



## PROVO MUNICIPAL COUNCIL Work Meeting Minutes

1:30 PM, Tuesday, February 04, 2020  
Room 310, Provo City Conference Room  
351 W. Center Street, Provo, UT 84601

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

#### Roll Call

The following elected officials were present:

Council Chair George Handley, conducting  
Council Vice-chair David Harding  
Councilor Shannon Ellsworth  
Councilor William Fillmore  
Councilor Travis Hoban  
Councilor David Sewell  
Councilor David Shipley  
Mayor Michelle Kaufusi

#### Prayer

The prayer was offered by Councilor David Shipley.

#### Business

**1. A presentation regarding fiscal year (FY) 2021 budget from Parks and Recreation. (20-032) ([0:04:23](#))**

Scott Henderson, Parks and Recreation Director, presented. He was assisted by Doug Robins, Parks and Recreation Assistant Director. Mr. Henderson shared the department's commitment to the General Plan goals and he shared a slideshow video illustrating Parks and Recreation's many functions and programs and how they aligned with the General Plan goals and progress. Mr. Henderson highlighted the unique features of the Parks and Recreation operations—over 30,000 residents participate at their managed sites every day. Their department has a tremendous impact and influence on community health, as evidence by high participation and satisfaction rates of the public they serve. Provo residents react to new services and amenities with heavy use. Parks and Recreation has been able to make operations more efficient by increasing use and decreasing subsidies; they strive to run self-sufficient operations and he shared previous subsidies and the reductions over time to the subsidies they have received. He also commended his excellent staff, whose hard work and dedication contribute to their efficient staffing and utility management; they have been able to take on additional acreage and services without adding more staffing.

Mr. Robins highlighted the unique geographic location of Provo, with the Wasatch mountains to the east, Utah lake to the west, the Provo River running down its spine, and ample access to

nearby canyons. He commended the foresight of Provo’s past leaders to establish a unique system of parks. Provo is a community made up of many young and active people who place high value on outdoor recreation—indeed, Provo was the runner-up for the best outdoor place in the country in *Outside* magazine. In a recent community opinions survey conducted by a consultant, 91% of the community rated Provo’s parks as being in good or excellent condition. The consultant expressed that it was the first time in their 30 years of conducting such surveys where they have received those kinds of results. Mr. Robins shared details of several recent projects which have brought more efficiency and innovation to their operations, including a transition to LED lights, central irrigation control, combining multiple uses into their facilities, and several partnerships with Provo Public Works, including aquifer recharge sites in city parks and stormwater retention basins in the park. They use a business model of keeping full-time staff stable and to utilize part-time and seasonal workers during the growing season.

Mr. Robins shared an update on the revenue bond for the cemetery which passed in 2011. The expansion project has been completed and revenue from sales at the site are repaying the bond. There is a general trend nationwide toward more cremations; this has been incorporated into the expansion project. Parks and Recreation hopes to explore a perpetual funding mechanism to maintain the site after buildout, so that it does not become a burden on future generations.

Mr. Robins highlighted the status of several capital improvement projects, some grant-funded and some RAP tax-funded. He highlighted several approaches the department takes on projects: they have an internally skilled staff who can complete much of the work internally; they contract out what doesn’t make sense to do in-house and this combination approach allows them to deliver high-quality projects for lower costs. They also seek to sequence projects to meet the expectations of the community as well as the limitations of their funding sources.

Mr. Robins also addressed the Parks and Recreation’s role in maintaining landscaping on boulevard rights-of-way, freeway interchanges and gateways into town, weed abatement at over 30 city properties, snow removal at city properties, and collaboration with the Fire Department to mitigate wildfire conditions in parks areas. Provo’s population is also very service-oriented, with over 4000 people contributing 9560 hours on 161 projects in the last three years. This represents a value of over \$110,000 to the community. Parks and Recreation hopes to augment their volunteer programs even further. Mr. Robins also shared information about Provo’s group sports programs and details on the regional sports park, which is currently in the design phase. This represents great future opportunities to highlight Provo’s athletics community and to bring tournament travel to Provo and the surrounding area.

Mr. Henderson shared more about other areas of the Parks and Recreation budget and operations, highlighting their special events team and the high-caliber, high-attendance events they put on and fund using event revenue. Given the size and success of their events, that was an area of the budget where they saw certain supplemental needs; as they continue to run larger and larger events, they need to purchase more supplies. There are also certain items that make sense to bring in-house rather than rent frequently (such as a portable stage). Mr. Henderson also shared information about the Covey Center operations, booking rates, diversity of programming, and the reduction to their annual subsidy. He noted that there may be additional needs for more staffing support during construction of the new city hall, as well as more part-time technical

crew to facilitate multiple performances per day.

