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## **PROVO MUNICIPAL COUNCIL**

### **Redevelopment Agency of Provo**

#### **Regular Meeting Minutes**

5:30 PM, Tuesday, July 17, 2018

Room 200, Municipal Council Chambers

351 West Center, Provo, Utah

### **Opening Ceremony**

#### **Roll Call**

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Council Member David Harding

Council Member David Knecht

Council Member David Sewell (via telephone)

Council Member Gary Winterton

Council Member George Handley

Council Member George Stewart

Council Member Vernon K. Van Buren

Mayor Michelle Kaufusi

CAO Wayne Parker

Council Attorney Brian Jones

Executive Director Clifford Strachan

Conducting: Council Chair Gary Winterton

**Prayer** – Joseph Hamblin

**Pledge of Allegiance** – Danny Drew

**Approval of Minutes** – The April 24, 2018 council meeting minutes were approved by unanimous consent.

### **Presentations, Proclamations, and Awards**

#### **1 A presentation of the July 2018 Employee of the Month. (0:08:51)**

Jenny Starley, Provo City Employees Association, presented the July 2018 Employee of the Month award to Ron Adams, with Parks and Recreation.

Doug Robins, Assistant Director of Parks and Recreation, had worked with Mr. Adams for more than 24 years, said he was a go-to employee, who cared deeply about Provo City. He noted that Mr. Adams announced he was retiring from Provo City on August 1, 2018.

Larry Shane, Parks Superintendent, said Mr. Adams had served in various divisions of Parks and Recreation, including the cemetery and golf course. He would often ride his bicycle to work and, occasionally, from park to park, instead of using his work truck. Mr. Adams enjoyed hunting, hiking, water sports, camping and all sports, including golf and softball. His background in sports enhanced his expertise in parks construction and maintenance. He would be missed by everyone.

**Public Comment** ([0:17:47](#))

David Harding, Provo City Council Member, spoke from the podium concerning the new rental disclosure and acknowledgement requirements, which would go into effect August 1, 2018. He believed this issue came to a head because of the displacement of a group of people. It was a citywide problem but was most acute in an area that had a drastic change in demographics in a short period. We were potentially at the start of another shift. He expressed concern about the effect of this complex problem, which did not have a simple solution. He hoped there were things the city would do to open up housing for people that may be displaced by the new policy.

**Action Agenda**

**2 Resolution 2018-27 consenting to the appointment of individuals to various boards and commissions. (18-003)** ([0:22:00](#))

**Motion:** An implied motion to approve Resolution 2018-27, as currently constituted, has been made by council rule.

Wayne Parker, Provo City CAO, presented a list of individuals to be appointed or reappointed to serve on various boards and commissions. He said they have tried to stagger terms on the boards and commissions so that all board appointments did not expire at the same time. He asked the council to approve the appointments.

Mr. Harding appreciated the efforts to stagger the appointments in order to provide continuity on boards and commissions. He said one group of appointments appeared to make the staggering worse because a larger number were appointed to the same term. He recommended the administration look at that group. Regarding the Transportation & Mobility Advisory Committee (TMAC), the city code recommended that members be appointed from all areas in the city. Mr. Parker replied that the board appointments for TMAC was not a comprehensive list; there were still two positions to be filled that would fill that requirement.

Mr. Jones explained that the version being displayed that night was not the original version seen by council members. There were several term expiration dates changed earlier that day to address the staggering issue. The exhibit did not always show all members on a committees or board, just those being appointed or reappointed, which might make the staggered terms look worse. In addition, the entire TMAC exhibit was updated to show which appointee filled positions required by city code, such as the academic position; however, there were no name changes.

Mr. Knecht said he attended an open house held for council members to meet appointees and spent a long time getting to know them. It was important to let them know how much we appreciate their service.

Chair Winterton called for a vote on the implied motion to approve the appointments.

**Roll Call Vote:** The motion passed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren in favor.

Chair Winterton amended the agenda to discuss item no. 6 next.

**6 Ordinance 2018-22 amending a nonexclusive franchise agreement with Mobilitie to operate a telecommunications network in Provo City (18-010) (0:29:28)**

**Motion:** An implied motion to approve Ordinance 2018-22 as currently constituted, has been made by council rule.

Marcus Draper, Assistant City Attorney, presented. He reported a change in the state's Small Wireless Facilities Deployment Act that stated, as of November, non-performing agreements would be invalid. The proposed ordinance was in response to that change and made two notable amendments to the franchise agreement. First, the agreement would be subordinated to the new state law. In the event of a conflict, the new state law would control the agreement. Second, under the current agreement, Mobilitie must pay 3.5 percent of gross revenues from sales to customers within Provo City limits. The new state law allowed a city to charge \$250 for a small wireless facility or the 3.5 percent of gross revenues, whichever was greater. Mobilitie agreed to pay \$250 rather than have to calculate the 3.5 percent gross revenues every year. They would calculate the 3.5 percent every other year until the revenues exceeded the \$250 payment. At that time, they would calculate the gross revenues every year and pay 3.5 percent of those revenues as the franchise fee.

