



PROVO MUNICIPAL COUNCIL Work Meeting Minutes

2:00 PM, Tuesday, September 24, 2019
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 Vice-Chair Kay Van Buren, conducting
Council Chair David Harding, via electronic participation
David Sewell
David Knecht
George Stewart
George Handley
Mayor Michelle Kaufusi

Excused: Councilor Gary Winterton

Prayer

Wayne Parker, CAO, offered the prayer. Council Vice-Chair Kay Van Buren thanked the Provo Power Department for their excellent work in restoring power. Mr. Parker shared details about the outage and the herculean efforts of the crew.

Approval of Minutes

May 21, 2019 Work Meeting
Approved by unanimous consent.

Business

1. A discussion regarding the carryover of certain Fiscal Year 2018-2019 budget amounts into Fiscal Year 2019-2020. (19-098) ([0:04:50](#))

David Mortensen, Budget Officer, presented. Mr. Mortensen shared details of the carryovers from the previous fiscal year for the various City departments and funds. Carryover funds typically result from operational or personnel savings. Mr. Mortensen outlined carryover items from various departments and funds and addressed questions from Councilors, including:

- Councilor George Handley asked about the lobbyist item. This was for a lobbyist at the state level; the City has not pursued a federal lobbyist in about a decade.
- Community Development: zoning cleanup program and building cleanup program
 - Mr. Parker clarified that in a situation where a property owner fails to clean up a

nuisance, the City can expend capital funds to conduct a cleanup and place a lien on the site. An ongoing amount is budgeted each year, and then is carried over to the next year to maintain the funding source.

- Information Systems: due to the timing of hardware and software purchasing, they have requested to carry over the full balance of their remaining budget.
- The Fire Department has one encumbrance and several appropriations.
- The Police Department has requested a carryover of the full amount.
- Parks and Recreation: several encumbrances, equipment replacement, and \$242,000 for a shade structure and the design for the regional sports park
- General services: a carryover of the full balance has been requested. This includes funds for employee recognition, Provo 360, tuition reimbursement, and general/ground funds.
- John Borget, Administrative Services Director, noted that \$645,000 in Parks and Recreation and \$745,000 in the General Fund/General Services was for the equipment replacement funds, which contained funds in the event of a building or facility failure.
- Other funds primarily included carryover funds to cover encumbrances for CIP projects.
 - Most large projects were not completed in one fiscal year; carryover ensures that funds are available continuously during the completion of a project.
- The Energy Department requested their full carryover to go to fund balance.

Mr. Mortensen outlined how the carryover program operates. The General Fund carryover totaled approximately \$5 million. The Mayor is authorized carry over 50% of each department and division's savings after encumbrances and budgeted expenses, in order to establish funding for the employee recognition and innovation fund. Mr. Mortensen noted that \$203,242 would be added to the General Fund balance and \$203,242 to employee recognition.

Councilor George Stewart commented that having a carryover plan was very important; he felt it was certainly appropriate and beneficial to the city. Mr. Parker offered further details on how the carryover program is authorized. The carryover requests are organized by the Finance division and must be approved by the Mayor. The process includes in-depth review and discussion with department directors. Ultimately this list was the result of the Mayor's review and finalization. Mr. Parker explained that sharing the carryover list with the Council was an effort toward transparency and a courtesy to the Council for the Administration to report on the funds at the end of the year; the Council has already appropriated the funds to specific operating budgets.

Mr. Mortensen indicated that the carryover document was available in the meeting packet and Councilors were welcome to share further comments or concerns. Mr. Parker also indicated that the Council members could drop in or send an email with questions to the Administration, who would follow up with them on specific comments or concerns. *Presentation only.*

2. A discussion regarding defining over-occupancy as a nuisance. (19-094) ([0:24:04](#))

Marcus Draper, Assistant City Attorney, presented. Utah state code grants cities the right to designate certain actions or conditions as a public nuisance. This would provide a civil remedy for those who are repeated violators and would allow the City to seek injunctive relief. Councilor David Sewell asked Mr. Draper to summarize how the change would help.

Mr. Draper explained that Title 14 of the city code defines over-occupancy as a non-permitted use. There is a process to issue an administrative fine or to prosecute an individual for a misdemeanor, but many parts of the process were unclear or ambiguous whether the city can file an injunctive order in court. By adding over-occupancy to the list of nuisances, this provides another tool which could be used in extreme situations of flagrant and repeated violations. Mr. Draper explained that it was a remedy principally and almost exclusively used against landlords.

