



PROVO MUNICIPAL COUNCIL

Work Meeting Minutes

12:00 PM, Tuesday, December 11, 2018
Room 310, Provo City Conference Room
351 W. Center Street, Provo, UT 84601

Agenda ([0:00:00](#))

Roll Call

The following elected officials were present:

- Council Chair Gary Winterton, conducting
- Council Vice-Chair David Harding
- Councilor George Stewart
- Councilor Kay Van Buren
- Councilor David Sewell
- Councilor George Handley
- Councilor David Knecht
- Mayor Michelle Kaufusi, arrived approximately 1:00 PM

Prayer

The prayer was given by Travis Ball, Provo Power Director.

Approval of Minutes ([0:10:48](#))

1. **November 29, 2018 Joint Zoning & Housing Committee Meeting Minutes**
Approved by unanimous consent.

Business

2. **A discussion on an ordinance amending Provo City Code to clarify requirements regarding customers that generate electric energy (18-103) ([0:11:39](#))**

Travis Ball, Provo Power Director, introduced the discussion and invited Brian Jones, Council Attorney to present. Mr. Jones outlined the changes to the City ordinance regarding energy generation requirements. Mr. Jones noted that section 4(f) was recently added by the Council to permit private generation over 25 kW for industrial and commercial customers.

Council Chair Gary Winterton asked for clarification on several points of the ordinance, to which Mr. Jones responded in more detail. Mr. Jones and Mr. Ball explained that several of the changes were intended to specify how the connections would be made to preserve the integrity and safety of the overall power system and grid. Mr. Jones explained that the requirements to become a qualified facility were federal requirements, and thus would not be impacted or changed by the

City's ordinance changes. Rather, the ordinance clarifies that because it is a buy-all, sell-all scenario, the client would not receive credits from Provo City.

Erik Davis, Brigham Young University Counsel, explained that BYU explored a co-generation facility as a means of becoming a more environmentally friendly entity and to create less of an environmental impact by switching from burning coal to utilizing natural gas in power generation. As BYU considered the options available, they became aware of the opportunity to utilize the power generated as a by-product from the on-campus heating and cooling. Mr. Davis expressed appreciation to the Council and Provo City for providing additional clarity on what BYU can do and how their program can work. With these changes, BYU will have a clearer direction in which to structure their deal with UMPA.

Mr. Jones added that his interpretation of the intent of each involved group was to reach a mutually beneficial solution. He noted that this was why the provision to allow written agreements was added in the last 24 hours, as it provided additional clarification and fixed some of the current issues which had been an impediment for some of the negotiations.

In response to a question from Councilor David Harding, Mr. Jones explained that the current ordinance, as written, would allow the City to make a written agreement with industrial or commercial customers generating over 25 kW, but that elsewhere in the ordinance, it includes a provision for any qualifying facilities. Mr. Ball noted that it would be unlikely for a qualifying facility to generate less than 25 kW. Mr. Jones also noted that there was a provision which allowed the Administration to make a written agreement in any case where it would be in the best interest of the City. Mr. Ball offered additional clarification in response to a question from Mr. Harding about net metering for residential customers. *Presentation only. This item was scheduled for the December 11, 2018 Council Meeting.*

3. A discussion on policies regarding impact fee policy (18-099) ([0:36:02](#))

Cliff Strachan, Council Executive Director, presented on the impact fee review process. Attorney Jody Burnett, and Megan Weber of Zions Bank Public Finance, joined via conference call.

Mr. Strachan outlined several policy considerations for the changes to impact fees:

- Level of service
- Timeline for implementation
- Policy for impact fee exemptions

Mr. Burnett shared feedback on these policy considerations. He explained some repercussions of changing the level of service or not collecting the full amount of impact fees. Particularly, he noted the potential legal claims which the City could face should the impact fees implemented not provide for an adequate level of service. Councilors discussed these implications and the history of the City's changes to impact fees in the last several decades.

Mr. Harding noted that 14 years ago, the Council determined to charge 70% of the impact fees, with the costs of the remaining 30% being placed upon the General Fund and rate-payers. Mr. Harding noted that this system has eroded over time, as rates had remained artificially low. Mr.