Chair Winterton invited public comment. There was no response to the request.

With no council discussion, Chair Winterton called for a vote on the implied motion.

**Roll Call Vote:** The motion passed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren in favor.

**3 A resolution appropriating \$350,000 to acquire a purchase option for property located at Provo Towne Center Mall. (18-073) (0:32:28)**

**Motion:** An implied motion to approve the resolution, as currently constituted, has been made by council rule.

David Walter, Redevelopment Agency Director, presented. This appropriation would be used to acquire a purchase option for the Sears Building at the Provo Towne Center Mall from Brixton Capital. After looking at several scenarios for the rehabilitation or construction of new city facilities, the Sears building was selected as one of the options. The six-month purchase option would keep the Sears building off the open market until a decision was made. This option would include two parcels – 134,000 square feet of improved space plus 10 acres of property. Other parties interested in the Sears building would most likely use the space for offices as well.

Chair Winterton noted this item would need to be approved or denied within four to five weeks to ensure the purchase option was on the November 2018 ballot. Mr. Walter confirmed the deadline was August 21, 2018 so there was some time to consider this issue. He felt Brixton deserved some compensation for keeping the space off the market.

Mayor Kaufusi felt the request was not fiscally responsible. If we appropriated the funds, she would expect the city to go in that direction because it was a lot of money. She wanted to choose an option, or direction, before a decision was made about the appropriation. She acknowledged it was up to the council to make that decision.

Mr. Parker said they initiated the discussion with Brixton in order to keep the Sears building alternative open. If Brixton continued to actively market the property, the Sears option might not be available. It was a risk/reward decision because the property could be sold tomorrow, or it could be available two years from now. He was not countering the Mayor's concerns; he just wanted the council to understand the reasoning behind the request.

Mr. Strachan explained that during work session a motion was made to prepare a joint statement, between the mayor and council, which would indicate their support for exploring options for a new city center. The city would hold open houses to discuss the options, as well as an open house at the Sears building for the public to tour. The public would then be invited to weigh in on the options. As for the appropriation request, the council could choose to approve the implied motion, deny the request, or continue the request for further discussion.

Chair Winterton invited public comment.

Chris Wiltse, Maeser Neighborhood, respected Mayor Kaufusi for her comments. He felt it was important to consider the need to fund other projects rather than spend it on this purchase option.

Jamie Littlefield, Timp Neighborhood, said we should maintain a civic presence in the downtown. If the city facilities relocated to the 20-year old Sears building, it would be a struggle to meet basic department needs. The site facing the mall on the first and second level, and two phases in the lower levels would not have any daylight. She asked about covered and secured parking for police. The public safety report urged against creating a site for police in big box retail. She said we should build exactly what we need, and do it right, so we were not in the same situation 20-30 years from now.

Christian Wood, Provo, agreed with Ms. Littlefield. The mall seemed like an odd choice. He had not heard of any other city using a mall for city hall facilities. He felt there were other options and we should seek those out.

Scott Bingham, Timpanogos Neighborhood, felt going to the mall would trade one problem for another. There would still be seismic issues. It would be a sales detriment for the mall and would be exchanging city employees for paying mall customers. This would be another business moving out of downtown Provo and we would lose some momentum. He suggested building a stand-alone facility, representing the iconic nature of Provo, adjacent to Center Street.

Justin Anderson, Provo, felt that \$350 was a lot for a family in Provo and the city was discussing \$350,000. The city should not be gambling with that large amount of taxpayer dollars. He asked the council to keep good fiscal policy in mind when they make their decision.

Tosh Metzger, Spring Creek Neighborhood, thought the Sears building was a great idea and was not too expensive. The mall location provided good transportation access. The mall was changing; it was no longer just a shopping mall but was being rebranded to include housing and businesses. The city center would be a great addition to the mall.

**Motion:** Council Member George Stewart made a motion to continue this item until the first meeting in August (August 7, 2018). The motion was seconded by Council Member David Knecht.

Mr. Handley clarified that continuing this item until August 7 would give the council time to continue the item one or two weeks later if necessary. This item was a priority for the council, but he wanted to make sure they did not make a premature decision and had all the input necessary. The absolute latest date they could act to have it placed on the November ballot would be August 22, 2018.

Mr. Strachan said the council had several options concerning a new city center. They could do nothing, chose one of the three new city center proposals, or they could choose something completely different. He agreed that August 22, 2018 was the drop-dead date to get something on the November ballot. If not addressed this year they might have to delay a decision about new city facilities for a few years or compete with the school district bond next year.

Mr. Parker emphasized there were a number of options the city had explored in the past, including purchasing the ancestry.com building in Riverwoods. The effort to submit three proposals was to stimulate the discussion around relocating, a partial remodel, or constructing a new building. The scheduled open houses would give citizens the opportunity to provide input.

Chair Winterton called for a vote on the motion to continue this item until August 7, 2018.

