

The Regular Meeting of the
Brian Head Town Council
[www.zoom.us \(click on link\)](https://www.zoom.us/j/84741938295)
Via Zoom Meeting ID# 847 4193 8295
TUESDAY, OCTOBER 27, 2020 @ 1:00 PM

Roll Call.

Members Present: Mayor Clayton Calloway, Council Member Larry Freeberg, Council Member Kelly Marshall, Council Member Lynn Mulder, Council Member Shaun Kelly.

Staff Present: Bret Howser, Town Manager; Nancy Leigh, Town Clerk; Wendy Dowland, Public Works; Shane Williamson, Town Treasurer; Aldo Biasi, Public Works Director; 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 October 27, 2020.

B. PLEDGE ALLEGIANCE

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

C. AWARD PRESENTATION FOR MACH HATCH, PLANNING COMMISSION.

Mayor Calloway explained that Mac Hatch has submitted his resignation to the Planning Commission and the Town wanted to thank Mac for his dedication and service as a Planning Commission Member for the past ten years, and thank him for his service to the community. Mayor Calloway stated that Mac has been a positive influence and has the respect of the Council and citizens of Brian Head. Mayor Calloway presented a plaque of appreciation to Mac Hatch for his service.

Carrie Dever, Planning Commission Vice-Chair, thanked Mac Hatch for his participation in the Planning Commission over the past ten years. Carrie presented a card and gift card on behalf of the Planning Commission to Mac in appreciation.

Mac thanked the Council and Planning Commission for their generosity and stated that he has retired from Brian Head Resort as the Mountain Manager. Mac explained he will continue to work with the Resort during the transition.

Bret Howser, Town Manager, thanked Mac for his dedication and service not only to the Town in the capacity of a Planning Commission Member but also with his continued support to the community.

D. DISCLOSURES

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

E. APPROVAL OF THE MINUTES:**October 13, 2020, Town Council Meeting**

Motion: Council Member Marshall moved to approve the October 13, 2020, Town Council minutes. Council Member Mulder seconded the motion.



Action: **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes:** Council Member Mulder, Council Member Freeberg, Council Member Marshall, Council Member Kelly, Mayor Calloway).

F. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS. Public input is limited to three (3) minutes.

Nancy Leigh, Town Clerk

1. Reminded the Council to submit their Open Meeting training certificates as soon as possible.
2. There will be a ballot box for the General Election available in the Clerk's office.

Mayor Calloway

1. Reminded the public to get out and vote in the upcoming General Election.
2. Bristlecone Pond ground movement has been detected adjacent to the pond. Council Member Kelly reported he noticed another crack on the other side of the pond. Council Member Kelly will meet with the Public Works Director regarding the ground disturbance. Mayor Calloway stated he wanted the Council to be aware of it. Council Member Freeberg reported that town resident, Dan Phelan, is an engineer who specializes in this type of ground disturbance which is occurring at the pond. Council Member Freeberg commented he will have Mr. Phelan contact the Public Works Director.

Council Member Marshall

1. Inquired as to the status of when the state chipper will be chipping the slash piles that property owners recently deposited in front of their properties. Chief Benson explained the crew is waiting for more favorable weather to bring the chipper in to chip the slash piles. Chief Benson reported he is working with the Public Works Director on alternative plans if needed. Some of the slash piles can be burned over the winter since a fire restriction is currently in place.
2. Inquired as to when the 2020 Census results will be published. Nancy Leigh, Town Clerk, responded she is unsure of the date for the 2020 Census results at this time.

Bret Howser, Town Manager, reported staff has been working on correcting some of the lights that violate the dark sky ordinance. Staff has been retrofitting the lighting on the Public Safety building's flagpole. The floodlight located on the building has been turned off. Bret encouraged the Council to contact him on any other lighting issues that need to be addressed.

Wendy Dowland, Public Works, reported the building department is starting to slow down, but land use is increasing. The department has received several conditional use permit requests and the Planning Commission will be reviewing those requests.

