

The Regular Meeting of the
Brian Head Town Council
Via Zoom Meeting ID# 885 0043 8418
www.zoom.us/j/88500438418
TUESDAY, JULY 28, 2020 @ 1:00 PM

Roll Call.**Members Present:**

Mayor Clayton Calloway, Council Member Larry Freeberg, Council Member Lynn Mulder, Council Member Shaun Kelly.

Members Absent:

Council Member Kelly Marshall.

Staff Present:

Bret Howser, Town Manager; Nancy Leigh, Town Clerk; Aldo Biasi, Public Works Director; Wendy Dowland, Public Works; Chief Dan Benson, Public Safety Director.

A. CALL TO ORDER

Mayor Calloway called the regular meeting of the Brian Head Town Council to order at 1:00 pm for July 28, 2020.

B. PLEDGE ALLEGIANCE

Mayor Calloway led the Council and others in the Pledge of Allegiance.

C. EMPLOYEE SERVICE AWARD FOR CHIEF DAN BENSON 20 YEARS

Mayor Calloway presented Chief Dan Benson a service award for his 20 years of service to Brian Head Town. The Mayor and Council thanked Chief Benson for his service and dedication.

D. DISCLOSURES

There were no conflicts of interest with today's agenda items. Mayor Calloway stated that the disclosure statements are on file at the Town Clerk's office and are available for public inspection during normal business hours.

E. APPROVAL OF THE MINUTES:**July 14, 2020, Town Council Meeting**

Motion: Council Member Kelly moved to table the July 14, 2020, Town Council minutes. Council Member Freeberg seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Freeberg, Council Member Kelly, Council Member Mulder, Mayor Calloway. Absent: Council Member Marshall).**

F. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS

Nancy Leigh, Town Clerk, reminded the Council to submit their certificates from the online open meeting training.

Council Member Mulder reported the Community Wildland Fire Committee will be holding a fire mitigation cleanup on the Town-owned lot known as the Archery Range on August 19, 2020, from 9:00 am to noon. There will be a demonstration of steps to properly clean a lot for fire mitigation. Lunch will be provided, and the public is invited to attend.

Mayor Calloway



1. Spoke with Jose Maldonado, Best Western Premier General Manager, who reported he has been reassigned to another property and the Best Western Premier will remain closed until further notice.
 2. Mayor Calloway suggested the electronic reader board be brought in to educate the visitors on wearing masks. Bret reported the cost for the electronic reader board is \$60 a day and would cost approximately \$3,000 if the reader board was used until Labor Day. The Town received Covid-19 funding that could be applied towards the cost of the reader board. A new electronic reader board would cost \$30,000.
- Consensus of the Council:** Rent the electronic reader board until Labor Day. The message will be asking visitors to wear masks.

Bret Howser, Town Manager

1. Brian Head Resort has a program where they identify one percent (1%) of their season pass sales and put it back into the local economy. The Town received a \$17,000 check from the Resort with a match from the James Coleman Foundation. The funds will be used for marketing the businesses in general. The Town currently has a summer marketing program with MI Marketing who markets to Las Vegas and Southern California. Ron Burgess, Brian Head Resort, recommended the funds are funneled into that marketing program which is allocated at \$60,000 and the \$17,000 would increase the program to \$77,000 for the marketing of Brian Head. Bret stated if the Council has another option, to let him know. The Town is seeing the results of the marketing for the past two years with the high number of visitors coming to Brian Head. Staff will prepare a letter from the Town thanking the Resort for the donation.

Wendy Dowland, Public Works/Building, reported the Planning Commission will be holding a public hearing for two conditional use permits: one for a convenience store and the other for an RV campground during the Planning Commission's next meeting. Those wishing to comment can do so at the meeting or by submitting a written comment.

Aldo Biasi, Public Works Director

1. Updated the Council on the status of the chlorination project.
2. A leak was found in the Saltpile transmission waterline but was not from the construction of the waterline last year.
3. Mountain View Waterline Project: Orton Excavation will be working on completing the waterline project that began last year. They are on the last leg and should have the waterline in service soon.
4. Village Way street has been repaved and the manholes were brought level to the ground and should be completed by next week.
5. Staff submitted a preliminary list for the Snowshoe and Toboggan Road Improvement Project. The staff is currently working on Snowman right now.
6. Asphalt millings will be used on Gurr Well Road, Spruce, and Fir Streets. Staff will try to repair other areas on Forest Drive if there is a surplus of millings.

