

NORTH OGDEN CITY COUNCIL MEETING MINUTES

January 7, 2020

The North Ogden City Council convened in an open meeting on January 7, 2020 at 6:00 p.m. at the North Ogden City Office at 505 East 2600 North. Notice of time, place, and agenda of the meeting was posted on the bulletin board at the municipal office and posted to the Utah State Website on January 3, 2020. Notice of the annual meeting schedule was published in the Standard-Examiner on December 22, 2019.

PRESENT:	M. Brent Chugg	Mayor
	S. Neal Berube	Mayor-elect
	Ryan Barker	Council Member
	Blake Cevering	Council Member
	Cheryl Stoker	Council Member
	Phillip Swanson	Council Member
	Carl Turner	Council Member
	Charlotte Ekstrom	Council Member-elect

STAFF PRESENT:	Jon Call	City Manager/Attorney
	Annette Spendlove	City Recorder/HR Director
	Dave Espinoza	Public Works Director
	Tiffany Staheli	Parks & Recreation Director
	Dirk Quinney	Chief of Police
	Lynne Bexell	Administrative Assistant
	Clark Crowther	Police Lieutenant
	Lorin Gardner	City Engineer

VISITORS:	Christopher Heiner	Leonard Looney	Dale Anderson
	Julie Anderson	Steve Gray	Alane Ferney
	Brent Call	Tyler Crittenden	Kiley Crittenden
	Herman Armendiraz	Casey Wheeler	Lynn Satterthwaite
	Carol Satterthwaite	Kim Ekstrom	Clinton Elmer
	Rakel Elmer	Jordi Elmer	Hope Elmer
	Susan Clements	Kathryn Warren	Stephen Russell
	Bob Buswell	Marjean Swanson	Bill Bernard
	Mark Miller	Randy Winn	Brett Hamblin
	Aaron Christensen	Kim Christensen	Stefanie Casey
	Charlotte Jensen	Jodi Cleveland	Brian Cleveland
	Kevin Burns	Janis Christensen	Terry Bexell
	Karla Hall	John Arrington	Dave Hulme
	Cal Heiner	Gayle Harris	Shawn Heiner
	Gary Wolthuis		

Mayor Chugg called the meeting to order. Council Member Barker offered the invocation and led the audience in the Pledge of Allegiance.

CONSENT AGENDA

3. **DISCUSSION AND/OR ACTION TO CONSIDER NOVEMBER 12, 2019 CITY COUNCIL MEETING MINUTES**
4. **DISCUSSION AND/OR ACTION TO CONSIDER NOVEMBER 19, 2019 CITY COUNCIL MEETING MINUTES**

Council Member Swanson motioned to approve November 12, 2019 and November 19, 2019 City Council Meeting Minutes. Council Member Barker seconded the motion.

Voting on the motion:

Council Member Barker	aye
Council Member Cevering	aye
Council Member Stoker	aye
Council Member Swanson	aye
Council Member Turner	aye

The motion passed unanimously.

PRESENTATIONS

1. **SWEARING IN OF MAYOR AND COUNCIL MEMBERS**

City Recorder Spendlove administered the Oath of Office to Mayor Berube and Council Members Barker, Ekstrom, Stoker, and Swanson.

Mayor Berube thanked Mayor Chugg for his service to the City; Mayor Chugg was called upon at a time of uncertainty to lead the City and he is grateful for the work he has done since then. He stated he learned early in his life that success comes from surrounding oneself with greatness and he looks forward to working with the Council to better the community of North Ogden.

2. **SWEARING IN OF YOUTH CITY COUNCIL MEMBERS**

City Recorder Spendlove administered the Oath of Office to the Youth Council Members and Advisors present.

ACTIVE AGENDA

5. PUBLIC COMMENTS

Scott Barker, 2592 Barker Parkway, stated he has been pushing the idea of pursuing a grant for Barker Park. He believes it will take a professional grant writer writing the grant to get it approved. The land has been sitting unused for 20 years and he feels now is the time to develop the park to give the increasing population of the City something to do. He hates the idea of the youth of the City having nothing to do, which could result in them causing mischief. He has talked to others in the community about their ideas for grant writing. He feels that it would be worth paying a professional grant writer to write a grant that could help to secure funding to develop the park. He then stated he enjoys working with the City Council Members in his capacity as a Planning Commissioner and he is looking forward to continuing that service. He has learned a great deal about the City in that role and he has recognized that the City staff are hard workers who care about the City.

