

The Regular Meeting of the
Brian Head Town Council
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Via Zoom Meeting ID# 829 8159 8882
TUESDAY, OCTOBER 26, 2021 @ 1:00 PM

AGENDA

- A. CALL TO ORDER**
- B. PLEDGE ALLEGIANCE**
- C. DISCLOSURES**

- D. APPROVAL OF THE MINUTES:** October 12, 2021, Town Council Meeting
- E. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS.** Public input is limited to three (3) minutes on non-agenda items.
- F. AGENDA ITEMS:**
 - 1. TRAILS COMMITTEE APPOINTMENTS.** Bret Howser, Town Manager. The Council will give their approval for the appointment of the Trail Committee Members.
 - 2. NIGHTLY RENTAL CODE DISCUSSION.** Bret Howser, Town Manager. The Council will discuss possible amendments to the Nightly Rental Code.
 - 3. PUBLIC ART PIECE LOCATION DECISION.** Bret Howser, Town Manager. The Council will decide on the location for the public art piece, Brian the Bear.
 - 4. FUTURE AGENDA ITEMS.** The Council will discuss potential items for future agendas.
- G. ADJOURNMENT**

Date: October 21, 2021

Available to Board Members as per Ordinance No. 11-003 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the public board may participate by means of electronic communications. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in three conspicuous locations; The Mall, Post Office, and the Brian Head Town Hall and have posted copies on the Utah Meeting Notice Website and the Brian Head Town website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Nancy Leigh, Town Clerk





STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Trails Committee Appointments
AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: October 26, 2021
TYPE OF ITEM: Administrative Direction

SUMMARY:

The Town Council will advise and consent on appointments to the Trails Committee.

BACKGROUND:

The Trails Committee was established by ordinance in 2009 to develop the Brian Head Trails Master Plan, initially, and later revised to handle ongoing implementation of the Trails Master Plan. The Committee was to consist of six members representing various community stakeholders.

After the completion of the Trails Master Plan in 2013, the Committee has not enjoyed robust participation. Shaun Kelly was appointed as the Committee Chair in 2014, and most of the work expected of the Committee has been handled by him, the Town Manager, and the Town Council ever since.

The Town Council revised the Trails Committee ordinance in September 2021 to adjust the makeup of the Committee.

ANALYSIS:

During the creation of the FY 2022 Strategic Plan, staff suggested a course of action to reinvigorate the Town's trails planning, implementation, and maintenance efforts. The proposed actions steps (which were adopted in the Strategic Plan by the Council) include:

- Re-establish Trails Committee
- Update Trails Master Plan with prioritized project list and funding recommendations

The Town Manager has reached out to the following to fill the newly established makeup of the Committee:

- Council/Planning Commission – Shaun Kelly
- Town Manager or Designee – Bret Howser
- Brian Head Resort – Ken Jenson
- Community At-Large – Mike Saemisch
- DNF or CBNM (advisory) – Jess Hancock

Each of these potential appointees has been contacted and expressed a desire to help with the Town's trail planning efforts. I have personally worked with them over the years on various trails endeavors and have found them to be dedicated to bringing about excellent trails and trail systems in and around our community.

FINANCIAL IMPLICATIONS:

There will be a minimal cost associated with conducting Committee meetings. This Committee will be tasked with developing a project plan and maintenance plan for trails, which will be incorporated into one or more budget proposals in the future.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends consenting to the appointments of Shaun Kelly, Bret Howser, Ken Jenson, and Mike Saemisch as full members of the Brian Head Town Trails Committee, with Jess Hancock as an advisory member.

PROPOSED MOTION:

I move to consent to the appointments of Shaun Kelly, Bret Howser, Ken Jenson, and Mike Saemisch as full members of the Brian Head Town Trails Committee, with Jess Hancock as an advisory member.

ATTACHMENTS:

N/A



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Short Term Rental Code
AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: October 26, 2021
TYPE OF ITEM: Discussion

SUMMARY:

The Council was requested to consider several potential adjustments to the Town's Nightly Rental Code.

BACKGROUND:

In 2019-2020, the Town Council endeavored to make adjustments to the Town's nightly rental (or short-term rental or STR) regulations contained within the business license code. This effort began in response to a relative few (but ardent) complaints from residents in single family residential neighborhoods who were dealing with impacts (such as parking, noise, trespassing, etc.) from neighboring single family residences being used as nightly rentals (an allowed use in R1 zones in Brian Head). After considering different revision options presented by staff, the Council initially settled on a set of revisions which focused on requiring nightly rental licensees to educate guests via a "Good Neighbor Policy" which was subsequently created by a committee consisting of nightly rental owners/operators and permanent residents. After operating under the revised ordinances for a year, the nightly rental committee was reconvened to make any further recommendations. At that point, the committee recommended that stronger language be included in the ordinance to hold nightly rental owners responsible for nuisances generated by the operation of their business. After holding robust public hearings, the Council decided to approve further revisions to the nightly rental regulations which included the recommended provision to hold licensees responsible for noise/nuisance and apply that only to STRs in single-family residential zones. This new STR ordinance has been in place since summer 2020.

After hearing additional concerns from the community regarding the growth in nightly rentals during a set of public forums in January 2021, the Council discussed the matter of limiting/capping STRs in single-family residential zones in August 2021 and decided not to take further action to modify town ordinances at that point, opting instead to allow for a year of enforcement with the new code enforcement officer on staff to determine if existing ordinances are sufficient.

During public comment during the September 12, 2021 Council meeting, Jim Ortler presented the Council with a list of potential changes to the short-term rental ordinance, and Council directed staff to bring the item for discussion during a regular Council meeting.