Bob Whitelaw, Alpine Lodging, inquired if the Town received grant money from the County from the Covid-19 grant. Funds were sent to the County in which a portion of the funds was to go to the cities in Iron County for distribution to assist the businesses. Bob commented he was unsure if the Town received its money from the County. Bret responded the County received additional money and in speaking with the County Auditor, Dan Jensen, he reported they are not limiting Brian Head's portion since the Town only received \$8,000 from the State since it was based on population. Bob suggested the Town inform the businesses of the assistance they could receive.

G. AGENDA ITEMS:

1. **NIGHTLY RENTAL CODE AMENDMENT & LICENSE FEE DISCUSSION.** A proposed amendment to the Nightly Rental Code and a discussion on the Business License Fee Study.



Nightly Rental Code Amendment

Bret Howser, Town Manager, presented a draft ordinance amending the Nightly Rental Code (see attached). Bret explained the proposed draft ordinance is presenting new language that requires the licensee to regulate the noise, occupancy limits, and nuisances. Bret explained the concept from the 2019 code amendment was to educate the guests by utilizing the Good Neighbor Policy. After a year, the Short Term Rental Committee met for an overview of the code and forwarded a recommendation to the Council to hold the licensee responsible for their guests' behavior. The code identifies a three violation or "strike" rule in which the licensee could have their license suspended and/or revoked if they receive three strikes within a year.

Business License Fee Study

Staff was asked to review the license fees and has conducted a business license fee study (see attached). The businesses were separated into two categories: 1) nightly rentals. 2) other businesses. Staff reviewed the administrative hours spent on licensing in each category along with material costs. This was divided by the number of business licenses in each category.

Enhanced Service Disproportionate Fee Study

The second fee study that was completed is an enhanced service fee for disproportionate services (see attached). This type of fee can be adopted if there is a type of business that requires additional services, as in the case of nightly rentals, additional public safety services are required. The Council will need to determine if the Town is going to provide for the level of service that the community is expecting from the Town with more law enforcement due to the increasing number of nightly rentals. The enhanced service fee could be one way to obtain the resources to provide the extra hours for the level of service the community expects.

Bret explained there are other resort communities, such as Park City, that assess a disproportionate fee for nightly rentals, but they use bedrooms instead of units. If the Town identifies one-fourth of a full-time officer it would be 500 to 600 hours or about 10% of an officer's time spent on proactive nuisance enforcement. It would cost the licensee approximately \$200 per year. Bret explained he wanted to present the concept to the Council for consideration. This would address the full-time residents' concerns with nightly rentals. The Short Term Rental Committee recommended holding the licensee accountable for their guests and this would allow the Town to have the additional resources in dealing with nightly rentals and address the concerns of the residents.

The Council discussed the following:

1. Mayor Calloway recommended a new section to the nightly rental code. Identify section "F" to allow a licensee whose license was suspended, a process for reinstatement of their license. Bret suggested this language be identified in Chapter 2B which is suspension and revocation.
2. The time frame from which a license resets for "strikes" will be annual.
3. Concerns on a potential issue of one person who is looking to rid his neighborhood of nightly rentals could constantly file complaints against the nightly rentals identifying a nuisance violation each time, and potentially suspending a nightly rentals license to operate.
4. Mayor Calloway commented the Council and residents need to realize Brian Head is a resort community and the services are based on the number of tourists that visit Brian Head. The Council is trying to find a balance between the nightly rentals and full-time residents and there are tradeoffs in trying to accomplish that balance.
5. The current nuisance code requires three complaints from three different people to constitute a nuisance. Bret responded the officers will have discretion in each incident.



