

CITY OF SOUTH SALT LAKE
CITY COUNCIL MEETING

COUNCIL MEETING Wednesday, March 9, 2016
7:00 p.m.

CITY OFFICES 220 East Morris Avenue
South Salt Lake, Utah 84115

PRESIDING Council Chair Debbie Snow

CONDUCTING: Council Member Sharla
Beverly

SERIOUS MOMENT OF REFLECTION/
PLEDGE OF ALLEGIANCE Debbie Snow

SERGEANT AT ARMS Bill Hogan

COUNCIL MEMBERS PRESENT:
Sharla Beverly, Mark Kindred, Portia Mila, Ben Pender,
Kevin Rapp, Shane Siwik and Debbie Snow

STAFF PRESENT:
Mayor Cherie Wood
Charee Peck, Chief of Staff
Lyn Creswell, City Attorney
Hannah Vickery, Deputy City Attorney
Kyle Kershaw, Finance Director
Mike Florence, Community and Economic Development Director
Frank Lilly, Deputy Community & Economic Development Director
Alexandra White, City Planner
Corby Talbot, Wastewater Manager
Mont Roosendaal, Public Assets Director
Sharen Hauri, Urban Design Director
Craig D. Burton, City Recorder
Niels Melville, Information Technology

OTHERS PRESENT:
See attached list.

APPROVAL OF MINUTES

February 10, 2015 Work Meeting. Council Member Rapp moved to approve these minutes.

MOTION Kevin Rapp
SECOND Ben Pender

Voice Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

February 10, 2015 Regular Meeting. Council Member Pender moved to approve these minutes with a correction.

MOTION	Ben Pender
SECOND	Kevin Rapp

Voice Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

NO ACTION COMMENTS

1. **SCHEDULING.** The Deputy City Recorder informed those at the meeting of upcoming events, meetings, activities, etc.
2. **CITIZEN COMMENTS/QUESTIONS.** None.
3. **MAYOR COMMENTS.** Mayor Wood reminded the Council that the City was selected by the national director of the FBI for his leadership award this year. The area director will be at the Central Park Community Center at 1:00 p.m. on March 31. In April, Police Chief Jack Carruth and Jerry Silva will be going back to the FBI to receive the award.

The Mayor introduced Adina Hamik as the new Youth City Council Advisor.

Youth City Council Mayor, Asma Dahir, and her twin sister Anisa, reported on the latest activities of the Youth City Council.

4. **CITY ATTORNEY COMMENTS.** City Attorney, Lyn Creswell, asked the Council to let the City Recorder know if they are interested in attending the Fire Opps 101 event on May 14.
5. **CITY COUNCIL COMMENTS.** Council Member Mila welcomed Ms. Hamik as the new Youth City Council Advisor. It is nice the Youth City Council get so involved in the City.

Council Member Siwik welcomed Ms. Hamik as well.

Council Member Pender welcomed Ms. Hamik. The Youth City Council is a great program. He thanked Council Chair Snow for her moment of reflection tonight.

Council Member Kindred thanked Council Chair Snow as well.

Council Chair Snow thanked the Youth City Council for all they do. It's a great program. She welcomed Ms. Hamik.

ACTION ITEMS

APPOINTMENTS

Mr. Creswell advised the Council that this is not a Mayor's recommended appointment. This appointment arises out of the City's responsibility for the Central Valley Water Reclamation Facility Board. The City is one of seven member agencies. The organization is regulated by a board and the City has the right to designate one elected official to sit on the Board. Council Member Kindred was asked, on behalf of the Mayor, to start attending those and he could be the board member or the Council could designate someone else.

Council Member Pender moved to approve the appointment of Mark Kindred to the Central Valley Water Reclamation Board.

MOTION	Ben Pender
SECOND	Shane Siwik
<u>Roll Call Vote:</u>	
Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

UNFINISHED COUNCIL BUSINESS

- 1. A resolution authorizing forgiveness of the July 2009 interfund loan from the City's Capital Improvements Fund to the City's Ambulance Service Fund and elimination of the 2009 promissory note.** Finance Director, Kyle Kershaw, advised that this action will require a budget amendment which will handle the actual transaction of how they do it. It will not impact any of the facts that were brought to the Council's attention at the previous meeting.

