This level is usually used for a significant incident(s) or as a component of progressive discipline discipline or recurring issues addressed in a previous warning.

(1) Managers are responsible to provide documentation with the issues addressed using this level of discipline Managers are responsible to provide written documentation addressing the issues through the disciplinary form.

(2) Managers will usually conduct the Written Warning the meetings and review the issue(s). as needed.

(3) Human Resources will usually review the disciplinary form with the manager to ensure that it accurately reflects the issues addressed in the written warning addresses the behavior or issue involved.

(4) Human Resources may also attend these meeting as needed. Whenever practical, Human Resources will also attend this meeting.

(5) Employees will be provided with a copy of the Written Warning disciplinary form as evidence issues addressed. Employees will be asked to sign the supervisor copy of the form. If an employee refuses to sign the document, it will be noted on the supervisor copy that a copy of the warning was given to the employee and the employee refused to sign.

(6) This level of discipline may affect an employee's yearly evaluation rating and yearly compensation increases if one is given.

(1) Whenever grounds for disciplinary action exist, an employee's supervisor or department director may reprimand an employee. The employee's supervisor or department director shall furnish the employee with an Employee Written Reprimand Notification setting forth the reason(s) for the disciplinary action.

(2) A copy of the Employee Written Reprimand Notification, signed by the employee's supervisor or department director and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form; the employee's supervisor or department director will indicate the same on such notice.

CD. Suspension. Whenever grounds for disciplinary action exist, a manager may discipline an employee utilizing a Suspension. Whenever potential grounds for disciplinary action exist, the City may suspend an employee. Suspension is a temporary disassociation between the employee and the work place. City Manager approval, with direction from Human Resources, is required for a suspension. Herriman Suspension is usually used for a significant incident(s) or as a component of progressive discipline. The City may suspend an employee with or without pay for up to, but not exceeding, thirty (30) calendar days, for cause or for an investigation into allegations.

(12) When proposing to suspend an employee for more than two days without pay, the City Manager shall ensure that the City complies with the due process proceedings set forth below. stated below. hereinafter set forth in paragraphs 4, 5, and 6 of this section.

(2) Human Resources may investigate the behavior or issue(s) involved, or cause an investigation to be performed by a neutral party and will review the disciplinary form with the manager to ensure that it accurately reflects the issues addressed in the addresses the behavior or issue(s) involved in the Suspension. Suspension Managers are responsible to provide written documentation addressing the issues through the disciplinary form which and usually.

(3) -Managers will usually conduct Suspension meetings and review the issue(s).

(43) Human Resources may also attend these meeting as needed.

(34) -On or before the effective date of the suspension, Human Resources shall furnish the employee with a written Employee Suspension Notification setting forth the reason(s) for suspension.

(75) Employees will be provided with a copy of the Suspension disciplinary form disciplinary form as evidence issues addressed. Employees will be asked to sign the supervisor copy of the form. If an employee refuses to sign the document, it will be noted on the supervisor copy that a copy of the suspension warning was given to the employee and the employee refused to sign.

(866) This level of discipline may affect an employee's yearly evaluation rating and yearly compensation increases if one is given.

(797) An employee on suspension shall be responsible for making full employee contributions to their employee medical insurance benefits.

D. Demotion. Whenever grounds for disciplinary action exist, a manager may discipline an employee utilizing a Demotion.- Demotion is reducing an employee's remuneration and may or may not include a transfer to a different job assignment within the employee's current department or to another department within the City. Demotion is usually used for a significant incident(s) or as a component of progressive discipline. This level is usually used for an employee who is consistently not performing at the needed level for his current assignment but has shown the ability to be an effective employee with less responsibility or reduced lowered job duties.

(1) When proposing to demote an employee the City Manager shall ensure that the City complies with the due process proceedings set forth below. ~~Whenever grounds for severe disciplinary action exist, the City may demote an employee. Herriman may demote, or reduce in grade, an employee for cause or provide for reasonable accommodation in appropriate circumstances.~~

(2) Human Resources may investigate ~~(or cause an investigation to be performed)~~ the behavior or issue(s) involved, or may cause an investigation to be performed by from a neutral/etral party. and Human Resources will review the disciplinary form with the manager to ensure that it accurately reflects the behavior or issue(s) involvedaddressed in the Demotion.

(3) Managers will usually conduct suspension meetings and review the issue(s).

(4) Human Resources may also attend these meeting as needed.

Comment [TD4]: If an employee has a disability and can perform the job with reasonable accommodations then it is not a disciplinary issue.

(45) Employees will be asked to sign the supervisor copy of the Demotion. If an employee refuses to sign the document, it will be noted on the supervisor copy that a copy of the demotion was given to the employee and the employee refused to sign.

Pay

~~E. Transfer. This action should only be used if there is good reason that an employee can succeed in a different position or a different environment.~~

~~(1) Whenever grounds for disciplinary action exist During certain disciplinary occurrences, the City may transfer an employee. The City Manager's approval in counsel with Human Resources, approval is required for a transfer. Herriman may transfer an employee (with the exception of a probationary employee) by furnishing the employee with a written Employee Transfer Notification.~~

~~(2) The employee will be notified of the transfer and receive a new job description and responsibilities.~~

~~(3) A copy of the Employee Transfer Notification transfer form or the constructive discipline form, signed by the City Manager and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the City Manager will indicate the same on such notice.~~

~~(4) When proposing to transfer an employee from one position to another with less remuneration, the City Manager in conjunction with Human Resources shall follow set policies and procedures to ensure proper procedures are taken and ensure compliance with the due process proceedings hereinafter set forth in paragraphs 4, 5, and 6 of this section below.~~

E. Termination. Whenever grounds for disciplinary action exist a manager may discipline an employee utilizing a Termination. Termination is the permanent disassociation between the employee and the City. Termination is usually used for a significant incident(s) or as a component of progressive discipline.

(1) When proposing to terminate an employee the City Manager shall ensure that the City complies with the due process proceedings set forth below.

(2) Human Resources may investigate ~~(or cause an investigation to be performed use a neutral party to investigate)~~ the behavior or issue(s), or cause an investigation to be performed by a neutral party, and will review the disciplinary form with the manager to ensure that it accurately reflects the behavior or issue(s) involved-addressed in the Termination.

(3) Managers will usually conduct Termination meetings and review the issue(s).

(4) Human Resources may also attend these meeting as needed.

(5) Employees will be asked to sign the supervisor copy of the Demotion. If an employee refuses to sign the document, it will be noted on the supervisor copy that a copy of the demotion was given to the employee and the employee refused to sign.

(6) Employees who are terminated will not be eligible for rehire.

3. CAUSES FOR DISCIPLINARY ACTION.

A. Causes for disciplinary action may include, but are not limited to, the following:

(1) Violation of the laws of the State of Utah or the United States, other than minor traffic offenses.

(2) Violation ~~of the code of personal conduct in this Manual~~this of this Manual or City policy or procedures.

~~(3) Violation of any of the provisions of this Manual.~~

(4) Conduct which endangers the peace and safety of others or poses a threat to the public interest.

~~(5) Unjustified Inappropriate~~ interference with work of other Herriman City employees.

(6) Misconduct. Misconduct includes, but is not limited to, behavior that is not in accordance with City company culture, accepted moral or professional standards.

(7) Malfeasance (conduct that cannot be legally justified or that conflicts with the law).

(8) Misfeasance (abuse of lawful authority in order to achieve a desired result).

~~(9) Nonfeasance (the omission of a required act).~~

~~(10) Incompetence. Incompetence includes, but is not limited to, lacking the skills, qualities, or abilities to do something properly~~complete required duties.

~~(11) Negligence. Negligence includes, but is not limited to, causing injury or harm to another person or property as a result of actions or failure to provide proper or reasonable care.~~

~~(12) Insubordination. Insubordination includes, but is not limited to, refusing to follow reasonable orders; refusing to meet with a supervisor; yelling, using obscene, foul, or abusive language; or showing anger through physical gestures, such as slamming doors, throwing documents, supplies, or other items.~~

~~(13) Failure to maintain skills.~~

~~(14) Inadequate performance of duties.~~

~~(15) Unauthorized access to or distribution of employment or health records.~~

(146) Unauthorized access to or distribution of controlled, confidential, or private records.

~~(17) Unauthorized access to or distribution of records considered private, controlled, or protected by GRAMA.~~

~~(1815) Pattern of Uu~~ unauthorized absence or tardiness.

~~(1916)~~ Falsification or unauthorized alteration of records.

~~(20) Violation of Herriman policies.~~

~~(2417)~~ Falsification of employment application.

~~(2218) Found to have D~~ Discrimination in hiring, assignment, or promotion of another employee.

~~(2319)~~ Sexual harassment.

~~(24) Violation of the Personnel Policies and Procedures.~~

~~(25) Use of alcohol or drugs, other than medication prescribed by a physician, that affect job performance.~~

~~(2620)~~ Falsifying Herriman Records.

~~(2721)~~ Knowingly marking the time slip of another employee, authorizing one's time slip to be marked by another employee, unauthorized alteration of a time slip. Time sheet manipulation.

~~(2822)~~ Illegal possession of firearms, weapons, or explosives on Herriman City owned property; provided, however, an employee who has been issued a permit or temporary permit by the State of Utah to carry a concealed weapon is authorized to possess a firearm on City-owned property. Except for police officers, employees are not authorized to use deadly force when acting for and in behalf of the City. If an employee that is not a police officer uses deadly force, the employee will not have immunity or be indemnified by the City.

~~(2923)~~ Carelessness which affects the safety of personnel or damage to property.

~~(3024)~~ Threatening, intimidating, coercing, or interfering with fellow employees on the job, or the public at large.

~~(3425)~~ Theft or removal of any Herriman City property or the property of any employee from the work area premises without proper authorization.

~~(3226)~~ Gambling or engaging in a lottery at any Herriman City work area.

~~(3327)~~ Misusing, improper use, destroying, or damaging any Herriman City property (including, but not limited to, Herriman City-owned vehicles) or the property of any other employee.

~~(3428)~~ Deliberately restricting work output of themselves or others.

(3529) Drinking any alcoholic beverage while working or while on City business, or being under the influence of illicit drugs or alcohol while working or while on City business or when on call or on first rotation. For purposes of this subparagraph, "while on City business" means during such times that the ~~employee is you are~~ representing Herriman the City in an official capacity or ~~you~~ could reasonably be presumed to be a represent~~ing~~~~ative of~~ Herriman the City.

(3630) Sleeping during working hours.

(3731) Engaging in violence or behavior that carries the potential for violence, including, but not limited to, fighting (verbal or physical) on Herriman City premises, or while on Herriman City business, ~~or in a Herriman uniform~~; using obscene, foul, abusive, or threatening language or gestures towards employees or the public.

(4032) ~~Violation of cellular phone policy, Communication Systems policy, or Computer System policy. Using work time for personal conduct.~~

(4433) Engaging in rude or discourteous behavior towards other employees or the public, including, but not limited to, spreading rumors or gossiping, refusing to work with certain employees, sabotage, throwing items, yelling, ignoring customers, or other behavior that is disruptive to the work environment.

(4234) Making a malicious, fraudulent or frivolous complaint with intent to cause harm, harass, disrupt City services, or with reckless disregard to the truthfulness of the complaint.

(4335) Refusing to respond to an official request for factual information or willfully impeding an internal investigation after receiving notification that a response is required.

(4436) Failure to obtain or maintain any required occupational license, professional license, or certification, such as a commercial driver's license.

(4537) Using e-mail, voice mail, fax, text messaging, or any other form of social media to violate any of the policies set forth herein.

4. CONDUCTING AN INVESTIGATION.

A. ~~An employee's supervisor, department director, Assistant City Manager, or City Manager may conduct an investigation into the allegations which form the grounds for disciplinary action. If the City deems it necessary, Generally Human Resources may should lead or conduct an investigations with guidance from the City Manager and the Manager of an employee. A neutral third party may conduct the investigation when it is determined by the City to be appropriate.~~

B. It is expected that Human Resources remain a neutral party to the situation and provide recommendations based on ~~the results of its investigation.~~

Comment [TD5]: This makes me nervous to discipline an employee for things they did on off hours. Also due to tax implications we do not consider Herriman City apparel as a uniform.

Comment [TD6]: Point 2 takes into account not completing with policy.

C. Human Resources is responsible to reduce risk to the City without compromising the outcome of the investigation.

GD. The City Manager, with counsel from Human Resources, may place an employee on administrative leave ~~During an investigation to determine the facts upon which disciplinary action may be imposed, the City Manager may place an employee on administrative leave.~~

~~DE. Disciplinary action that involves a termination, suspension for more than two days without pay, or transfers from one position to another with less remuneration shall not be imposed until Human Resources has concluded the investigation and an informal predisciplinary hearing, with appropriate written notice, has been completed by Human Resources due process steps have been followed.~~ The investigation shall include an opportunity for the employee to respond to the allegations and make written responses within five (5) business days of the predisciplinary hearing ~~when the employee was informed of the allegations of the investigation.~~ All such written responses shall be placed in the employee's personnel file.

~~F. Investigations will be separate from predisciplinary hearings.~~

EG. Human Resources will investigate any City employee witnesses who may have information into the investigation. The employee under investigation may request Human Resources to investigate certain individuals that may help their case.

FH. Human Resources will gather facts of the situation and case to provide a recommendation the manager of the employee and the City Manager.

~~I. The City Manager will have decision rights based on the findings of the investigation to determine the level of discipline.~~

5. DUE PROCESS AND IMPOSING DISCIPLINARY ACTION ~~(including Due Process as required).~~

A. Human Resources shall ensure that disciplinary action and discipline are administered in a consistent legal manner.

B. Each employee shall be afforded prior access to ~~Herriman's~~ the City's rules, policies, and procedures.

~~C. The employee shall receive timely written notice of the predisciplinary meeting, overview of allegations, and potential disciplinary action.~~

DC. In determining the type and severity of the disciplinary action, the City Manager ~~shall consider if the disciplinary action is appropriate to the conduct and is consistent with previous discipline imposed by the City~~ and may consider aggravating and mitigating circumstances which include, but are not limited to, the repeated nature of misconduct; prior disciplinary action imposed; the severity of the misconduct; the employee's work record; the effect on

~~Herriman~~ the City's operations; and/or the potential of the misconduct to harm person(s) or property.

