

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.



PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, June 16, 2020

Room 200, Municipal Council Chambers

Electronic meeting: <https://www.youtube.com/user/provocitycouncil>

Opening Ceremony

Roll Call

Prayer – Dave Sewell, Provo City Councilor

Pledge of Allegiance – Travis Hoban – Provo City Councilor

Chair Handley said the council had been concerned about the need for greater civility, inclusion, and appreciation for the diverse and wonderful qualities of our community. Recent events had made such an expression more urgent. The council created a video, not meant as a political statement, but as a statement of principle. The video was shared with the public.

Approval of Minutes

With no objections or corrections, the following council meeting minutes were approved by unanimous consent:

- February 4, 2020 Council Meeting Minutes
- February 18, 2020 Council Meeting Minutes
- May 19, 2020 Council Meeting Minutes

Presentations, Proclamations, and Awards

- 1. A presentation regarding the 2020 Census update and Mayor Kaufusi's Census Challenge Video. (20-028) ([0:22:55](#))**

Mayor Kaufusi shared a video introducing The Final Countdown Challenge, a competition between Utah County and Salt Lake County to get as many citizens as possible to complete the census. Completing the census was important because it determined federal funding for public services and the number of state representatives in Congress for the next decade.

Public Comment ([0:12:34](#))

Karl Youngblood, Provo, noticed that the police department budget had increased in the proposed FY 2021 budget. In light of recent events, many people were concerned with how police departments were structured and if it was contributing to unnecessary violence and brutality against minorities. He felt that police should not be burdened with responding to issues that could be taken care of elsewhere, such as social services, etc. He asked if there had been any discussion about changes in police budgeting.

Chair Handley reminded the public that the budget discussion would be presented later. He invited anyone with a comment about the budget to respond at that time.

There were no more public comments.

Action Agenda

2. A public hearing on transferring utility revenues to the General Fund and other funds. (20-008) ([0:36:27](#))

David Mortensen, Provo City Budget Analyst, presented. State law required Provo City to provide an annual disclosure of funds transferred from utility enterprise funds to the General Fund. He noted that the transfer was considered a “dividend” to Provo taxpayers. Funds were used to cover costs of city services like police, fire, parks and recreation. The proposed FY 2021 budget included the following transfers:

- \$11,490,387 – Ten percent transfer from utilities considered a dividend to Provo taxpayers due to private utility ownership;
- \$1,149,041 – One percent road maintenance fee;
- \$1,258,879 – Payment to General Fund for administrative services administrated on a city-wide basis;
- \$3,250,000 – Telecom debt service payments;
- \$894,190 – Provo 360 fund.

In addition to the transfers to the General Fund shown above, Provo City will transfer \$583,820 from the Wastewater Fund to the Water Fund to provide management services.

3. Ordinance 2020-19 adopting a budget for Provo City Corporation for the fiscal year beginning July 1, 2020 and ending June 30, 2021 in the amount of \$292,355,876 and amending the Consolidated Fee Schedule. (20-008) ([0:41:28](#))

Motion: An implied motion to adopt Ordinance 2020-19, as currently constituted, has been made by council rule.

Mr. Mortensen stated the proposed ordinance would adopt a budget for FY 2021 in the amount of \$292,355,876 and amend the consolidated fee schedule. He said the budget document was posted to the Finance page of the Provo City website for review by the public. The proposed budget was \$853,220 less than the tentative budget approved in May. He reviewed some of

the changes that were made to the tentative budget. Revenue adjustments included increases in the General Fund (\$66,000) and the Library Fund (\$51,000) after receiving the certified tax rates from Utah County. The Water capital budget was reduced by \$1 million. That amount had been appropriated in the current year in order to begin work on an Aquifer Storage and Recovery (ASR) project. The proposed budget also included funding received from the federal government for CDBG Covid-19 projects. Several other minor changes and formula corrections were made to the tentative budget.

Chair Handley invited public comment.

Katelyn Cooper, Provo, said the current defund police departments movement had given citizens the opportunity to review the City's relationship with the police department. She recommended the council re-evaluate the police budget and move several responsibilities to other civil servants. She encouraged the council to create an exploratory committee to create more safeguards and increase the trust between the people and police.

Abby Price, Provo, noted the majority of funding for the police department was for patrol and Community Oriented Police (COP). She was concerned because there was no information about what COP funding was used for. The goals listed in the budget focused on mental health and gangs but did not include any reference to racial inequality. She felt other funds, such as Community and Neighborhood Services and Development Services, should receive more funding. There should be more discussion before approving the budget.