Council Member Siwik asked what happens if they don't forgive the debt.

Mr. Kershaw responded that they will have to figure out another way to remove the negative fund balance from the Ambulance Services Fund or the State Auditor will keep the City's sales taxes. There are other mechanisms but basically it would entail appropriating more money from the Capital Improvements Fund over to the Ambulance Fund so they start eating away at the Ambulance Fund's negative balance. Basically what the Council is doing is forgiving a loan that will never be repaid under the current situation. The Council is basically forgiving a loan to itself.

Council Chair Snow noted that the State Auditor's letter stated to submit a correction action plan detailing how the negative balance is being reduced or eliminated. She asked if they could submit a corrective action plan that includes doing away with the Ambulance Fund and contracting out.

Mr. Kershaw said going down that road is a long process, at least a year. The Council's final decision in that process will certainly have to take place after sixty days which is the deadline the State has given. It is certainly an option to consider but it is more than a financial decision.

Council Member Beverly recalled that the people on the ambulance are being considered as part of the staffing for the Fire Department. It is a complicated issue that would need a lot of research.

Council Member Pender clarified that based on the numbers; staff is saying they will never sustain the ambulance.

Mr. Kershaw said the ambulance will be sustained. He explained that seven years ago a loan was given for startup costs to buy equipment and vehicles. The original intention was the loan would begin to be paid in two or three years after the ambulance service matured and the billing cycle was in place. But for various reasons that has never happened. They are probably just to the point right now where they are breaking even with operating expenses if current trends continue. If they ever do break in the black, staff recommends that they start reserving that for replacement costs of equipment.

Council Member Pender asked if Mr. Kershaw thought they would ever get in the black.

Mr. Kershaw said he does. He doesn't think the margin will be huge but this is the first year in the past seven where he's been able to say that the operating revenue will be equal, or a little bit greater than the operating expenses. That is if the current trends continue.

Council Member Pender said he would like to know what the City has paid yearly to sustain the ambulance since the loan was given. He would also like to know the maintenance costs to the ambulances since they have been in operation. He would like to review the Council meeting where this was approved as well.

Council Member Siwik clarified that if they forgive the loan it doesn't affect the budget this year. They are not losing money out of the General Fund.

Mr. Kershaw explained it will be a budget sheet transaction. In the Capital Fund there is an asset that is a loan receivable from the Ambulance Fund. In the Ambulance Fund there is a loan payable to the Capital Fund. The transaction will actually erase the liability on the Ambulance side and erases the asset on the Capital side. Erasing the liability on the Ambulance side takes care of that fund balance that the State has a problem with.

Council Member Siwik said the only thing that prevents them from keeping the debt on the books is the State says they can't keep it on the books.

Mr. Kershaw clarified that they can keep in on the books, but as staff looked at the demand letter from the State, it just seemed like the cleanest, easiest, most straightforward way to comply with State reporting requirements was for the Council to address this loan issue. If they had confidence that the loan was going to get repaid, and they could reserve money for future equipment replacement and for repaying the loan, they would have gone down another road to comply. That just isn't on the horizon as far as they can tell and staff recommends that forgiving the loan is the easiest way to comply with the State. The State isn't making them get rid of the loan they are making them get a plan to address the negative fund balance. This was the staff's best recommendation to accomplish that.

Council Member Siwik wondered if the State was okay with the City waiving the loan.