6. Michelle Santos, nightly rental owner, reported she has a contract with each of her guests. One provision in her agreement identifies that if authorities come to the door, that guest will forfeit their deposit. She has a zero-tolerance policy and has had about five people in 20 years.
7. Amy Whitelaw, Alpine Lodging, reported one positive take from the proposed language will be communication between the Town and the businesses. Ms. Whitelaw explained there are certain situations in which she may not be able to handle the situation and guests and believes the Marshals should be handling the situation instead.
8. One option could be a central list of guests that have caused problems for the nightly rental businesses. Mayor Calloway suggested the nightly rental business coordinate a system that works for them.
9. Mayor Calloway commented that notification to the owners may be the key to solving the problems since the owners need to be aware of a situation before it escalates. Mayor Calloway inquired if staff can revisit this topic for a possible solution in the amended language.
10. Shirley Christensen, Cabinkeeper Cleaning, commented she disagrees with the proposed language that owners should be held responsible for the guests' behavior. One problem she encounters is a full-time resident on Ridge View Street constantly bothering her when she tries to clean one of her cabins on Ridge View in which she has been forced to lock the door in order to clean. She is aware this full-time resident is trying to put one of her nightly rental clients out of business and believes the Town should address the issue of some of the actions from the full-time residents towards nightly rentals. Mayor Calloway recommended she call the Marshall when the resident trespasses onto the property.
11. Discussion on when the three strikes could happen, such as one incident with three violations, and if it would be counted as one strike or three? It was determined that it would be considered one strike, depending on the Marshal's decision.
12. A change in the language will identify that a strike is against one unit and not the license since a license can have multiple units under it. Staff will clarify the language.
13. The actual fire inspection is not included in the administrative time. That time for staff to schedule the inspection is identified. Currently, the Fire Department has two four-hour shifts each weekend for nightly rental fire inspections, but since the firefighters are not always doing inspections, they are also working at the fire station during the shift.
14. David Pulsipher, a nightly rental owner, commented he disagrees with the proposed language regarding illegal or criminal conduct and holding the owner responsible. He believes it could open a pandora's box for attorneys to sue the Town since the language is broad.
15. Council recommended the word "illegal" be removed from the language.
16. Mayor Calloway commented the majority of the issues seem to occur in single-family residential zones rather than the multi-family zones who have the HOA's regulate their condo complex internally through their CC&R's.
17. Council Member Freeberg suggested if the parking at the condos begins to flow out onto the Town's streets, the Town will need to contact the property manager for that condo complex to resolve the issue.
18. **Consensus of the Council:** The proposed language will apply to cabins in the single-family residential zones and not apply to condos in the multi-family residential zones. Nuisance and noise control will still apply to the condo owners.
19. Council Member Kelly reported according to the Utah League of Cities and Towns, condos are expected to rent out more than single-family residential and from a planning perspective, the single-family residential zones are different and should have higher standards.
20. Chief Benson explained if the Marshals were called to an incident at a condo, it would need to be a criminal problem, civil items such as dogs would need to be handled by the HOA.



21. Discussion on whether the property manager of a condo complex would be called if there was an incident with a nightly rental.
22. Erik Feagans, Timbernest Condo property manager, reported their HOA holds the owners responsible for their guests and friends for anything or anyone they bring onto the property and the owner can be fined if there is a violation of the CC&R's. The HOA can be more stringent than the Town's regulations.
23. Paulette Allen, The Ridges HOA, reported nightly rentals have negatively impacted the condo owners and they are starting to sell their condos. They have problems with parking and the occupancy limits are ignored by the renters. Cindy Ross, The Ridges HOA Board Member, reported it is difficult to enforce the rules and regulations with the nightly rentals.
24. Chief Benson explained if there was a call to the Marshals, typically their presence alone will resolve the issue. If they are required to keep a log on nightly rental issues, it would become very difficult to track and would include more work for the officer. Bret reported staff would have to discuss the logistics of how it would work, but each incident the Marshals respond to, they are given the discretion of whether to contact the owner or not.

Consensus of the Council:

1. Apply section "E" with a modification primarily to single-family zones
2. The language will be clarified to identify the unit instead of the licensee if a license is suspended.
3. The Town will notify the licensee when an issue arises that could count as a strike.
4. Delete the word "illegal" from the proposed language.