**Roll Call Vote:** The motion passed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren in favor.

**4 Resolution 2018-28 conveying the intent of the Municipal Council regarding development beyond the Northern Wedge Property of the East Bay Golf Course. (17-136) ([1:04:22](#))**

**Motion:** An implied motion to approve Resolution 2018-28, as currently constituted, has been made by council rule.

Brian Jones, Council Attorney, presented. In January 2018, the council approved a resolution to consider surplus a portion of the golf course to negotiate a possible sale for a medical facility. During that meeting, the council discussed making a statement of intent regarding possible development of the rest of the golf course property. The proposed resolution stated that this council had no intent to expand development at the golf course beyond the northern wedge where the medical school would be constructed.

Responding to a question from Mr. Van Buren, Mr. Parker stated that city staff had submitted a request to the Planning Commission for a zone change. The council would be seeing that request soon. The zone change was not part of the intent statement.

Mr. Handley said the council had asked about including language about retaining the remaining golf course property as a golf course in the intent statement and in the agreement. He did not see that language in the agreement. Mr. Jones replied that the latest version of the real estate purchase agreement stated, "Whereas the council has no intent to expand development beyond the northern wedge property and intends to retain the usage of a golf course on the remaining property." It was his suggestion to have the additional resolution rather than just the agreement because the statement had no binding effect in the sales agreement. He viewed the resolution as more public and in keeping with the January discussion.

Chair Winterton invited public comment. There was no response to the request.

Chair Winterton called for a vote on the implied motion to approve the intent resolution.

**Roll Call Vote:** The motion passed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren in favor.

**5 Resolution 2018-29 approving the negotiated sale of the Northern Wedge Property of the golf course. (17-143) ([1:09:32](#))**

**Motion:** An implied motion to approve Resolution 2018-29, as currently constituted, has been made by council rule.

During the work session earlier in the day, Mr. Jones reviewed some of the changes made to the negotiated agreement over the past several days. Most of the council's concerns were resolved at that time. He updated the council on further changes that had been made to the documents since the work session discussion.

- Real Estate Purchase Agreement – The realtor accepted all changes made during work session. No further changes have been made.
- Reimbursement Agreement – Developer accepted Provo City's requested change in paragraph one. Developer added clarifying language in line with Provo's intent.
- Environmental Indemnity Agreement for Provo City – The city's changes were accepted by the developer. New language was added at the end of paragraph 4.4, which stated mitigation costs of methane gas would be borne by the developer.
- Environmental Indemnity Agreement for the Developer – The same methane mitigation language was added at the end of paragraph 3.4, which would ensure the costs would be borne by the developer.
- Development Agreement – all of the city's changes were accepted including the following:
  - In response to concerns that construction might lead to the release of hazardous materials, the following section was added by the developer at the city's request: "Section 6.2.7. Construction Methods. Recognizing the prior use of the Property as a landfill, Developer will use commercially reasonable construction methods, feasible to the Project development, in order to mitigate the release of Hazardous Materials."
  - In section 6.4, the public works director asked that language be added which made clear what the current sewer capacity was and how future capacity might be added, as necessary, for the project. The developer agreed with the additional language.

Mr. Jones noted that during the work session, a motion was made to use a different version of the resolution than what was included in the materials. Part 1 of the resolution was amended in accordance with that motion. It stated that sale of the property was approved in accordance with the terms described in the draft agreements and the mayor may negotiate and execute final agreements that substantially comport with those agreements. The implied motion now applied to this version of the resolution as displayed.

Chair Winterton invited public comment. There was no response to the request.

In response to a question by Mr. Knecht, Mr. Van Buren said the changes did not specifically address his concerns. The amendment to the construction methods was nice, but it had no binding power.

Mr. Harding appreciated the earlier discussion concerning the risks associated with the project. He understood the risks a little more, but there was still a little anxiety and he hoped things turned out well. He supported continuing in the direction they had started.

One of Chair Winterton's concerns was protection of the golf course. He appreciated the Parks and Recreation Department's diligence in protecting the asset. He felt the city could still run a viable and successful golf course during this process. Unfortunately, we did not know exactly what the risks would be and how the medical school would benefit Provo City. He acknowledged the risk but felt the risk would be worth the potential benefits.

Mr. Van Buren said it had been a long and interesting process. From a golf course standpoint, this was a good thing because we would get three good holes out of the process. However, he would not be voting for this agreement. His reservation could be summarized in the following statement from a letter sent from Nathan Dorius to Provo's Senior Assistant City Attorney, Camille Williams: "In our opinion, the city is on the hook, under the law, for any environmental problems caused during the city's ownership of the property." He felt the city had responsibility and liability and would have to bear the cost of mitigating any environmental impact from digging on golf course property that was an uncontrolled dump for 30 years. He did not feel the potential risks were worth any possible benefits of the medical school.

Chair Winterton called for a vote on the implied motion.

**Roll Call Vote:** The motion passed 5:2 with Council Members Handley, Harding, Sewell, Stewart, and Winterton in favor. Council Members Knecht and Van Buren opposed.