Mr. Henderson shared details about the Recreation Center operations, which is one of the most successful facilities of its kind in the country and sees visits from over 2 million guests annually. He also shared innovations at the recreation center including their self-sufficient funding, Triple Play membership, and implementation of an app which has reduced phone calls and staff time to conduct routine transactions. Mr. Henderson noted certain pay increases recommended by the annual market rate study completed by Human Resources. Parks and Recreation was supportive of such measures to invest in their facility to ensure its continued success, by having appropriate staffing, and adding additional equipment, staffing, and facilities when needed to accommodate growing demand. Mr. Henderson also shared details about the Peaks Ice Arena and advances made there to renovate the entrance and make better use of the space for other uses. The Peaks Arena is recognized nationally for being a successful, continually operating Olympic venue. Mr. Henderson also highlighted programs and successes of the East Bay Golf Course, including plans for future programming as part of the renovated holes due to the medical school and relocation of a portion of the course.

Mr. Henderson noted that Parks and Recreation did not ask for or receive supplemental budget requests during the past year. If they needed to cut their budget, they would examine the self-sufficient budgets versus those which were general fund-supported and identify key cost-benefit comparisons. He also noted that they have not waited for tough budget years to be efficient and cost-effective, as they routinely try to introduce further efficiencies into their spending and operations. Mr. Henderson recognized many of his senior staff members and thanked them for their great work in their various areas of responsibility. He also shared a photo of a large group of their staff pictured in the Council Chambers, accounting for only about one-eighth of their full 55 full-time and 800 part-time employees. He acknowledged the team effort at work every day in their department and how unique an operation theirs is for a municipal parks and recreation department. He suggested that efficiency, innovation, effort, and reinvestment together incubate success. He also thanked Mayor Michelle Kaufusi for her visionary leadership—she frequently asks, “What’s next?” rather than “Aren’t you ready for a break?” That approach is consistent with their attitude and approach in Parks and Recreation.

Councilors asked questions regarding Parks and Recreation, including:

- Councilor Travis Hoban asked about the demand for opening the recreation center on Sundays. Mr. Henderson said it is discussed often and they have analyzed the projected revenues from Sunday operations versus the costs of operating an additional day each week. From an efficiency standpoint, it did not make sense as Sunday use would pull from a much smaller contingent of the community and would decrease the success they are having overall in that Sundays would be more costly to operate. Councilor David Harding also added thoughts on Sunday use and the cultural and social climate in Provo.
- Councilor George Handley thanked Mr. Henderson for the excellent job he and his staff do; he felt that the City’s parks and recreation facilities were one of the best things about living in Provo. Mr. Handley asked about the regional sports park and the possibility of using it for purposes other than sports, such as a music festival. He also wondered if there was enough demand at the recreation center that would merit the City looking at building a second facility. Mr. Henderson said that they see the regional sports park as an events

center. They have had great success in other areas of their operations by introducing a diversity of programming, and they would use the same concepts to guide their management of the regional sports park. Regarding the popularity of the recreation center, Mr. Henderson indicated that they have been able to do some amazing things with the Triple Play program; 15% of fitness use was now taking place at the Peaks Ice Arena. Their department routinely comes up with new ideas that do not require additional capital or additional brick and mortar to spread out their population. He acknowledged that it was a decision they would continually look at, but opening a second facility would definitely have a major financial impact on how the current facility operates.

- Councilor Shannon Ellsworth shared her positive impressions of the department and the tangible benefit to quality of life for Provo residents by having access to great parks and recreation facilities. Ms. Ellsworth asked about the firm selected for the regional sports park and whether Parks and Recreation officials were confident that we would meet the project budget while also getting a quality project. Mr. Henderson indicated that the firm has worked on the Rock Canyon project; going in, the consultants knew it would be a complicated site. Mr. Henderson and his staff were confident in the skills of the consultant and Provo City has had good experience with their deliverables.
- Mr. Harding asked about a beach park at Utah Lake. Mr. Henderson indicated that they have worked with the State to facilitate much of the design process for a beach park at the Provo entrance to Utah Lake State Park. This had been a desire of Mayor Curtis, but there have been issues with algal blooms which have halted some of the momentum. He hoped the project at the State would move forward, as it would be an exciting facility to introduce on Provo's west side.
- Mr. Handley asked for an update on Rock Canyon trail updates. Mr. Henderson indicated that the CIP plan was funded at \$250,000 and they hoped to secure an additional \$100,000 in grant funding in order to expedite the process.
- Cliff Strachan, Council Executive Director, asked about the ice arena funding. Mr. Henderson indicated that the Utah Olympic Oval in Kearns was subsidized with Olympic Foundation funding, while the Peaks Ice Arena has been a standalone facility for a long time. *Presentation only.*