Aldo Biasi, Public Works Director

1. Staff will continue to monitor the fault that occurred at the pond. Currently, the fault has not moved and staff will investigate the other side of the pond on the reported fault.
2. Phase 2 of the Town Walking Trail Project is nearing completion. The project should be completed in the spring of 2021.
3. The public works crew is working on a lot of ongoing projects. Aldo reported he will have more information in his department update for the next Council meeting.

Shane Williamson, Town Treasurer, reported the sales tax revenue is trending upward with the August 2020 revenues. Council Member Freeberg commented that during the budget session in April, the Town decided to go with a contingency Plan B for the budget and inquired if the Town will continue with the current Plan B budget since revenues are trending upward? Shane responded the revenues are exceeding the normal budget by a significant amount, but staff will continue with the Plan B budget until January. December revenues will be the first indicator of the winter economy along with the property taxes.



G. AGENDA ITEMS

1. PUBLIC ART PIECE SURVEY RESULTS & DISCUSSION. A survey for a public art piece for Brian Head Town.

Bret Howser, Town Manager, explained an action step was identified to send out a survey to get the public's opinion on a public art piece and determine whether to proceed with a request for proposals to commission an art piece for the Town. The purpose of an art piece is to give visitors a point of interest to go to for selfies advertising Brian Head.

The survey that was sent out asked three simple questions: 1) Do you think Brian Head needs an art piece? 2) What location for the art piece? and 3) Any ideas for an art piece? (see attached).

The survey results were presented to the Council with the following discussion:

- a) The survey received 25 responses. The survey was sent to the residents, businesses, and property owners in Brian Head.
- b) Eighty-eight percent (88%) thought an art piece was a good idea. Twelve percent (12%) were against the idea.
- c) The Bristlecone Pond/Park was the most agreed upon location with other suggestions of multiple locations and/or moving the pieces around.
- d) Most of the Council liked the idea of an art piece.
- e) Burke Wilkerson, Brian Head Resort, stated he likes the idea of an art piece, and in touring other ski resorts in Colorado, most of them had some type of art. Burke suggested something that would represent the local area and to contact the Southern Utah University Art Department for possible suggestions.
- f) Carrie Dever, Planning Commission, suggested a baby bear on a lift chair.

Consensus of the Council: Staff will proceed with a request for a proposal and will identify a process on how to identify the art piece. Bret suggested the Council keep an open mind and not settle for anything until there is a piece that is a fit for Brian Head.

2. FOOD TRUCK DISCUSSION. A discussion on food trucks in Brian Head.

Bret Howser, Town Manager, explained this agenda item was presented to staff late Friday afternoon and did not allow enough time to complete a staff report. Bret reported staff will still need to continue to gather more information on this item.

Bret reported the staff has been receiving requests from food truck companies inquiring about operating in Brian Head during the winter season. Bret explained that with the Covid-19 pandemic and the limited dining spaces, it may be to the benefit of the Town to have some food trucks that could serve the visitors during the winter season.

Bret reported the Town's current Mobile Food Vendor Code which is identified in the Licensing Code is restrictive. Currently, food trucks are allowed in construction sites and special events. They are prohibited from operating in the public right of way. In 2019 the State Legislature passed laws that deregulated regulations at a local level. One of the main items was that cities could not prohibit a food truck from locating within proximity to a brick-and-mortar restaurant.

Staff has been researching the state law regulating food trucks along with contacting the Town Attorney. Staff will also contact the Utah League of Cities and Towns on food truck regulations. One item is the Town does not receive the sales taxes from the sale of food.



1 According to the State Tax Commission, the taxes go to where the food truck keeps their
2 inventory/commissary. Bret explained that the Town's intent is to create an experience for the
3 visitors to get food easily, the Town may have to forgo the sales taxes.