~~ED.~~ Disciplinary action that involves a termination, suspension for more than two days without pay, or transfers from one position to another with less remuneration shall not be imposed until an informal predisciplinary hearing, with appropriate written notice to the employee. The predisciplinary hearing investigation shall include a presentation of the allegations, potential disciplinary action, and an opportunity for the employee to respond to the allegations and make written responses within five (5) business days of the predisciplinary hearing. All such written responses shall be placed in the employee's personnel file.

~~FE.~~ With respect to discipline that ~~imposes~~~~proposes~~ a termination, suspension for more than two days without pay, or involuntary transfer form one position to another with less remuneration, Human Resources shall ensure that a formal written decision/statement is given to the employee that includes a predisciplinary meeting is held and notify the employee, in writing, of the findings of the investigation and response to the /predisciplinary hearing. The written decision/statement shall include:

- (1) The grounds for disciplinary action, including a description of the specific misconduct for which the disciplinary action is being imposed.
- (2) Any prior disciplinary action imposed.
- (3) The disciplinary action to be imposed.
- (4) The effective date and duration of the disciplinary action.
- (5) The corrective action necessary, if any, for the employee to avoid further disciplinary action.
- (6) A statement that includes the following notification: Notice: Pursuant to Utah Code Ann. § 10-3-1106(3)(a)(i)(2008) (as amended from time to time), you have ten (10) calendar days in which to file a written notice of appeal with the City Recorder from the discipline referenced herein. If you fail to file the written notice of appeal required by Utah Code Ann. § 10-3-1106(3)(a)(i)(2008) (as amended from time to time) within such ten (10) day period, you will have irrevocably waived your right to appeal the foregoing discipline to the Employee Appeal Board, and discipline will be implemented.

F. Suspension, demotion, transfer, or termination of an employee shall require the approval of the City Manager.

~~G. Human Resources may note the disciplinary action on their personal notes at the time the disciplinary action is imposed and/or on the employee's performance evaluation form.~~

6. APPEAL PROCEDURES.

A. "Probationary employees" and "temporary employees" have no appeal rights.

B. "At will", "City Manager", and "Assistant City Manager" have no appeal rights.

C. Employees have no appeal rights with respect to "verbal warnings."

D. Employees have no appeal rights with respect to "written ~~reprimand~~ warnings."

E. Employees, except those employees excluded from the right to appeal as provided above, may appeal the termination, suspension for more than two days without pay, or involuntary transfer from one position to another with less remuneration, to an Appeal Board. All such appeals shall comply with Utah Code Ann. §§ 10-3-1105 and 1106 (2008) (as amended from time to time).

SECTION XIV: SALARY PLANNING

1. GENERAL POLICY. Subject to City Council approval of funding, through the adopted budget, the City Manager shall be responsible for the development and maintenance of a uniform and equitable pay plan for Herriman. The pay plan shall consist of minimum and maximum rates of pay for each position and such intermediate steps as deemed necessary and equitable. Salaries shall be linked directly to the position classification plan and may take into consideration the following factors:

- A. Ranges of pay for other positions.
- B. Prevailing rates of pay for similar employment in both public and private organizations.
- C. Cost of living factors.
- D. Other benefits received by employees.
- E. The financial policy and economic conditions of Herriman.
- F. Years of service and experience of an employee.
- G. Certifications.
- H. Title change and promotion.
- I. Professional accreditation required for the job.
- J. Obtaining a higher education degree that benefits the City.
- K. Merit and/or annual review.

2. PAY STRUCTURE DEVELOPMENT AND ALLOCATION.

- A. Human Resources shall conduct studies of salary grades and ranges and will make recommendations to the City Manager regarding the salary grades. Implementation of adjustments is subject to budgeting approval and the availability of funds.
- B. The City Manager shall assign each position's grade to a pay range based upon the position's responsibilities, duties, comparable market pay, and relationship to other levels as defined in the position level plan and by market data.

3. NEW HIRES.

- A. Pay for newly hired employees will normally be set at the minimum of the salary range assigned to the position with possible additional pay based on additional work experience, specialized skills relevant to the position, and internal equity with other similarly positioned staff.
- B. City Manager approval is required to hire above the midpoint of a pay range.
- C. Upon successful completion of the probation period the new employee may be eligible for a pay increase.

4. MERIT INCREASE.

- A. The Mayor, upon approval of a budget line item for such by the City Council, shall adopt merit increase guidelines effective the first full pay period after July 1 of each fiscal year.
- B. Full-time and part-time employees are eligible to receive a merit increase.
- C. A part-time employee is eligible to receive a merit increase in the same amount of elapsed calendar time on the job as a full-time employee.
- D. A merit increase shall not exceed the range of maximum assigned to a position level, but an annual performance award may be considered.

5. MIDYEAR SALARY ADJUSTMENT.

- A. The City Manager may approve a midyear salary adjustment in order to mitigate inequity, adjust to market pay, or for high level performance that goes beyond expectations.
- B. The employee's manager shall create a written rationale and submit a copy for approval to the City Manager and to Human Resources for placement in the employee's personnel file.
- C. A selective adjustment is subject to the availability of funds and guidelines that have been established.

6. COST-OF-LIVING ADJUSTMENTS. When the budget approved by the City Council grants a cost-of-living adjustment (COLA) which exceeds an across-the-board pay plan adjustment, the COLA shall not exceed the new range maximum unless approved by the City Manager.

7. PROMOTION. Upon successful completion of job performance criteria the City Manager may grant a salary increase to an employee receiving a promotion. If the new salary is below the minimum of the new range, it shall be increased to the new minimum.

8. REASSIGNMENT. Except when due to a demotion or a disciplinary action, an employee who is reassigned shall be paid at least the same salary received prior to the reassignment. If the new position is a higher level the employee may be adjusted based upon new responsibilities and will be brought up to at least the minimum of the new range upon successful completion of job performance criteria.

9. RECLASSIFICATION. The City Manager may deem it necessary to reevaluate a position's grade and salary.

- A. If the City Manager reclassifies a position to a higher level, then the incumbent's salary maybe adjusted based on increased responsibilities but will

be moved to at least the minimum of the new range upon successful completion of job performance criteria.

B. A reclassification increase is subject to the availability of funds.

C. If the City Manager reclassifies a position to a lower level, the incumbent's salary shall remain the same. If the incumbent's salary exceeds the maximum of the new range, the incumbent is ineligible to receive a salary increase until the salary range increases to incorporate the incumbent's pay rate. An employee is ineligible to receive cost-of-living increases until the salary range increases.

SECTION XIV: SALARY PLANNING

1. GENERAL POLICY. ~~Subject to City Council approval of funding, through the adopted budget, the~~The Mayor~~City Manager, subject to the budgets approved by the City Council,~~ shall be responsible for the development and maintenance of a uniform and equitable pay plan for Herriman. ~~The pay plan, which~~ shall consist of minimum and maximum rates of pay for each position and such intermediate steps as deemed necessary and equitable. Salaries shall be linked directly to the position classification plan and may take into consideration the following factors:

- A. Ranges of pay for other positions.
- B. Prevailing rates of pay for similar employment in both public and private organizations.
- C. Cost of living factors.
- D. Other benefits received by employees.
- E. The financial policy and economic conditions of Herriman. Subject to the approved budget, the City may from time to time adopt a pay-increase policy.
- F. ~~Longevity increase.~~Years of service and experience of an employee.
- G. Certifications.
- H. Title change and promotion.
- I. Professional accreditation required for the job.
- J. Obtaining a higher education degree that benefits the City.
- K. Merit and/or annual review.

Comment [TD1]: We cover this in the sections below.

2. PAY PLAN STRUCTURE DEVELOPMENT AND ALLOCATION.

- A. Human Resources shall conduct studies of salary ~~levels~~grades and ranges and ~~shall will~~ make recommendations to ~~Herriman~~the City Manager regarding the salary ~~levels~~grades. Implementation of adjustments is subject to budgeting approval and the availability of funds.
- B. The City Manager shall assign each position's ~~level~~grade to a pay range based upon the ~~levels'~~position's responsibilities, duties, comparable market pay, and relationship to other levels as defined in the position level plan and by market data.

3. NEW HIRES.

- A. Pay for newly hired employees will normally be set at the minimum of the salary range assigned to the position with possible additional pay based on additional work experience, specialized skills relevant to the position, and internal equity with other similarly positioned staff.~~shall normally be set at the minimum of the pay range assigned to a job class. However, the City Manager may approve compensation, as warranted by job qualifications and experience subject to the availability of funds.~~

B. ~~The City Manager shall not authorize approval is required to hiring~~ above the midpoint of a pay range ~~except in unusual circumstances.~~

C. Upon successful completion of the probation period the new employee may be eligible for a pay increase.

4. MERIT INCREASE.

A. The Mayor, upon approval of a budget line item for such by the City Council, shall adopt merit increase guidelines effective the first full pay period after July 1 of each fiscal year.

B. Full-time and part-time employees are eligible to receive a merit increase.

~~C. Employees at or above the pay range maximum and employees whose performance is rated less than successful, shall not be eligible to receive a merit increase.~~ ^[TD2]

DC. A part-time employee is eligible to receive a merit increase in the same amount of elapsed calendar time on the job as a full-time employee.

~~E. An employee's supervisor must complete an employee's performance evaluation at least thirty (30) days before the effective date of a merit increase.~~

^[TD3]

FD. A merit increase shall not exceed the range of maximum assigned to a position level, but an annual performance award may be considered.

5. MIDYEAR SALARY ADJUSTMENT.

A. The City Manager may approve a midyear salary adjustment in order to mitigate inequity, adjust to market pay, or for high level performance that goes beyond expectations.

B. The City employee's Manager shall create a written rationale and submit a copy for approval to the City Manager and to Human Resources for placement in the employee's personnel file.

C. A selective adjustment is subject to the availability of funds and guidelines that have been established.

6. COST-OF-LIVING ADJUSTMENTS. When the budget approved by the City Council grants a cost-of-living adjustment (COLA) which exceeds an across-the-board pay plan adjustment, the COLA shall not exceed the new range maximum unless approved by the City Manager or the new longevity scale maximum for an employee in longevity status.

7. PROMOTION. Upon successful completion of job performance criteria the City Manager may grant a salary increase to an employee receiving a promotion. If the new salary is below the minimum of the new range, it shall be increased to the new minimum.

8. REASSIGNMENT. Except when due to a demotion or a disciplinary action, an employee who is reassigned shall be paid at least the same salary received prior to the reassignment. ~~and if~~ the new position is a higher level the employee may be adjusted based upon new responsibilities and will be brought up to at least the minimum of the new range upon successful completion of job performance criteria.

9. RECLASSIFICATION. The City Manager may deem it necessary to reevaluate a position's grade and salary.

A. If the City Manager reclassifies a position to a higher level, then the incumbent's salary may be adjusted based on increased responsibilities but will be moved to at least the minimum of the new range upon successful completion of job performance criteria.

B. A reclassification increase is subject to the availability of funds.

C. If the City Manager reclassifies a position to a lower level, the incumbent's salary shall remain the same. If the incumbent's salary exceeds the maximum of the new range, ~~or provided the individual meets longevity status criteria, the longevity scale maximum,~~ the incumbent is ineligible to receive a salary increase until the salary range ~~or longevity scale~~ increases to incorporate the incumbent's pay rate. An employee is ineligible to receive cost-of-living increases until the salary range increases.

~~10. DEMOTION. If an employee is demoted, either voluntarily or involuntarily, the City Manager may treat the employee's salary according to paragraph 11.C. above or reduce the salary to the applicable pay range.~~

~~11. BENEFITS.~~

~~A. Suspended Employee.~~

~~(1) An employee suspended for disciplinary reasons shall continue to be eligible to receive Herriman retirement, health, dental, disability, and life insurance programs subject to the conditions set forth in paragraph 13.A.~~

~~(2) below.~~

~~(2) The employee shall pay the employee portion of insurance premiums to continue coverage through the period of suspension. [TD4]~~

~~B. Part-time Employee.~~

~~(1) Except as otherwise provided herein, part-time employees do not qualify for benefits.~~

~~(2) Temporary employees and interns do not qualify for benefits. [TD5]~~

Section XIX: LEAVES OF ABSENCE. The City may provide paid time off to employees as a benefit. Managers have discretion to determine when time off may be approved as time off is not a right to employees unless legally protected.

1. ABSENT WITHOUT APPROVED LEAVE.

A. Any unauthorized absence of an employee from duty shall be grounds for disciplinary action.

B. Any employee who is absent for three (3) or more consecutive work days without authorized leave or without a doctor's note shall be deemed to have voluntarily resigned their position and employment without notice. Where extenuating circumstances are found to have existed; however, such absence may be covered by the City Manager by subsequent grant of leave with or without pay as the circumstances dictate.

2. ANNUAL VACATION.

A. Except as provided by Contract, each full-time employee shall receive annual vacation leave ("vacation") at the following rate:

Tenure with the City	Accrual Per Hour Worked	Annual Accrual Amount
Up to 5 th year anniversary	0.0385	2 week
5 th year anniversary up to 10 th year anniversary	0.0577	3 weeks
10 th year anniversary up to 15 th year anniversary	0.0769	4 weeks
15 th year anniversary and up	0.0962	5 weeks

Note: annual accrual amounts are based on an employee's average hours during a work week.

B. Managers and Directors will accrue an additional week of vacation in addition to the accruals above.

C. Part-time employees who are normally scheduled to work less than twenty (20) hours per week shall not accrue annual vacation.

D. Persons hired on an emergency, temporary, internship, or contract basis shall not accrue annual vacation.

E. It is the policy of Herriman that employees use or lose their annual vacation. Notwithstanding, an employee may accrue and carry forward from calendar year to calendar year a maximum of eighty (80) hours. Any accrued annual vacation in excess of eighty (80) hours shall be forfeited on December 31 at 11:59:59 of each year.

- F. An employee who is separated from employment shall be compensated for all accrued annual vacation.
- G. All annual vacation requests should be submitted a reasonable time in advance of the desired time off to the employee's supervisor. If an excessive (being the number of requests if granted that would render the department or organization ineffective) amount of employees request annual vacation for the same time period, annual vacation shall be granted according to management discretion and usually on a first-come-first-served basis.
- H. Official annual vacation records will be maintained and kept current by the payroll department.
- I. Vacation usage will be reported by the employee's supervisor's using approved forms.
- J. Exempt employees are required to account for annual vacation in full-day increments.