## 2. **A training on the use of development agreements. (20-030) ([1:02:30](#))**

Brian Jones, Council Attorney, presented. He introduced the topic of development agreements, noting that they were mentioned a number of times in the Land Use, Development, and Management Act (LUDMA). However, none of the provisions in LUDMA or in city code gave a definition of a development agreement as they pertain to municipal governments. Mr. Jones indicated that while they were not defined, there was a long history nationwide of development agreements. This history rises out of attempts to solve tension between the vesting of developer rights and constitutional limitations on municipal exactions.

At a certain point, a developer has obtained the legal right to develop a property in a particular way. The Utah Supreme Court ruled on vested rights in 1980, citing provisions protecting a developer from changes to legislation after they have undertaken a project or had their development rights vested. Since that time, these provisions have been put into State code. Once a developer has submitted a completed application, the application is subject to a review of the

regulations which were in effect on the day the application was complete. Mr. Jones explained the six-month period associated with pending legislation and how a developer's vested rights interface with that timeline. Mr. Jones also explained the legal precedent established in several landmark cases, which requires a nexus and proportionality between conditions imposed on a developer with the impacts of their development. Mr. Jones clarified the additional requirements imposed by state regulations. Cities cannot impose taxes that the state legislature has not expressly authorized them to levy; requiring something of a developer could be considered an illegal tax if there is not an enabling statute.

Mr. Jones shared background history of development agreements (DA). DAs are a tool which a developer can proffer as part of a project, to secure more long-term certainty than is offered with their vested rights. The tool also serves to formalize the mitigation of potential impacts or commitments regarding infrastructure which may be of concern to the City. Utah is one of about 15 states that authorize the use of DAs. Councilor David Shipley asked about multi-phase projects versus single-phase projects; Mr. Jones explained that because DAs are not defined in Utah, they could be appropriately used in either instance. Mr. Jones cited an example in Provo which resulted in an undesirable project; the Chevron on 500 West 800 North was supposed to be a medical office. The City approved the zone change, then the developer could make the project financially viable so built a gas station. Where development agreements have been used, typically the developer and the City are reaching a mutually beneficial agreement.

Mr. Jones shared two challenges raised in the past about the legality of development agreements. The City cannot give up its power to engage in the regulation and passing of laws for the health and safety of the public. It can also be problematic if the city enters a DA promising to approve something; the legislative body cannot bind a future Council, as doing so would illegally restrict their police power. It also does not work to have the Planning Commission impose conditions on a project, as that is outside of their purview. Mr. Jones reiterated some best practices for DAs:

- Make sure there is enabling statute.
- Restrict the use of a development agreement to the purposes listed in enabling statute.
- Limit the length of agreement so that the binding of the city is not seen as unreasonable.
- Avoid excessive conditions and conditions not for a public purpose.
- Conditions should have rough proportionality and nexus.

Mr. Jones also explained that having the DA tied to the property is problematic; Mr. Jones recommended that a development agreement needs to expire with the building permits, and needs to have only requirements that can be met by the time the building permits are issued. Mr. Jones explained that using a DA to impose conditions that are likely unconstitutional to impose, would appear as an exaction or involuntary to the court. Another consideration is whether a DA is truly voluntary if the zoning is not already in place; is the DA the only way for the developer to get the zoning they desire? Mr. Jones stressed the vital importance of building a record that the DA was voluntary and proffered by the developer.

Cliff Strachan, Council Executive Director, shared insight about the cautions the Council should exercise. Neighborhood chairs and Council members often mention DAs, which tends to discredit the process—it is problematic if the neighborhood chairs and Councilors start exacting voluntary demands from developers about projects the people never have any intention of supporting. This also discredits the Council that engages in the behavior. Neighborhood chairs

often bring up conditions that the Council itself may not have required. This happens in the process; it is a frequent complaint received from developers about developing in Provo. Mr. Jones explained that the neighborhood has nothing to do with a DA; it is entirely between a developer and the Council. The Council should decide which of the neighborhood concerns they agree are valid and which are of concern to the Council.