Staff will present a re-draft of the ordinance with the above items included in the re-draft.

Fees:

1. The existing fees are \$160 for a new application and \$80 for renewal. This fee includes an unlimited number of units under one license.
2. The proposed fee is \$150 for a new application and includes one unit. There is an additional \$32 for each new unit. The renewal fee is \$90 (includes one unit) and \$19 for each additional unit.
3. Bob Whitelaw, Alpine Lodging, disagreed with the proposed fees since he would have to pay \$500 for a business license. Mr. Whitelaw stated he believes the fee study is inaccurate as to the staff's time that is calculated. Mr. Whitelaw stated he had 20 units in 2018 and 17 units in 2019 and the fee is too high and will have to charge a higher cleaning fee to compete with Airbnb, especially during the Covid-19 pandemic.

Enhanced Service Disproportionate Fee:

Mayor Calloway stated the Council will need to take more time to review the disproportionate fee for law enforcement services at a later time and will address it at a later meeting.

2. TOWN WALKING TRAIL, PHASE 2 PROJECT BID AWARD. Contract award for the Town Walking Trail, Phase 2 Project.

Aldo Biasi, Public Works Director, presented the bid tabulation for the Phase 2 of the Town Walking Trail (see attached). Aldo reported one company, Progressive Contracting, decided to not bid on the project and pulled their bid. Aldo recommended the Council award the contract for the Phase 2 of the Town Walking Trail to Sunroc at a bid of \$315,000.

Council discussed the following:

1. A financial analysis was completed in January for the project and the bids came in close to the total amount budgeted.
2. The trail section in front of Brian Head Village is not included in the bid since the Brian Head Village Homeowners Association (HOA) agreed to pave the portion of the walking trail running in front of the condo complex.



3. The Brian Head Village HOA understands there will be no parking allowed on the paved trail and they have recommended installing posts or planters to chain off the trail from any parking.
4. Council recommended staff draft an agreement with Brian Head Village HOA to ensure the paving of the trail; a different location for their snow storage; no parking allowed on the Town trail. Bret explained the snow storage will be an agreement with the Utah Department of Transportation (UDOT) since the storage would be in the State's right of way.
5. If the Council decides to include the portion of the trail in front of Brian Head Village, it will cost an additional \$42,000.
6. Council Member Freeberg suggested reducing the thickness of the asphalt from three inches (3") to two and a half inches (2.5").
7. The phase 2 portion of the trail will need to be built up more due to the soil samples that were taken. Three inches of asphalt would be an additional \$24,000.
8. Bret recommended the Council identify three inches of asphalt in front of the Lofts and the Aspens since it would be plowed during the winter. The trail from Brian Head Village to Georg's Ski Shop will have two inches of asphalt.
9. Aldo explained that this portion of the trail will require more maintenance. Council Members Freeberg, Mulder, and Kelly expressed their concerns on the maintenance of the trail and having to repave.
10. The paved trail along the west side of Highway 143 from the Lofts to Georg's Ski Shop and trail around Bristlecone Pond is \$400,000. The budget plans show these as two separate projects.
11. The Town received a grant for \$150,000 which has matching funds from UDOT for \$130,000. The engineering cost is \$52,000 which is included in the budget of \$402,000.
12. Due to the soil samples, the contractors will be reworking the subgrade and installing different culverts. This portion of the trail will be built up due to the prior issue of the soil moving.
13. Mayor Calloway commented the Town may need to work with Brian Head Village on any damage that could occur due to snow removal.

Motion: Council Member Kelly moved to award the Town Walking Trail Phase 2 to Sunroc in the amount of \$351,218.80 with the change of an additional one-half inch for a total of three inches (3") of asphalt to be used for the section of trail running in front of the Lofts. Council Member Mulder seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes:** Council Member Kelly, Council Member Mulder, Council Member Freeberg, Mayor Calloway. **Absent:** Council Member Marshall).