Harding wondered whether it would be advisable to consciously make a policy decision to set the impact fee rate at 80% of the recommended rate, with the sense that the remaining 20% would be funded by the General Fund and rates. Councilors discussed this policy approach.

Motion: George Stewart moved that the Council does not recall the Impact Fee Review Committee and that they put the impact fee changes into effect on March 11, 2019, and that they do not provide any exemptions. Seconded by David Knecht. *Mr. Stewart later withdrew this motion and no vote was taken.*

Councilor George Handley was interested in further discussion of Councilor Harding's policy consideration (of charging 80% versus 100% impact fees) and the implications for Provo residents. Mr. Handley felt it would give the City more flexibility to grant exemptions [for affordable housing] by charging 100% of impact fees by default for standard applicants.

Wayne Parker, CAO, explained that there were several statutory impact fee exemptions that the Council could choose to apply, such as for affordable housing. For the Utah Valley Convention Center, Utah County approached the City for an impact fee exemption. Under State law, the City could not do this, but the City could make a General Fund appropriation for the amount to pay those impact fees on behalf of the project. Mr. Burnett explained that with the exception of low-income housing, exemptions can only go toward a specified purpose in the statute that also bears a strong public purpose, and the City must still identify a specific funding source.

Councilor George Stewart felt that the City had been undercharging for impact fees for years. He also felt that residential development should pay its full weight at the beginning, as residential projects tended to be subsidized by other development.

Ms. Weber provided some clarification on the costs which the City would bear if the impact fees were charged at 80% of the rate for water impact fees. Mr. Burnett clarified that the question was whether the impact fees could be reduced and if funding the bond payments would require additional rate increases or if it would be feasible at the current rates.

Mr. Strachan explained that for the water systems alone, shifting 20% of the impact fee costs back to ratepayers would be approximately \$2 million over a period of 10 years; this would be a significant burden on existing ratepayers to bear for new users of the system. Mr. Strachan indicated it was certainly an option, but something the Council needed to fully examine.

Dave Decker, Public Works Director, explained that fixture usage versus evaluating what the water meter can actually deliver was problematic. Fixtures could be added to a home which could change their typical usage, but their water meter would be static. The impact fees for residential properties were typically based on the water meter size, rather than the calculation based on the number of fixtures.

Ms. Weber explained that fixture unit count was tied to wastewater impact fees for non-residential development, in order to equate their demand to a residential unit. Ms. Weber clarified that the water meter size was the basis for water impact fees. Ms. Weber clarified that there could be a multi-family housing project which could represent a project with unique

features, which would have a lower potential for usage, then the City could evaluate and determine a proportion of the impact fee rates commensurate with the scope of the project; it would allow the City this ability. Any impact fee payer could establish the assumptive proportionate usage did not apply to them and request that the City reassess the impact fees assessed to them.

Mr. Strachan returned to addressing the policy considerations regarding implementation and timing. Mr. Strachan explained that there had been some discussion about delaying the implementation to allow sufficient notice to builders. Mr. Strachan had spoken with Gary McGinn, Community Development Director, about impact fees, which are paid at the time of obtaining a building permit. Mr. McGinn suggested moving the impact fee implementation to July 1, 2019, at the beginning of the new fiscal year. This would allow any projects currently under negotiation to be completed prior to the increase. New projects which would be affected by the changes would have additional notice by scheduling the changes several months out.

Mr. Stewart clarified an aspect of the exemptions. Mr. Harding asked whether the Council needed to make a decision on exemptions at this time, or if the exemptions could be granted on a case-by-case basis. Councilors discussed the exemptions and provisions for such, and how this would impact the City's impact fee ordinance.

Motion: George Handley moved that the Council commit to have a discussion at a later point regarding an impact fee exemption for low-income housing, but that the discussion not delay a vote on the impact fees at the Council Meeting on December 11, 2018. Seconded by David Knecht.

Mr. Burnett clarified that the State statute specifies that the municipality may include information on exemptions in the impact fee enactment legislation. Mr. Harding suggested the Council have a housing affordability discussion in general. Mr. Strachan explained that the Council could still have a discussion on housing affordability, but continue to proceed with the impact fee changes and work on those issues concurrently. Mr. Strachan and Ms. Weber explained that increasing the rate would require the 90-day period, but if the Council chose to enact the full rate, the Council could lower the fees at a later date for exemptions.