3. HOLIDAY LEAVE.

A. Holidays which apply to regular employees working 20 hours a week or more, provided that such day is a regular work day for the part-time employee or scheduled time to work for the part-time employee, are:

- | | |
|---|--------------------------|
| (1) New Year's Day | January 1st |
| (2) Martin Luther King, Jr. Day | 3rd Monday in January |
| (3) President's Birthday | 3rd Monday in February |
| (4) Memorial Day | Last Monday in May |
| (5) Independence Day | July 4th |
| (6) Pioneer Day | July 24th |
| (7) Labor Day | 1st Monday in September |
| (8) Thanksgiving Day | 4th Thursday in November |
| (9) Day after Thanksgiving | 4th Friday in November |
| (10) Veteran's Day | November 11 |
| (11) Christmas Day | December 25 |
| (12) Day after Christmas (depending on the day of week and upon approval of the City Manager) | |

B. If any of the above holidays fall on Saturday, then the preceding Friday shall be the holiday. If any of the above holidays fall on Sunday, then the following Monday is the holiday.

C. A holiday which falls during an employee's annual vacation shall be counted as a paid holiday and not as annual vacation.

4. PERSONAL TIME OFF

- A. Personal time off (PTO) is to be used at the discretion of the employee for personal leaves of absence which usually does not include vacation time.
- B. PTO shall be available to all full-time employees, part-time employees, and probationary employees.
- C. PTO accruals are added at each payday and accrue based on each hour worked. Employees will not be allowed to have negative accounts.

Scheduled hours worked per week	Accrual Per Hour Worked	Annual Accrual Amount
40 hours	.0385	80 annual hours
At least 30 hours but less than 40 hours.	.0385	60 annual hours for 30 hour a week employees.
At least 20 hours but less than 30 hours.	.0385	40 annual hours for 20 hour a week employees.

- D. Not more than one hundred sixty (160) hours of PTO time for full-time employees and eighty (80) hours of PTO time for part-time employees may accrue at any given time.
- E. At the end of each year, the maximum carryover amount to the new year is eighty (80) hours. Any PTO time that exceeds eighty (80) hours shall be forfeited on December 31 at 11:59:59 p.m. of each year.
- F. Use of PTO.

- (1) PTO will not be granted to employees during their first ninety (90) calendar days of employment, except for emergency circumstances with manager approval.
- (2) In order to qualify for PTO use, an employee must notify the employee's supervisor no later than one (1) hour after normal starting time on each day of absence unless the circumstances surrounding the absence make such notification impracticable. The employee's supervisor should also be kept advised of the employee's progress and expected date of return to duty.
- (3) Any absence beyond accrued PTO will result in the employee being carried on vacation status until all accrued vacation has expired, then be carried in a leave-without-pay status.

(4) Exempt employees are required to account for PTO in full-day increments.
(5) Non-exempt employee should have a minimum of a 2 hours usage of PTO. Anything less than that should be taken during a lunch break.

(6) Common uses of PTO may be:

- (a) Sick Time
- (b) Dentist and Doctor Appointments
- (c) Make up time for shortage of holiday hours
- (d) FMLA time off
- (e) Bereavement or Funeral leave

5. MATERNITY LEAVE.

A. An employee who becomes pregnant, or whose legal or common law spouse becomes pregnant, may continue working, prior to the birth of the child, until such time as the employee can no longer satisfactorily perform the essential functions of their duties. The employee may be granted vacation, PTO, and/or leave without pay for this period of absence. Regulations governing vacation, PTO, and leave without pay will apply.

B. During a maternity leave period in excess of thirty (30) calendar days, an employee's annual vacation, PTO, and/or time toward their performance evaluation, if applicable, shall not accrue.

C. Herriman may fill vacancies created by maternity leave with temporary or provisional appointments. At the expiration of the maternity leave, the employee shall return to the same position, where feasible, or to a similar position. Failure of the employee to return to work at the expiration of maternity leave shall be considered a voluntary resignation of their position and employment without notice.

6. MILITARY LEAVE. An employee shall be granted leave with compensation for the difference in salary for active duty, for service in the National Guard or in the Armed Forces reserves.

7. JURY LEAVE. An employee may be granted leave with full pay when performing jury duty or when required to serve as a witness in any Herriman litigation in any municipal, county, state, or federal court, or before an administrative tribunal. Any compensation received by the employee must be turned back to Herriman. Paid leave will not be granted when the employee is serving as his own witness in financial and related suits which he has initiated.

8. ADMINISTRATIVE LEAVE WITH PAY.

A. While performing authorized duties. An employee may be placed on administrative leave with pay, as determined by Herriman, or an employee may be granted administrative leave with pay to perform authorized duties in connection with Herriman business, attend trade or professional meetings which relate to official duties, participate in recognized and authorized training programs, or facilitate the needs of Herriman.

B. Pending possible disciplinary action. An employee may be granted administrative leave with pay pending the outcome of an investigation undertaken to determine if disciplinary action against the employee is warranted. While an employee is on administrative leave with pay pending possible discipline, the employee must be available for work assignments, must leave a contact telephone number, and must be in close proximity to Herriman.

9. LEAVE WITHOUT PAY.

A. The City Manager may grant an employee leave without pay for a specified period of time, not to exceed one (1) year. At the expiration of the leave without pay, the employee shall return to the same position, where feasible, or to a similar position. Failure of the employee to return to work at the expiration of leave without pay shall be considered a voluntary resignation of their position and employment without notice.

B. A leave without pay shall not constitute a break in service. However, during a leave without pay period in excess of thirty (30) calendar days, an employee's time toward their performance evaluation, if applicable, shall not accrue.

C. Leave without pay may be granted or imposed:

(1) For education purposes when the employee's course of study will be of direct benefit to Herriman, their absence will not be a hardship for their department, and the employee agrees to return to work at the end of the leave-without-pay period, as set forth herein.

(2) To attend funerals or attend to an ill or injured member of the employee's immediate family when the absence is not covered by PTO.

(3) For pending disciplinary actions.

D. Employees are expected to apply for leave without pay in advance and in writing, providing as much detail about the absence as possible so that the City Manager may decide where the leave without pay is warranted.

10. DOCUMENTATION OF LEAVE. Some of the above absences must be supported by a copy of the official paperwork causing the absence or the employee's election to use PTO to cover some or all of the FMLA leave. Such paperwork must be submitted to the City Manager as soon as possible. In some cases where official paperwork is not available, the City Manager may request that the employee supply additional information in writing to support the absence.

Section XIX: LEAVES OF ABSENCE. The City may provide paid time off to employees as a benefit. Managers have discretion to determine when time off may be approved as time off is not a right to employees unless legally protected.

1. ABSENT WITHOUT APPROVED LEAVE.

A. Any unauthorized absence of an employee from duty shall be grounds for disciplinary action.

B. Any employee who is absent for three (3) or more consecutive work days without authorized leave or without a doctor's note shall be deemed to have voluntarily resigned their position and employment without notice. Where extenuating circumstances are found to have existed; however, such absence may be covered by the City Manager by subsequent grant of leave with or without pay as the circumstances dictate.

2. ANNUAL VACATION.

A. Except as provided by Contract, each full-time employee shall receive annual vacation leave ("vacation") at the following rate:

~~(1) For five years or less of service, eighty (80) hours of annual vacation shall accrue at the rate of 3.08 hours per pay period.~~

~~(2) For more than five (5) years of service, but less than ten (10) years of service, one hundred twenty (120) hours of annual vacation shall accrue at the rate of 4.62 hours per pay period.~~

~~(3) For ten (10) years or more of service, but less than fifteen (15) years of service, one hundred sixty (160) hours of annual vacation at a rate of 6.15 hours per pay period.~~

~~(4) For fifteen (15) years or more of service, additional vacation shall accrue at the rate of 7.69 hours per pay period, to a maximum not to exceed two hundred (200) hours of annual vacation.~~

<u>Tenure with the City</u>	<u>Accrual Per Hour Worked</u>	<u>Annual Accrual Amount</u>
<u>Up to 5th year anniversary</u>	<u>0.0385</u>	<u>2 week</u>
<u>5th year anniversary up to 10th year anniversary</u>	<u>0.0577</u>	<u>3 weeks</u>
<u>10th year anniversary up to 15th year anniversary</u>	<u>0.0769</u>	<u>4 weeks</u>
<u>15th year anniversary and up</u>	<u>0.0962</u>	<u>5 weeks</u>

Note: annual accrual amounts are based on an employee's average hours during a work week.

B. Managers and Directors will accrue an additional week of vacation in addition to the accruals above. (in addition to the applicable provision above)

~~forty (40) hours of additional annual vacation shall accrue at the rate of 1.54 hours per pay day.~~

~~C. Each part-time employee who is normally scheduled to work twenty (20) or more hours per week shall accrue annual vacation in proportion to the number of hours actually worked by the part-time employee in a week (not to exceed accrual for more than 40 hours worked per week).~~ Part-time employees who are normally scheduled to work less than twenty (20) hours per week shall not accrue annual vacation.

D. Persons hired on an emergency, temporary, internship, or contract basis shall not accrue annual vacation.

E. It is the policy of Herriman that employees use or lose their annual vacation. Notwithstanding, an employee may accrue and carry forward from calendar year to calendar year a maximum of eighty (80) hours. Any accrued annual vacation in excess of eighty (80) hours shall be forfeited on December 31 at 11:59:59 of each year.

~~E. A holiday which falls during an employee's annual vacation shall be counted as a paid holiday and not as annual vacation.~~

F. An employee who is separated from employment shall be compensated for all accrued annual vacation.

G. All annual vacation requests should be submitted a reasonable time in advance of the desired time off to the employee's supervisor. If an excessive (being the number of requests if granted that would render the department or organization ineffective) amount of employees request annual vacation for the same time period, annual vacation shall be granted in order of application according to management discretion and usually on a ~~(first-come-first-served~~ basis) ~~at the discretion of the employee's supervisor.~~

H. Official annual vacation records will be maintained and kept current by the financial payroll department.

I. Vacation usage will be reported by the employee's supervisor's using approved forms.

J. Exempt employees are required to account for annual vacation in full-day increments.

3. HOLIDAY LEAVE.

A. Holidays which apply to ~~full-time and part-time employees~~ regular employees working 20 hours a week or more, provided that such day is a regular work day for the part-time employee or scheduled time to work for the part-time employee, are:

- | | |
|---------------------------------|--|
| (1) New Year's Day | January 1st |
| (2) Martin Luther King, Jr. Day | 3rd Monday in January |
| (3) President's Birthday | 3rd Monday in February |
| (4) Memorial Day | Last Monday in May |
| (5) Independence Day | July 4th |
| (6) Pioneer Day | July 24th |
| (7) Labor Day | 1st Monday in September |
| (8) Thanksgiving Day | 4th Thursday in November |
| (9) Day after Thanksgiving | 4th Friday in November |
| (10) Veteran's Day | November 11 |
| (11) Christmas Day | December 25 |
| (12) Day after Christmas | (depending on the day of week and upon approval of the City Manager) |

B. If any of the above holidays fall on Saturday, then the preceding Friday shall be the holiday. If any of the above holidays fall on Sunday, then the following Monday is the holiday.

EC. A holiday which falls during an employee's annual vacation shall be counted as a paid holiday and not as annual vacation.

4. PERSONAL TIME OFF

A. Purpose. Personal time off (PTO) is to be used at the discretion of the employee for personal leaves of absence which usually does not include vacation time.

B. Eligibility. PTO shall be available to all full-time employees, part-time employees, and probationary employees. who are regularly scheduled to work forty (40) hours per week at a rate of 3.08 hours per pay period (80 hours per year). Employees who are regularly scheduled to work thirty (30) hours per week or more, but less than forty (40) hours per week, shall accrue PTO at a rate of 2.31 hours per pay period (26 pay periods per year). Employees who are regularly scheduled to work twenty (20) hours or more per week, but less than thirty (30) hours per week, shall accrue PTO at a rate of 1.54 hours per pay period (26 pay periods per year). Part-time employees who are normally scheduled to work less than twenty (20) hours per week and temporary employees are not eligible for PTO. PTO will not be granted to employees during their first ninety (90) calendar days of employment, except for emergency circumstances.

C. Accrual Rates. PTO accruals are added at each payday and accrue based on each hour worked. Employees will not be allowed to have negative accounts.

<u>Scheduled hours worked per week</u>	<u>Accrual Per Hour Worked</u>	<u>Annual Accrual Amount</u>
<u>40 hours</u>	<u>.0385</u>	<u>80 annual hours</u>
<u>At least 30 hours but less than 40 hours.</u>	<u>.0385</u>	<u>60 annual hours for 30 hour a week employees.</u>
<u>At least 20 hours but less than 30 hours.</u>	<u>.0385</u>	<u>40 annual hours for 20 hour a week employees.</u>

~~D.~~ D. Not more than one hundred sixty (160) hours of PTO time for full-time employees and eighty (80) hours of PTO time for part-time employees may accrue at any given time.

E. At the end of each year, the maximum carryover amount to the new year is eighty (80) hours. Any PTO time that exceeds eighty (80) hours shall be forfeited on December 31 at 11:59:59 p.m. of each year.

E.F. Use of PTO.

(1) PTO will not be granted to employees during their first ninety (90) calendar days of employment, except for emergency circumstances with manager approval.

(2) In order to qualify for PTO use, an employee must notify the employee's supervisor no later than one (1) hour after normal starting time on each day of absence unless the circumstances surrounding the absence make such notification impracticable. The employee's supervisor should also be kept advised of the employee's progress and expected date of return to duty.

(3) Any absence beyond accrued PTO will result in the employee's being carried on vacation status until all accrued vacation has expired, then be carried in a leave-without-pay status.

(4) Exempt (~~salaried~~) employees are required to account for PTO in full-day increments.

(5) Non-exempt (~~hourly~~) employee should have a minimum of a 2 hours usage of PTO. Anything less than that should be taken during a lunch break.

(6) Common uses of PTO may be:

(a) Sick Time

(b) Dentist and Doctor Appointments

(c) Make up time for shortage of holiday hours

(d) FMLA time off

[\(e\) Bereavement or Funeral leave](#)

5. MATERNITY LEAVE.

A. An employee who becomes pregnant, or whose legal or common law spouse becomes pregnant, may continue working, prior to the birth of the child, until such time as the employee can no longer satisfactorily perform the essential functions of their duties. The employee may be granted vacation, PTO, and/or leave without pay for this period of absence. Regulations governing vacation, PTO, and leave without pay will apply.

B. During a maternity leave period in excess of thirty (30) calendar days, an employee's annual vacation, PTO, and/or time toward their performance evaluation, if applicable, shall not accrue.