Councilor George Handley asked about limits and downsides, and whether there were any ways the provision could be misused. Mr. Draper explained the checks on the system that created accountability against abuse of this provision. Councilor David Knecht shared that the City of Houston, Texas, had strict laws regarding nuisances. Mr. Knecht also noted that this was the next item on the list for the Zoning Strategic Plan. Councilor Kay Van Buren asked whether Carrie Walls, Zoning Administrator, was supportive of the provision. Mr. Draper indicated that she was supportive of this additional tool. He noted that the civil lawsuit was just one aspect; the City could also criminally prosecute nuisances after notices to abate had been issued and several layers of due process had taken place. There were layers of protection but this provided the City with tools to conduct effective enforcement where repeat offenders in continual violation.

Councilor David Sewell asked for Brian Jones' perspective on the proposal. Brian Jones, Council Attorney, shared additional background on the discussion leading to this proposal. When the Council first stated that zoning compliance was one of their top priorities and formed the Zoning Compliance Committee, Mr. Draper and Ms. Walls researched a number of possible solutions. This idea came to the forefront when they found it in the code of other cities, including Springville. Mr. Draper has spoken with Springville legal and enforcement and obtained insight as to how they use this tool. As Mr. Draper and Ms. Walls prepared a list of ideas for the Zoning Compliance Committee to consider, this was on the list of potential ideas and was also part of the Zoning Strategic Plan. As Mr. Jones sees it, it was another tool to utilize. He agreed with Mr. Draper, that it was not likely to result in dozens of nuisance cases. Rather, it would be used rarely against egregious violators when other tools were not working.

Motion: David Knecht moved to move this item to a future Council Meeting. Seconded by George Handley.

Vote: Approved 6:0, with Gary Winterton excused.

3. A discussion regarding proposed amendments to Personnel Policies in Title 4. (19-082) ([0:35:55](#))

Daniel Softley, Human Resources Division Director, presented. Mr. Softley outlined the background of this item and what he covered during previous presentations to the Council. Mr. Softley reviewed changes in more detail section-by-section, noting sections which were simplified and consolidated. In the draft version, green text indicated portions which were moved from one area to another. Red text indicated new additions and blue strike-through represented deleted text. Several updates offer clarification on provisions that apply to both classified and unclassified civil service employees, and others provided consistency with State code. Mr. Softley also noted updated references to the new Development Services Department.

Mr. Softley also outlined leave policies and the process for frontloading sick leave and vacation hours, noting how the probationary period acted as a protection for the City. Mr. Softley also outlined the clarifications on overtime and compensatory time; the overtime provision has been brought into compliance with federal provision. The process for addressing unauthorized overtime is addressed elsewhere in a separate process.

Mr. Jones provided background information on the pay range tables and the impetus for moving them from the code. Rather than having two tables which were not consistent, the singular table would be hosted on the City or HR website. The Administration indicated that they could bring this as a part of the budget review each year. Mr. Parker explained that the pay ranges were rarely updated outside of the budget process, but occasionally a minor requirement was needed during the year to assist with recruitment, or to react to a market change or condition that was raised during the annual market rate study. Mr. Jones felt that this was a compromise step that represents the actual historical practice of updating the pay tables. Cliff Strachan, Council Executive Director, shared a comment from Councilor David Harding (who participated electronically), who felt that housing the pay tables on the website would sufficiently resolve the concerns. Mr. Jones also clarified that the ordinance as drafted would repeal Title 4 in its entirety and reenact the new draft of Title 4, in order to simplify implementation. ***Presentation only. This item will be brought back to the Council on October 8, 2019.***

4. A discussion regarding an improvement agreement to construct a road in the Mountain Vista Business Center. (19-099) ([1:03:05](#))

Dixon Holmes, Assistant CAO, presented. Mr. Holmes shared background information on the development of the Mountain Vista Business Center. The federal Economic Development Administration (EDA) has granted the City funds for constructing a road in the Mountain Vista Business Center, however the road must not be speculative; rather, it must have a dedicated user.

Mr. Holmes outlined the proposed expansion by Hall Labs and how this new road would be used. About 10 years ago, the City had transferred the remaining property to the Redevelopment Agency, however the City has received the grant to build the road. Hall Labs would purchase the property from the RDA and Scannell would act as master developer of the acreage. The prospective buyers have requested an agreement outlining the City's commitment. The City had previously agreed with the EDA to construct the road, so this request would simply extend to Hall Labs and Scannell the commitment the City has already made. Mr. Parker noted that there was some time-sensitivity for the developer to take advantage of the opportunity zone.

Councilor George Stewart asked what businesses would go into the new facilities. Mr. Holmes explained that these would be larger office spaces and the projected tenants had not yet been identified. Hall Labs was an incubator for many successful businesses in the area. As a previous proposal would have located a gravel operation at this site, the City Administration was pleased with this direction toward business development opportunities. Mr. Holmes also clarified that the planned road would be an extension of the existing Tracy Hall Parkway.