Randy Winn, 2412 Barker Parkway, expressed his gratitude to former Mayor Chugg and former Council Member Turner. He then congratulated those who have been elected or re-elected to their respective position.

Bob Buswell, 962 E. 3025 N., stated that he enjoys attending the City Council meetings. He thanked former Mayor Chugg and former Council Member Turner for their service and indicated he looks forward to witnessing the work to be done by this new Mayor and City Council.

Dave Hulme, 513 E. 1700 N., stated that when he first read the minutes of an August City Council meeting he was disappointed to learn that Council Member Barker had moved out of the City. He has continued to be disappointed over the coming months as he has seen a complete lack of official action to address the matter. He feels there are a number of people who feel the same and this situation should be taken care of. City staff should not be put in the position of having to tell a sitting Council person that their office has been vacated according to State laws and it is his personal opinion that the correct thing to do in this situation would be to resign. He does not feel the other members of the City Council should be placed in this situation either, especially in a year they are trying to get elected themselves. When voters are charged with electing their representatives, they should not be concerned about whether those representatives are in violation of a law that could result in their removal from office. Most of all he is concerned for those who have been or are aggrieved by the continuance of someone operating as a Council Member even though State law indicates their office has essentially been vacated. This includes candidates running against this individual who may have been defeated in the primary or general election; these people could potentially litigate against the City for failing to enforce State law. The same could be true for any developer who feels that a vote cast for Council Member Barker should be invalidated because he should not have

been a Council Member according to State law. He feels citizens should have an expectation that their tax dollars not be spent on legal risks such as these. The reason the law is in place is because citizens deserve to have elected representatives that are subject to the same laws they are voting for in the municipality. The State law is very clear that if the elected official's primary residence is no longer in the City they represent, their office is vacated. He would be curious to know Council Member Barker's intent regarding his place of residence. This nation was founded as a nation of laws; it has become increasingly popular to let those laws slide when they do not fit a certain situation or when politics come into play. However, he would hope the elected leaders of North Ogden will take the laws they are subject to seriously and enforce them even when it is inconvenient or unpopular. If there is certainty that a law should not be enforced, efforts should be made to get the law changed so there is no subjective enforcement in the future.

Kathryn Warren, 720 E. 2550 N., stated that the matter of Council Member Barker's place of residence is ridiculous. Council Member Barker was living in the City when his home was placed on the market and he did not know it would sell in just two weeks. He is now doing everything he is supposed to do in order to annex his new residence into the City. If the City were to take action to remove Council Member Barker from the Council, the citizens would be losing a tremendous asset. She stated that Council Member Barker has done nothing illegal in her opinion and she feels a great deal of time and effort has been wasted on something that is so insignificant.

Gary Wolthuis, 1257 E. 3075 N., asked for clarification on whether Council Member Barker actually lives in the City.

Council Member Barker stated that he lives in an unincorporated portion of the City. Mayor Berube stated that this is a very complicated issue and one that will be addressed under the next item on the agenda.

6. ELECTED OFFICIAL RYAN BARKER'S PRINCIPAL PLACE OF RESIDENCE (UTAH CODE: 10-3-301)

A staff memo from City Manager/Attorney Call explained there have been some questions come up about the rules surrounding the principle place of residence for elected officials. There are some provisions in the State Code which cause some confusion. For clarity we are asking the Council to make some official determinations to help fill some of the gaps in the laws. The main provision of the law is found in Utah Code 10-3-301 which provides the framework of the residence requirements. One issue with this section is it doesn't define "Principle Place of Residence" but references out to 20A-2-105 to define the term.

In 20A-2-105 there is some language which discusses how somebody loses their “principle place of residence”. In particular there are references to:

- When somebody loses their “principle place of residence” after establishing a new one. 20A-2-105(5)(c);
- Somebody not establishing a new residence in a County, unless they intend to do so 20A2-105(3)(f); and
- When somebody loses their residence after moving without the intent of remaining. 20A2-105(3)(e).