C. Herriman may fill vacancies created by maternity leave with temporary or provisional appointments. At the expiration of the maternity leave, the employee shall return to the same position, where feasible, or to a similar position. Failure of the employee to return to work at the expiration of maternity leave shall be considered a voluntary resignation of their position and employment without notice.

6. MILITARY LEAVE. An employee shall be granted leave with compensation for the difference in salary for active duty, for service in the National Guard or in the Armed Forces reserves.

7. JURY LEAVE. An employee may be granted leave with full pay when performing jury duty or when required to serve as a witness in any Herriman litigation in any municipal, county, state, or federal court, or before an administrative tribunal. Any compensation received by the employee must be turned back to Herriman. Paid leave will not be granted when the employee is serving as his own witness in financial and related suits which he has initiated.

8. ADMINISTRATIVE LEAVE WITH PAY.

A. While performing authorized duties. An employee may be placed on administrative leave with pay, as determined by Herriman, or an employee may be granted administrative leave with pay to perform authorized duties in connection with Herriman business, attend trade or professional meetings which relate to official duties, participate in recognized and authorized training programs, or facilitate the needs of Herriman.

B. Pending possible disciplinary action. An employee may be granted administrative leave with pay pending the outcome of an investigation undertaken to determine if disciplinary action against the employee is warranted. While an employee is on administrative leave with pay pending possible discipline, the employee must be available for work assignments, must leave a contact telephone number, and must be in close proximity to Herriman.

9. LEAVE WITHOUT PAY.

A. The City Manager may grant an employee leave without pay for a specified period of time, not to exceed one (1) year. At the expiration of the leave without pay, the employee shall return to the same position, where feasible, or to a similar position. Failure of the employee to return to work at the expiration of leave without pay shall be considered a voluntary resignation of their position and employment without notice.

B. A leave without pay shall not constitute a break in service. However, during a leave without pay period in excess of thirty (30) calendar days, an employee's ~~annual vacation, PTO, and~~ time toward their performance evaluation, if applicable, shall not accrue.

C. Leave without pay may be granted or imposed:

(1) For education purposes when the employee's course of study will be of direct benefit to Herriman, their absence will not be a hardship for their department, and the employee agrees to return to work at the end of the leave-without-pay period, as set forth herein.

(2) To attend funerals or attend to an ill or injured member of the employee's immediate family when the absence is not covered by PTO.

(3) For pending disciplinary actions.

D. Employees are expected to apply for leave without pay in advance and in writing, providing as much detail about the absence as possible so that the City Manager may decide where the leave without pay is warranted.

10. DOCUMENTATION OF LEAVE. Some of the above absences must be supported by a copy of the official paperwork causing the absence or the employee's election to use PTO to cover some or all of the FMLA leave. Such paperwork must be submitted to the City Manager as soon as possible. In some cases where official paperwork is not available, the City Manager may request that the employee supply additional information in writing to support the absence.



STAFF REPORT

DATE: October 5, 2015
TO: The Honorable Mayor and City Council
FROM: Jackie Nostrom, City Recorder
SUBJECT: Designating and Appointing Election Judges

RECOMMENDATION:

Approval of a resolution designating and appointing election judges to serve in the 2015 Municipal General Election.

BACKGROUND:

Utah State Code §20A-5-602 sets forth procedures for appointing election judges, designating their compensation and setting forth duties. The Municipal legislative body shall appoint the election judges at least 15 days prior to the date of the local election.

DISCUSSION:

Election Judges are solicited and appointed as part of the Elections Contract through Salt Lake County. The City Council must appoint three individuals who reside within the county to serve as Election Judges each being registered voters, or one individual being registered and over the age of 21, one individual being registered, and the last can be an individual that is 16 or 17 years of age. The City Council may not appoint any candidate's parent, sibling, spouse, child, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law to serve as an election judge where the candidate appears on the ballot.

FISCAL IMPACT:

The Election has been budgeted for in the current budget.

Jackie Nostrom
City Recorder

**HERRIMAN, UTAH
RESOLUTION NO.**

**A RESOLUTION DESIGNATING AND APPOINTING ELECTION JUDGES
TO SERVE IN THE 2015 MUNICIPAL GENERAL ELECTION**

WHEREAS, the Herriman City Council (“*Council*”) met in a regular session on October 14, 2015, to consider, among other things, approving a resolution designating and appointing election judges to serve in the 2015 Municipal General Election; and

WHEREAS, Section 20A-5-602, Utah State Code, sets forth the procedure for appointing Election Judges, designating their compensation and setting forth their duties; and

WHEREAS, the City Council of Herriman City desires to make the appointments, set their compensation and provide for other matters relating to them.

NOW THEREFORE, BE IT RESOLVED, by the City Council of Herriman City, Utah as follows:

Section 1. Appointment of Poll Workers. The persons named as Election Judges, or subsequent names as appointed by the Salt Lake County Clerk’s Office, as set forth below and are hereby appointed to serve in the 2015 Municipal General Election at the voting center located at the Herriman Library 5380 West Herriman Main Street (12720 South):

Nancy Ann Jones-Knowlton
Cindy N. Medford
Mary Ellen Woolley Ross

Section 2. Compensation. The poll workers shall be compensated at a rate not to exceed Salt Lake County’s rate paid for elections.

Section 3. Oath of Each Judge. The Salt Lake County Clerk’s office shall administer an oath to each poll worker as provided in the Utah State Code.

PASSED AND APPROVED by the City Council of Herriman City, Utah, this 14th day of October 2015.

HERRIMAN COUNCIL

Carmen Freeman, Mayor

ATTEST:

Jackie Nostrom, CMC
City Recorder



STAFF REPORT

DATE: October 12, 2015
TO: The Honorable Mayor and City Council
FROM: John Brems, City Attorney
SUBJECT: Recertification of the Herriman Justice Court

RECOMMENDATION:

Approval of the resolution requesting the recertification of the Herriman Justice Court.

BACKGROUND:

Utah Code Annotated §75-5-139(3) requires that Justice Courts be recertified at the end of each four-year term.

DISCUSSION:

Please see the attached draft opinion letter which indicates the requirements and feasibility for continuing the operation of a Justice Court.

October __, 2015

Mayor Carmen Freeman
Herriman
13011 S. Pioneer St.
Herriman, UT 84096

Re: *Opinion Letter Regarding Recertification of Herriman Justice Court*

Dear Mayor Freeman:

I am the duly appointed and acting City Attorney for the city of Herriman, Salt Lake County, Utah (“*Herriman*”). In my capacity as City Attorney, and for purposes of this opinion, I have reviewed the following items:

1. UTAH CODE ANN. §§ 78A-7-103 et seq.
2. Requirements established by the Judicial Council.
3. Resolution No. _____ adopted by the Herriman City Council (the “*Council*”) on October __, 2015, requesting recertification of the Herriman Justice Court (“*T*”).
4. Court Certification Affidavit dated _____, 2015.

In rendering this opinion I have assumed that all documents that have been submitted to me as originals are authentic; all documents that have been submitted to me as copies conform to originals; all signatures are genuine; and (except for the signers on behalf of Herriman) all signers of the documents have the necessary capacities to execute and deliver such documents on behalf of the entities for whom they signed.

Any alteration of the aforementioned facts or assumptions may adversely affect the opinions rendered herein. Further, I have reviewed the items referred to above and have made such inquiries as are specified herein.

Based solely upon the items described above and verbal representation of court personnel, but subject to the qualifications, assumptions, and exceptions herein stated, as of the date hereof I have found that:

1. All official Court business is conducted in a courtroom or in an office located in a public facility which is conducive and appropriate to the administration of justice.

2. The Court is open and judicial business is transacted each day as appropriate for the classification of the Court, although the judges are not present during all hours that the Court is open.
3. The hours that the Court will be open are posted conspicuously at the Court.
4. The judges and the clerk are available to attend Court and conduct Court business as needed and attend the Court at regularly scheduled times.
5. Herriman provides and compensates the judges and clerical personnel to conduct the business of the Court.
6. Herriman assumes expense of travel, meals, and lodging for the judges to attend required judicial education and training.
7. Herriman assumes the cost of travel and training expense for clerical personnel at training sessions conducted by the Judicial Council.
8. Herriman provides sufficient staff of public prosecutors to attend the Court and perform the duties of prosecution.
9. Herriman provides adequate funding for attorneys where persons are indigent as provided by law.
10. Herriman provides law enforcement officers to attend Court when required and provide security for the Court.
11. Witness and jury fees as required by law are paid by Herriman.
12. All fines, surcharges, or assessments which are payable to the State are forwarded to the State as required by law.
13. Herriman pays the judges a fixed compensation.
14. Court is held within the jurisdiction of Herriman, except as provided by law.
15. Herriman provides and keeps current for the Court a copy of the motor vehicle laws of the State of Utah, appropriate copies of the Utah Code, Judicial Court's Manual, state laws affecting local government, local ordinances, and other necessary legal reference material.
16. All required reports and audits are filed as required by law or by the Rules of the Judicial Council.
17. The Court uses a common-case management system and disposition reporting system as specified by the Judicial Council.

18. The Court records all proceedings with a digital audio recording device and the audio recordings are maintained for one year.

19. The Court is open at least one hour each day that the Court is required to be open as provided by law.

20. The judge is available to attend Court and conduct Court business as needed.

21. The Court has the following furnishings: a desk and a chair for the judges (on a 6" riser); a desk and a chair for the court clerk; chairs for the witnesses; separate tables and appropriate chairs for plaintiffs and defendants; a Utah state flag; a United States flag; a separate area and chairs for at least four jurors; a separate area with appropriate seating for the public. The Court also has the following: an appropriate room for jury deliberation; an appropriate area or room for victims and witnesses which is separate from the public; judicial robe; gavel; current bail schedule; copy of the Code of Judicial Administration, and necessary forms and supplies. Office space for the judges and the clerk is also provided. The judge has his own desks, as well as the clerk, and there is a secured filing cabinet for the judges and the clerk, a telephone for the judges, and a telephone for the clerk, appropriate office supplies, a cash register or secured cash box, a typewriter or word processor, and a copy machine.

22. A clerk is present during the time the Court is open each day and during Court sessions.

23. Law enforcement services are provided by a separate service district.

24. A security plan has been filed that appears to be consistent with C.J.A. Rule 3-414.

25. One judge is employed on a part-time basis.

26. The appropriate number of clerks, as required by the classification of the Court, is present during the time the Court is open each day and as needed during Court sessions.

27. The Court is open during regular business hours.

28. The courtroom is not dedicated for exclusive use as a court.

29. The judges' chambers, clerk's office, and courtroom are in the same building.

30. The judge has a private chamber/office.

31. Except as provided above, the judges' chambers and the clerk's offices are not shared by another entity.

Herriman is now advised that the foregoing items are all requirements for Justice Court recertification. Based upon my findings with respect to the above referenced items, it is my

opinion that the Court meets or exceeds all requirements imposed by state statutes and by the state Judicial Council. It is therefore my opinion that the continued operations of the Court are feasible under applicable law.

This opinion is subject to the following limitations:

3.1. The application, effect, and/or nonviolation of any law, regulation, ordinance, or rule of any federal, state, county, municipal, or other governmental agency, court, or body is, of course, subject to any change in existing law, with a retroactive application being possible; to the adoption of conflicting law (by statute, judicial decision, or otherwise); or to the adoption of law where no law now exists. Further, although I consider the opinions expressed herein to be valid under existing law, the modification of such existing law by a court or governmental agency of competent jurisdiction occurring after the date hereof may affect the opinions expressed herein.

3.2. The documents described herein are subject to applicable Utah law (statutory, judicial decisions, and otherwise), which may be affected by the exercise of judicial discretion in accordance with general principles of law and equity.

3.3. The opinions that are expressed herein relate only to the effect of applicable laws of the State of Utah, and I express no opinion as to the effect or application of the laws of any other state, municipality, or jurisdiction.

This opinion is rendered solely for the benefit of the addressees specified above. This opinion is a legal opinion only, and is not a guaranty or warranty of the matters discussed herein. This opinion may not be (a) relied upon by any other person or entity or in connection with any other transaction; (b) furnished, either as an original document or as a copy, to any other persons or entities; (c) quoted, circulated, or referred to (in whole or in part) in any other document; or (d) publicly filed, without my prior written consent.

Very truly yours,

BREMS LAW

John N. Brems

HERRIMAN, UTAH
RESOLUTION NO. 15-

**RESOLUTION REQUESTING THE RECERTIFICATION
OF THE HERRIMAN JUSTICE COURT**

WHEREAS, the Herriman City Council (the “*Council*”) met in regular session on October ___, 2015, to consider, among other things, adopting a resolution requesting the recertification of the Herriman Justice Court; and

WHEREAS, UTAH CODE ANN. § 75-5-139(3) requires that justice courts be recertified at the end of each four-year term; and

WHEREAS, the term of the present court expires on February 8, 2016; and

WHEREAS, the Council has received a draft opinion letter from John N. Brems, City Attorney, which sets forth the requirements for the operation of a justice court and feasibility of continuing to maintain the same; and

WHEREAS, the Council has determined that it is in the best interests of the health, safety and welfare of the inhabitants of Herriman to continue to provide for a justice court.

NOW, THEREFORE, BE IT RESOLVED that the Council hereby requests recertification of the Herriman Justice Court by the Justice Courts Standards Committee and the Utah Judicial Council.

BE IT FURTHER RESOLVED, that the Council hereby affirms its willingness to continue to meet all requirements set forth by the Judicial Council for continued operation of the Herriman Justice Court for the next four-year term, except as to any requirements waived by the Utah Judicial Council.

This Resolution, assigned No. 15-___, shall take effect immediately on passage and acceptance as provided herein.

PASSED AND APPROVED by the Council of Herriman, Utah, this ___ day of October, 2015.

HERRIMAN COUNCIL

By: _____
Carmen Freeman, Mayor

ATTEST:

Jackie Nostrom, Recorder



STAFF REPORT

DATE: October 8, 2015
TO: The Honorable Mayor and City Council
FROM: Planning Commission
SUBJECT: 21Z15 – Ordinance regarding lots on a private right of way.

RECOMMENDATION:

The Planning Commission recommended approval of the text change for lots on a private right of way.

BACKGROUND:

The ordinance currently has a section regarding “lots on a private right of way”. The new text changes this to “flag lots” and outlines the specific requirements for a subdivision with a flag lot.