Mr. Jones shared comments on the actual agreement and resolution. He had some qualms regarding revised language in the most recent revision of the agreement, however the language

was more technical/legal-related and did not affect the deal points. Mr. Jones was concerned that this question not delay the timing, as the deal points would remain the same. Mr. Jones suggested a revision to the resolution which would address this last sticking point but authorize the Mayor to execute the agreement. Camille Williams, Assistant City Attorney, explained that an important deal point for the investors and financiers was that the road be built within a reasonable timeframe. In the current draft of the agreement, a timeline of 18 months was identified. Ms. Williams indicated that Public Works staff were hopeful that the City would receive the necessary grant funding.

Councilor David Knecht asked about utility improvements and the Clyde properties in Springville. Mr. Holmes indicated that some services had been stubbed in to the undeveloped area of Mountain Vista, however further upgrades would likely be at the expense of the developer. He also thought Springville would not be likely to annex the Clyde properties. Mr. Holmes noted that the Mountain Vista properties were currently zoned as Planned Industrial Commercial, which was consistent with the zoning of the East Bay Business Park.

Motion: David Sewell moved to substitute for the implied motion a version of the resolution that authorizes the mayor to negotiate and execute an agreement that reflects the deal points which have been discussed. Seconded by George Handley.

Vote: Approved 5:0, with Gary Winterton and David Harding excused.

Policy Items Referred from the Planning Commission

5. A discussion regarding a zone change of approximately one acre of real property, generally located at 674 E 3230 N from Residential Agriculture (RA) to One-Family Residential (R1.10). Edgemont Neighborhood. (PLRZ20190175) (1:24:10)

Dustin Wright, Planner, presented. He noted that neighborhood residents had expressed concerns about the driveway. The property owner has adjusted the plan to have one shared paved access; with a shared driveway, there were fewer access points to the street and was a safer design for cars and pedestrian traffic. Mr. Wright felt that the applicant has been very responsive to concerns of the neighborhood and has worked with neighbors to continue the conversation and introduce several desired revisions. These revisions have resolved most neighbors' concerns. *Presentation only. This item was already scheduled for the Council Meeting on September 24, 2019.*

6. A discussion regarding proposed ordinance amendments regarding accessory apartments. City-wide application. (PLOTA20190120) (1:29:20)

Councilor David Knecht presented. Mr. Knecht explained concerns from the Wasatch Neighborhood and how these have been addressed to fit within the intent of the proposed ordinance amendments. Mr. Knecht and Mr. Jones reviewed changes which have been made to the draft ordinance amendment, including:

- Several minor technical changes
- Clarification on detached garages having an internal connection to an accessory unit
- Clarification on setbacks
- Revised provision on shipping containers to require compatible material selection

Please Note – These minutes have been prepared with a time-stamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.

- Clarification on utility metering requirements
- Clarification on minimum unit size for attached accessory units vs. detached units
- Removed reference to Conditional Use Permits
- Rental Dwelling License requirement

Since this draft, based on recommendations of the Housing Executive Committee, was only recently completed, it would be circulated to Councilors for further review prior to being scheduled for a future meeting. *Presentation only. This item was scheduled to return to the Council on October 8, 2019.*

Business

7. A discussion regarding recommendations from the Sign Ordinance Committee. (19-102) ([1:40:53](#))

Council Vice-Chair Kay Van Buren presented. Mr. Van Buren reiterated the committee's mission statement to review sign ordinances and how they are applied in various areas of the City. Mr. Van Buren shared comments about the process and with the background of electronic sign regulation in Provo City.

Councilors discussed at length various policy considerations for electronic signage. Comments and discussion points included:

- Councilor David Sewell explained the committee's concern that the City would have trouble defending the 3 changes per day standard. The City cannot regulate content, so if a sign owner wanted to display the time and temperature, there would not be a way to enforce the 3 times per day change.
- The committee debated the option of having a minimum hold time of 1 minute in low-churn areas and leaving the minimum hold time at 8 seconds in high-churn areas.
- An advantage of longer minimum hold times is minimization of the Las Vegas effect.
- Councilor George Handley wanted to hear more of the committee's reasoning, as changing from 3 times per day to once per minute was a huge jump. Mr. Handley was concerned about safety and how reducing the frequency of the change helps safety.
- Mr. Sewell had done considerable research into the safety factor, but there was not much empirical evidence one way or another. The committee shared Mr. Handley's concerns for safety, but evidence shows that drivers glance at signs, then look back to the road.
- Councilor Kay Van Buren noted that many buildings have more than three tenants, so being able to change the sign more than three times per day was preferred.
- Councilor David Knecht suggested that drivers may observe a sign change once as they pass. He was concerned about residents in proximity to signs with frequent changes.
- Councilor George Stewart hoped the committee would bring a recommendation of what would be business-friendly but not unsafe.
- Councilor David Harding shared a comment electronically: "We recently broadened the allowed area for low-churn electronic signs to anywhere backlit signs are allowed, based on the idea that low-churn (3 times per day) electronic signs are no more obtrusive than back-lit signs. Now we are considering allowing low-churn signs to change every minute. This seems far more obtrusive than a back lit sign."