In summation, Mr. Jones expressed that development agreements were not a silver bullet and he felt that it was not true and dangerous to think that; they may be a useful tool but should be used thoughtfully and purposefully. Mr. Jones offered some clarifications on how the Planning Commission should act and he suggested that it would be helpful to do a joint presentation and discussion for the Council and Planning Commission together. Council Chair George Handley suggested this topic should also be addressed with neighborhood chairs *Presentation only*.

**3. A discussion regarding the creation of a Very Low Density Residential (VLDR) Zone. (20-029) ([1:46:33](#))**

Gary McGinn, Community and Neighborhood Services Director, presented. He explained that there were a number of zones codified in the city code which did not appear anywhere on the City's zoning map. For instance, many developers create a PRO (project redevelopment option) zone, and then many of them have gone unused. In most PRO zones, the modifications are typically for setback requirements or parking ratios, leaving most else the same. In an effort to simplify the code and make it easier to enforce, staff was exploring a zone that would allow a density between Low-Density Residential and the traditional residential zoning. They had some elements of an open space subdivision zone which they planned to adapt and develop into a VLDR zone. The intent was to create a zone that would also allow a little more creativity in how someone approaches a site with particular constraints of size, shape, or geological issues. This would also reduce the instances where developers proffer development agreements, because the regulatory schemes are codified in the city code.

Councilors shared comments on the proposal. Several commented that they could think of several projects in recent months where this type of zone would have been appropriate and very helpful. Mr. McGinn was interested in whether the Council was receptive to the idea. If so, then staff will invest some time in developing a proposal. They wanted to have a sense of high-level issues which were of concern to the Council before they began the process. Mr. McGinn indicated that they would also conduct a proforma to identify circumstances where existing PRO zones could be reassigned. Councilors were generally supportive of the idea and looked forward to hearing the future proposal. *Presentation only*.

**4. A discussion regarding Councilors' committee assignments. (20-021) ([2:05:33](#))**

Cliff Strachan, Council Executive Director, presented. He summarized recent discussions on the audit and budget committees. Mr. Strachan also shared background information about the initial purposes behind the housing and zoning committees, which had been created several years previously in response to the priorities of the then-Council. He invited discussion from the Council regarding the direction of other Council committees. Councilors' comments included:

- Councilor Shannon Ellsworth suggested that having targeted, tight objectives, as well as

a timeline or due date would make committees more effective. She also suggested that the Planning Commission is comprised of individuals with professional expertise that is underutilized. They constantly discuss and review housing developments. She hoped the Council could help break down silos and redundancies. She was comfortable with outsourcing and delegating responsibilities that staff already worked closely on. Perhaps issues of homelessness and other needs could be more focused with the right partners.

- Ms. Ellsworth was also interested in promoting owner-occupancy and long-term residency. However, this is often weaponized against people like her who rent homes. She hoped the Council could be cognizant of some of these issues moving forward.
- Councilor George Handley echoed comments about the nebulous nature of the Housing Committee in the past. As a member of the committee, he observed that they were most often putting out metaphorical fires, rather than using the expertise and backgrounds of the committee members toward planning and long-term vision. He wondered if making a standing committee and redefining its mission would achieve the desired result.
- Councilor David Harding expressed a desire for more formal training on committee work. He also echoed the suggestion for organizing a formal housing board.
- Mr. Harding outlined several issues he felt needed to be addressed by the Council relating to housing: short-term rentals, inclusionary zoning, and housing affordability.
- Ms. Ellsworth and Mr. Harding were both interested in furthering this conversation and bringing proposals back to the Council for the direction to take on housing issues.

**Motion:** George Handley moved to nominate David Shipley as chair and Travis Hoban as vice-chair of the Audit Committee; to charge them with examining the scope of what committee would do and who would be involved; and to approve the mission statement: "The mission of the Audit Committee is to review and make recommendations to the Mayor and City Council concerning the City's financial reporting processes, standards, financial statements, and internal controls, as audited by the City's independent auditors; and other audit related assignments as requested by the City Council." Seconded by David Sewell.

**Vote:** Approved 7:0.

***The word "objectively" was struck from the Budget Committee mission statement by unanimous consent:*** "The mission of the Budget Committee is to ~~objectively~~ review and make recommendations concerning the City's annual budgets, which should be results-oriented and structurally balanced, have sustainable revenues, and promote cost effective management of programs and capital infrastructure."

**5. A discussion regarding Tier 3 gasoline and a proposed resolution calling for state action to educate consumers about where Tier 3 gasoline is sold. (20-031) (2:32:28)**

John Magness, Policy Analyst, shared background information on Tier 3 gasoline and a presentation given by the Sustainability and Natural Resources Committee. Every refinery is required to meet Tier 3 goals, either by reducing the sulfur content present in their final product or by purchasing credits to make up the difference (which can be cost-prohibitive). Mr. Magness shared more details on how the process works, including the reporting required by the EPA.