Because of the confusion, Staff feels it is best to take some official action under 10-3-301 to help clarify the situation. The Council is not necessarily required to take this action, because of the provisions found in 20A-2-105, however, staff believes it allows for the City to help provide some clarification of how the City will evaluate the intent to establish residency. To satisfy 10-3- 301 the Council is required to have public comment about the request for consent on the residency requirements under subsection 10-3-301(6). After that comment period the Council could propose a motion to clarify how it would review the residency of its members moving forward.

Staff is recommending a six-month window from the time a new home is purchased to complete an annexation, or nine months from the time the Council makes this recommendation, whichever comes first.

Mr. Call reviewed his staff memo. He stated that it is his understanding that Council Member Barker’s home was sold two weeks ago and Council Member Barker has since been residing in a home that is in an unincorporated island of the City, but within the City’s municipal boundaries. The question at hand is the intent of the individual – Council Member Barker – relative to the location of his primary address. He stated that Council Member Barker has not closed the transaction on the property that is technically unincorporated and until he owns the property he cannot initiate the annexation process. He noted the State Code specifically indicates that someone does not lose their voting eligibility in one location until they gain it in another location. It is his understanding that it is Council Member Barker’s intent to maintain his residency in North Ogden, but it will take him a bit of time to move his residency back into North Ogden. The Council has the ability to authorize for a temporary absence of a Council Member to occupy a secondary residence up to one year and still maintain their seat on the Council. He advised there are two ways for Council Member Barker to clearly maintain his seat on the Council; one is to establish a timeline for which Council Member Barker is required to complete the action to move his primary residence back into North Ogden City. The second is for Council Member Barker to live in a residence that is already in the City and not live outside of that residence for more than 60 consecutive days.

Mayor Berube invited input from Council Member Barker.

Council Member Barker reiterated Mr. Call's statements about his inability to initiate the annexation process for the property he is currently living at because he does not yet officially own it. He added he also does not believe he's violating the State law because he does not technically own the home he is living in. He stated that as soon as he owns the home he will file an annexation petition.

Mr. Call discussed case law about this issue; one case he found relates to the Mayor of Alta who owns a store in the town of Alta and he lives in a residential space that is attached to that store. However, his family lives in a residence that is not located in Alta. This issue was litigated in court; typically, in these cases, the court will err on the side of upholding election results and that is the route that he is also following in this case. Council Member Barker added that he is a Fire Fighter stationed at the Fire Station located in North Ogden and he essentially lives in that Station for extended periods of time.

a. PUBLIC COMMENTS

Susan Clements, 668 E. 3125 N., stated it is her understanding that Council Member Barker listed his home for sale, it sold, and he moved around the corner into a home that is not incorporated in the City, but is within the municipal boundaries of the City. Council Member Barker stated that is correct; the home he is living in is located across the street from the Barker Park Amphitheater and it is a historical home that has been standing since 1910. It is located on an unincorporated island of property within the City.

Dave Hulme, 513 E. 1700 N., stated that he believes the law should have been written to allow for consideration of an annexation action as Council Member Barker describes. This is a mistake on the legislature's part and something he hopes the City will work with the State Legislature to correct. He believes there are a number of things the City can do in its own Code to mirror or expound upon State Code; the City cannot supersede State Code or be stricter, but it may be possible to clarify issues such as this one. He stated he feels the laws should not be written in a way that requires a City or an official to 'jump through hoops' to be in compliance; rather, the law should be clearer. The law only addresses what happens when an elected official moves outside of the City; it does not address what should happen when an elected official finds themselves in a situation where they are technically living outside of City boundaries. He thinks it would be a good idea for the City to pursue clarification in some way. He thanked the Council, Mayor, and City staff for looking into this issue. He is not sure that the City would prevail in their defense of Council Member Barker's situation if this issue were litigated.