Mr. Jones explained that it was advisable for the exemptions to have specific criteria, such as an ordinance specifying the terms and the qualifying factors. There needs to be some specific provision in the ordinance that the provider of the exemption can use to evaluate a proposal.

Amended Motion: George Handley amended the motion that the Council commit to have a discussion at a later point regarding an exemption for low-income housing and criteria for the City ordinance and that the Housing Committee prepare a recommendation, but that the discussion not delay a vote on the impact fees at the Council Meeting on December 11, 2018. Seconded by David Knecht.

Mr. Stewart withdrew his previous motion because his motion was effectively the same as what was stated in the implied motion on the item.

Councilor Kay Van Buren and Councilor David Knecht expressed a desire to evaluate the growth rate which was used to evaluate the impact fee changes. Ms. Weber indicated that the growth rate of 1% population increase per year was very conservative. Mr. Stewart expressed that he would like to hear from Public Works their thoughts on the growth rate calculation.

Mr. Decker explained that one of the key projects that the water fee was based on were two water tanks that have already been constructed. There are several wells and future wells built into the impact fees which have not been developed; inadequate water resources are a risk not only to growth, but they also provide redundant backups to the existing system. For wastewater, there were some significant implications for the timing of the new wastewater treatment plant. Delaying other wastewater projects would result in delays for developers.

John Borget, Administrative Services Director, added that they met with each department regarding their capital improvement plans; it would require additional consulting dollars to go back through the CIPs in order to make determinations on what projects could be delayed.

Councilors shared additional comments and discussed the changes. Mr. Stewart felt strongly that it was important to make these changes, which have been needed since 2004. Mr. Winterton wished to discuss the implementation date. Councilor David Sewell wished to discuss Mr. Handley's motion; he felt that this subsidy had not been in place for affordable housing in the past and that it was important to consider whether the majority of residents were supportive of it.

Mr. Knecht asked and Mr. Parker confirmed that the code provides ability for the Mayor to adjust building or permit fees for some purposes; it has happened fairly rarely, but is an option. The Convention Center received heavily discounted building permit fees. Providing this permit fee reduction reduces the revenue going into the General Fund; because the City has been fairly conservative in estimating the revenues, the City has never been in a tough position, but it is a pretty exceptional circumstance when that is done.

Mr. Harding noted the discussion on tax and fee burnout, observing that the public does not necessarily distinguish between impact fees and taxes. Mr. Parker noted that people who are creating impact to the infrastructure and the demands on the systems are the ones who are paying the impact fees. Mr. Handley felt that it was in the taxpayers' interest that the City is adequately charging impact fees. Mr. Handley felt that greater burdens had been placed on the average taxpayer with the City's history of charging insufficient impact fees since 2004.

A vote was taken on Mr. Handley's amended motion.

Vote: Approved 6:1, with Kay Van Buren opposed.

The discussion returned to the point of the impact fee implementation date.

Motion: David Sewell moved to change the implied motion to reflect an effective date of July 1, 2019. Seconded by Kay Van Buren.

Mr. Harding asked whether there were a desire to examine a stepped increase between March and

July 2019. Several Councilors expressed that a phased approach created timing issues and created more work for many at the City to make fair evaluations. Mr. Borget felt it made more sense not to phase the implementation but to evaluate the changes on a regular basis.

Vote: Approved 5:2, with George Stewart and George Handley opposed.

4. An update on the state loan and financing for the Wastewater Treatment Plant and a discussion on the Westside map (18-052) ([1:50:08](#))

Dave Decker, Public Works Director, introduced staff and consultants present whose work has been essential in preparing for this discussion with the Council. Mr. Decker outlined the previous presentation to the Council earlier in the fall, where the Council and Public Works staff had discussed several considerations, including exploring funding options with the State.