**7 Resolution 2018-30 adopting amendments and updates to the General Plan. (PLGPA20180142)**  
[\(1:25:15\)](#)

**Motion:** An implied motion to approve Resolution 2018-30, as currently constituted, has been made by council rule.

Clifford Strachan, Council Executive Director, presented. The current version of the general plan was adopted in August 26, 1997 with major updates in November 2004 and August 2010. Minor amendments occurred frequently. Vision 2030 was initiated in 2010 and adopted in late 2011. No comprehensive review of the general plan had been completed since the city began using Vision 2030 as the document by which the city administration measured progress. In 2016, the council made a general plan update one of their nine priorities.

Council staff and community development staff have worked together to align the existing General Plan language with Vision 2030 and a draft version of Vision 2050. Drafts of the proposed amendment were made available on Open City Hall three times for the council, neighborhood program leaders, and the public. All city department heads had the opportunity to weigh in on various aspects of the plan. The work was overseen by the council policy governance committee with parts of the amendment vetted by TMAC and the housing committee.

A draft of the proposed General Plan amendments was presented to the Planning Commission on May 9 and May 23, 2018. The Planning Commission recommended denying the amendments because the work did not originate with them; they had issues with the process, preferred the update process be completed section by section, and felt they had insufficient time to review the amendments. Some Planning Commission members did not want to approve policies they did not agree with, even though those policies were already adopted in the General Plan and Vision 2030. At the May 23, 2018 hearing,

public comments focused on the housing section, specifically on the rental dwelling disclosure ordinance.

The policy governance committee met on June 28, 2018 to discuss the proposed text amendments. They agreed the amendments were more reorganization than a substantive update, in order to align with Vision 2030. Substantive changes included many policies already adopted by the council, such as land use policies for the west side. Council members proposed minor additions relevant to sustainability. The proposed draft was slightly different than the one presented to the Planning Commission.

Key changes included:

- Reordered the numbering pertaining to chapters and goals.
- Reference numbers for exhibits were placed in the proper sequence.
- Corrected an omission to include, by reference, the moderate-income housing plan.
- Incorporated Vision 2030 statements.
- Consolidated implementation steps and Vision 2030 goals.
- Amended language in the land use section to incorporate, by reference, the Timp Neighborhood plan.
- Included housing plans, master plans, and neighborhood plans by reference to avoid duplication.
- Included established policies.

The policy governance committee recommended that the council adopt, and the mayor sign, the resolution adopting the General Plan amendment. The Planning Commission should undertake a comprehensive review and rewrite of the full General Plan, element by element, beginning with the housing element.

Mr. Handley asked for clarification on the difference between an amendment and an update because it created confusion about the process. Mr. Jones explained that Provo City Code talked about comprehensive amendments while the term update did not appear in the code. The code did not define what a comprehensive update was but stated that if the Planning Commission began what they considered a comprehensive update, they had to meet certain noticing requirements. Mr. Handley appreciated the explanation. He felt the confusion came because it seemed the melding of the General Plan and Vision 2030 was the same as a major overhaul of the General Plan. He felt it was a major amendment and should have been handled differently. He hoped they would go forward element by element to make sure all changes were rigorously reviewed to satisfy our needs going into the future.

Gary McGinn, Community Development Director, said they did not consider the proposed changes as a comprehensive update. It was a reorganization to combine the Vision 2030 and the current General Plan so there was only one document for people to reference. We have amendments to the General Plan all the time. Staff would be working with the Planning Commission on a comprehensive amendment, which might come to the council serially, not all together.

Chair Winterton invited public comment.

Tatiana Quinn, Provo, researched the General Plan, vision 2030 document and the Vision 2050 draft and had noticed much of the language was included in the other documents. She wanted to bring something to the attention of the council that was new, and not found in other documents. Goal 3.4.2.5, providing sufficient housing options for single professionals as a means to increase family occupancy in the single-family areas, showed a strong preference for family occupancy in single-family areas. There were non-traditional families (groups of three or less) that were permitted to live in single-family areas. This



showed a bias toward one type of person and suggested the only option for a non-traditional family type was to segregate them traditional family types. She asked the council to consider removing this language from 3.4.2.5.

Chair Winterton closed public comment and invited council discussion.

Council Member Sewell requested that this item be continued to the next meeting, per council rules. Council members discussed whether this item would qualify, under council rules, to be continued to the next meeting with one council member's request or if they needed a council majority to continue the item or pass the legislation. Mr. Jones explained that if the council approved the resolution, it would create a new General Plan, which was the same procedure for any amendment to the General Plan. The Planning Commission would begin a comprehensive review of the General Plan, regardless of the action taken that night. When the Vision 2030 plan was created by the administration and adopted by the council, the city began operating with two documents that did not always correlate. Combining the two documents in order to eliminate the incompatibilities was one of the council's priorities. Until this resolution was passed, the city would continue to operate with two governing documents. By combining the two documents, it also provided the opportunity for substantive reviews and changes to take place in the future by the Planning Commission.