Madison Fisher, Provo, appreciated the discussion about the budget and allocation of funds to the police department. She said the city supported the school district's request to place an additional officer in the schools. She noted that school districts all over the nation were cutting ties with police. She said police officers in schools harmed the students. It was too hard to make any changes to the budget at this time but asked the council to consider the relationship between the school district and police. They should eliminate that expenditure from future budgets.

Chair Handley closed public comment. He noted that the city had received more than 14 pages of comments on Open City Hall that referenced police budgeting. They questioned whether we had an over reliance on public safety and asked how to prevent police brutality and racial inequality. It was too late to make changes to the proposed FY 2021 budget but he would like to move forward with creating a committee to have ongoing discussions about public safety, including the presence of police officers in the schools. To make the right changes required time. He noted that Chief Ferguson had been meeting with the public to hear their concerns. This process was just beginning and would need to be continued.

Mr. Parker shared Chair Handley's concerns. He said the City was anxious to engage with the residents on budget and police concerns.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

The meeting was adjourned as the Municipal Council and reconvened as the Stormwater Service District.

Stormwater Service District

- 4. A public hearing on transferring Stormwater fund revenues to the General Fund and other funds. (20-010) ([1:04:08](#))**

Mr. Mortensen said the Stormwater Service District would transfer \$756,631 to the General Fund. The transfer included \$561,600 for the General Fund, \$56,160 for the Utility Transportation Fund, \$81,908 for Administrative Overhead, and 56,963 for Provo 360.

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

- 5. Resolution 2020-SSD-06-16-1 adopting a budget for the Provo City Stormwater Service District for the fiscal year beginning July 1, 2020 and ending June 30, 2021 in the amount of \$6,704,839. (20-010) ([1:07:30](#))**

Motion: An implied motion to approve Resolution 2020-SSD-06-16-1, as currently constituted, has been made by council rule.

Mr. Mortensen said the proposed budget for FY 2021 was \$6,704,839. There had been no changes to the tentative budget approved in May.

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

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

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

The meeting was adjourned as the Stormwater Service District Board and reconvened as the Redevelopment Agency Board.

Redevelopment Agency of Provo

- 6. Resolution 2020-RDA-06-16-1 adopting a budget for the Redevelopment Agency of Provo City Corporation for the fiscal year beginning July 1, 2020 and ending June 30, 2021 in the amount of \$1,171,617. (20-009) ([1:10:28](#))**

Motion: An implied motion to approve Resolution 2020-RDA-06-16-1, as currently constituted, has been made by council rule.

Mr. Mortensen said the proposed FY 2021 RDA budget was \$1,171,617. There had been no changes to the tentative budget approved in May.

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

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

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

7. Resolution 2020-RDA-06-16-2 approving and adopting the Community Reinvestment Project Area Plan and Budget for the Riverwoods Community Reinvestment Project Area. (20-094) ([1:13:23](#))

Motion: An implied motion to approve Resolution 2020-RDA-16-02-2, as currently constituted, has been made by council rule.

David Walter, Redevelopment Agency Director, presented. The proposed resolution would enact and adopt a Community Reinvestment Project Area for the Riverwoods Business Park. The project area encompassed eight parcels of land adjacent to the current Qualtrics business. The funding would allow Qualtrics to double in size by adding an additional 166,000 square feet of office space and two structured parking facilities with 500 spaces each. Just under 400 parking spaces would be available for other visitors to Riverwoods. Qualtrics planned to hire 1,000 new employees during the next ten years. Mr. Walter said that Qualtrics started in Provo and they would like to stay in Provo. Approving this resolution would allow them to expand and achieve their goals.

If the plan was approved, the RDA could begin negotiations with the other taxing entities to help capture a portion of tax increment that would be generated with this expansion.

Mr. Walter said that Utah State law required the RDA to set aside ten percent of the budget for low- to moderate-income housing. There were no residential units planned for this project, so the funds could be used in other areas of the City.

Ms. Ellsworth asked if the parking lot would be next to the river. Mr. Shields, with Qualtrics, said there would be two parking structures on 17 acres where the current facility sits. An additional four-acre lot, that would be developed as a parking lot, was across the street and bordered the river.