Mr. Decker outlined the approved loan authorization from the State Division of Water Quality (DWQ). The DWQ authorized funding of \$2 million in principal forgiveness and a \$75.8 million loan, at a 0.5% interest rate repayable over 20 years. Interest would only be applied until the project is completed; principal payments were not to exceed \$50,000 per year until 2027. Mr. Decker outlined the estimated repayment schedule and he noted that this was a significant offer from the State—the interest rate and repayment structure was much more favorable than what would be available on the private market. Mr. Decker noted several challenges with the loan:

- Required Davis-Bacon wages and Buy American provisions
- Requirement for implementation of an asset management program
- Additional NEPA requirements and environmental studies
- The City did not receive the full allotment of \$120 million which was requested.

Mr. Decker outlined several ways that the City could try to close the gap. Mr. Decker suggested a multitude of efforts and methods would be required. Several they have identified for closing the funding gap were:

- Pay-as-you-go funding/build with cash
 - This method would utilize fund balance and rate schedules
- State bridge loan
 - Continue the conversation with the DWQ and State offices about bridging the gap
 - Explore additional funding through another State agency, such as the Department of Natural Resources (perhaps for funding based on developing an Aquifer Storage and Recovery program as part of the treatment plant project)
- Construction strategies and site selection
 - Building in or utilizing the existing treatment plant could allow the City to offset some costs—the Headworks and UV building at each end of the treatment plant are both newer facilities which have both been rehabilitated recently. Using these existing facilities could offset or cut some construction costs.
- Private bonds
 - The Council could go to the private market and request bonds for the funding difference. This would be at a higher interest rate as a revenue bond.

Mr. Decker gave an update on the planning progress. Hansen Allen & Luce Engineers and AECOM have been chosen as the City's program manager. They would also be responsible for directing the design team, which would be selected after the RFQ process recently ended. The process selection was due in May and an updated CIP plan would be due in December.

Mr. Decker also shared an update on the collection system monitoring and meter study. Based on the data gathered, Public Works staff created a model to evaluate the collection system capacity with the impacts of I&I (inflow and infiltration) and to identify areas with remaining capacity for development throughout the City. Public Works staff prepared a map which illustrated the system-wide impacts and existing sewer capacity throughout the City. This map was shared with the Council, as well as with Community Development staff and the Planning Commission. Mr. Decker wished to receive more direction from the Council regarding the state loan, prioritization of development applications, and how to close the financial gap for project funding.

Councilor David Sewell asked if Public Works could send the Council a net present value analysis comparing the State loan (with the State's Davis-Bacon wages and Buy American requirements, and the loan at a 0.5% interest rate) and a market calculation (an interest rate of 3.5% or so, without the wage and purchasing requirements).

Mr. Decker also addressed a question from Councilor Knecht and explained that Public Works needed to continue to examine the issue of prioritization of sewer capacity.

Motion: David Harding moved to give direction that the Council is interested in moving forward with the loan offered by the State as a general method of funding the sewer treatment plant. *No second received.*

Amended Motion: David Harding amended the motion to give direction that the Council is interested in moving forward with the loan offered by the State as a general method of funding the sewer treatment plant and that the Council invite a proposal from staff regarding the issue of sewer capacity banking. *No second received.*

Amended Motion: David Harding amended the motion again to give direction that the Council is interested in moving forward with the loan offered by the State as a general method of funding the sewer treatment plant, that the Council invite a proposal from staff regarding the issue of sewer capacity banking, and that the Council consider the net present value calculation of the state loan versus traditional revenue bonds. Seconded by George Stewart.

Vote: Approved 7:0.

5. A discussion regarding state regulations for Stormwater and an update on a completed draft of the Stormwater Master Plan (18-102) ([2:44:54](#))

Dave Decker, Public Works Director, introduced the presentation and previous stages of related discussions. The Stormwater Master Plan draft was ready for review by the Council; the last stormwater master plan update was completed in 1986. In addition to an updated master plan, Mr. Decker wanted to address concerns with state regulations for low-impact development.

Rob Hunter, Engineer, presented an update on the Stormwater Master Plan and highlighted several components, including:

- Existing system deficiencies (for current city buildout, not future development)
- Regional and local stormwater detention
- Updates necessary to bring the system up to the necessary capacity
- Focuses on main lines (often 24" and above) rather than area or subdivision drains
- 10-year plan outlining additional stormwater pipelines and detention basins
 - This plan was used to assess the recommended impact fee rates.
- Outline of costs for all facilities addressed in the master plan

Mr. Hunter explained the storm modeling used, which mimics storms as they typically occur on the Wasatch Front. Mr. Hunter outlined elements of the new master plan, including regional detention for single-family residential projects and other proposed improvements.