ANALYSIS:

The following STR issues/proposals were suggested by Jim Ortler:

1. Delete "single family residential from 3-2A-21-3-D-2
 - a. Analysis: The cited portion of code allows the Town to hold nightly rental owners responsible for certain behaviors of their guests (setting up the 3

strikes policy). At the time Council implemented this, it was quite purposely limited to only cabins (single-family zones). The Council's existing policy is to allow condo HOAs to deal with their own nightly rental issues however they choose, and however strictly they choose.

- b. Recommendation: Staff does not recommend changing this policy as doing so would open up a whole new world of enforcement issues – such as one example which was brought up during public input in 2020, when somebody is causing a noise disturbance by walking around too loudly in a condo located above a resident's condo. Another example would be trying to sort out parking issues in a privately owned lot where residents and STR guests are all mixed together.
2. Modifications to D-5 Parking: “There must be a sufficient number of parking spaces for each nightly rental unit licensed. Once the number of parking spaces for licensed nightly rental units reaches the number of existing legal parking spaces for any property, no additional licenses may be issued at that property.” A table of max spaces per square footage was put forth.
 - a. Analysis: The current code sets the maximum parking at the actual amount of off-street parking available and requires cabins to post that maximum. The suggested code may limit some cabins to less parking than they have actually available. It seems aimed at limiting the number of nightly rentals in a condo complex through parking.
 - b. Recommendation: Again, there is no reason that staff is aware of why a condo HOA couldn't create and enforce this rule themselves. The purpose of the Town's ordinances related to STR parking is to reduce STR guests from parking in the right-of-way, not to apportion private parking among residents and guests.
3. A license of nightly rentals cannot be issued for a property with “Primary” residential status.
 - a. Analysis: Staff has cross-checked all of the licensed nightly rental units with County property tax data and found 6 that were registered as primary residential. These have been turned over to the County Assessor for review. State statute considers a property to be eligible as “Primary” for tax purposes if the resident lives there for 183 days or more.
 - b. Recommendation: In theory, there could be a primary residence that is used as a nightly rental for a few months per year. So staff does not recommend altering our code to disallow this, but we do suggest building into our administrative process that we collect the property tax ID number for each nightly rental application and cross-check with the Assessor's data, and where they are listed as “primary” we will make the Assessor aware.
4. Licensee may not advertise occupancy levels greater than that allowed by Fire Code
 - a. Analysis: Pretty straight forward. This has been a concern for both cabins and condos.
 - b. Recommendation: This may run afoul of state statute §10-8-85.4, which states that a “legislative body may not... use an ordinance that prohibits the act of renting a short-term rental to fine, charge, prosecute, or otherwise punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website.” I would argue that we would not be punishing them

“solely” for the act of listing, but rather for the act of listing too high a maximum occupancy. Nonetheless, most cities have interpreted this statute to mean that you don’t regulate their advertisement. Staff is neutral on whether to implement this but recommends that we seek further legal input if Council is interested.

5. If property is part of a HOA, the applicant must obtain the consent of the HOA.
 - a. Analysis: This effectively puts the Town in the position of implementing HOA rules.
 - b. Recommendation: We have not heretofore undertaken to enforce HOA rules from the Town. We have checked with other cities/towns on such matters, particularly where HOA regulations are more stringent than our own design standards, and all cities/towns we are aware of have avoided becoming entangled. HOA’s have a legal process they can follow to enforce their rules. Staff does not recommend implementing this suggestion.

FINANCIAL IMPLICATIONS:

N/A

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

See Analysis section

PROPOSED MOTION:

No motion necessary, item is discussion/informational only

ATTACHMENTS:

N/A



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Public Art Proposals
AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: October 26, 2021
TYPE OF ITEM: Discussion

SUMMARY:

The Council will discuss potential locations for the public art project and provide direction to staff.

BACKGROUND:

In September 2021, Council decided to move forward with the Brian the Bear public art proposal from Terrence Martin. The Pinecone Cairns proposal put forth by Billy Joe Miller also garnered interest, but Council asked staff to work with the Mr. Miller on to redevelop that proposal for a future project more focused on Town branding.

After looking at potential locations for Brian the Bear around Bristlecone Pond, the Council asked for some further renderings showing Brian in a specific location on the south side of the existing playground structure.

ANALYSIS:

The requested further renderings are attached to this report.

One consideration related to placement would be the existing playground structures. Currently these structures have a relatively tall profile and may impede the scenic value of the art piece. However, in the past the Council has discussed replacing the playground equipment (which was recommended by a risk assessment provided by Utah Local Gov't Trust since it is not commercial grade play equipment) with play structures that are more in the vein of "imaginative play" such as the picture below:



Indeed, an imaginative play concept centered around forest/bear elements such as streams, boulders, etc, would blend nicely with Brian the Bear, and the opportunity to rebuild the playground entirely would provide more placement and integration options for the Bear.

Staff has also begun work on drafting a contract. As this is a relatively unique professional services contract, it is attached to this report in case the Council wishes to review it.

FINANCIAL IMPLICATIONS:

The cost estimate for the imaginative play structure along with 12" in engineered wood chips was about \$52,000 in 2018. Another \$40,000 was quoted for site prep and installation, which at the time we considered doing in-house. The Council was not interested in expending those kinds of funds on the project in 2018. Staff sought grant funding in 2019 from Iron County Restaurant Tax Grant but was denied. Over the years, staff has looked around for funding for playgrounds, but has not found any good options.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

N/A

PROPOSED MOTION:

Council may give administrative direction to staff, either by consensus or by motion

ATTACHMENTS:

- A- Location renderings
- B- Draft contract

Attachment A – Location Renderings