Mr. Kershaw confirmed they would be. In an enterprise fund, State law prohibits having a negative fund balance because what that means is your assets are less than your liabilities and they don't allow that condition. He explained that originally there was talk of putting the ambulance service in the General Fund but staff didn't like that idea because you would never know what it is truly costing. It would have been absorbed by all the other activities in the General Fund. Staff recommended putting it in an enterprise fund so the Council would know exactly what the revenue and expenditures are. Because there was going to have to be funding for startup costs, doing the loan between the two funds was the best way to record that. It was staff's intention to keep that on the books as long as they could and hopefully the Ambulance Fund would start paying it back but it never happened. Another reason why this is more palatable is because the Sewer Fund only services about half of the City. The Water Fund only services about two thirds of the City. So if they were talking about this between the Sewer Fund and the Capital fund or Water Fund, there's a whole component where a portion of the residents, who aren't on those systems, would have to be footing the bill. The Ambulance Fund covers the entire City. All the residents participate in the Ambulance Fund and they all participate in the Capital Fund so there is no benefit given to those that aren't serviced by it.

Council Chair Snow asked staff to put the original feasibility study and Dr. Sturkey's audit of the Ambulance Service in Drop Box for the Council.

Council Member Kindred clarified that if the State doesn't have a problem with this approach the auditors would not either.

Mr. Kershaw confirmed that was the case.

Council Member Kindred asked what the expected life of an ambulance is.

Public Assets Director, Mont Roosendaal, answered twelve years.

Council Member Kindred surmised that even if they get in the black and reserve for this, the chance of recouping enough to get new vehicles would be low.

Mr. Kershaw advised that the biggest driver of revenue in this is the calls. The second one is the State sets the rates and about a year ago the legislature upped the Medicaid reimbursement rate. That is driving the favorable results now.

Council Member Kindred asked how many ambulances they have.

Mr. Kershaw said they have three with two in service. They rotate the vehicles.

Council Member Kindred asked if enterprise funds have a sunset date or are they permanent.

Mr. Kershaw said they are sunsetted when they get out of the business.

Council Member Beverly recalled the number one reason they went into the ambulance business was to improve service. The trends are moving in a positive direction and she feels before they make a decision on what they are going to do with the Ambulance Fund they should continue to look at those and gather the information. They need to deal with the current issue right now. It seems like two weeks ago the Council gave direction for staff to go forward with this.

Council Member Siwik moved to place this item on Unfinished Business of the March 23, 2016 Council Meeting.

MOTION Shane Siwik
SECOND Debbie Snow

Voice Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

2. **An ordinance granting final plat approval for the S-Line Townhomes planned unit development and establishing a Planned Unit Development Overlay over the existing East Streetcar Neighborhood Land Use District located at 2255 South 400 East.** Mr. Creswell reviewed the changes requested by the Council in the earlier work meeting. They included the following: the developer shall be allowed to offer units for rent for a period of time up to and including three years after a certificate of occupancy has been issued for the first unit. Such rental periods may be extended by three additional one year periods so long as prior to each extension the following conditions are satisfied: (1) the developer has used reasonable diligence to comply with section B by actively marketing the individual townhome units and lots for sale and (2) the developer has not failed to cure a notice of default during the cure period as set forth in 7.25. They also changed the rental total from fifty percent down to twenty percent.

Council Chair Snow clarified that the language allows the Council to decide if an extension will be extended even if the all conditions are satisfied.

Mitch Fieldly, attorney for the developer, said they would like the extension to be automatic so long as the City is okay with it. The City at any time has the right to provide a notice of default so it has its discretionary right there and if they don't cure within sixty days it can use its discretion to say they are out of the agreement at any time.

Council Member Pender feels it is being pushed until it is turning into another rental for the next ten years. He is concerned for the residents in the area. He's okay with three years but if they are trying to push six years and it turns into ten years he is not okay with that.

Mr. Fieldly explained that it is six years from the first unit regardless of when they finish the last unit.

Mr. Creswell advised that the three years starts upon issuance of the certificate of occupancy of the first unit. It is three years for the entire project not just for each unit. When the first unit is completed the three years starts regardless of how many have been built and how many occupancy certificates you have.

Council Chair Snow said her expectation is that they will do everything within their power to get them sold in three years. But, if there's an unforeseen

circumstance the additional sentence in the agreement is put in as a benefit to the developer. They can come and ask for a year extension and another, and another, but no longer than six. It is not a drop dead to sell them in three years. It gives them flexibility but gives the City power to some extent if it feels like it is exceeding expectations and is uncomfortable with the that it is headed. She likes the language because it allows the Council to maintain that control.