Brian Torgersen, Public Services Division Director, clarified that additional capacity is added to the system primarily through additional pipes and detention basins. Mr. Hunter and Mr. Torgersen answered a number of Councilors' questions regarding detention basins, including those about locations, cooperation with Parks and Recreation and the Provo School District, related land acquisitions, developer-installed detention basins, and detention basins in Provo.

Mr. Decker presented on the State regulations for stormwater and he outlined several areas impacted by the MS4 permit requirements from the State. There are six main components of the permit that the City has been required to include by mid-2019, one of which relates to the on-site capture and disposal of stormwater for 90th percentile rainfall (about the first 0.6 inches of that rainfall event would need to be captured onsite and dissipate into the ground onsite).

Mr. Decker outlined some concerns about the regulations, including:

- Risks to the drinking water and groundwater for stormwater displacement
- Decentralized stormwater maintenance reaches an unsustainable level for Stormwater staff to address
- Maintenance responsibilities for private property owners

Mr. Decker responded to several questions from Councilors and he also highlighted several ideas which could be implemented. These comments and responses included:

- Public Works has concerns about pavers or permeable pavement, as diverting water underneath the road can deteriorate the road base.
- Stormwater typically has sediment in it and the underground vaults must be cleaned in order to allow continued functioning of the system.
- Low-impact construction is effective initially, but maintenance becomes problematic.
- Bioretention or bioswales are solutions that would require private property owner maintenance. These would still require the City to follow up with individual private property owners in order to comply with the State permit.
- Dry well or sump pumps are another solution which requires significant maintenance responsibility for private property owners. A number of sumps in the Carterville Neighborhood have been blocked by debris, vegetation, and leaves.

Mr. Decker was concerned that the State was advancing very prescriptive measures, rather than allowing Provo flexibility in making the best determinations for the City, such as regional detention with specific control structures. Mr. Torgersen clarified that the City has to document the process they utilize on a case-by-case basis for every single project. For instance, even though the City knows there is a high baseline groundwater on the west side, Public Works must document each development and the process they went through (such as geotechnical work, etc.) and be able to submit this documentation as part of an audit by the State regarding Provo City's stormwater systems. Mr. Decker would much rather see a one-time exemption for a development or area. Public Works staff have met with the DWQ several times to discuss these concerns. The Utah Valley Home Builders' Association is also concerned with the prescriptive regulations.

Mr. Decker reiterated the three main concerns:

- The standard is too stringent and does not allow enough flexibility for local needs.
- There are significant areas in Provo where onsite infiltration may not work.
- These changes place a significant maintenance burden on the City.

Councilor George Handley wondered whether Provo could demonstrate that there are certain physical constraints in Provo. He was concerned that the State wanted to impose regulations on areas with a high risk of landslides and consistently high groundwater. He was concerned with the DWQ introducing environmental regulations that neglect the environmental practicalities of the areas where it must be applied and suggested the City state that the categorical treatment of cities was unrealistic and did not make sense environmentally.

Mr. Torgersen explained that the City would be allotted a total maximum daily load (TMDL), which would measure the water quality standard achieved. Mr. Decker also clarified that the State was currently requiring low-impact development in every new project. In conclusion, Mr. Decker expressed that he felt it was helpful for the Council to understand these concerns so they could share factual information during conversations with ULCT and other elected officials at the State or in neighboring municipalities. *Presentation only.*

Policy Items Referred from the Planning Commission

- 6. A request for an amendment to adopt Provo City Code Chapter 14.50(36), for the establishment of a new redevelopment zone to facilitate a construction project. Spring Creek Neighborhood. (PLOTA20180365) ([2:53:55](#))**
- 7. A request for an ordinance amendment to the Zone Map Classification of approximately 5.89 acres of real property, generally located at 1606 S. State Street, to a Redevelopment PRO zone. Spring Creek Neighborhood. (PLRZ20180105) ([2:53:55](#))**