Mr. Stewart said nothing would change in the next three weeks, so he wanted to pass the resolution now.

Mr. Sewell appreciated the work that had gone into the proposed amendments but wanted to take more time before approving the resolution. He would prefer to meet with the Planning Commission or give them time to focus on things that were new or different with the proposed amendments and give the council their comments. For example, Ms. Quinn's comment about the family occupancy goal (goal 3.4.2.5) was something he had missed and felt this was a problem. Provo was a family friendly community and he wanted to keep it that way. The goal stating the city wanted to increase family occupancy in single-family areas needed to be tweaked a little to avoid the appearance of discouraging other types of occupancy (such as singles). He could not vote for the amendment with that goal as part of the document.

Mr. Strachan said that staff had presented what they were asked to do and were ready to have it approved. He explained that goal 3.4.2.5 was in the document because it had been proposed by the housing committee and was based on a batching overlay zone previously adopted in the Southeast Area Plan.

Mr. Handley said he would be comfortable striking that goal and then passing the document. He made the following motion:

**Motion:** Council Member George Handley moved to amend the exhibit by striking Goal 3.4.2.5 from the document and approving the document as-is, with the mandate to go back to the Planning Commission for a substantive revision. The motion was seconded by Council Member Sewell.

Mr. Strachan explained that if the wording was struck, the underlying language still existed in the Southeast Area Plan. They would just be removing the sub goal from the overarching goal.

Mr. Sewell said he supported about 95 percent of the intent of that statement, he just felt it needed to be reworded a little. He supported striking the goal so they could take a little more time to come back with a statement that would accomplish most of the goal.

Mr. Strachan said that Goal 3.4.2.5 stated, "Provide sufficient housing options for single professionals as a means to increase family occupancy in the single-family areas." To parse that would be to delete "as a means to increase family occupancy in the single-family areas." The goal would then state, "Provide sufficient housing options for single professionals."

Mr. Handley and Mr. Strachan discussed whether to remove or amend the goal. Mr. Strachan felt that by amending the goal it would be more consistent with the batching overlay and encourage more places for single professionals to feel welcome. Mr. Handley agreed with that goal but was not sure what that meant and did not know if it was the right language.

Mr. Knecht said one of the highlights of the Southeast Area Plan was to be the first neighborhood to recognize that the singles demographic existed and needed something. He felt the language, as amended, would send that message. He made the following motion.

**Motion:** Council Member Knecht made a substitute motion to amend Goal 3.4.2.5 to state, "Provide sufficient housing options for single professionals" and delete, "...as a means to increase family occupancy in the single-family areas." The motion was seconded by Council Member George Handley.

**Roll Call Vote:** The motion passed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren in favor.

Mr. Sewell withdrew his request to continue this item.

Chair Winterton called for a vote on the implied motion to approve the resolution, using the amended exhibit.

**Roll Call Vote:** The motion passed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren in favor.

**8 An ordinance amending the General Plan regarding a designation change from Mixed Use to Industrial for 14.17 acres located at approximately 1400 S. State Street. Spring Creek Neighborhood. (PLGPA20180128) ([2:09:45](#))**

**Motion:** An implied motion to approve the ordinance, as currently constituted, has been made by council rule.

Chair Winterton introduced the item and noted that the request was changed from 14.17 acres to eight acres.

Austin Corry, Provo City Planner, presented. The proposed ordinance was a General Plan map amendment for vacant land adjacent to the current Pro Steel property that had not yet been subdivided. The applicant had the property under contract pursuing a purchase of that portion of the land. The council needed to feel comfortable that the applicant had provided sufficient detail and justification to

amend the General Plan map. The request was to move from mixed-use designation to industrial for that site. The Planning Commission recommended denying the request.

Chair Winterton invited the applicant, Steven Turley, to address the council.

Mr. Turley said he had the opportunity to purchase the vacant property, which was adjacent to property in which he had an ownership interest. He had a construction company and purchasing the vacant land would allow them to expand their offices into the area and use it as a construction yard. The land was recently rezoned with the R1.10 designation and yet the General Plan, as supported by the Southeast Master Plan, shows this area as MDR. He understood that the General Plan was a guiding document and that zoning was the law. Several applications had been made for multi-family housing in areas just north and south of the vacant property. He asked for clarification on how the council felt about that area. If the council's intent was something different from light industrial use, he would appreciate knowing what their expectations were.

Chair Winterton said the R1.10 zone was a placeholder and a greater density (either MDR or LDR) was planned for this area.

Mr. Knecht said the Southeast Area Plan called for MDR. When the plan was originally sent to the Planning Commission, the neighborhood wanted LDR so they would have control over any potential project. Staff pointed out that if they really wanted control, they should initially zone the area R1.10.

Mr. Turley said that investors, neighbors, and developers felt the council had spoken loud and clear that they want R1.10 in that neighborhood.