Council Member Beverly feels they need to stick to the agreement if the developer is honoring and doing all they can then the Council is being reasonable and honoring the contract.

Council Member Siwik heard mention that the lender is not comfortable with anything less than six years. From his experience, the lender complies with what government regulations are, not the other way around. It's not the Council's job to comply with what the lender wants.

Mr. Fieldly agreed. The perspective from the developer would be they can't do the project without having the appropriate financing. The more they push the limits on what they customarily provide, the greater risk they have of them saying they can't do it and this is all for nothing. He understands why the City wants to have its discretion. He believes it does with the notice of default.

Council Member Pender feels the language is good for both.

Mr. Fieldly requested that if they could change it to "may not unreasonably withhold condition or delay its permission."

Mr. Creswell said he thinks that is the way it would be interpreted by a court. If they add that, that is what a court would say.

Council Member Rapp asked how many apartment units are going in the Zellerbach property.

Mr. Florence said it is 287 or 296.

Council Member Rapp said what they are talking about here is relatively insignificant. They don't want to set a bad precedent but he doesn't think they should be pursuing this too hard.

Council Member Beverly said the agreement takes away the precedent.

Council Member Rapp agreed.

Council Member Pender said it affects the people who live in the area. An additional thirty-two units is thirty-two or sixty-four more cars. To him it is important that they don't bog down that area. He doesn't want to keep adding to the problem. He wants to make sure there is something in place to protect the neighbors and their interests.

Adam Paul, with JF Capital, thought they had negotiated an agreement where the Council had plenty of control if they were not taking certain steps to sell the units. The City could at any time pull their permit to rent the units in year one, two or three.

Mr. Creswell said the City's primary remedy is a suspension of a business license to rent. The developer has the ability to appeal that and it can go back and forth but that is a significant remedy given everything that is in the agreement. That is the hammer that exists from the City's side.

Mr. Paul agreed. If they are doing everything they can and the market just is not there, they don't want the hammer to drop. It may be a new council and they might decide they just don't want to approve it anymore.

Council Member Siwik said that is the risk that the developer takes. They are getting a condition that probably no other developers get when they come in and want to build owner occupied units. They are getting it because they did it as individual lots to rent out in the beginning. That loophole existed and they worked that loophole to their advantage. How many other developers are building anything in the valley, with much more exposure to the market than this developer right now? He suspects almost ninety-five percent don't have what the Council is giving this applicant.

Mr. Paul disagreed. He feels it is the opposite. Typically a developer is not regulated by whether they can rent or sell a unit unless there is a development agreement in place.

Council Member Siwik said within the zone and project they applied for, they are using the fact that they are owner occupied to rent. He is okay with that but to say it is up to the Council to buffer them from the risks of the market...

Mr. Paul said they are not asking that.

Council Member Siwik said whether they are asking for it or not, that is what the Council is giving them in this year to year situation. That doesn't happen in a lot of other communities.

Mr. Paul said he sees the point. They greatly appreciate the Council working with them. They just thought that with all the remedies in place, it doesn't matter where it is in the process, whether they have fifteen years or six months, if they aren't doing all they can do to sell them, according to the agreement the City can pull their license to rent.

Council Member Siwik said he thinks they are arguing to agree. He thinks they have reached consensus.

Mr. Paul said it is just the ability of a bank to say, "Well, we believe the City Council has every intention to work with you but they still have the ability to

shut you down,” and that could cause a problem in the financing. He just wants to make sure it is really clear that as long as they are doing everything there can’t be any arbitrary shutting them down.

Council Member Beverly thinks it is definitely tied to these agreements and if they have done their job right, and this contract is right, it won’t matter who is on the City Council, this contract will stand and protect both parties.