- Mr. Sewell noted that there were tradeoffs between safety and the economic advantage of being able to change the message more frequently. A helpful visualization for him was to consider that in a decade or two, sign costs would likely decrease and there would be many more digital signs than there are now. He suggested the Council consider what the City would be comfortable with once the landscape had changed; likely, the argument would be for longer minimum hold times. Mr. Sewell hoped to strike a balance between aesthetics, safety, business interests, and what was reasonable. He noted that while there is a lack of empirical evidence, it does not eliminate the possibility of a correlation between sign hold times and driver behavior. An Australian study that he read indicated that digital signs tend to impact inexperienced and older drivers more (in terms of their ability to process multiple things happening and staying focused on driving tasks).
- Mr. Handley was skeptical of the need for electric signs; once some businesses have them, then others want to have them to compete. In New England where he grew up, billboards or electric signs are not allowed anywhere. Mr. Handley felt that in the digital age of smartphones, it seemed there were arguments for cutting back on the proliferation of electric signs. He was interested in further research on the effectiveness of signs. Mr. Harding echoed Mr. Handley's comments regarding visual pollution and distractions.
- Mr. Van Buren noted Mayor John Curtis was concerned in 2013 about the look and feel of University Avenue; some businesses already had electronic signs, which were grandfathered in, but it created some potential legal issues.
- Brian Jones, Council Attorney, noted that part of the reason the committee was reconsidering this discussion was because there were many signs in violation. Enforcement may or may not be effective, and could possibly upset business owners. Mr. Jones clarified that in part, the hesitance of enforcement officials was a result of wanting to confirm with a Council decision what the accepted standard is. It was also common for enforcement to receive more complaints about new signs, which typically needed to be re-calibrated to the appropriate brightness.
- Mr. Jones also clarified that the Provo School District was not governed by Provo City code. Enforcement receives frequent complaints about signs operated by the School District, which the City can do nothing about. Mr. Van Buren noted that the committee discussed sending a letter to the District officials to educate them on the issue and request voluntary compliance on their part. Councilors were supportive of this measure.
- Mr. Sewell was interested in further research on hold times and what other municipalities have done. Mr. Sewell also noted that it would be important to solicit feedback from both the residential and business communities through an Open City Hall topic.
- Mr. Knecht was interested in exploring case law on signage, particularly churn/hold times. Mr. Parker suggested examining APA materials or case studies on sign regulation.
- There was further discussion on the interface between adjoining commercial and residential areas. Several Councilors suggested that appropriate interfacing between such areas would be critical for the west side and other areas, and some resident support may hinge on whether it means businesses come with intrusive signage. Mr. Harding felt that high-churn areas were okay in certain commercial corridors, but felt that three changes per day was reasonable in most areas, where electronic signs were intended to be similar to back-lit signs. Mr. Handley and Mr. Sewell shared concerns from constituents regarding the impact of light pollution on quality of life. Perhaps rather than thinking about commercial versus residential uses, it should be more granular (e.g., commercial

vs. mixed use; high- vs. low-density). Areas such as University Avenue were problematic as there were residential areas in close proximity to a business corridor.

- Mr. Van Buren noted that the City code was already very specific about brightness.
- Councilors discussed a variable hold time based on the road speed. There were challenges for consistency of enforcement with a complex range of hold times.
- Mr. Sewell preferred a more limited standard as far as hold times, but he also hoped to strike a balance, considering the ongoing litigation and complaints about a sign on University Avenue—he felt it was a difficult situation where one business had an unfair economic advantage over other businesses situated in the same area. He wanted to ensure that the City has a fair and defensible standard that the Council was willing to defend.
- Councilors discussed the 8-second hold time preferred by Yesco, an industry leader in local business signs. Mr. Sewell recalled that 8 seconds was felt to be a reasonable length for viewers at highway speeds to read and absorb the message before it changed.

Mr. Jones noted that sign decisions could move forward independently. He suggested that the Council could send the amendment to Title 14 (clarifying the prohibition of electronic signs in residential areas) on to the Planning Commission for their review; then the while the Council continued discussions on hold times.

Motion: George Stewart moved to forward the proposed change to Provo City Code Section 14.38.010 to the Planning Commission for review. Seconded by David Knecht.

Mr. Knecht asked if the proposed change would include Low- and Medium-Density Residential zones. Mr. Jones indicated that the Planning Commission could review those zones as well.

Vote: Approved 6:0, with Gary Winterton excused.

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. *None requested.*

Adjournment

Adjourned by unanimous consent.