DISCUSSION:

The new ordinance helps to codify several of the things that we typically require by policy. It makes flag lots much easier to regulate and allows property owners to know what is allowed. Items include the required width of the driveway and the size of the flag lot.

HERRIMAN, UTAH
ORDINANCE NO. 15-xx

**21Z15– HERRIMAN CITY – TEXT CHANGE TO SECTION 10-19-10, LOTS ON A
PRIVATE RIGHT OF WAY**

WHEREAS, the City of Herriman, pursuant to state law, may enact a land use ordinance establishing regulations for land use and development; and

WHEREAS, pursuant to state law, the Planning Commission shall prepare and recommend to the City Council the proposed land use ordinance amendment; and

WHEREAS, pursuant to City of Herriman Land Use Ordinance, the Planning Commission shall hold a public hearing and provide reasonable notice at least 10 days prior to said public hearing to prepare and recommend to the City Council the proposed land use ordinance text changes; and

WHEREAS, notice of the Planning Commission public hearing on the land use ordinance text change was published on September 7, 2015, noticing of the September 17, 2015, public hearing at 7:00 p.m.; and

WHEREAS, the Planning Commission recommended approval of the land use ordinance text change in the meeting held on October 1, 2015, at 7:00 p.m. in the Community Center; and

WHEREAS, pursuant to City of Herriman Ordinance, the City Council must hold a public meeting allowing public input at said public meeting; and

WHEREAS, the City Council public meeting on October 14, 2015, was held at 7:00 p.m.; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of the City of Herriman to adopt the land use ordinance text change as recommended by the Planning Commission;

NOW THEREFORE, be it ordained by the Herriman City Council that the following text change be adopted as a change to the land use ordinance of the City: *(the underlined text is the new wording and the strikethrough text is to be deleted)*

~~10-19-10: LOTS AND BUILDINGS ON PRIVATE RIGHTS OF WAY: *(Land Use Ordinance)*~~

~~A. Except where the requirements of this section are reduced by permit of the appeals authority or approval for a planned unit development, the minimum area for any lot fronting on a private right of way, at least twenty feet (20') wide, shall be one half ($\frac{1}{2}$) acre, and the minimum distance from the center of the right of way to the front line of the building shall be fifty feet (50'); except that property that cannot be subdivided as outlined in the subdivision ordinance~~

~~may be developed on a private street or right of way in any residential R zone upon approval of the community development director. Such approval shall be governed by the official policies regulating such development, as adopted by the planning commission and on file at the planning commission office.~~

~~B. All lots on a private right of way shall be required to install a six foot (6') solid vinyl fence along both sides of the private right of way.~~

10-19-10: FLAG LOTS:

In order to encourage the more efficient use of land, flag, or L-shaped lots may be allowed as an exception subject to the following conditions:

A. A flag or L-shaped lot shall be comprised of a staff portion contiguous with the flag portion thereof.

B. The staff portion of said lot shall front on and be contiguous to a dedicated public street. The minimum width of the staff portion of a flag lot shall be twenty feet (20'), and the maximum length shall be two hundred twenty feet (220') unless otherwise approved by the planning commission upon recommendation of the Unified Fire Authority.

C. A flag lot shall not gain access via an easement on an adjacent property.

D. No building or construction, except for driveways, shall be allowed on the staff portion of said lot unless the minimum width thereof is the same or greater than the minimum width for a lot as allowed in the underlying zone (excluding entrance features and streetlights).

E. The front side of the flag portion of said lots shall be deemed to be that side nearest to the dedicated public street upon which the staff portion fronts, unless otherwise determined by staff on a case by case basis.

F. The staff portion of said lots shall be deemed to end, and the flag portion of said lots shall be deemed to commence at the extension of the front lot line.

G. The square footage of the flag lot shall be a minimum one-half acre. The square footage located in the flag portion of said lot, which shall be exclusive of the square footage located in the staff portion of said lot, shall not be less than one-third acre.

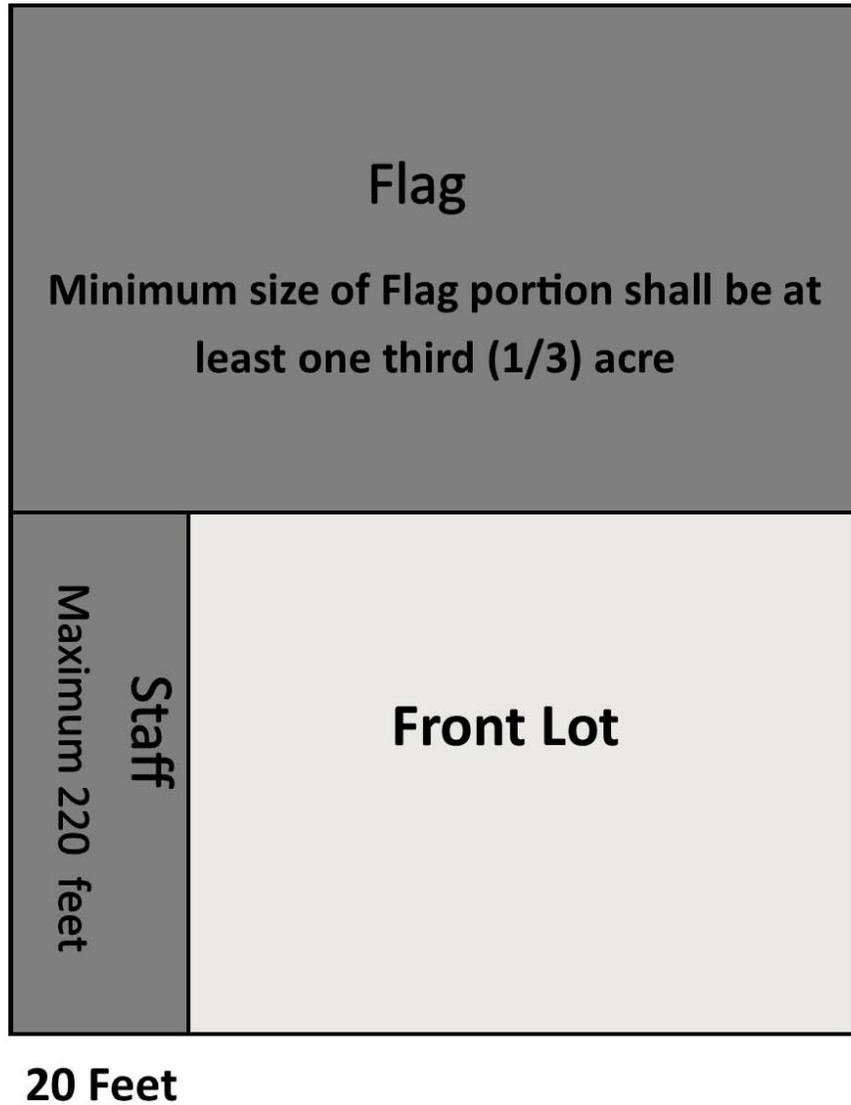
H. The front, side, and rear yard requirements of the flag portion of said lots shall be the same as is required in the underlying zone.

J. No more than one flag lot can be served by the staff portion.

K. The approved building envelope shall be illustrated upon the final plat.

L. A duplex, twin home, or any other multi-family dwelling shall not be located on a flag lot.

M. A six (6) foot solid vinyl fence shall be installed on all sides of the flag lot, including along both sides of the staff portion of the lot, unless an exception is granted by the Planning Commission.



Minimum total Flag lot size of one half (1/2) acre

11-6-3 LOTS (*Subdivision Ordinance*)

F. All flag lots shall meet the requirements of section 10-19-10.

PASSED AND APPROVED this 14th day of October, 2015.

HERRIMAN

ATTEST:

Mayor Carmen Freeman

Jackie Nostrom, City Recorder

VOTING:

Carmen Freeman	Yea	___	Nay	___
Mike Day	Yea	___	Nay	___
Matt Robinson	Yea	___	Nay	___
Craig B. Tischner	Yea	___	Nay	___
Coralee Wessman-Moser	Yea	___	Nay	___



STAFF REPORT

DATE: October 12, 2015
TO: The Honorable Mayor and City Council
FROM: Justun Edwards
SUBJECT: Deer Mitigation Plan Approval

RECOMMENDATION:

Recommend approval of the Deer Mitigation Plan as presented.

BACKGROUND:

The plan has been a work in progress over the last 18 months or so. There have been several public meetings and open houses to receive public comment from the residents on how the city should manage the resident deer populations in Herriman. The plan will consist of two methods, “Lethal” remove deer by trained specialists using archery equipment. “Non-lethal” remove deer using traps and relocate deer to areas determined by the Division of Wildlife Resources.

ALTERNATIVES:

Do nothing

FISCAL IMPACT:

CURRENT FISCAL YEAR BUDGET \$24,500

Urban Deer Control Plan

C.O.R #: 4UDCP9700

City: *Herriman City*

City Contact Information:

Main Contact: *Justun Edwards*

Secondary Contact: *Sandra Llewellyn*

Address for Correspondence:

13011 S Pioneer Street

Herriman, UT 84096

Summary of Justification for Action:

Herriman City's Urban Deer Control Plan is intended to maintain a balance between the number of deer within the City and the negative impact they create for our residents. These negative impacts include auto/deer accidents, damage to private and public property, public safety, and the health of the deer herds. The City has determined that new management controls are needed.

Estimated Population Size at Beginning of Action: *600-700*

Population Objective after Action: *250-300*

Management Actions

Persons Eligible to Perform Deer Removal Activities (List all People and Their Job Descriptions and Contact Information):

The City will select a small group of trained experienced bow hunters to participate in the program. Prior to being certified as an "urban bow hunting specialist," each proposed hunter selected by the City must demonstrate that they understand the applicable rules and pass a shooting proficiency test. Once that is completed, the City will certify the hunter as an "urban bow hunting specialist." All applicable state laws and rules apply and must be adhered to.

Non-Lethal Methods (Including Hazing, Fencing Ordinances. Does not include Live Trapping and Relocation):

N/A

Conditions and Restrictions of Baiting and Spotlighting:

Baiting is only permitted to achieve a closer shot. Spotlighting is only permitted for retrieval of the animal.

Locations and Time Periods of Deer Removal Activities:

Time period to be determined by the Division of Wildlife

Hunt locations will be chosen based on the pressure of animals. Locations will consist of both public and private property. Permission will be received prior to entering private property.

Lethal Methods of Take (Include conditions under which each may be employed):

Archery Tackle equipment only.

Tagging Requirements:

Animal will be tagged with a tag issued by Herriman City immediately upon recovery. Prompt notification to the Herriman City Program Coordinator is required of all kills. Submittal of the Deer Control Harvest Survey for City records is also required.

Carcass Removal and Disposal (Include protocol for how carcasses will be handled once deer are euthanized. Address donating meat, how antlers will be returned to the Division of Wildlife Resources, biological samples collected, etc.):

All evidence of the deer must be removed from the property. Field dress of the deer will need to take place at another permissible site. The hunter is allowed to keep the animal if desired. Donations of the venison are to be taken to Meyer's Meats in Draper, Utah.

Date of Public Meeting Considering this Plan:

October 14, 2015

Approval Signatures:

City Mayor

City Recorder



STAFF REPORT

DATE: October 9, 2015
TO: The Honorable Mayor and City Council
FROM: Blake Thomas, City Engineer
SUBJECT: Street Tree Maintenance Care

RECOMMENDATION:

Approval

BACKGROUND:

Several recent projects have required trees to be trimmed along streets and trails. This has resulted in some issues with residents being disappointed in how the tree trimming has been conducted and concerns regarding the timing of notification from the city of when the work was going to be done.

DISCUSSION:

The updated ordinance includes provisions that identify standards to be met for tree trimming along streets and trails and spacing requirements for new trees to provide for safe sight distances for traffic and pedestrians. There is also a clarification provided for notice to residents when trees are to be trimmed and a method for residents to appeal the city's decision to prune or remove a tree. The ordinance applies mainly to trees on private property the overhang public right-of-way. Trees in the park strips are owned by the City.

ALTERNATIVES:

There are many options for trimming requirements, permitting for trimming trees, and notification of scheduled maintenance.

FISCAL IMPACT:

NONE

HERRIMAN, UTAH
ORDINANCE NO. 15-

**AN ORDINANCE AMENDING HERRIMAN CODE OF ORDINANCES 7-9-4
THROUGH 7-9-6, STREET TREE MAINTENANCE AND CARE**

WHEREAS, the Herriman City Council (“*Council*”) met in regular session on October __, 2015, to consider, among other things, amending Herriman Code of Ordinances 7-9-4 through 7-9-6, Street Tree Maintenance and Care; and

WHEREAS, staff recommends that the Street Tree Maintenance and Care provision of the Herriman Code of Ordinances be amendment; and

WHEREAS, based on information presented to the Council by staff the Council finds that the Street Tree Maintenance and Care provision of the Herriman Code of Ordinances should be amended.

NOW, THEREFORE, BE IT ORDAINED by the Council that Herriman Code of Ordinances 7-9-4 through 7-9-6 be restated in its entirety (the amendments herein are designated by interlineating the words to be deleted and underlining the words to be added) set forth on the attachment hereto.

PASSED AND APPROVED this _____ day of _____, 2015.