Ms. Ellsworth had hoped they could preserve and create spaces around the river for public use. Mr. Shields replied that there was a 100-foot setback they would honor and the path along the river that would be preserved.

Chair Sewell invited public comment. There was no response.

Chair Sewell said this was a good thing for the City and would bring high paying jobs.

Mr. Harding was grateful that Qualtrics was expanding and wanted to stay in the city. He expressed discomfort with using tax increment financing this way. The tax increment we were rebating could be better used elsewhere. The \$600,000 from the school district could be used to help better educate our children.

Ms. Ellsworth agreed with Mr. Harding.

Chair Sewell said we relied on staff to negotiate this type of agreement where they think it could make a difference. He said the state was also contributing to this project.

Mr. Walter reported that Qualtrics had applied to the State and received a post-performance tax credit, not to exceed \$32 million. Qualtrics had to perform in order to get any of the tax increment. He noted that Qualtrics would be making a \$70 million investment in the business park.

With no further discussion, Chair Sewell called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

The meeting was adjourned as the Redevelopment Agency Board and reconvened as the Municipal Council.

Action Agenda

8. Resolution 2020-19 adopting the Community Reinvestment Project Area Plan for the Riverwoods Community Reinvestment Project Area. (20-095) [\(1:28:08\)](#)

Motion: An implied motion to approve Resolution 2020-19, as currently constituted, has been made by council rule.

Mr. Walter said this was the City half of the resolution just approved by the RDA. If approved, these items would be taken to the County for recording. The interlocal agreements with the taxing entities would be brought back to the council for approval.

Chair Handley called for public comment. There was no response.

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

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

9. Resolution 2020-20 approving a substantial amendment to the Program Year 2019 Annual Action Plan to incorporate additional funds from the Coronavirus Aid Relief & Economic Security Act into the Community Development Block Grant Coronavirus funds. (20-093) ([1:32:15](#))

Motion: An implied motion to approve Resolution 2020-20, as currently constituted, has been made by council rule.

Dan Gonzalez, Provo City CDBG and HOME Program Administrator, presented. Due to COVID-19, the Coronavirus Aid, Relief, and Economic Security (CARES) Act authorized additional CDBG-CV funding to address the economic fallout from the pandemic. Provo City would receive an allocation of \$745,997 in CDBG-CV funds. To use the funds, the City was required to amend the most recently approved Annual Action Plan. The CARES Act provided flexibility and waivers for CDBG grantees to make it easier to use the funds. He reviewed the CARES Act provisions, which included:

- Preventing duplication of benefits. Funds may not be used if another source or financial assistance was available.
- Suspending the 15 percent cap on the amount of grant funds used for public service activities.
- Authorizing the use of funds to cover or reimburse costs to prevent, prepare for, and respond to coronavirus incurred by the City.
- Allowing amendments to Citizen Participation Plans to expedite procedures.
- Reducing the typical 30-day public comment period to six days.

Eligible programs to be funded included:

- Boys and Girls Fund for emergency child care, meals, and personal protective equipment.
- United Way of Utah County for the 211-center hotline.
- Mountainlands Community Health Center for personal protective equipment.
- Family Support & Treatment Center for virtual therapy.
- Housing Authority of Utah County for mortgage and rental assistance.
- Provo City CNS for small business assistance.

Mr. Gonzalez said funding could not be made directly to citizens; the City would use public programs to provide assistance.

Chair Handley invited public comment. There was no response.

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

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

10. Ordinance 2020-20 amending Provo City Code to adopt additional regulations for the Class "F" Beer License for restaurants with ancillary breweries. (20-098) ([1:43:48](#))

Motion: An implied motion to adopt Ordinance 2020-20, as currently constituted, has been made by council rule.

Hannah Salzl, Council Policy Analyst, presented. The council had been discussing additional regulations for the Class "F" beer license. Several policies received more broad support among the councilors. Ms. Salzl reviewed the additional regulations proposed for inclusion in Provo City Code 6.14.140:

- (13) Any premises for which a Class "F" license has been issued shall not:
- (a) produce more than 1,500 barrels of beer per calendar year on said premises;
 - (b) store outdoors any of the equipment, materials, ingredients, or products associated with or resulting from the production of beer on the premises;
 - (c) exceed thirty percent (30%) of the total floor area of the commercial space of the 101 premises with respect to the area used for brewing, bottling, and kegging;
 - (d) engage in service truck loading and unloading between the hours of 8 p.m. and 8 a.m.; nor
 - (e) engage in service truck loading on public streets, but rather must perform such activities using an off-street or alley-accessible loading dock.