Mr. Fieldly pointed out that another reason it is great to have the automatic extension from a leasing perspective is in the event that they are actively trying to sell them, as you approach that three year deadline it becomes increasingly more difficult to have customary leases. If they are two years and three and half months into it and suddenly faced with an obligation to sign a lease, it is for eight and a half months. He asked if they could petition the City Council for their one year extension at some point, six or nine months before the three year mark. He asked how far in advance the Council would let them come back. It is not in the agreement. If they are going to go with the “may” language it makes more sense, from their perspective, to advance that out as far as the City Council will allow so that they can try to have customary leases.

Council Member Beverly thought it should be at least ninety days, if not more.

Council Member Kindred asked what they are looking for, is it six months?

Mr. Fieldly said six months would be great. He thinks they can work with that.

Council Member Siwik said he doesn’t have a problem with that.

Council Chair Snow noticed that the agreement just said it is coming back. She questioned who it would come back to.

Mr. Creswell said he didn’t see it having to come back to the Council. If they want it to come back to them then they will have to specify it.

Council Chair Snow preferred a provision that says it comes back to the Council.

Mr. Creswell said he has a lot of provisions in the agreement and his assumption was they have a senior staff member that is going to act in the Council’s behalf. If there is any portion that they want to come back to them they can do that. As a whole concept he had their representative, the Community Development Director, as their agent in carrying out all this.

Council Member Beverly suggested letting the senior staff oversee it until they get to the extension period and at that point the City Council could be

involved.

Council Chair Snow said she was comfortable with that.

Mr. Creswell reviewed the changes discussed and said he would need some time to make the changes. He suggested the Council table the item and come back to it later in the meeting.

Council Member Rapp moved to table this item.

MOTION Kevin Rapp

SECOND Portia Mila

Voice Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

The Council moved to Unfinished Business Item 3 on the agenda.

3. **Amendment of the South Salt Lake Zoning Map from Commercial Corridor, North District, Commercial General, Light Industrial, and Transit Oriented Development Overlay to Downtown and adoption of the Downtown South Salt Lake Land Use Ordinance and Design Standards. The zoning encompasses the area from 2100 South to I-80 and from State Street to I-15.** Deputy Community and Economic Development Director, Frank Lilly, reviewed a presentation with the Council. A copy is attached to these minutes and incorporated by this reference.

Council Member Rapp moved to place this item on Unfinished Business on the next Council meeting.

Council Member Snow moved to return to item number 2 on Unfinished Business.

MOTION Kevin Rapp

SECOND Debbie Snow

Voice Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

Council Member Snowed moved to return to item number 2 on Unfinished Business.

MOTION Debbie Snow

SECOND Portia Mila

Voice Vote:

Beverly Aye

Kindred Aye

Mila Aye

Pender Aye

Rapp Aye

Siwik Aye

Snow Aye

The Council then moved back to Unfinished Business Item 2 on the agenda.

- 2. An ordinance granting final plat approval for the S-Line Townhomes planned unit development and establishing a Planned Unit Development Overlay over the existing East Streetcar Neighborhood Land Use District located at 2255 South 400 East.** Mr. Creswell reviewed the changes made to the development agreement. The second sentence in “D” says “such rental period may be extended for three additional one year periods upon request by the developer to the City Council, approval of which may not be unreasonably withheld by the City Council so long as prior to each extension request the following conditions are satisfied...” At the end of the paragraph it says. “Such renewal period extension requests may be submitted up to six months before the end of the preceding period.” This would be the only item that would come back to the City Council. Everything else will be under the management of the Community Development Director.

Council Member Mila moved to approved the PUD overlay zone, but authorization to sign that ordinance and the effectiveness of the ordinance being contingent upon one; closing on the sale of the property in question by the developer , and two; the signature of the developer on the development agreement, if and when that is approved.

MOTION Portia Mila

SECOND Kevin Rapp

Roll Call Vote:

Beverly Aye

Kindred Aye

Mila Aye

Pender Aye

Rapp Aye

Siwik Aye

Snow Aye

Council Chair Snow move to approve the final plat subject to and contingent upon the purchasing of the property by the developer and the developer signing the development agreement, if and when that is approved by the Council.