4
5 Bret reported one option could be to identify a special event in which all vendors are required
6 to get a temporary sales tax ID number from the State Tax Commission. This would allow the
7 sales taxes to be identified for Brian Head.

8
9 Burke Wilkerson, Brian Head Resort, commented he believes the food trucks are a good idea
10 since the resort is limited on their dining spaces for the public; his only concern is if those who
11 purchase food at the food truck want to come into the lodge to eat. The resort would need to
12 regulate the number of people coming into the lodge. Burke explained that he would be
13 against the idea of food trucks otherwise.

14
15 Burke reported he contacted several food truck vendors for special events and many of them
16 did not want to come to Brian Head due to going up and down the hill.

17
18 Bret reported if a food truck locates on private property, the property owner has control of how
19 long a food truck can operate on their property and the Town cannot request the food truck
20 operator to provide proof of written permission from the property owner. The resort could
21 allow food trucks to operate on their property and set the dates and times in which they can
22 operate.

23
24 Bret inquired if the Council is interested in considering temporarily allowing food trucks to
25 operate in Brian Head by suspending some of the current restrictions due to the pandemic and
26 restrictions on dining.

27
28 Mayor Calloway stated the Council would need more facts and recommended staff research
29 further and bring back an option for Council to consider.

30
31 **Consensus of the Council:** Staff will present a resolution suspending portions of the Mobile
32 Food Vendor Code due to the pandemic and limited dining seating and will further investigate
33 the sales taxes for food vendors.

36 3. CODE ENFORCEMENT DISCUSSION ON PENALIZING CONTRACTORS

37 **WITHOUT A PERMIT.** A discussion on options for penalizing a contractor and/or property owner
38 for building without the proper permits.

39
40 Wendy Dowland, Public Works, reported she was asked to research whether a contractor
41 could be held responsible for working without a permit. Wendy reported she contacted the
42 Utah State Department of Professional and Occupational Licensing (DPOL) who reported that
43 if the property owner hires a contractor, the contractor is responsible for obtaining the
44 appropriate permits. If the owner is doing the work, then it is the owner's responsibility to
45 acquire the proper permits. The Town can cite either the contractor and/or the property
46 owner.

47
48 The Council discussed the following:

- 49 a) The Town can submit a claim to DPOL regarding a violation, but in speaking with other
50 communities DPOL's main concern is contractors being properly licensed.
51 b) Wendy recommended the Town's best action is to cite and/or issue a stop order to the
52 contractor and/or property owner and address each instance on a case by case basis.
53 c) Cedar City does not cite the owner and/or contractor but sends them a "Do better letter".
54 Cedar City takes an educational approach in working with contractors and/or property
55 owners.



- 1 d) Council Member Freeberg reported that this item was originally brought up due to the
2 clear-cutting of lots. Council Member Freeberg suggested staff proceed with citing both
3 the contractor and/or property owners since word would get out and it would help educate
4 the contractors and property owners if they were cited.
5 e) Council Member Freeberg suggested staff present an educational course for contractors
6 since the Town is now seeing newer contractors working in Town. This could help prevent
7 problems and could get the word out to other contractors and/or property owners.
8 f) Bret reported staff conducted more code enforcement this summer and specifically looked
9 for grading and tree removal violations. On one instance, staff came across a contractor
10 working without a tree removal permit and the job was stopped until a permit was
11 obtained. The contractor stated they were hired by the property owner and was unaware
12 of the requirement to obtain a tree removal permit.
13 g) Staff has been utilizing the GIS system from Iron County and was able to write a citation to
14 some property owners who were cutting without a permit.
15 h) The penalty is a class B misdemeanor which carries a fine up to \$1,000, but since it goes
16 through the court system, the judge determines what the fine will be.
17 i) Another issue has been property owners and/or contractors applying for a tree removal
18 permit for fire mitigation and then cutting down live trees in the process. Approximately
19 80% of property owners obtain a tree removal permit and most are compliant with the
20 code.
21 j) The Planning Commission will be reviewing the grading permit process during its next
22 meeting.
23 k) Bret reported there will be legislation from the State to remove local authority for issues
24 such as these. It began last year with a proposed law that any land use violation would be
25 an infraction and not a misdemeanor, which the Town Code currently identifies
26 misdemeanors. Staff has been asked by the Utah League of Cities and Town to review
27 our current code and make the changes from misdemeanors to infractions.
28 l) Wendy proposed that the Town not allow for a tree removal or grading until a building
29 permit is pulled. Wendy reported that the staff's time is limited and difficult to keep up
30 with. Tree removal permits should only be issued for fire mitigation without a building
31 permit associated with it.
32 m) A possible penalty could be to triple the fee if tree removal were done without a building
33 permit.
34 n) Bret explained the solution is to develop a reputation and is unsure if citing someone after
35 the fact is getting to where the Town wants to be in preventing the issues.
36