- (14) No more than one premise located within the same contiguous incidence of the General Downtown (DT1), Downtown Core (DT2), or Regional Shopping Center (SC3) Zones may be granted a Class "F" license.

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

Ms. Ellsworth said this was something they had worked on for months. The restrictions and regulations were part of a mechanism to regulate the manufacturing use involved with brewpubs. The beginning, middle, and end of this process had been about compromise.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

11. Ordinance 2020-21 amending Provo City Code relating to permitted uses and yard requirements of the M1 Light Manufacturing Zone. Citywide application. (PLOT20200117) (1:50:49)

Motion: An implied motion to adopt Ordinance 2020-21, as currently constituted, has been made by council rule.

Robert Mills, Provo City Planner, presented. The proposed ordinance would amend the permitted uses in the M1 Light Manufacturing zone. Specifically, the amendment would allow combustible petroleum product distribution in the zone and allow a conditional use of flammable petroleum product distribution. The amendment removed the conditional use of natural and manufactured gas storage and distribution points. The Development Services Director would be allowed to grant different exceptions to the yard requirements in order to make the operation safer and more efficient.

Mr. Mills said this amendment had specific reference to the Christensen Oil property on 600 South. They had been operating continuously as a petroleum point for many decades. Their operation was a legal non-conforming use. If approved, the ordinance would allow them to have a permanent permitted use in the M1 zone while finding a creative way to make the neighborhood safer. The permitted uses were strictly limited to the block where Christensen Oil was located (north of 600 South, east of 200 East, south of 500 South, and west of 300 East). Christensen Oil had submitted an agreement with the city addressing specific concerns that had been brought up in the past.

Mr. Hoban said there was a concern raised about whether Christensen Oil owned some of the property they were built on. He asked Gary McGinn, Development Services Director, to address that concern. Mr. McGinn said there might be a boundary overlap, but Christensen Oil could only offer an agreement that would run with the property they owned. We were in the process of finalizing a legal description. He said that happened often. The council would approve a rezone without a final boundary line description. He asked that the council adopt the ordinance, allow staff to work out the final details, and authorize the mayor to enter into the agreement.

Listed below are responses to several questions asked by Mr. Fillmore.

- Fire Marshall Schofield defined the current hazardous material route for Christensen Oil. Coming out of their yard they could go east on 600 South to State Street. Or, they could go west on 600 South to 100 West, north on 100 West to 400 South, then east to University Avenue.
- Mr. McGinn said that planting trees for aesthetic purposes was not part of the agreement with Christensen Oil. They might be willing to do that but it was not a requirement in the M1 zone.

- Chief Miguel said they had another subject matter expert look at the property. They compared what was happening at the property with the time frames when they were built. He met with the Christensen's to discuss some recommendations for the property. He noted that some of the recommendations were not part of the regulations when Christensen Oil began.
- Mr. McGinn said that propane tanks located on the property had been addressed for the entire M1 zone. They would be allowed to have a 500-gallon propane tank to use for their forklifts.
- The fire department had worked to minimize the potential risk of a fire or explosion on site. Mr. Schofield was not aware of the details of their fire liability insurance policy.

Ms. Ellsworth said she received an email from a citizen that had planted trees on their property and said that some of the others would like trees planted on their property. She did not think it was necessary for us to ask Christensen Oil to donate trees. Mr. Mills said that extra trees could possibly create another fire hazard.

Chair Handley asked if the new warehouse and permanent storage would reduce the odor problem. Chief Miguel said that tanks were designed to vent when they were heated, which created the odor. Possible ways to counteract the odor could be discussed with Christensen Oil.

Chair Handley invited public comment. ([2:09:28](#))

Ted Anderson represented CUP Holdings, which held title to property at 554 South 300 East. He said that a portion of their property was being used by Christensen Oil. His property was being used for light manufacturing and should be residential. Mr. Anderson asked that item be tabled until the boundary line issue was resolved.

Todd Christensen, President of Christensen Oil, admired the honesty and integrity of Provo City council and staff. The request by Chief Miguel and Mr. Schofield for an independent fire code review should be praised. The inspection, by another fire chief in Utah County, did not find any violations. The review said the area was well maintained and run professionally, especially when keeping up with current requirements. He appreciated the time and effort taken by the administration to help solve some of the concerns.