HERRIMAN

By: _____
Carmen Freeman, Mayor

ATTEST:

Jackie Nostrom, City Recorder

7-9-4: STREET TREE MAINTENANCE AND CARE:

- A. Care And Maintenance: The parks and recreation director shall initiate and administer a program to provide for the planting, maintenance, care, removal and replacement of street trees, consistent with resources available. At a minimum, adjacent property owners will be required to maintain their park strips by watering street trees.
- B. Standards: All trees located within street rights of way, easements, or city owned places shall be ~~maintained according to applicable standards.~~ located forty (40) feet from the back of curb of an intersecting road, thirty (30) feet from any traffic sign, twenty (20) feet from a street light, and ten (10) feet from a driveway or fire hydrant. Tree locations must be in conformance with the Manual on Uniform Traffic Control Devices (MUTCD) and the American Association of State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets as well as ~~Such standards include~~ standards set by the National Arborist Association, International Society Of Arboriculture, Utah Community Forest Council, and the street tree program.
- C. City Tree Maintenance: The city shall have the right to plant, prune, maintain, and remove street trees. The city may remove, or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to public utilities or other public improvements, or is affected with any injurious fungus, insect, or other pest. This subsection does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of said tree is in accordance with the street tree program and a permit is issued.
- D. Tree Replacement: The city may replace street trees or other plantings which have died or been removed for any reason, or plant additional street trees deemed appropriate, consistent with available resources.
- E. Adjacent Property Owners To Maintain Trees On Their Property: Adjacent property owner trees and other plantings shall not overhang or encroach upon sidewalks, streets, public rights of way, or other designated pedestrianways, or obstruct the view of traffic signs or any street intersection. ~~Trees must be thirty feet (30') from any traffic sign.~~ Trees and other plantings shall be pruned clear of all branches between the ground and a height of seven feet (7') for ~~any~~ that portion over hanging the sidewalk or pedestrianway. Trees and other plantings that project over any street or access road that may be used for emergency purposes shall be trimmed to a height of ~~twelve~~ thirteen feet ~~six inches~~ (123'6") from the grade of the street or access road. Said owners shall remove all dead, diseased, or ~~hazardous~~ dangerous trees; or broken or decayed limbs which constitute a menace to public safety at the owner's expense. If the city determines that a particular tree is not maintained properly, the city may take the following actions:

1. Provide written notice to the owner, occupant, or agent of any lot, building, or premises in or upon which a hazardous tree or a tree obstructing signage or clear view to correct the hazard or obstruction within twenty-one (21) calendar days.
2. Notice under this section may be served in-person or by mail to the person, firm, or corporation.
3. If the particular tree which poses a hazard or obstruction has not been mitigated within twenty-one (21) days after issuance of the notice, the city may perform the required maintenance at the expense of the person, firm, or corporation.
4. Notice of appeal of the city's determination that a tree poses a hazard or obstruction may be filed to the city manager in writing within ten (14) calendar days of issuance of the notice. Appeals shall be heard by the designated department director within fourteen (14) calendar days of receipt of the appeal, which decision is final.

F. Abuse Or Mutilation: It shall be unlawful to injure street trees.

G. Tree Topping: It shall be unlawful to top any street trees. Street trees damaged by storms or other causes, or street trees under utility wires or other obstructions where other pruning practices are impractical, are exempted from this subsection.

H. Debris Removal: Persons working on street trees shall be required to remove all debris from the rights of way by sunset of the same day. The acceptable standard shall be a broom clean finish or better.

I. Planting Season: Planting season for street trees is September 1 through May 31 of the next year. This will ensure a higher survival rate of new trees. (Ord. 13-24, 10-24-2013)

7-9-5: REMOVAL OF TREES:

A. Permit Required: It shall be unlawful for any person to ~~prune, trim, or~~ remove any street tree without first having obtained a permit from the city.

B. Removing Stumps: Any tree, tree stump, or shrub that shall be removed from any of the public street or places within the city shall be removed below the surface of the ground so that the top of the stump shall not project above the level of the ground, unless written permission to leave a projecting stump is granted by the city.

C. City Authority: The city may condemn and remove, or order the removal of any tree, tree stump, shrub, or plant upon any of the public streets or on city owned property within this city where the same is dead, diseased or for any reason whatsoever is deemed undesirable or unsafe by the city. The city shall have the authority to condemn and remove, or order to be removed, any tree, tree stump, shrub, or plant upon private property when the city shall find such action necessary for public safety or to prevent the spread of disease or insects to public trees and places. Where no apparent emergency exists, the city shall give at least fifteen (15) days' notice of intent to remove any street tree to adjacent property owners of the decision to remove the street tree. (Ord. 13-24, 10-24-2013)

7-9-6: PERMITS:

A. Planting: It shall be unlawful for any person to plant or cause to be planted any street tree ~~without first obtaining a permit from the city. Said permit shall specify the location, planting season, and variety of trees to be planted~~that does not meet the spacing and location requirements of section 7-9-4B.

~~B. Trimming: It shall be unlawful for any person, other than city personnel, to engage in tree trimming of a street tree without first obtaining a permit from the city. The permit shall be issued when the city finds that the trimming is necessary and that the proposed method is satisfactory. Said permit shall specify the work to be done under such permit, and shall expire thirty (30) days after the date of its issue.~~

~~B.C.~~ Removal: Any person desiring to remove a street tree shall make application to the city. The city shall determine whether or not such tree is required to be retained in order to preserve the intent and purpose of the street tree program. If the city finds that removal is warranted, then either the city may cause such tree to be removed or issue a permit to the person authorizing removal. If a permit is granted for removal of a street tree, all removal work shall be completed within thirty (30) days from the date of issuance of the permit and shall be under the general supervision of, and in accordance with, the street tree program. All removal permits shall be null and void after the expiration of thirty (30) days from the date of issuance, unless extended by the city.



STAFF REPORT

DATE: October 12, 2015
TO: The Honorable Mayor and City Council
FROM: Justun Edwards
SUBJECT: Avalos Water Impact Fee Adjustment

RECOMMENDATION:

Approval of adjusting water impact fee

BACKGROUND:

Property owner is requesting a water connection to the City water system, they currently receive water from a private well. Current water impact fee charges are based on lot size. The lot is 2.5 acres, the majority of the lot consists of driveway, out buildings, pasture and open space which does not require water use. It has been determined, that approximately .34 acres will require the use of water.

DISCUSSION:

Discuss the approval of adjusting the impact fee from 2.5 acres \$19,652 to .34 acres \$3,071.

ALTERNATIVES:

Charge full impact fee

FISCAL IMPACT:

REDUCED IMPACT FEE REVENUE OF \$16,581.

HERRIMAN, UTAH
ORDINANCE NO. 15-

AN ORDINANCE ADJUSTING THE WATER IMPACT FEE BASED ON UNUSUAL CIRCUMSTANCES WITH RESPECT TO PROPERTY LOCATED AT OR NEAR 13318 SOUTH 7530 WEST

WHEREAS, the Herriman City Council (“Council”) met in regular meeting on October 14, 2015, to consider, among other things, an ordinance adjusting the water impact fee based on unusual circumstances with respect to property located at or near 13318 South 7530 West; and

WHEREAS, Owner of property located at or near 13318 South 7530 West has requested an adjustment to the Water Impact fee based on unusual circumstances; and

WHEREAS, the unusual circumstances are; the property owner owns a .90 acre lot, of which approximately .26 acres require the use of water. With the remainder of the lot consisting of driveways, out buildings, pasture and natural vegetation; and

WHEREAS, based on the information presented to Council the Council finds that the property owners intended use and layout of the lot, reduces the potential impact to the water system from .90 acres to approximately .26 acres constitutes unusual circumstance; and

WHEREAS, after careful consideration, the Council hereby finds that the unusual circumstances justifies an adjustment of the water impact fee with respect to the property located at or near 13318 South 7530 West.

NOW, THEREFORE, BE IT ORDAINED by the Council that the water impact fee with respect to property located at or near 13318 South 7530 West be adjusted for a usage area of .26 acres.

BE IT FURTHER ORDAINED that the City is hereby authorized to implement this ordinance with respect to the property located at or near 19918 South 7530 West.

PASSED AND APPROVED by the Council of Herriman, Utah, this 14th day of October, 2015.

HERRIMAN

ATTEST:

Mayor Carmen Freeman

Jackie Nostrom, City Recorder



STAFF REPORT

DATE: October 12, 2015
TO: The Honorable Mayor and City Council
FROM: Justun Edwards
SUBJECT: Berela Water Impact Fee Adjustment

RECOMMENDATION:

Approval of adjusting water impact fee

BACKGROUND:

Property owner is requesting a water connection to the City water system, they currently receive water from a private well. Current water impact fee charges are based on lot size. The lot is .90 acres in size, the majority of the lot consists of driveway, out buildings, pasture and open space which does not require water use. It has been determined, that approximately .26 acres will require the use of water.

DISCUSSION:

Discuss the approval of adjusting the impact fee from .90 acres \$8,045 to .26 acres \$3,071.

ALTERNATIVES:

Charge full impact fee

FISCAL IMPACT:

REDUCED IMPACT FEE REVENUE OF \$4,974

HERRIMAN, UTAH
ORDINANCE NO. 15-

**AN ORDINANCE ADJUSTING THE WATER IMPACT FEE BASED ON UNUSUAL
CIRCUMSTANCES WITH RESPECT TO PROPERTY LOCATED AT OR NEAR 7014
WEST GINA ROAD**

WHEREAS, the Herriman City Council (“Council”) met in regular meeting on October 14, 2015, to consider, among other things, an ordinance adjusting the water impact fee based on unusual circumstances with respect to property located at or near 7014 West Gina Road; and

WHEREAS, Owner of property located at or near 7014 West Gina Road has requested an adjustment to the Water Impact fee based on unusual circumstances; and

WHEREAS, the unusual circumstances are; the property owner owns a 2.5 acre lot, of which approximately .34 acres require the use of water, with the remainder of the lot consisting of driveways, out buildings, pasture and natural vegetation; and

WHEREAS, based on the information presented to Council the Council finds that property owners intended use and layout of the lot, reduces the potential impact to the water system from 2.5 acres to approximately .34 acres constitutes unusual circumstance; and

WHEREAS, after careful consideration, the Council hereby finds that the unusual circumstances justifies an adjustment of the water impact fee with respect to the property located at or near 7014 West Gina Road.

NOW, THEREFORE, BE IT ORDAINED by the Council that the water impact fee with respect to property located at or near 7014 West Gina Road be adjusted for a usage area of .34 acres.

BE IT FURTHER ORDAINED that the City is hereby authorized to implement this ordinance with respect to the property located at or near 7014 West Gina Road.

PASSED AND APPROVED by the Council of Herriman, Utah, this 14th day of October, 2015.

HERRIMAN

ATTEST:

Mayor Carmen Freeman

Jackie Nostrom, City Recorder



STAFF REPORT

DATE: October 9, 2015

TO: The Honorable Mayor and City Council

FROM: Blake Thomas, City Engineer

SUBJECT: Reduction of Transportation Impact Fees for Knots on Main

RECOMMENDATION:

Approval

BACKGROUND:

The existing transportation impact fee for commercial development works well for some commercial applications but not for others because it is based solely on square footage of the business and there are no separate categories for the type of business.

DISCUSSION:

The owner felt that the impact fee required was not proportional to the actual traffic anticipated by their development. Per ordinance, the Council can consider a reduction of fees if the owner conducts a study and the Council, upon review of the study, finds that the reduction is justified. Therefore, the owner commissioned an independent study to be conducted by a local professional engineer who emphasizes in traffic engineering. Their study shows that a reduction of the fees is justifiable. The original transportation impact fee calculation is \$26,100 and the suggested transportation impact fee is \$10,439.

ALTERNATIVES:

N/A.

FISCAL IMPACT:

REDUCTION IN TRANSPORTATION IMPACT FEES BY \$XX.XX

HERRIMAN, UTAH
ORDINANCE NO. 15-

**AN ORDINANCE ADJUSTING THE TRANSPORTATION IMPACT FEE BASED ON A
STUDY SUBMITTED BY THE DEVELOPER WITH RESPECT TO A NEW
COMMERCIAL DEVELOPMENT LOCATED AT OR NEAR _____ TO BE KNOWN
AS KNOTS ON MAIN**

WHEREAS, the Herriman City Council (“Council”) met in a regular meeting on October __, 2015, to consider, among other things, an ordinance adjusting the transportation impact fee based on a study submitted by the developer with respect new commercial development located at or near _____ to be known as Knots on Main; and

WHEREAS, _____, is developing a new commercial development to be known as Knots on Main (“Knots”) that will be built on a parcel of real property located at or near _____; and

WHEREAS, Knots and/or its representative submitted to the City a study (“Study”) demonstrating that their proportionate share of the costs of transportation facilities are not reasonably related to their development activity; and

WHEREAS, the Study indicated, among other things, that _____;
and

WHEREAS, as required by Utah Code Ann §11-36a0402 (1)(d) Ordinance No. _____ includes a provision governing calculation of the amount of the transportation impact fee to be imposed on a particular development that permits adjustment of the amount of the impact fee based upon studies and data submitted by the developer.

WHEREAS, after careful consideration, the Council hereby finds that the developer and/or its representative has submitted studies and data in the form of the Study that justifies an adjustment of the transportation impact fees with respect to Knots on Main and that it is in the best interest of the health, safety, and welfare of the citizens of the City to adjust the transportation impact fee with respect to Knots on Main.

NOW, THEREFORE, BE IT ORDAINED by the Council that the transportation impact fee with respect to Knot on Main be adjusted to an adjusted total transportation impact fee of \$10,439.

BE IT FURTHER ORDAINED that the City is hereby authorized to implement this ordinance with respect to Knots on Main.

PASSED AND APPROVED by the Council of Herriman, Utah, this ___ day of October, 2015.