Mr. Harding supported the General Plan, which called for mixed use and supported the Southeast Area Plan, which said future land use should be MDR. He hoped for quality MDR development in the area. In the meantime, the area was zoned R1.10 trying to send a signal that they want to see a proposal before they rezone to MDR.

Mr. Stewart said they were not looking for light industrial in the area.

Mr. Knecht said they wanted to encourage developers to design products for young single professionals. They had a proposal just south of Bear River designed for that type of housing. For years Mr. Turley pointed out that they needed more rooftops to possibly get a grocery store where the Pioneer Drive-in used to be. Mr. Knecht said there was still a hope for additional rooftops since the ground was vacant and there were other housing projects being proposed in other areas.

Chair Winterton invited Mary Millar, Spring Creek Neighborhood Chair and Southeast Area Representative, to comment.

Ms. Millar met with a developer recently and was told the normal thing that developers tried to live by was to have 90 days' worth of housing stock for people to come into an area. The developer told her it was no longer like that. Now it was two weeks' worth of housing stock and could still not keep up. She shared references to the council meeting minutes when the rezone was approved. In that meeting, Mr. Peperone explained that:

- The LDR would limit projects to side-by-side units, such as townhomes.
- The MDR allowed stacked property.
- Rezoning to LDR might allow townhomes, which didn't meet the needs for the area.
- Staff explained to developers that the council was looking for a specific product type.

- The council did not want just more student housing.
- The R1.10 zone allowed an extra layer of scrutiny to ensure the right product was developed.

Ms. Millar said they knew what population would come and they were sadly unprepared at this point. She was aware of three projects underway in her neighborhood, with at least one of them falling under the batching singles overlay. The point in keeping the R1.10 zone was to plan for the future. The applicant told her there were no specific plans for this area if it was rezoned. Why move forward on something that had no definite outcome?

Chair Winterton invited public comment. There was no response to the request.

Mr. Harding thanked Mr. Turley for giving the council the opportunity to restate their intention for the area. He understood that someone looking at the zone map might see the R1.10 designation and get the wrong impression. He invited Mr. Turley to contact him directly in the future.

Chair Winterton called for a vote on the implied motion to approve the map designation change.

**Roll Call Vote:** The motion failed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren opposed.

Mr. Sewell asked if council or community development staff might consider an amendment that would clarify the intent of the recent zoning changes. Mr. Corry said the text of the Southeast Area plan conveyed much of what had been said. He did not think anyone from Community Development was unclear about the intent of the R1.10 zone.

**9 Ordinance 2018-23 amending Provo City Code regarding neighborhood meeting requirements for General Plan amendments and zone changes. Citywide impact. (PLOTA20180186 and 18-036) ([2:31:17](#))**

**Motion:** An implied motion to approve Ordinance 2018-23, as currently constituted, has been made by council rule.

Robert Mills, Provo City Planner, presented. The proposed amendment was requested by council staff to provide further clarification and help for the neighborhood program regarding public hearing noticing requirements for zone changes and general plan amendments. Staff and the Planning Commission reviewed the item and recommended approval.

Karen Tapahe, Council Community Relations Coordinator, said they wanted to clarify issues concerning the timing for holding neighborhood meetings to discuss zone changes and general plan amendments. They came up with more concise and consistent language, which was in three parts of the city code. This helped the neighborhood chairs and applicants know what to expect.

Chair Winterton invited public comment.

Ken Millar, Spring Creek Neighborhood, realized the frustration of the public notice timing issues. He asked if an applicant could demand a hearing within a 20-day period or did that preclude the 45-day time limit? Mr. Jones explained that the council could consider an amendment, even if a neighborhood meeting had not been held, if forty-five (45) days had passed from sending the notice to the neighborhood chair, a neighborhood meeting had been waived, or twenty (20) days had passed since

the applicant requested final action in writing. If final action was requested, in writing, that state statute trumped the forty-five (45) days.

Mr. Harding noted that if a developer wanted to avoid the 45-day requirement and use the state statute to request the final action in twenty (20) days the council might not be willing to approve the request.

Mr. Millar asked if there was a specific procedure for developers to follow for providing notice (by mail) to the adjacent residents. Ms. Tapahe replied that community development gave the developer a list of addresses in the pertinent area. If the development were within 1,000 feet of an adjacent neighborhood, the developer would notify that neighborhood as well. The developer was not required to put out signs; it was just a mailed notice. The city put out the signs as a courtesy as part of the neighborhood program.

Chair Winterton closed the public hearing. He called for a vote on the implied motion.

**Roll Call Vote:** The motion passed 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Winterton, and Van Buren in favor.