Councilors shared feedback and concerns about issuing a formal resolution. Cliff Strachan, Council Executive Director, explained that this was a request from Don Jarvis, Chair of the Mayor’s Sustainability and Natural Resources Committee. Buying Tier-3 credits does not contribute to an overall improvement in local air quality; a resolution by the Council contributes further to publicizing where Tier 3 gasoline is sold, and to place pressure on refineries to officially move to producing Tier 3 gasoline. Several Councilors commented that the state legislators seemed reluctant to help advance this, so they felt a resolution would send a clear message that the Council and Provo City favors these changes. Councilor George Handley didn’t feel that the power behind a resolution was diluted by nature of the Council passing a certain number of them. Councilor David Sewell expressed that he thought the Sustainability Committee had a great track record with the specific resolutions they bring to the Council.

Mr. Jarvis explained that the three main refineries north of Salt Lake serve most of the state. Two of these three is producing Tier 3 gas, but the third is not. Mr. Jarvis emphasized the critical need for public education, as market forces won’t cause a shift in production unless there is knowledge about and demand for Tier 3 gas. He noted that Provo City has passed five resolutions since 2014 related to sustainability issues that the State Legislature has acted on. Mr. Jarvis also highlighted efforts by Representative Harrison in Draper to publicize Tier 3 availability. He suggested someUCAIR funding could be applied toward Tier 3 publicity. Councilors suggested stronger language in the resolution regarding education initiatives. Several Councilors also expressed that if 6 or 7 Councilors did not support the resolution, it might send mixed messages to the State legislature.

**Motion:** George Handley moved to authorize Council Leadership to send a letter to state legislators about the Council’s consideration of this resolution in two weeks and encourage legislators to advance and pass legislation for Tier 3 gasoline; and to bring this resolution to the Council Meeting on February 18, 2020. Seconded by Bill Fillmore.

**Vote:** Approved 7:0.

## Policy Items Referred from the Planning Commission

### 6. **An ordinance amending Provo City Code relating to floor area ratio, setback, and buffer yard requirements in the Research and Business Park (R&BP) Zone. Citywide Application. (PLOT20190425) ([2:55:28](#))**

Dustin Wright, Planner, presented. The applicant, who represented the ownership in the area, wishes to modify the zone to eliminate the floor ratio requirement. Mr. Wright explained that this was not a typical element in other zones but was very innovative about 20 years ago when business parks were being created in Provo and other cities. Staff felt there was still sufficient language within this zone to regulate development. The revised language would allow the Director of Development Services to reduce setback requirements, but the language did not specify a specific limit. The Planning Commission added language regarding erosion control, which staff also supported. In response to a question from Councilor Shannon Ellsworth regarding properties with river frontage, Mr. Wright indicated that the code preserved the setback from the river and the open space requirements; there were no changes in this area. Councilor David Sewell inquired about the specific changes the applicant wanted to make at



their property and suggested raising the question with the applicant. ***Presentation only. This item was already scheduled for the Council Meeting on February 4, 2020.***

7. **An ordinance amending the General Plan designation of approx. 151 acres, generally located between 300 E. and 1000 E. and between 4800 N. and 6000 N., from Agricultural (A) to Residential (R). North Timpview Neighborhood. (PLGPA20190352) ([3:01:26](#))**

Brian Maxfield, Planner, presented. Mr. Maxfield explained that this application was only to address the General Plan land use map; this proposal did not involve approving a rezone, project plan, or any other portion of the plan. Mr. Maxfield outlined several possible outcomes following the Council's decision on this General Plan Amendment. He clarified that this decision would not supersede the City ordinance about sensitive lands. The land was already zoned in the County for planned unit development of 3 houses per acre. The property would still need to get utilities installed, but the owner could technically proceed with the County. Of the total acreage, about two-thirds, or 100 acres, was in the County with the remaining 50 acres in Provo. In response to a question from Councilor Shannon Ellsworth, Mr. Maxfield indicated that current recreation use on private property was trespassing, though the owner could ensure access if they wanted to during the development stage. ***Presentation only. This item was already scheduled for the Council Meeting on February 4, 2020.***

### **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.

Brian Jones, Council Attorney, outlined the statutory basis for the closed meeting, which was a strategy session regarding reasonably imminent litigation.

**Motion:** David Harding moved to close the meeting. Seconded by George Handley.

**Vote:** Approved 7:0.

### **Adjournment**

***Adjourned by unanimous consent.***