HERRIMAN

ATTEST:

Mayor Carmen Freeman

Jackie Nostrom, City Recorder

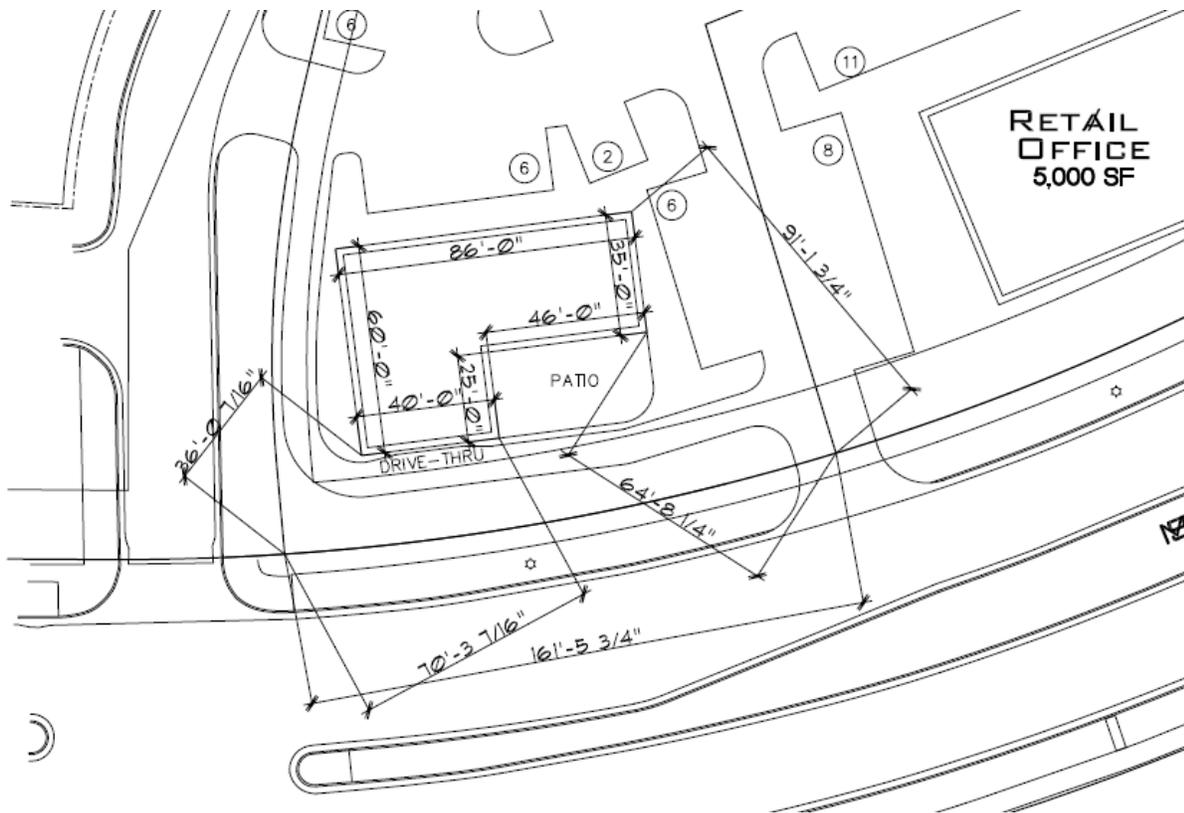
October 5, 2015



RE: Knots on Main Street – Herriman City, UT - Trip Generation

The proposed Knots on Main Street is a bakery / restaurant development located in Herriman, UT. Figure 1 shows the proposed site plan with a total of 5,156 sf of development where the baking area is 1,200 sf and 893 sf is being used for storage / office space which is a net 4,263 sf of restaurant space. This memo identifies the trip generation for the proposed site plan in order to compare it with the projected City traffic generation for the Transportation Impact Fees.

Figure 1: Site Plan



In determining the impact fees, the City must rely on a general retail classification in order to develop a generic impact fee per square feet as all Cities are required. Herriman City includes a transportation impact fee of \$4,350 per 1,000 sf which appears to be the average combination of the 9th Edition ITE general retail land use 820 (44.32 trip per day per 1,000 sf) and the (Specialty land use 826 of 42.7 trips per day per 1,000 sf). As specific retail sites are developed, a more accurate estimate of the traffic generated by site land use is needed to accurately determine the impact fees required by the City.

Table 1: ITE Trip Rates

ITE 9th Ed	Size	Land Use	Daily	Daily
Knots on Main	4,263	820/826	43.5	185

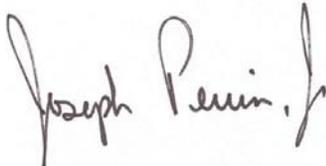
Based on the information provided, the impact fee should be based on 4,263 sf instead of the 5,156 sf. Further, the Trip Generation Handbook, 2nd Edition, the following reductions are also supported.

- 34% pass by traffic for retail commercial based on Page 46
- 10-15% local non-motorized traffic from being near the City Center/ bike route
- Applying the 34% reduction of pass by would indicate a daily rate of trip projection of 122 daily trips.
- The additional 10% of non-motorized trips would reduce the daily trips by 18.5 to 104 trips.

The 104 daily trips after non-motorized and pass-by traffic is factored indicates that the site is functioning closer to what would be expected from a 2,400 sf retail facility (104 trips / 43.5 trips per 1,000 sf). This would indicate an impact fee of (2,400 sf * \$4,350 per 1,000 sf) \$10,439 would be more representative for this site.

Please contact me with any questions at (801) 949-0348.

Sincerely,
A-Trans Engineering



Joseph Perrin, PhD, PE, PTOE
 Principal



STAFF REPORT

DATE: October 9, 2015
TO: The Honorable Mayor and City Council
FROM: Blake Thomas, City Engineer
SUBJECT: Street Sign Fee Ordinance Amendment

RECOMMENDATION:

Approval

BACKGROUND:

The engineering department performed an audit on the cost of street signs for new developments to determine if the fee being charged to developers was adequate. There were concerns that the fee was not covering the cost in some developments and that it was excessive in other developments.

DISCUSSION:

The audit determined that fees were not well aligned with actual costs. The proposed fees will align with actual current costs of street signs for new developments. A comparison of the current and proposed sign fees are provided below:

<u>Description</u>	<u>Old Fee</u>	<u>New Fee</u>
Local public roads <ul style="list-style-type: none">• Street Name Sign• Regulatory Sign	\$250 \$315	\$345 \$225
Collector & Arterial Public Roads <ul style="list-style-type: none">• Street Name Sign• Regulatory Sign	\$250 \$315	\$505 \$385
Private Roads (Excluding Towne Center) <ul style="list-style-type: none">• Street Name Sign• Regulatory Sign	\$250 \$315	\$245 \$125
Towne Center Public Streets <ul style="list-style-type: none">• Street Name Sign• Regulatory Sign	\$250 \$315	\$505 \$385
Towne Center Private Streets <ul style="list-style-type: none">• Street Name Sign	\$250	\$405

• Regulatory Sign	\$315	\$285
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ALTERNATIVES:

N/A.

FISCAL IMPACT:

NONE



HERRIMAN, UTAH
ORDINANCE NO. 15-

**AN ORDINANCE AMENDING ORDINANCE 06-__ WITH RESPECT TO
SUBDIVISION STREET SIGNS**

WHEREAS, on October __, 2015, the City Council (the “*Council*”) met in regular session to consider, among other things, amending Ordinance 06-__ with respect to subdivision street signs; and

WHEREAS, the engineering department performed an audit on the cost of street signs for new developments to determine if the fee that is being charged to developers was adequate. The audit determined that the fees were not reasonable related to the cost to provide such service and the engineering department recommends the adoption of a new fees schedule; and

WHEREAS, the Council desires to implement a revised subdivision street sign fee schedule based on the recommendation of the engineering department; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of Herriman to adopt a revised subdivision fee schedule as described herein.

NOW, THEREFORE, BE IT ORDAINED by the Council that the following be adopted as the revised subdivision street sign fee schedule directs staff to amend the Herriman City-Master Fee Schedule consistent with this ordinance.

Subdivision Street Signage:

<u>Description</u>	<u>Fee</u>
Local public roads	
•Street Name Sign	\$345
•Regulatory Sign	\$225
Collector & Arterial Public Roads	
•Street Name Sign	\$505
•Regulatory Sign	\$385
Private Roads (Excluding Towne Center)	
•Street Name Sign	\$245
•Regulatory Sign	\$125
Towne Center Public Streets	
•Street Name Sign	\$505
•Regulatory Sign	\$385
Towne Center Private Streets	
•Street Name Sign	\$405
•Regulatory Sign	\$285

This Ordinance, assigned Ordinance No. 15-____, shall take effect immediately.

PASSED AND APPROVED this ____ day of J October 2015.

HERRIMAN COUNCIL

By: _____
Carmen Freeman, Mayor

ATTEST:

Jackie Nostrom, Recorder



STAFF REPORT

DATE: October 8, 2015

TO: The Honorable Mayor and City Council

FROM: John Brems

SUBJECT: Adding Chapter A-5a regarding abatement of weeds, garbage and refuse, public nuisances, and illegal objects and structures.

RECOMMENDATION:

To approve adding Chapter A-5a regarding abatement of weeds, garbage and refuse, public nuisances, and illegal objects and structures; and also appointing a municipal inspector.

BACKGROUND:

Utah Code Section 10-11-1 authorizes a City to abate certain nuisances and then charge the cost of abatement to the property owner. Utah Code Section 10-11-2 contemplates an ordinance to describe the duties of an inspector and to implement the process. This ordinance creates the ordinance contemplated by the statute and _____ appoints the inspector. I have attached a memo that I wrote to the City detailing the process.

HERRIMAN, UTAH
ORDINANCE NO. 15-

**AN ORDINANCE ADDING CHAPTER 4-5A REGARDING ABATEMENT OF WEEDS,
GARBAGE AND REFUSE, PUBLIC NUISANCES, AND ILLEGAL OBJECTS AND
STRUCTURES**

WHEREAS, the Herriman City Council (the “Council”) met in regular meeting on October 14, 2015, to consider, among other things, adding Chapter 4-5a regarding Abatement of Weeds, Garbage and Refuse, Public Nuisances, and Illegal Objects and Structures; and

WHEREAS, Utah Code Ann. § 10-11-1 *et seq.* allows municipalities to regulate the abatement of weeds, garbage and refuse, public nuisances, and illegal objects and structures to appoint a municipal inspector for purposes of carrying out the provisions of the statute; and

WHEREAS, the Council determines that it is necessary to adopt an ordinance consistent with Utah Code Ann. § 10-11-1 *et seq.* to regulate the abatement of weeds, garbage and refuse, public nuisances, and illegal objects and structures.

NOW, THEREFORE, BE IT ORDAINED that the following be added to the Herriman Code of Ordinances:

CHAPTER 4-5a
**ABATEMENT OF WEEDS, GARBAGE AND REFUSE, PUBLIC
NUISANCES, AND ILLEGAL OBJECTS AND STRUCTURES**

4-5a-1: PURPOSE:

The Herriman City Council hereby declares that it is beneficial to the community to enact this chapter to regulate abatement of the growth and spread of injurious and noxious weeds, garbage and refuse, public nuisances, and illegal objects and structures. The provisions of this chapter shall constitute an additional method to regulate abatement of the growth and spread of injurious and noxious weeds, garbage and refuse, public nuisances, and illegal objects and structures. The provisions of this chapter shall be liberally construed in order to carry out the abatement of the growth and spread of injurious and noxious weeds, garbage and refuse, public nuisances, and illegal objects and structures.

4-5a-2: MUNICIPAL INSPECTOR:

The city council may appoint a municipal inspector to examine and investigate real property located within the city for the growth and spread of injurious and noxious weeds, garbage and refuse, public nuisances, and illegal objects and structures. The municipal inspector shall examine and investigate real property located within the city for the growth and spread of injurious and noxious weeds, garbage and refuse, public nuisances, and illegal objects and structures.

4-5a-3: INSPECTION:

If the inspector conducts an examination and investigation of real property located within the city, the inspector shall deliver written notice of the results of the examination and investigation in accordance with 4-5a-4.

4-5a-4: WRITTEN NOTICE:

- A. The municipal inspector shall serve the written notice on the property owner of record according to the Salt Lake County Recorder's Office, as provided in subsection C.
- B. The municipal inspector may serve the written notice on a nonowner occupant of the property or another person responsible for the property, who is not the owner of record, including a manager or agent of the owner, if the property owner is not an occupant of the property, as provided in subsection C.
- C. The written notice may be served on the property owner of record in person or by mail to the last-known address of the owner according to the records of the Salt Lake County Recorder's Office or on the nonowner occupant or another person responsible for the property who is not the owner of record in person or by mail to the property address.
- D. The written notice shall identify the property owner of record according to the records of the Salt Lake County Recorder's Office, describe the property and the nature and the results of the examination and investigation conducted, and require the property owner, occupant, or, if applicable, another person responsible for the property to eradicate or destroy or remove identified items examined and investigated and comply in a time period designated in the notice, but no less than 10 days after the day on which the notice is delivered or postmarked. With respect to a written notice of injurious and noxious weeds, the municipal inspector is not required to give more than one notice for each annual season of weed growth for weeds growing on the property.

4-5a-5: REMOVAL BY CITY AND COST OF REMOVAL:

- A. If the owner of, occupant of, or other person responsible for, the real property described in the written notice fails to timely comply with the written notice, the municipal inspector may, at the expense of the city, employ necessary assistance to enter the property and destroy or remove any item identified in the written notice and prepare an itemized statement, as set forth in subsection B, and mail to the owner of record according to the Salt Lake County Recorder's Office a copy of the itemized statement demanding payment within 30 days after the day on which the statement is postmarked.
- B. The itemized statement shall include the address of the property, an itemized list of and demand for payment of all expenses, including administrative expenses incurred by the city to employ necessary assistance to enter the property and destroy or remove the items identified in the written notice, the address of the city

treasurer where payment may be made for the expenses and notify the property owner that failure to pay the expenses may result in a lien on the property in accordance with Utah Code Ann. § 10-11-4, and that the owner may file a written objection to all or part of the statement within 20 days after the day of the statement postmark with the city recorder.

- C. If the owner fails to file a timely written objection or timely pay the amount set forth in the demand for payment, the city may file an action in district court or certify the past-due costs and expenses to the Salt Lake County Treasurer.
- D. If the city files an action in the district court, the city may sue for all removal and destruction costs, including administrative costs and reasonable attorney's fees, interest, and court costs.
- E. If the property owner files a written objection, as provided above, the city shall hold a hearing pursuant to the provisions of Herriman Code of Ordinances 1.11.1 *et seq.* as if it were an appeal of an administrative notice, except that the time periods and notice set forth in this chapter shall be applicable. The city shall mail or deliver notice of the hearing date and time to the property owner. At the hearing, the hearing officer shall review and determine the actual cost of abatement, if any. The property owner shall pay the actual cost due after the decision by the hearing officer to the city treasurer within 30 days after the date on which the hearing is held.
- F. If the property owner fails to pay the amount due as determined by the hearing officer, the city may file an action in the district court for the amount due as determined by the hearing officer or certify the past-due cost and expenses to the Salt Lake County Treasurer in accordance with Utah Code Ann. § 10-11-4.

4-5a-6: DUTY TO MAINTAIN PROPERTY:

- A. The owner and the occupant of a property who is not the property owner of record shall have a joint and several obligation and the duty to maintain property located with the city, including, but not limited to, abatement of the growth and spread of injurious and noxious weeds, garbage and refuse, public nuisance, or illegal objects or structures.
- B. Definition of noxious weeds shall have the same meaning as that term is defined in Utah Code Ann. § 4-17-1 *et seq.* or its successor.

This Ordinance, assigned Ordinance No. 15-___, shall take effect as soon as it shall be published or posted as required by law, deposited, and recorded in the office of the City Recorder, and accepted as required herein.

PASSED AND APPROVED this 14th day of October, 2015.