**10 An ordinance amending Provo City Code regarding allowances and requirements of home occupations. Citywide impact. (PLOTA20180109) ([2:40:22](#))**

**Motion:** An implied motion to approve the ordinance, as currently constituted, has been made by council rule.

Brian Maxfield, Provo City Planning Supervisor, presented. The request was to look at limitations to home occupations; specifically:

- Certain definitions related to home occupations.
- Changes related to the number of customers and employees allowed with major home occupations.
  - Maximum of two outside employees for major home occupations.
  - Outside employees allowed on the premise between 8:00 a.m. to 5:00 p.m. if home occupation brought customers to the premises.
  - Outside employees allowed on the premises between 8:00 a.m. to 9:00 p.m. if home occupation did not bring customers to the premises.
- No more than one major home occupation may be in operation at the same location.
- An accessory apartment and a major home occupation could not be operated at the same time and location.
- Clarified major and minor home occupation definitions.
- Minor home occupations not required to obtain a home occupation permit if it had no impact on the neighborhood (per state statute).
- No major home occupation may operate without an annual home occupation permit.
- Sufficient parking should be available for customer parking.
- Allowed four promotional meetings per month.
- Could not include more than 12 attendees at any one meeting.

Mr. Handley asked if a customer was a person getting a lesson *and* a person dropping off the student. Mr. Jones said that the council was assured by community development that they would not interpret a minor and parent as separate customers. They would utilize the language to differentiate between a group of people all there to take advantage of the service being offered and a parent/sibling accompanying a minor.

Mr. Sewell noted that in the case of a minor home occupation, that did not have outside customers, they were going to allow up to two outside employees, regardless of the property size. He did not see that provision in the current document. Mr. Maxfield did not recall reading that but would look into it with the Planning Commission.

Mr. Harding remembered the discussion as well. He would like to add a provision in Section 3A that would allow one (1) outside employee if the property size was greater than 8,000 feet and two (2) if greater than 38,000 square feet. Perhaps there could be a “plus-one” if there were no outside customers. That would allow a single outside employee for lots smaller than 8,000 feet.

Chair Winterton invited public comment.

Deborah Harmon, Provo, was concerned with how the new law affected an accessory apartment. Not allowing a home business because a citizen had an accessory apartment made them second-class citizens. Placing limitations on home businesses based on lot size was devastating to some people. It was taking away people’s ability to make a living. The council needed to consider the impact this would make on people.

Maraly Frandsen, Provo, named four other citizens (Jacolyn Ricks, Marva Lina Soto, Linda Alfonso, and Mary Quadros) and asked that their time be given to Russell Frandsen, so he could have a total of 12 minutes for his comments. Chair Winterton agreed.

[\(2:55:31\)](#) Russell Frandsen, Wasatch Neighborhood, said they were the only household in Provo to have both an accessory apartment and a home occupancy permit. Even though they would be grandfathered in, they were concerned about some of the proposed provisions. He referenced three documents during his presentation – the executive summary in the home occupation amendments, two lines in the proposed code changes, and an advisory opinion from the Utah State Property Rights Ombudsman (Ombudsman). He recommended the following changes to the proposal:

1. Define what sufficient parking was for residential childcare on Line 70 of the code. It was a safety hazard for customers to double park when dropping off or picking up children if on-street parking was not readily available. The proposed provision required homeowners to provide sufficient off-street parking for business related vehicles. He felt the solution did not address the issues raised. He proposed making the permit holder responsible for bad parking by customers. Permits could be rejected for noncompliance. The Ombudsman suggested the city clearly articulate the parking requirement for residential childcare, which was not the case for the 22 residential facilities in Provo. The parking requirements for commercial childcare would be excessive for residential childcare.
2. Delete lines 153-154 of the proposed code, which would not allow a home occupancy and accessory apartment in the same location. The city was concerned that accessory apartments and home occupations could have both traffic and parking impacts. The city’s solution was not to allow the home occupation. He felt that the city could identify and resolve any impacts that needed to be addressed as part of the permit process. At the Planning Commission meeting, there was more than seven hours of public debate to determine if both businesses could co-exist. There were only a few streets near BYU where there was a property use right, via zoning, to have an accessory apartment where the house might also apply for a major home occupancy permit. Property use rights were important. The city could issue a conditional use permit if detrimental impacts to adjoining areas could be mitigated. Per the Ombudsman, the Utah State Code (Chapter 10.9a) required that conditional use permits be approved if all detrimental impacts could be mitigated. The city would need to provide substantial evidence proving that

detrimental impacts could not be mitigated in order to deny a conditional use permit. He noted that the city required a fee of \$960 to issue a permit so they should take the time necessary to complete a thorough review. A public hearing should be required to consider the combined impact of allowing the two concurrent uses.

3. Delay changes to the major home occupancy permit discussions until current permit holders had been notified and could provide their input. While current permit holders would not be affected by the proposed changes, those residents had been through the permit process and would be a great source of feedback and suggestions. The staff report stated that neighborhood chairs had been notified about the proposed changes for the Planning Commission meeting. If he had been notified by his neighborhood chair he would have attended the Planning Commission meeting and given input.

Christian Wood, Provo, lived adjacent to the Frandsen's and said there was very little impact on his life. It was remarkable how much trouble citizens needed to go through to have a second source of income. If a citizen could not rent out an apartment and conduct a home business, they could be forced to leave the neighborhood and that would change the nature of the neighborhood. He supported letting homeowners run their homes the way they wanted and remove legislation that was placed upon them.