Brandon Christensen said he was the youngest son and had worked at Christensen Oil all his life. He assured everyone that the company valued its staff and wanted to keep them safe. Their request to install additional tanks was a safer alternative for the neighbors and environment. Rejecting the ordinance would not reduce the amount of product stored on site. They wanted to improve communication with the neighbors and build trust going forward.

Melissa Platt, legal counsel for Christensen Oil, just heard recently about the possible boundary line discrepancies. They planned to survey the property and research the title. She said this should not require the item to be tabled. Christensen Oil had a vested right to adapt to

changes in their industry but the non-conforming issues were unclear. The proposed text amendment would give certainty to all. She said they would continue to work together to come to reasonable agreements.

Ryan Hanks, Joaquin neighborhood, expressed concern about permitting further growth. Even though the risks were low, it did not change the fact that there were risks. Christensen Oil should not have to abandon their project but it would be nice to find space in a neighborhood where there was less concern. If there were discrepancies on the property, they should be reconciled before allowing the vote to proceed.

Rachel Savero, Provo, lived adjacent to Christensen Oil. She said there should be filters in place to limit the exposure of the odor to the neighborhood. Her home was built in 1890 and was there long before Christensen Oil was built. In 1990, Christensen Oil entered into an agreement with Provo City that there would be no hazardous materials stored there. Before any more agreements were made, the city needed to begin enforcing the agreements they already had with Christensen.

Ms. Horrito had lived near Christensen Oil for more than 20 years in a home that was built in 1881. She was grateful the council asked good questions about the business, including such things as insurance. Because the changes to the M1 zone were new, she requested additional time for the neighbors to review it and understand what would happen with Christensen Oil moving forward.

Carolina Allen, eight-year resident in the neighborhood, said it was good to have these conversations with the City and Christensen Oil. She had spoken to more than 100 neighbors and family members that were shocked because they did not have the opportunity to find out what was going on. The City should have as much support from the neighborhood as possible. They wanted to create a win-win situation for everyone. The proposed solution was not a win for the neighborhood. They needed more time to come to an agreement.

Makayla Horrito said she had grown up in the neighborhood. She agreed with everything the neighbors had said. They needed additional time to work with the council to find a better agreement that would be a win-win for everyone

Michael Horrito, 25-year resident in the neighborhood, expressed concern about the odor. The effect on the resident's health, because of the petroleum based fuels, was important to study. He also had an issue with the trucks. He lived three blocks away and one of their trucks passed right in front of his home. The boundary line issue should be resolved before this issue could move forward. To add additional expansion on the property went against the intent of the current zoning. He said the new agreement was different from what was previously presented.

Ted Beuhler, Provo, had owned his home for 15 years. He said the business did not meet the basic safety expectations that the neighbors expected. Incrementally, this problem had become bigger and bigger. They should have a satellite location for expansion, not on their

current property. He asked the council to take this issue back to the city staff so that neighborhood concerns were addressed.

Lynn Wilkins Dixon, Joaquin Neighborhood, said she contacted each of the representatives to discuss the facility and expansion. She appreciated that they brought in an outside consultant but they needed to bring in someone from the petroleum industry. A fire chief could not tell them if a facility like this was safe for surrounding residences. She went to the business and spotted numerous violations, such as allowing totes up against residential homes. She felt the council needed to get a final agreement and a thorough inspection.

With no more public comments, Chair Handley invited council discussion.

Chair Handley asked the council how they felt about the request for more time. Mr. Harding responded that this was the third time the council had heard the item. It had been through a thorough process with enough time for people to weigh in with their concerns. Even with additional meetings, people would ask for more time. This had been a problem for a couple of decades because there was some ambiguity about non-conforming rights. With this agreement, Christensen Oil would renounce any claims to legal non-conforming uses. It lets us start fresh and have certainty about how the land could be used in the future. He felt the agreement met the concerns of the residents, city, and company.

Ms. Ellsworth asked staff if they had details about the adjacent property that Christensen Oil was using but was not owned by them. Mr. McGinn said the residential property owner felt part of Christensen Oil was on their property. If that was the case, they would have to move their operation. Subject to this agreement, they could only operate on property they owned. He did not feel the dispute had any impact on the agreement between the City and Christensen Oil or to the proposed text amendment. Even without a property description, the council could approve a rezone ordinance to change the residential unit in the M1 zone to a residential zone.