HERRIMAN CITY COUNCIL

By: _____
Carmen Freeman, Mayor

ATTEST:

Jackie Nostrom, Recorder

BREMS LAW
2798 West Matterhorn
Taylorsville, UT 84129
(801) 580-2347

Memorandum

TO: Gordon Haight
Bryn McCarty

FROM: John N. Brems

DATE: October 6, 2015

RE: Memo Regarding Abatement of Weeds, Garbage, Refuse, and Unsightly Objects

This memo summarizes the process identified in Utah Code Ann. § 10-11-1 se seq. to deal with nuisances. The following details the process and outlines three special problem areas (Note the process described in this memo is just one of several approaches to deal with nuisances):

1. Inspection. UTAH CODE ANN. § 10-11-1 provides that a municipal inspector (“*Inspector*”) examine and investigate real property located within the City for the growth and spread of injurious and noxious weeds, garbage and refuse, public nuisances, or illegal objects and structures (collectively referred to herein as “*Weeds and Junk*”). If the Inspector inspects property, then he must deliver written notice (“*Written Notice*”) of the results of the inspection as described below.

2. Appointment of Inspector. UTAH CODE ANN. § 10-11-1 provides that “A municipal legislative body . . . may appoint a municipal inspector for the purpose of carrying out the provision of this chapter.” I recommend that the appointment be made by ordinance.

3. Written Notice. UTAH CODE ANN. § 10-11-2 requires that the Inspector deliver Written Notice of the results of his inspection to the owner (or occupant, if different, as described below) of the property inspected. “Deliver” as used in this section means serving the Written Notice, either personally or by mailing notice, addressed to the owner, at the last-known post office address as disclosed in the records of the Salt Lake County Recorder (“*Recorder*”). If Written Notice is “delivered” to an occupant that is different from the owner, it must be served, either personally or by mailing to the property address. The Written Notice must describe the property and the nature and result of the examination and investigation conducted and require the property owner or occupant, if different, to eradicate or destroy and remove items specifically identified in the Written Notice and indicate a time period within which such eradication must occur. The time period cannot be less than ten (10) days from delivery or postmark. If the Written Notice is for injurious and noxious weeds, the municipal inspector is not required to make more

than one Written Notice of each season of weed growth. Attached as exhibit “A” is a form Written Notice for your use.

4. City Assistance. UTAH CODE ANN. § 10-11-3 provides that if the owner or occupant, if different, does not eradicate the Weeds and Junk in accordance with the Written Notice, the Inspector, at the expense of the City, may employ necessary assistance to eradicate the Weeds and Junk. The Inspector must then prepare an itemized statement of all expenses, including administrative expenses, incurred to eradicate the Weeds and Junk. The Inspector must then mail a copy of the itemized statement to the owner demanding **payment** (“*Demand*”) within thirty (30) days of the date of the postmark of mailing of the amount set forth in the itemized statement. Note the statute does not indicate a minimum time period to give the Written Notice after the City employs the necessary assistance to eradicate the Weeds and Junk. I suggest that we establish a 30-day time period as policy and try our best to timely comply. The Demand must be sent by certified mail addressed to the property owner’s last-known address according to the Recorder. I recommend that it also be sent return receipt requested and by First Class mail. Attached as exhibit “B” is a form Demand for your use. If the owner fails to file a timely written objection to the Demand or to pay the amount set forth in the Demand within the required thirty (30) days, then the City may file an action in district court or certify the past-due costs and expenses to the Salt Lake County Treasurer (“*County Treasurer*”).

5. Suit. If collection of the costs is pursued through suit, the City may sue for and receive a judgment for all the costs of removal and destruction, including administrative costs, together with reasonable attorneys’ fees, interest and court costs and execute on the judgment.

6. Referral to the County Treasurer. If collection of the cost is pursued through referral to the Treasurer, the City must certify to the County Treasurer the past-due costs and expenses which appear to include administrative expenses incurred with respect to employing necessary assistance to eradicate the Weeds and Junk. Attached as exhibit “C” is a form certification for your use.

7. Written Objection. If the property owner files a timely written objection to the Demand, then a hearing is held as if it were an appeal of an administrative notice, except the time periods applicable to this provision shall control. At the hearing, the hearing officer reviews and determines the actual costs of eradication, if any. The property owner must pay the actual costs due after a decision of the hearing officer to the City Treasurer within 30 days after the day on which the hearing is held. If the property owner fails to timely pay such amount, the City may file an action in district court or certify the past-due costs and expenses to the County Treasurer.

8. Priority of Lien. Once the amount is entered on the Salt Lake County assessment rolls, it becomes a lien upon the property (same force and effect of a valid judgment at the district court, but not the same as a tax) and is collected by the County Treasurer at the time of payment of general taxes.

9. Special Situations.

a. Foreclosure. UTAH CODE ANN. § 10-11-4 provides that after entry by the County Treasurer that the amount entered shall have the force and effect of a valid judgment of the

district court and shall be a lien upon the property and shall be collected by the County Treasurer at the time of payment of general taxes. A suit and properly docketed judgment will have the same status but will not be collected by the County Treasurer. It is not uncommon for a property that has an accumulation of Weeds and Junk to be subject to some type of foreclosure. Utah law authorizes two types of foreclosures, nonjudicial foreclosure and judicial foreclosure or execution sale. In the event of a nonjudicial foreclosure, UTAH CODE ANN. § 57-1-28 provides that all subsequent interest holders' or junior lien holders' rights are eliminated with no right of redemption. In most circumstances, the lien for the cost to remove Weeds and Junk would be a junior lien and would be eliminated on a nonjudicial foreclosure thereby eliminating the County Treasurer's ability to collect on the judgment for cleanup of the Weeds and Junk as described in this memo. In the event of a judicial foreclosure or execution sale the junior lien holder has the right of redemption. In most circumstances the lien for the cost to remove the Weeds and Junk will be a junior lien holder. Utah Rule of Civil Procedure 69(C) provides that a junior lien holder has the right of redemption. Generally, the right of redemption is the right to redeem (in effect, the right to purchase) the property from a superior lien holder (in effect the owner of the property) by paying an amount equal to the sales price (the amount paid at foreclosure) plus 6%. The right of redemption must be exercised within 180 days after the sale. It is possible that the amount of the judgment will be paid because it appears on the property tax notice and is collected by the County Treasurer and may be erroneously considered to be a tax rather than a lien (which is not discharged by foreclosures).

b. Bankruptcy. The filing of a bankruptcy petition invokes what is known as the bankruptcy automatic stay. The automatic stay generally prevents creditors from taking any action to collect prebankruptcy debts from the bankrupt. Bankruptcy Code § 362(a). Actions taken in violation of an automatic stay are void, and willful violations of the automatic stay may allow the debtor to collect damages, including costs and attorney's fees. Bankruptcy Code § 362(h). Bankruptcy Code § 362(b) sets forth several exceptions to the automatic stay. Specifically, there is an exception to commence or continue an action or proceeding to enforce its "police and regulatory powers." Under the police and regulatory exception, there are four types of actions the City may take without violating the automatic stay. They are as follows:

- (1) commencement or continuation of an action or proceeding against the debtor that could have been commenced before the bankruptcy was filed;
- (2) the enforcement of a judgment (other than a money judgment) against the debtor or the debtor's property;
- (3) any act to obtain possession or control of debtor's property; and
- (4) an act to collect, assess, or recover a claim against the debtor for a claim that arose before the bankruptcy.

Bankruptcy Code § 362(a) (1)-(3), (6). The Bankruptcy Code does not define police and regulatory powers, but the courts have fashioned several tests to determine whether an action falls within this exception to the automatic stay. To summarize these tests, the underlying issue is whether the City's actions relate to public safety and welfare—effectuating public policy—in which the City's actions fall within the exception or whether the City's primary purpose is

pecuniary, in which case the automatic stay applies. Generally, courts hold that the City's actions to abate Code violations relating to health, safety, and general welfare are classic exercise of police and regulatory powers and fall squarely within the exemption to the automatic stay. As such, "actions to enforce property maintenance standards by issuing ordinance violations, citations, orders to comply, assessment of fines, and notices of potential civil penalties constitute action by a government unit to enforce its police powers or regulatory powers, and Section 362(b)(4) exempts these actions from the automatic stay as a matter of law. See In re Phillips, 368 B.R. 733, 741 (Bankruptcy N. D. Ind. 2007). However, once liability is affixed and a money judgment has been entered, a city necessarily acts only to vindicate its own interest in collecting those judgments," and the police and regulatory exception does not apply. See Phillips. Therefore, attempts to collect a money judgment, to file a lien against any of the bankrupt's property, or the "certification" process used by the City violate the automatic stay. The recordation of a notice pursuant to City Code § 18.06.010-060 would not violate the automatic stay. The Bankruptcy Reform and Consumer Protection Act of 2005, which became effective October 17, 2005, contains a provision that may be useful in this regard. Bankruptcy Code § 342(f)(1) permits the City to file a general notice of appearance, directing that all bankruptcy notices in Chapter 7 or 13 cases from the bankrupt be provided to a centralized location. If the City were to file a general notice of appearance under this provision, any notice of commencement of any Chapter 7 or 13 cases should be sent to that centralized location. I recommend that the City file such a notice and name me as the centralized location and that before taking the steps outlined above, check with me to confirm that the owner or occupant of the property has not filed a bankruptcy petition. I would be pleased to prepare a general notice of appearance to implement this recommendation.

c. Property Owned by Public Entity. UTAH CODE ANN. § 10-11-4 provides that the process of referral to the County Treasurer does not apply to public building, public structure, or public improvements (for example property owned by UDOT and the federal government). Also, before you pursue cleanup of property owned by the federal government or any of its agencies, please contact me.

EXHIBIT "A"

October 12, 2015

(NAME)
(ADDRESS)

**Re: *Written Notice of the Examination and Investigation
at (ADDRESS) (the "Property")***

Dear _____:

Herriman City (the "City") strives to maintain an ideal community in which to live, work, shop and play. _____ Code of Ordinances (the "Ordinances") was adopted to assist in maintaining the health and safety of the residents of the City.

As authorized by the Ordinances and UTAH CODE ANN. §§ 10-11-1, *et seq.* the "City Inspector" has ascertained that you are the owner of the Property described as:

(LEGAL DESCRIPTION; PARCEL ID#; ADDRESS)

After careful examination and investigation, the City Inspector has determined that the following violations exist: **(Note the following are examples)**

1. Junk in the yard – refuse, unsightly or deleterious objects (UTAH CODE ANN. § 10-11-1, *et seq.* and City Ordinance _____).
2. Weeds in excess of six inches (UTAH CODE ANN. § 10-11-1, *et seq.* and City Ordinance _____).
3. Failure to keep property clean – refuse, unsightly, or deleterious objects (UTAH CODE ANN. § 10-11-1, *et seq.* and City Ordinances _____).

YOU ARE REQUIRED TO ERADICATE, OR DESTROY AND REMOVE, SUCH ITEMS WITHIN _____ () DAYS FROM THE DATE THIS NOTICE WAS DELIVERED OR POSTMARKED.

If you fail or neglect to eradicate, or destroy and remove such items in accordance with this notice, they will be eradicated, destroyed or removed at your expense. Specifically, the City Inspector will employ necessary assistance and cause such items to be removed or destroyed, and payment for such assistance will be demanded of you. Failure to make payment of the amounts expended within thirty (30) days of demand may result in suit being brought to collect these amounts, or result in a lien on the Property in accordance with UTAH CODE ANN. § 10-11-4.

Govern yourself accordingly.

Very truly yours,

Herriman City

_____, City Inspector

EXHIBIT "B"

October 12, 2015

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL**

(NAME)
(ADDRESS)

Re: ITEMIZED STATEMENT/DEMAND FOR PAYMENT

Dear _____:

On or about _____, written Notice of Examination and Investigation was mailed to you with respect to the property located at _____. You failed to comply with the notice. Therefore, the Herriman City employed necessary assistance and caused such weeds, garbage, refuse, objects or structures to be removed or destroyed.

Pursuant to UTAH CODE ANN. § 10-11-1 *et seq.*, an itemized statement of all expenses incurred in the removal and destruction of such weeds, garbage, refuse, objects and structures is attached hereto.

DEMAND IS HEREBY MADE THAT PAYMENT OF THE AMOUNT OF THESE EXPENSES BE MADE WITHIN THIRTY (30) DAYS OF THE DATE OF THE MAILINGS OF THIS LETTER. PAYMENT MAY BE MADE TO THE CITY TREASURER AT 13011 SOUTH PIONEER STREET, HERRIMAN, UTAH 84096.

In the event that you fail to make payment of the amount set forth in the itemized statement to the Treasurer of Herriman City at 13011 South Pioneer Street, Herriman, Utah 84096 within the thirty (30) day time period, it may result in a lien on the property in accordance with UTAH CODE ANN. § 10-11-4.

You may file a written objection to all or part of the itemized statement within twenty (20) days after the date of the statement postmark with the Herriman City Recorder, 13011 South Pioneer Street, Herriman, Utah 84096.

Without acknowledging that these actions are within the coverage of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, the following notice is provided:

PURSUANT TO 15 U.S.C. § 1692, *et seq.*, YOU ARE HEREBY NOTIFIED THAT THIS IS AN ATTEMPT TO COLLECT A DEBT, AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THE DEBT SHALL BE ASSUMED VALID IF YOU DO NOT DISPUTE THE VALIDITY OF THIS DEBT WITHIN THIRTY (30) DAYS OF RECEIVING THIS NOTICE. IF YOU DISPUTE THIS DEBT IN WRITING WITHIN THIRTY (30) DAYS OF RECEIVING THIS NOTICE, YOU WILL BE PROVIDED WITH VERIFICATION OF THE DEBT. YOU WILL ALSO BE PROVIDED WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR IF YOU SO REQUEST IN WRITING WITHIN THIRTY (30) DAYS OF THIS NOTICE. YOU ARE FURTHER NOTIFIED THAT NOTWITHSTANDING THE NOTICES PROVIDED HEREIN, LEGAL ACTION TO COLLECT THIS DEBT MAY BE COMMENCED WITHIN THIRTY (30) DAYS OF THIS NOTICE.

Very truly yours,

HERRIMAN CITY

By: _____
_____, City Inspector

EXHIBIT "C"

_____2015

Salt Lake County Treasurer
2001 South State Street
Salt Lake City, UT 84190

Re: *Certification of Unpaid Costs and Expenses (Property Location)*

Dear County Treasurer:

Pursuant to UTAH CODE ANN. § 10-11-4, *et seq.*, Herriman City hereby certifies to you that there are unpaid costs and expenses in the amount of \$_____ with respect to the property located at (*Address, legal description and ID#*).

Very truly yours,

HERRIMAN CITY