Brent Call, 835 E. 2100 N., stated he has also reviewed the State Code and he understands the Council could grant an exception in Council Member Barker's case to allow him to reside at a secondary residence outside the municipality while still maintaining a principle place of residence in the municipality for a period of one year. It sounds like Council Member Barker would be required to maintain a residence in the

City while still living outside the City for a one-year period. He is confused as to how the exception could be granted given that Council Member Barker does not technically own a principle residence in the City. He stated that this is an issue of semantics; he agrees that Council Member Barker is a great Council Member and he would hate to lose him, but he also agrees with Mr. Hulme about the importance of upholding and abiding by laws that are in place.

b. DISCUSSION AND/OR ACTION TO CONSIDER A TIMELINE FOR COUNCIL MEMBER RYAN BARKER TO MAINTAIN A PRIMARY RESIDENCY WITHIN THE NORTH OGDEN CITY LIMITS

Mayor Berube asked how many days per month Council Member Barker sleeps at the Fire Station, to which Council Member Barker answered two days per month.

Mr. Call stated that many believe that the term ‘principle place of residence’ is very clear, but when reviewing the State’s Election Code for its definition, there is some confusion. He expounded on this confusion, noting the citation that has caused the most trouble reads “a person has not lost their principle place of residence in Utah or a precinct if that person moves to a foreign country, state, or other voting precinct within Utah for temporary purposes with the intention of returning”. He stated that Council Member Barker has moved to another voting precinct, which is in Weber County, but he has the intent of coming back into the City’s precinct upon annexation of his property. He stated he does not believe the Code anticipates this sort of situation and the legislature did not consider this type of situation when they wrote this law. A member of the City Council previously relied upon this statute in the past when they sold their home and moved in with their in-laws while purchasing their new home in the City. That situation did not become problematic as the situation was very temporary in nature and the individual only lived with their in-laws for less than 60 days.

Mayor Berube asked Mr. Call for an official recommendation as the City Manager/Attorney. Mr. Call stated that he is recommending the Council consider a specific timeframe for this situation to continue and consider amendments to the law that govern this type of situation. If the Council does not want to pursue that option, they could consider the Fire Station to be Council Member Barker’s principle place of residence until his home and property is annexed into North Ogden.

Council Member Swanson stated he spoke to Mr. Call at length over the weekend about his principle concern with State Code 10-3-301(6)(a), which indicates that “if an elected municipal officer obtains the consent of the municipal legislative body... before the expiration of the 60-day period described in (the law), the officer may: reside at a secondary residence outside the municipality while still maintaining a principal place of residence within the municipality for a continuous period of up to one year during the officer's term of office; or be absent from the municipality for a continuous period of up

to one year during the officer's term of office.” He stated that he feels that given that Council Member Barker was sworn into a new term of office today, the 60-day period would commence now rather than being dated back to when he sold his home in his last term of office.

Council Member Ekstrom asked if the current property is owned by the Barker Family Trust, to which Council Member Barker answered yes. Council Member Ekstrom asked if it is the Trust’s intention to annex the property. Council Member Barker stated it is his intent to annex; he has begun the process of purchasing the home from the Trust. The Trust will annex the property, but it would be smoother for him to actually buy the home and then begin the annexation as the property owner. Council Member Ekstrom stated she feels Council Member Barker’s intent to remain living in the City is clear; she wants to follow the law, but it is Council Member Barker’s intent to comply with the law.

Mayor Berube stated that he feels Mr. Call’s advice provides the Council with an opportunity to comply with the law while recognizing Council Member Barker’s intent to maintain his principle residence within North Ogden City boundaries.

Council Member Cevering motioned to provide Council Member Barker with a nine-month window from today’s date to complete the annexation into North Ogden City for the property he is currently purchasing. Council Member Ekstrom seconded the motion.

Council Member Swanson asked if the motion includes Mr. Call’s recommendation for the annexation to be finalized six-months from the date that the property acquisition is finalized. Council Member Cevering answered no, he only referenced the language regarding the nine-month window, but that would not preclude Council Member Barker from completing the annexation sooner.

Council Member Barker asked what will happen if a complication with the annexation arises and he is unable to annex within nine-months. He noted that the annexation of the City’s Public Works Facility property took nearly two years. Mayor Berube stated that if complications arise, the Council can reexamine the matter. Mr. Call stated that the only issue that may arise is that the Code requires the Council to make the decision about this issue within 60 days of moving to a secondary residence. He does not believe the time period could be extended at the expiration of the nine-month period. He added that there was a property dispute relating to the Public Works Property and that is why the annexation of that property took two years.