Mr. Jones said approving this agreement was similar to what we always did. The council usually approved the broad outline and authorized the mayor to negotiate and sign the agreement. The text amendment would not be final until an agreement had been approved.

Chief Miguel assured the council and neighborhood they had been listening closely to their concerns. He wanted to take care of some of these issues but needed the text amendment to do that. He was willing to invite an expert in the petroleum industry to perform an inspection.

Ms. Ellsworth had met with citizens, taken phone calls, held virtual meetings, and had multiple public hearings about this issue. She hoped the residents knew they were sincere in finding a solution and listening to them. If they could not resolve all the issues, at least the safety and odor issues needed to be addressed. She wanted to move forward that night.

Chair Handley hated to see such a chasm between citizens, the City, and staff. He had confidence in Chief Miguel and his ability to get things done. Much of what had happened over

the past several months was because of the neighborhood concerns. He hoped this amendment would give some teeth to changes going forward. He felt the text amendment and agreement were positive actions and it was hard not to see any recognition of that progress. He understood that the neighborhood was concerned with safety and setbacks. Christensen Oil had rights to continue doing their business and expand in some way. The question of safety, addressing odor issues, and moving totes into warehouses should be recognized as a positive gain.

Mr. Hoban said there had been some new information presented that Christensen Oil would have to figure out. He understood the homeowners not wanting this business near them but, on the flip side, Christensen Oil had been there for a long time. We must trust that minor infractions had been corrected. It was too expensive to move the business so we had to come up with another solution. We had to find the balance between the quality of life for people in the area and not putting a company out of business. Christensen Oil had offered to add a warehouse with sprinklers for safer tote storage and said that additional tanks would not be any taller than the current tanks. There were some good things coming out of this compromise. If not approved, the next step would be to fight a legal battle that he did not know if the City could win.

Mr. Sewell said we had come a long way but we were not finished. A few issues had been raised that would need to be negotiated. He felt the administration could work out those details.

Mr. Harding made the following motion:

Motion: Councilor Harding made a substitute motion to replace the implied motion ordinance for an ordinance that included the agreement proffered by Christensen Oil. The motion was seconded by Councilor Fillmore.

Mr. Jones confirmed that the motion was to advance the ordinance that included the agreement with Christensen Oil. The vote on this motion would not approve the text amendment.

Mr. Sewell asked if the text amendment applied to all M-1 zones or just the M1 zone for Christensen Oil. Mr. Jones said that some of the provisions in the ordinance only applied to a certain geographic area. Mr. Mills agreed saying there were two uses specifically for Christensen Oil - distribution of combustible petroleum products and distribution of flammable petroleum products.

Chair Handley called for a vote on the substitute motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

12. Ordinance 2020-22 amending Provo City Code to establish a Critical Hillside Overlay (CH) Zone. Citywide application. (PLOT20200077) ([3:07:42](#))

Motion: An implied motion to adopt Ordinance 2020-22, as currently constituted, has been made by council rule.

Brandon Larsen, Provo City Planner, presented. The proposed ordinance would protect the ecology and aesthetics of the foothills. The underlying zone would not change but certain properties would have additional development requirements. He presented a map identifying the properties that would be affected by the proposed Critical Hillside Overlay (CH) zone. He stated this was not an effort to take anyone's home or to stop development. This would help development blend into the foothills.

Mr. Larsen said the Planning Commission recommended approval and requested the council address some additional policy issues. Those issues included:

- Encourage Reclamation and Clustering – These two issues were complicated and might take a few more months to adequately address and development them. Proposals would be presented in a future meeting.
- Ridgelines – We started with about 50 ridgelines but, after further discussion, we now have ten to twelve ridgelines. These included the most prominent ridgelines in the foothills.
- Zone Boundaries - There were a handful of islands in the overlay zone, especially in the Foothill Drive area. They ranged from three quarters of an acre to around thirteen acres. There was a question about whether the islands should be included in the overlay.
- Limits of Disturbance –The proposed ordinance said that forty percent of the property could be disturbed, and sixty percent should be left in its current state. The Planning Commission wanted to soften this requirement by allowing ten percent for landscaping, reducing the current state to fifty percent. The limits of disturbance would apply to individual lots in a development.

Mr. Larsen said two other adjustments had been made. Cemetery lots would be excluded from the overlay zone. Paul Perry had a home on a parcel of land in the overlay zone. He asked that his property be removed from the map because he thought the zoning requirements already excluded him.