MOTION Debbie Snow

SECOND Ben Pender

Roll Call Vote:

Beverly Aye

Kindred Aye

Mila Aye

Pender Aye

Rapp Aye

Siwik Aye

Snow Aye

Council Member Beverly felt this was very collaborative and there was a lot of compromise and she felt good about the whole process. She thanked the developers for being willing to compromise.

Council Member Siwik acknowledged that this was a rough process but he wants the developers to know the Council is rooting for them. They want them to succeed.

A resolution approving the development agreement for the S-Line Townhomes between the City of South Salt Lake and JF S-Line Townhomes, LLC and authorizing the Mayor to sign the development agreement for the S-Line Townhome Project.

Council Member Kindred moved to approve this resolution.

MOTION Mark Kindred

SECOND Shane Siwik

Roll Call Vote:

Beverly Aye

Kindred Aye

Mila Aye

Pender Aye

Rapp Aye

Siwik Aye

Snow Aye

NEW COUNCIL BUSINESS

- 1. Municipal Wastewater Planning Program Resolution.** Wastewater Manager, Corby Talbot, advised the Council that this is an annual report that the City does. It is a self-assessment report which is required under the Sanitary Management Program.

Council Chair Snow asked how the sewer system is doing.

Mr. Talbot said it is old but it still works. They are actively keeping it going. The report asks to explain any problems and he can't think of any problems. It's an old system but it is in fairly decent shape and works well.

Council Chair Snow understands that they have identified the oldest pipes and they have a cycle of replacement.

Mr. Talbot agreed saying back in 2014 they did a master plan update of the sewer system and identified problem areas and future areas for redevelopment that could impact the sewer. The original part of the sewer system began to be installed in 1939. There are a lot of new things as well. They are continuing to rehab it as money allows with new pipe.

Council Chair Snow asked if there is any corrosion problem.

Mr. Talbot said there is. Sewer pipe is made of clay and is very brittle and breaks and cracks and then you have some exfiltration at that point. One of the things they try to do when pipes need to be rehabilitated is they have a criteria they put that in and they prioritize them. Once a line needs to be rehabilitated they will put a new pipe in that is kind of a two part resin, PVC type material. They pull down the pipe, inflate it and it cures off and seals any holes, cracks and joints and it all becomes one solid pipe.

Council Chair Debbie Snow moved to suspend the rules.

MOTION Debbie Snow

SECOND Kevin Rapp

Roll Call Vote:

Beverly Aye

Kindred Aye

Mila Aye

Pender Aye

Rapp Aye

Siwik Aye

Snow Aye

Council Chair Snow moved to approve this resolution.

MOTION Debbie Snow

SECOND Ben Pender

Roll Call Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

Council Member Siwik moved to adjourn to Closed Meeting to discuss strategy for pending or reasonably imminent litigation pursuant to Utah Code Annotated, 1953 as amended, Sec. 52-4-204 and Sec. 52-4-205(1)(c).

MOTION	Shane Siwik
SECOND	Portia Mila

Voice Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

Council Member Pender said they always talk about police and fire but Mr. Talbot's job is right up there as well and he appreciates him keeping a handle on that and the work they do.

The Council adjourned to Closed Meeting at 8:57 p.m.

In accordance with U.C.A. Section 52-4-206, 1953, as amended by Chapter 180, Laws of Utah, 1987, as amended, a recording was made of the Closed Meeting held to discuss the sale, purchase, exchange or lease of real property. Such recordings are protected records under Title 63, Chapter 2, Government Records Access and Management Act.

Closed Meeting ended at 9:06 p.m. Council Members returned to Council Chambers.

Council Member Siwik moved to adjourn.


MOTION	Shane Siwik
SECOND	Kevin Rapp

Voice Vote:

Beverly	Aye
Kindred	Aye
Mila	Aye
Pender	Aye
Rapp	Aye
Siwik	Aye
Snow	Aye

The meeting adjourned at 9:06 p.m.


Deborah A. Snow, Council Chair


Craig D. Burton, City Recorder