Javin Weaver, Planner, presented items 6 and 7 together, as they relate to the same project. The Willow Creek townhome project on south State Street will be a 62-unit project with landscaping. Mr. Weaver shared several renderings of the townhomes, including a view of the top of the units which featured a private terrace for each unit. The proposed PRO zone would permit a higher occupancy for each unit of one family or 4 unrelated singles. Mr. Weaver gave more details on

the parking requirements and configuration, which resulted in approximately 4.25 parking spaces per unit, split between off-street parking and unit garages. It was anticipated that the area would be more attractive to young professionals as opposed to students. Mary Millar, Spring Creek Neighborhood Chair, had positive feedback from the neighborhood regarding the project. The applicant drafted this zone to have a higher occupancy and a decreased parking requirement. The developer met with several focus groups which provided feedback on the project, which resulted in changes to the parking configuration as well as having four full bathrooms and four larger bedrooms. The building height and amenities were similar to what can be found in the MDR zone. Staff anticipate that this zone may be permissible in other areas along south State Street.

Mr. Weaver noted that one ordinance amendment would amend Provo City Code to create the zone, and the other ordinance amendment would then apply the zone to this specific project. *Presentation only. This item was already scheduled for the December 11, 2018 Council Meeting.*

8. A discussion on a request to adopt the Moderate Income Housing Report for Provo City. Citywide impact. (PLGPA20180395) (4:04:08)

Brian Maxfield, Planning Administrator, presented. He clarified that this was a presentation on the Moderate Income Housing Report; the Moderate Income Housing Plan would be coming at a later date. The report portion was essentially a form from the State, which is completed with data on housing in Provo, including the following categories: available and not affordable, affordable but not available, and efforts to move to an affordable and available cross-section. Provo has a unique feature in its student population.

Mr. Maxfield noted that the State was exploring expanding the options for meeting requirements for moderate income housing. Mr. Maxfield explained that findings of the plan showed that incomes were not keeping pace with housing costs, and the largest need was for extremely low-income housing (less than 30% of the median income), as well as needs for larger units with more bedrooms. Mr. Maxfield clarified that several elements of the updates were still being finalized, and a broader update would be brought before July 1, 2019.

Councilor David Harding asked for some clarification on income levels were determined. Mr. Maxfield explained that typically the calculation is based on the median income and whether a person spends more than 30% of their income on housing. Councilor David Knecht asked whether the report qualified Provo to receive funding from the Olene Walker Housing Loan fund. Mr. Maxfield explained that this report was one method of qualification for that program. *Presentation only. This item was scheduled for the December 11, 2018 Council Meeting.*

Business

9. A discussion on the Parameters Resolution for Provo Police, Fire & City Facilities Bond (18-106) (4:17:05)

Dan Follett, Finance Division Director, presented. He explained that the Council was asked to consider the parameters related to issuing the bonds for funding the new facilities approved by voters. The parameters resolution sets the limits for how the City moves forward with sale of the

bonds, maximum interest rate, and other factors impacting the bond sale. The City's posting of a notice of the sale of bonds would begin a 30-day period in which individuals could respond with concerns about the bond issuance process. The Council would review the sale of bonds at the Council Meeting on January 22, 2019. Mr. Follett highlighted other items of note for the bond.

Mr. Winterton asked whether there were any ability to shift the competitive bond sale to get more favorable market conditions. The City's bond counsel explained that they would make predictions based on their best knowledge of the market conditions, including planning the sale apart from other tax-exempt issuances and utilizing recent decreased interest rates. ***Presentation only. This item was scheduled for the Council Meeting on December 11, 2018.***

Closed Meeting

The Municipal Council or the Governing Board of the Redevelopment Agency will consider a motion to close the meeting for the purposes of holding a strategy session to discuss pending or reasonably imminent litigation, and/or to discuss the purchase, sale, exchange, or lease of real property, and/or the character, professional competence, or physical or mental health of an individual in conformance with § 52-4-204 and 52-4-205 et. seq., Utah Code.

Council Attorney Brian Jones indicated that the topic to discuss met the statutory requirement.

Motion: Gary Winterton moved to close the meeting. Seconded by George Handley.

Vote: Approved 7:0.

Adjournment

Adjourned by unanimous consent.