David Day, Development Engineering Coordinator, reviewed a map showing ridgelines that would be affected by the overlay zone. The map included ridgelines in Buckley Draw, Slate Canyon, Y Mountain, Rock Canyon, above East Lawn Memorial Cemetery, and at the mouth of

Provo Canyon. They eliminated 40 smaller ridgelines and narrowed it down to the ones shown on the map.

Chair Handley invited public comment.

Sharon Memmott, Provo, said the Planning Commission also wanted the council to address the hodgepodge nature of the map. She asked why the map was being reduced. Why not extend it down to University Avenue since that would include all the areas in question. This overlay was merely a tool to give direction to further development and to protect the unique nature of Provo. It was time to move forward with this overlay zone.

Kaye Nelson, Provo, thanked the council and staff for listening to the concerns of the residents. The overlay zone was an important tool to help preserve the foothills and trails. She hoped the document would do what was intended.

Angela Mourick, Provo, was concerned that many of the ridgelines had been removed from the map presented to the Planning Commission. The council should pass this ordinance because it was part of a bigger vision.

There were no more public comments.

Chair Handley read Item No. 13 into the record stating that items 13 and 14 were being discussed together but would be voted on separately.

Mr. Shipley asked if there was a size limit for parcels removed from the map or if the acreage was a factor in the decision. Could we use the acreage and increase the size in order to remove some of the smaller island parcels.

Mr. Sewell said he had a hard time applying the zone to areas that were already developed. It was not so much the size of the parcel.

Mr. Fillmore shared Mr. Sewell's concerns but he would not have a problem excluding the smaller parcels. He did not like the idea of a parcel an acre or less bound by this overlay.

Chair Handley said there was one more caller with a public comment that could not get through due to technical difficulties.

Paul Perry, Provo, said he was one of the owners whose property had been removed from the overlay zone. He wanted to represent other property owners that would be hurt by this proposal as much as he was but were afraid to speak up. They did not have the money to hire lawyers like he did. He had hired three lawyers and one of them was on the phone with him that night, as well as a someone from the State to represent him. If the City took away their property rights, the owners would suffer.

Chair Handley brought the item back to council for further discussion.

Mr. Sewell said they were trying to protect the foothills along the edge of the City. It sounded more arbitrary if the map included properties based on their size. If it was limited to the outskirts and areas that were not developed it would be fairer.

Ms. Ellsworth said these were good guidelines. They did not prohibit development in the area but would improve the quality of development in sensitive areas.

Chair Handley said a deciding factor would be if these were the right guidelines for development of sensitive areas. If so, it should be applied to all areas that would be improved. He did not want to remove all the islands but he would vote for it if the majority of councilors want to remove them. He had consulted a lot of good resources to design the overlay the way it should be designed. Many of those islands were there because the quality of the land. He acknowledged that this ordinance would have some negative impacts on some people. He was not persuaded that it would have a negative impact on property values.

Mr. Shipley said he was supportive of the legislation but felt there was some logic with cutting out some of the smaller parcels. By allowing development of only 40 percent of the property you were effectively denying development on the smaller properties.

Mr. Harding said he was supportive of the effort and did not feel strongly about the fine details. He asked for a recommendation from the subcommittee members that had worked on the legislation. He supported moving forward with the proposal recommended by staff.

Chair Handley reminded councilors that this was the first meeting after approval by the Planning Commission. Any councilor could request that the item be continued.

Mr. Fillmore said this had been arduous process and was more complex than he thought it would be. The original intent was to protect the foothills. He agreed with Mr. Sewell that it did not feel right to burden the smaller parcels with this overlay. We keep saying we were not forbidding development, but, to the extent that most islands were already on the 30 percent plus slope, the current zoning precluded their development. He proposed a substitute motion.

Motion: Councilor Fillmore made a substitute motion to adopt the critical overlay zone the way it was written, with one caveat - that we exempt any parcel less than one-half acre.

Bill Peperone, Development Services Director, said they had already taken out all lots that were less than one-half acre. The smallest island on the map was three quarters of an acre.

Mr. Peperone pointed out that the version of the ordinance in front of them said that if there was an exception given to the limitation on retaining walls, it would be considered by staff and not the Planning Commission.

In response to a question from Mr. Fillmore, Mr. Peperone said if they took out lots up to one acre, it would only remove one, possibly two parcels.