Council Member Swanson stated that given the State Code allows the Council to grant Council Member Barker up to one year to reestablish his principle residence in the City, he would prefer to amend the motion to extend the nine-month period referenced in the original motion to one year. This will help the Council to avoid a troublesome situation in the event Council Member Barker is not able to finalize the annexation in nine-months.

Council Member Cevering withdrew his initial motion and offered an amended motioned to provide Council Member Barker with a one-year window from today's date to complete the annexation into North Ogden City for the property he is currently purchasing. Council Member Ekstrom seconded the motion.

Voting on the motion:

Council Member Barker	abstained
Council Member Cevering	aye
Council Member Ekstrom	aye
Council Member Stoker	aye
Council Member Swanson	aye

The motion passed unanimously.

7. **DISCUSSION AND/OR ACTION TO CONSIDER A RESOLUTION
APPOINTING COUNCIL MEMBER RYAN BARKER TO THE MOSQUITO
ABATEMENT BOARD**

Mayor Berube indicated that Council Member Barker is willing and able to serve in this position and he asked for a motion from the Council to approve a resolution appointing him.

Council Member Swanson motioned to approve Resolution 01-2020 appointing Council Member Ryan Barker to the Mosquito Abatement Board. Council Member Stoker seconded the motion.

Voting on the motion:

Council Member Barker	aye
Council Member Cevering	aye
Council Member Ekstrom	aye
Council Member Stoker	aye
Council Member Swanson	aye

The motion passed unanimously.

8. **DISCUSSION AND/OR ACTION TO CONSIDER A RESOLUTION
APPOINTING MAYOR S. NEAL BERUBE TO THE SEWER BOARD**

City Recorder Spendlove reported that the Trustees on the Central Weber Sewer Board are all elected and are usually the Mayor of the City they are representing. She noted Mayor Berube has indicated he is willing and able to serve in this role.

Council Member Stoker motioned to approve Resolution 02-2020 appointing Mayor S. Neal Berube to the Sewer Board. Council Member Swanson seconded the motion.

Voting on the motion:

Council Member Barker	aye
Council Member Cevering	aye
Council Member Ekstrom	aye
Council Member Stoker	aye
Council Member Swanson	aye

The motion passed unanimously.

9. DISCUSSION AND/OR ACTION TO CONSIDER AN APPOINTMENT OF MAYOR PRO TEMP

Mayor Berube asked that the Council consider appointing Council Member Stoker as the Mayor Pro Temp to act in his absence.

Council Member Swanson motioned to approve Council Member Stoker as the appointment for Mayor Pro Temp. Council Member Ekstrom seconded the motion.

Voting on the motion:

Council Member Barker	aye
Council Member Cevering	aye
Council Member Ekstrom	aye
Council Member Stoker	aye
Council Member Swanson	aye

The motion passed unanimously.

10. DISCUSSION AND/OR ACTION TO CONSIDER A PROCLAMATION COMMEMORATING NORTH OGDEN CITY SCHOOL CHOICE WEEK

A staff memo from City Recorder/HR Director Spendlove explained Mayor Chugg received an email on December 17, 2019 requesting that the City Council consider joining dozens of city and county leaders across the country in officially recognizing January 20-26, 2019 as School Choice Week.

National School Choice Week (NSCW) will feature an unprecedented 40,000+ events nationwide.

National School Choice Week is entirely nonpolitical and nonpartisan, and we do not advocate for or against any legislation. Our goal is simply to raise awareness, among parents of the public and nonpublic K-12 education options available to their children. Last year, more than 720 mayors and county leaders, along with 32 governors, the unanimous United States Senate, and the President issued proclamations recognizing NSCW.

Ms. Spendlove reviewed her staff memo, after which Mayor Berube read the proclamation document for the record.

Proclamation 2020-01 commemorating North Ogden City School Choice Week was adopted.

11. PUBLIC COMMENTS

There were no public comments.