37 **Consensus of the Council:** Staff will cite either the contractor if they are under an agreement
38 with the property owner or cite the property owner if they are doing an owner-build.
39
40

41 **4. DISCUSSION ON PROPOSED AMENDMENTS TO TITLE 8-3-3, WORKING WITHIN**
42 **THE TOWN'S RIGHTS-OF-WAY EXEMPTION.** A discussion on a proposed amendment to the
43 Town Code allowing an exemption to work within the Town's rights-of-way after October 15th.
44

45 Aldo Biasi, Public Works Director, presented proposed changes to the Town Code, Title 8-3-3,
46 Working within the Town's Rights-of-Way exemption (see attached).
47

48 Aldo reported he is proposing an amendment to the Code which would allow for an exception for
49 work within the Town's rights-of-way past the deadline depending on the weather. Currently, the
50 weather has been mild, and staff has received requests from contractors to extend past the
51 October 15th deadline for working within the right-of-way. It has been a general rule that it was
52 allowed if permitted by the Public Works Director, but the staff is requesting that it be identified in
53 the Town Code. Currently, the winter season is defined by October 15th through May 15th.
54

55 The proposed amendment would now be from October 1st through May 15th. Aldo reported
56 certain situations would allow work to be conducted beyond the October deadline, such as



1 emergency issues. Aldo reported the contractor would need to put in a request no later than
2 September 30th and anything after October 1st would not be considered. The work is to be
3 completed between October 1st through October 15th unless an extension has been authorized. If
4 the seasonal weather sets in during the extension period, the Town can rush the project or shut it
5 down for the winter season if needed.
6

7 Aldo reported his intent is to have all construction work within the Town's right-of-way completed
8 by September 30th and an extension would allow work until October 15th. Aldo explained staff
9 has run into issues with contractors who wait until the last minute and do not finish the work
10 properly and the town must come in and finish backfilling the project.
11