Mr. Harding pointed out that the ordinance before them met Mr. Fillmore's recommendation of removing lots less than one-half acre.

In response to a question from Mr. Fillmore, Mr. Sewell said that for him, it was all or nothing. He said many property owners looked at the hillside and people had developed all around them. Why should they be held to a different standard? For him it was not the size, it was including properties in the overlay zone when they were in areas that had already been developed.

Chair Handley said this was an ordinance that functioned like a design standard. He felt that the impact this would have on development was overstated.

Mr. Fillmore withdrew his substitute motion. He said that if people were opposed to their inclusion in the overlay zone they had the right to seek a variance.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Chair Handley said the next stage would be to create an area plan for the northeast. Mr. McGinn said they just needed a request from council to begin that process. It could be put on a future agenda for discussion.

13. Ordinance 2020-23 amending the Zone Map classification of multiple east bench properties to include them in the Critical Hillside Overlay (CH) Zone. Citywide application. (PLRZ20200078) ([3:52:28](#))

Motion: An implied motion to adopt Ordinance 2020-23, as currently constituted, has been made by council rule.

Chair Handley said this item had been discussed with the previous item.

In response to a question from Mr. Shipley, Mr. Peperone said the Perry property would be excluded from the overlay zone because there was already a home on the parcel. He said the text of the ordinance would exclude the property but felt Mr. Perry would like it taken out of the overlay zone on the map.

Motion: Chair Handley made a motion to remove the 2.8 parcel, owned by Paul Perry, from the zone map. The motion was seconded by Councilor Sewell.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Chair Handley called for a vote on the implied motion, which included the amended zone map.

Vote: The motion was approved 6:1 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, and Shipley in favor and Councilor Sewell opposed.

14. Ordinance 2020-24 amending the zone map classification of approx 18.5 ac of real property generally located at 901 W 1560 S from Residential Agricultural (RA) and Agricultural (A1.5) to One-Family Residential (R1.7). Lakewood Neighborhood. (PLRZ20200079) (4:00:24)

Motion: An implied motion to adopt Ordinance 2020-24, as currently constituted, has been made by council rule.

Brian Maxfield, Provo City Planning Supervisor, presented. This item had been discussed by the council earlier. He said there were still hoops to jump through before the property was vested. Engineering said there were agreements to be made before any utility improvements could be completed.

In response to a question from Ms. Ellsworth, Mr. Maxfield said this project had been continued last time because they wanted additional input through open city hall.

Mr. Jones said a development agreement had been proffered for this project. Mr. Maxfield said the proposed agreement held the developer to a net density of four units per acre and they would build according to the site plan.

Mr. Jones pointed out that the ordinance to which the implied motion currently applied did not mention the development agreement. Council would have to make a motion to substitute the development agreement of the ordinance.

Mr. Harding said the council had a nonbinding policy that this area should be developed at four units per acre. The requested R1-7 zone was denser. Based on the site plan, it looked like the developer wanted to have a variety of lot sizes. He felt confident moving this forward with the proffered development plan.

Mr. Harding noted that the parcel had an existing home. Had the City considered what would happen if the property owner of the one-acre lot wanted to subdivide in to an R1-7 density? If that one acre was subdivided it would make the entire project denser than four units per acre.

Mr. Maxfield said that the one-acre property was subject to the development agreement. They would not be able to have more than four lots per acre on that one piece. That lot was not included in the net density of the development.

Ms. Ellsworth said this seemed like a straightforward project. It was single family residential, which should not upset the neighbors. She did not think a development agreement was even necessary. It should be approved quickly so the developer could move forward.

In response to a question from Mr. Fillmore, Mr. Jones said he had reviewed the development agreement and it looked straight forward.

Mr. Fillmore made the following motion.

Motion: Councilor Fillmore made a motion to approve inclusion of the development agreement in the ordinance. The motion was seconded by Councilor Hoban.

Chair Handley invited public comment.

Becky Bogdin, neighborhood chair, appreciated the development agreement and hoped it would be approved.

There were no more comments.

Mr. Harding said that the R1-7 zone was necessary because some of the lot sizes were small and some were large. They would average out to four units per acre. He pointed out that they were approving a zone map classification, not the text of the ordinance. Nothing would prevent the developer from amending their site plan to include more density.

Chair Handley called for a vote on the substitute motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Adjourn

The meeting was adjourned at 9:52 p.m. by unanimous consent.