12. COUNCIL/MAYOR/STAFF COMMENTS

Council Member Swanson stated that during a recent meeting a resident commented on the fact that there are residents in the community who belong to different faith groups than the predominant religion. He suggested amending the Council meeting agenda format to provide for an invocation and/or thought and to strive to include residents of differing faiths or beliefs. Mayor Berube stated that he feels that is appropriate and it would be helpful for Administration to pursue a policy for Council consideration. This policy would provide for inclusivity.

Council Member Swanson then congratulated his fellow Council Members who were recently elected or re-elected. He also congratulated Mayor Berube. He stated he looks forward to working with this group of people for the next two to four years.

Council Member Cevering commented on the quality service performed by the employees of the Public Works Department responsible for snow removal on City streets. He then stated that he recently had a conversation with Parks and Recreation Director Staheli about needed improvements at the North Shore Aquatic Center and he suggested the use of Redevelopment Agency (RDA) funds to pay for those improvements. He then reported that the City's website now gives residents the option of signing up to receive a monthly newsletter mailed to their home. This is an effort to improve transparency in the City and he will be communicating this option to as many residents as possible. He is hopeful that City staff can also take measures to advertise this option as well. He concluded that he recently spoke with a local resident regarding damages he suffered during snow removal efforts; his mailbox was destroyed and the City cannot offer him

any financial assistance. Mayor Berube stated that he would like to review the policy that governs that matter because there are many residents who have mailboxes valued at greater than \$100.

Council Member Ekstrom agreed with the request to change the policy that provides for the City to pay \$100 for replacement of mailboxes damaged by the City. She lives near the person whose mailbox was destroyed and she can attest to the fact that the City required the residents to build nice brick mailboxes. It would be appropriate for the City to pay for that mailbox to be rebuilt. City Manager/Attorney Call stated he will review the policy and bring it to the Council for consideration.

Mayor Berube stated it is his intent to direct City residents to the official Facebook page of North Ogden. He would like to start dialogue with residents to allow them to speak directly with him about a concern they may have.

Council Member Barker referenced agenda item six. He is not opposed to his living situation being discussed, but he was not made aware of it until after the agenda was posted. In the future when similar events arise, he feels the City should let the individual that is impacted know of the agenda item.

Mayor Berube asked Mr. Call to summarize the process for getting an item on an agenda. Mr. Call stated that one Council Member or the Mayor can place an item on the agenda. He added that he personally added the item after being contacted by others about the issue and doing his own research into the appropriate timeframe for Council action. He stated he should have notified Council Member Barker and apologized that he was surprised.

Council Member Stoker also commented on the great work done by the City's snow plow drivers; she has ridden along with them several times and they work all day to make sure City streets are clear. She then stated she is also looking forward to working with the City Council and Mayor Berube as well as the wonderful staff of the City.

City Recorder/HR Director Spendlove reported on the upcoming Local Officials Day at the Legislature hosted by the Utah League of Cities and Towns (ULCT). She invited Council Members to let her know if they are interested in attending.

Mr. Call reported on the City's partnership with the Utah Special Olympics to host a polar plunge at the North Shore Aquatic Center. He noted that participation is lower this year than in past years and he asked that the Council help to spread the word about this event. He then reported on the schedule of upcoming budget meetings as well as the offer from Administration to work with any member of the Council to orient them to the operations of each of the Departments of the City.

Council Member Ekstrom stated she looks forward to serving the City in the capacity of Council Member.

Mayor Berube stated he also looks forward to his work with the City Council and City staff. He noted the upcoming budget process is very important and he values the input of residents, staff, and all Council Members. He encouraged residents to continue to attend Council meetings and contact any elected official when they have a concern. He stated there is always room for improvement and he is willing to talk to any resident about an improvement or change they desire.

13. **ADJOURNMENT**

Council Member Cevering motioned to adjourn the meeting. Council Member Ekstrom seconded the motion.

Voting on the motion:

Council Member Barker	aye
Council Member Cevering	aye
Council Member Ekstrom	aye
Council Member Stoker	aye
Council Member Swanson	aye

The motion passed unanimously.

The meeting adjourned at 7:26 p.m.


S. Neal Berube, Mayor


S. Annette Spendlove, MMC
City Recorder


Date Approved