12 The Council discussed the following:

- 13 a) Mayor Calloway commented this proposed amendment would shorten the building season
14 and was not the intention he wanted.
- 15 b) Aldo explained his intention is to get the work completed before the winter season sets in
16 because any open trench would jeopardize the town's infrastructure by freezing.
- 17 c) The contractor can continue to work on private property, but not within the right of way. Staff
18 has had problems with getting the contractors to come back and repair the road.
- 19 d) Mayor Calloway commented that Dominion Energy sets their date in which they will not work
20 in Brian Head as of October 15th and if an earlier date is identified such as October 1st, then
21 they will not come to Brian Head after October 1st and they do not consider any extensions,
22 making it more difficult on the contractor.
- 23 e) Mayor Calloway stated that as a contractor he is not in support of the proposed amendments
24 shortening the construction season.
- 25 f) Council Member Kelly inquired as to why the dates are different for winter parking vs. working
26 within the right of way. Council Member Kelly inquired if the ten feet (10') is from the right of
27 way into a driveway, would a contractor be allowed to work after the deadline. Aldo
28 responded that it would depend on the case, but that the Town would need to be notified
29 since they may not know where the waterline is located. Bret responded staff will need to
30 research the legality of this provision.
- 31 g) Bret explained that if someone works along the property line and the waterline is in the right-
32 of-way, there is a risk of freezing the waterline which could cause damage. The staff wants
33 to ensure the water and sewer lines stay the required depth underground without exposure to
34 the winter freeze.
- 35 h) Winter season parking vs. working within the right of way. Bret explained the Town is trying
36 to accomplish two different things. To protect the Town's infrastructure from freezing which is
37 a temperature-based and parking is snow removal services which are not temperature based.
- 38 i) Aldo explained it was not the staff's intention to stop work, but was to push the contractor's
39 along to get their project completed before the winter season sets in.
- 40 j) Council Member Kelly commented the current Town Code has several sections that address
41 weather changes and the Town's ability to fill in the road and the contractor's responsibility to
42 come back and re-dig and complete the project later. Council Member Kelly suggested that it
43 be kept simple and allow the Public Works Director to decide if needed.
- 44 k) Mayor Calloway recommended the dates remain the same: October 15th through May 15th
45 and allow for an extension if the contractor requested one by October 12th, they would have
46 one week to complete. If the weather forecast identified a storm and the work was not
47 completed, there should be something in the Consolidated Fee Schedule that would allow for
48 the Town to complete the backfill and charge the contractor. The Town has the enforcement
49 power to have the contractor complete the work.
- 50 l) Aldo explained he would want the contractors to approach the Town before October 12th
51 since in past years the weather turns bad and moisture starts to saturate the ground. He
52 would like to have the contractor approach the Town sooner than three days before the cutoff
53 date of October 15th.
- 54 m) Mayor Calloway explained that if a contractor obtained a permit and bond to work within the
55 right of way by September 15th, he would have a deadline of October 15th to finalize, and if by



- chance he falls behind, he would need to contact the Town by October 7th and ask for an exception if he plans to go beyond October 15th.
- n) Mayor Calloway inquired as to the last water leak in front of Apple Annie's and if staff took pictures and identified it for the Town's GIS system since there were difficulties in locating the waterline. Aldo responded he took pictures but has not downloaded them onto the GIS system yet.

Consensus of the Council: The winter dates will be from October 15th through May 15th and staff will identify another mechanism to allow for an extension. Staff will bring back another proposed amendment for Council's consideration.

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

Tentative agenda items for November 10, 2020, Town Council meeting:

- a) Grading discussion. The Planning Commission will be reviewing the grading permit process and will forward a recommendation to the Council.
- b) Working within the Town's right-of-way code amendment.
- c) Food truck resolution.

Wendy reported the Planning Commission will be reviewing a list of items for Land Management Code amendments. Wendy inquired if the Council would like to discuss the proposed amendments first before the public hearing is scheduled.

Mayor Calloway suggested staff submit the Planning Commission minutes. Bret reported he will be doing an administration department update and will include a combination of the Planning Commission minutes and an abbreviated summary of the Planning Commission meeting. Bret reported he will begin doing a monthly administration department report for the Council.

John Grissinger Dedication

Mayor Calloway reported that he has been working on a dedication piece to John Grissinger and apologized for not involving the Council sooner. A swing will be dedicated to John that will be located at the pond near the zig/zag fence with a view to the ski runs as a thank you for his contribution to the community. Mayor Calloway presented a picture of the swing being constructed (see attached).

H. ADJOURNMENT

Motion: Council Member Kelly moved to adjourn the regular meeting of the Brian Head Town Council for October 27, 2020. Council Member Mulder seconded the motion.

Action: **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes:** Council Member Freeberg, Council Member Kelly, Council Member Marshall, Council Member Mulder, Mayor Calloway.

The regular meeting of the Brian Head Town Council was adjourned at 3:40 pm for October 27, 2020.

November 10, 2020

Date Approved

Nancy Leigh, Town Clerk