Rachel Luke, Rock Canyon Neighborhood, lived next door to a recording studio that advertised as a performance and event venue despite being a minor home occupancy. There was a lot of traffic, parking, noise, and lack of privacy that this business had imposed on their neighborhood. They discussed their issues with several departments including the police and city attorney and was told that a business having single paying entities qualified as a customer. She said a citation given to the business had been squashed and the neighborhood was still having issues one year later. If the code had been clear from the beginning, they would not be in their current situation. The neighborhood opposed this business, but they were told there was nothing they could do as long as the business owners followed the limitations. The code stated that the use should be conducted so that neighbors, under normal conditions, would not be aware of its existence. She asked the council to use this part of the code when considering permits, so the residential nature of neighborhoods could be the priority.

Joyce Hasting, with Care About Childcare at Utah Valley University, expressed concern about issues concerning childcare in this proposal. Many people work outside the 8 a.m. to 5 p.m. hours. They would be affected by the provision that only allowed outside workers to work during those hours. The number of children in a facility determined how many caregivers were needed at any specific time. Childcare facilities needed to maintain their ratios for the safety of the children. For instance, if there were ten children in the home from 6-8 p.m. they would need at least two caregivers. When you had an apartment with childcare, those people in the apartment were required to go through extensive background screening. As for parking, it only took a few minutes to drop a child off, so the childcare should not have specific parking requirements.

Steve Wygant, tree streets area, supported the council's efforts to protect residential neighborhoods. Many neighborhoods close to BYU were under constant pressure for development and changes in code that would change the nature of the neighborhood. While many individual cases, such as the Frandsen's preschool, may be able to mitigate the effects of having both an accessory apartment and a major home occupancy at their home, this was not always the case. The city could not make policy decisions based on an individual case. They should look at the worst-case scenario in order to apply the policy universally. He supported this amendment. He said there had been a considerable amount of misinformation shared about the impact of this policy in terms of eliminating all home businesses. He asked the council to address that concern.

Chair Winterton closed public comment and invited council discussion.

Mr. Sewell asked that this item be continued to the next meeting. He had noticed one substantive discrepancy between what was sent to the Planning Commission and what was being discussed that night. He wanted to carefully review the amendments to make sure there were not any others.

Mr. Handley emphasized that home occupations were not a bad thing. Neighborhood daycare and preschools enhanced a residential neighborhood. There were a number of questions that needed to be discussed. However, the big question was if the city needed to separate the right to have a major home occupation from the right to have an accessory apartment. He wanted to know the citywide effects of the proposed legislation. The council only received the Ombudsman judgement minutes before the work meeting and he would like to explore that document before making a decision.

Mr. Harding said there were separate provisions that governed customers for childcare facilities. Did that provision also include a different time limit for employees or would the proposed time limits on home business occupancies govern childcare as well?

Mr. Jones said that family daycares were listed as a minor home occupation with a parenthetical stating they could not have more than six children. He could not see any other guidelines for that particular occupation.

Mr. Stewart invited council members to send staff questions they would like answered for the next meeting. It was hard during a meeting to find the answers.

Mr. Knecht commented on the advisory opinion from the Ombudsman. It stated that the city improperly denied the applicants conditional use permit for a proposed family day care. The city did not provide evidence that reasonably anticipated any detrimental effects that could not be substantially mitigated through reasonable conditions. He said unless there were conditions placed on a conditional use upfront it became difficult to state what the problem and solution would be so, by default, a conditional use was approved.

Mr. Maxfield stated he was in agreement with Mr. Knecht's comment. State law stated that home occupations, which had no impact on adjoining property, had to be permitted. However, a city did not have to permit any major home occupations. Staff wanted to approach a much larger look at home occupations in the future.

Mr. Jones made a follow-up comment on the Ombudsman's ruling concerning the Frandsen's business. In this single decision, the Ombudsman believed the city did not prove that an accessory apartment and a major home occupation were so incompatible that a conditional use permit could be denied. However, as a legal matter, the opinion also stated that it was up to the city to decide what conditional uses were permitted. Accessory apartments and major home occupations did not have to be permitted. Even if both were permitted, the proposed use had to satisfy the local code's plain and objective requirements. If one of the plain and objective requirements did not allow both, then a citizen could not do both.

Per Mr. Sewell's request, Chair Winterton continued this item to the work session on August 7, 2018.

**11 CONTINUED TO A FUTURE PLANNING COMMISSION MEETING: An ordinance amending Section 14.10.020(6) to allow commercial uses to operate "only in historic buildings" in the Residential Single Family (R1) Zone. Citywide application. (PLOTA20180094)**



**12 CONTINUED TO A FUTURE PLANNING COMMISSION MEETING: An ordinance amending Section 14.06.020 to redefine "Family" to include four unrelated individuals. Citywide application (PLOTA20180169)**

Adjourn

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The meeting was adjourned, by common consent, at 8:52 p.m.