3. ORDINANCE AMENDING THE WATER & SEWER CODE. An ordinance amending the Water and Sewer Code.

Aldo Biasi, Public Works Director, presented the third draft of an amendment to the Water and Sewer Codes (see attached). Aldo explained staff has presented four different options for Council's consideration:

- Option 1: If a waterline runs in front of the property, the property owner would be required to connect. This includes all buildings.
- Option 2: Only new construction would be required to connect if they are within three hundred feet (300') of any property line and must be installed in the driveway.



- Option 3: The furthest point of the property line that is within three hundred feet, the property owner would be required to connect. Bret presented an example for clarification purposes (see attached).
- Option 4: New construction and any home pulling a building permit for a remodel that is within three hundred feet would be required to connect.

The Council discussed the following:

1. Mayor Calloway commented if the property owner is to extend the waterline, it should be extended to the furthest point of their property for the next property owner to extend.
2. Council Member Freeberg suggested the Town consider a reimbursement from the other property owners who connect so the initial person extending the waterline is not paying for the entire line themselves and could be partially reimbursed with a sunset provision. Bret explained the Town currently has reimbursement agreements and it is the staff's recommendation to repeal the reimbursement agreements.
3. A suggested change on Option 4 would be to identify square footage instead of the 50% of the home for remodeling. Mayor Calloway stated if a remodel exceeds 50% it goes from repair to reconstruction.
4. Council Member Freeberg stated he has concerns with forcing people to connect to the Town's water system. Mayor Calloway stated people are building more in the area and fire protection is not being extended with the new construction which is endangering the rest of the Town.
5. JD Reed, a new property owner, commented when he purchased his property he was told from the realtor that his property was more than three hundred feet away from water but found out they are 250' from the waterline and is unable to extend the waterline due to the cost and he would have to take a loss on his investment. He has not yet pulled a building permit and is waiting on the Council to decide on the waterline connection requirement before he decides whether to build.
6. Wendy Dowland, Public Works, reported the County is against people hauling water to their cabins and have put a restriction on those deeds that they can only use their cabin so many days a year since they are not connected to a water system.

Council agreed on the following:

1. Three Council Members are in favor of some type of rule to connect.
2. New construction within three hundred feet would be required to connect. Remodels would not have to connect.
3. The three-hundred-foot measurement would be from the waterline to the furthest point of the property.

Council could not agree on whether an existing home would be required to connect within three years. This will be decided at the next Council meeting.

Motion: Council Member Freeberg moved to table Agenda Item F-3, Water & Sewer Code amendment until all Council Members are present. Council Member Mulder seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Kelly, Council Member Mulder, Council Member Freeberg, Mayor Calloway. Absent: Council Member Marshall).**

4. AMENDMENT TO THE BEAUTIFICATION PROGRAM. A resolution amending the Beautification Program to include lighting.

Mayor Calloway stated that due to the lateness of today's meeting, this agenda item will be addressed at the next Council meeting.



Motion: Council Member Freeberg moved to table Agenda item F-4, Amendment to the Beautification Program.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Freeberg, Council Member Kelly, Council Member Mulder, Mayor Calloway. Absent: Council Member Marshall).**

5. CONSOLIDATED FEE SCHEDULE RESOLUTION. A resolution adopting the Fiscal Year 2021 Consolidated Fee Schedule.

Mayor Calloway stated that due to the lateness of the meeting, this agenda item will be addressed at the next Council meeting.

Motion: Council Member Freeberg moved to table Agenda item F-5, Consolidated Fee Schedule.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Freeberg, Council Member Kelly, Council Member Mulder, Mayor Calloway. Absent: Council Member Marshall).**

6. POTENTIAL FUTURE AGENDA ITEMS. The Council will discuss potential items for future agendas.

Council did not address this agenda item.

G. ADJOURNMENT

Motion: Council Member Freeberg moved to adjourn the regular meeting of the Brian Head Town Council for July 28, 2020. Council Member Mulder seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Freeberg, Council Member Kelly, Council Member Mulder, Mayor Calloway. Absent: Council Member Marshall).**

The regular meeting of the Brian Head Town Council was adjourned at 5:02 pm for July 28, 2020.

September 08, 2020

Date Approved

Nancy Leigh, Town Clerk

