

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

Roll Call.

Members Present: Mayor Pro Tem Larry Freeberg, Council Member Kelly Marshall, Council Member Lynn Mulder, Council Member Shaun Kelly.

Members Absent: Mayor Clayton Calloway.

Staff Present: Bret Howser, Town Manager; Nancy Leigh, Town Clerk; Amanda Hunter, Code Enforcement; Shane Williamson, Town Treasurer.

A. CALL TO ORDER

Mayor Pro Tem Freeberg called the regular meeting of the Brian Head Town Council to order at 1:00 pm for October 26, 2021.

B. PLEDGE ALLEGIANCE

Mayor Pro Tem Freeberg led the Council and others in the Pledge of Allegiance.

C. DISCLOSURES

- Council Member Kelly stated that he may have a potential conflict of interest with agenda item F-2, Nightly Rental Code Discussion, because he currently resides in a condominium.

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

D. APPROVAL OF THE MINUTES:**October 12, 2021, Town Council Meeting**

Motion: Council Member Mulder moved to approve the October 12, 2021 Town Council minutes. Council Member Kelly seconded the motion.

Action: **Motion carried 3-0-1 (summary: Yes = 3, No = 0, Abstain = 1. Vote: Yes:** Mayor Pro Tem Freeberg, Council Member Mulder, Council Member Kelly. **Abstained:** Council Member Marshall was absent from the meeting. **Absent:** Mayor Calloway)

E. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS. Public input is limited to three (3) minutes on non-agenda items.**Nancy Leigh, Town Clerk**

- The Brian Head History Committee hosted an open house on October 20, 2021. The public was invited, and the goal was to contact individuals who had knowledge of Brian Head's history or would be willing to volunteer for committees for the 50th birthday celebration scheduled for March 2025. Nancy asked those who may know people who have knowledge of the history of Brian Head and surrounding areas to contact her.



2. Reminded the 2021 election candidates that the campaign finance disclosure statements are due no later than 5:00 pm today;, otherwise, if not submitted, their name would be removed from the ballot.

Mayor Pro Tem Freeberg, reminded the public the Municipal Election is Tuesday, November 2, 2021. Nancy reported there was a delay in mailing the ballots out on Tuesday, October 12th and the County Clerk is working to get the ballots out. Ballots can be turned in at the ballot box at Town Hall or the Iron County Clerk's office. There are two council positions and a mayor position open.

Council Member Kelly reported early voting is taking place on Tuesday through Friday and polling stations are located at the Iron County Courthouse in Parowan.

Bret Howser, Town Manager, reported the Council was interested in the idea of incorporating geofencing technology to count the number of people coming to Brian Head. Bret reported he researched three different companies and it was reported that there is not a good way to count people using geofencing. Bret reported he will mark the action steps for geofencing as complete and requested that if the Council is aware of any other option to contact him. The companies that were contacted recommended the Town continue using the electronic speed sign to count the number of vehicles coming to Brian Head. Council Member Kelly suggested staff contact Granicus software company who may have the technology that could assist the Town. Staff will follow up with Granicus.

F. AGENDA ITEMS:

1. TRAILS COMMITTEE APPOINTMENTS. Approval for the appointment of the Trails Committee Members.

Bret Howser, Town Manager, reported he is requesting the advice and consent of the Council to appoint new Trail Committee Members. Bret reported the Trails Committee has fallen off over the years after the adoption of the Trails Master Plan. The previous Trail committee members consisted of representatives from other agencies such as the Forest Service, Cedar Breaks National Monument, and others. He is now looking to update the Trails Master Plan and recommended a reduced number of voting members to efficiently move through the update of the Trails Plan.

Bret recommended four official voting members for the Trail Committee:

- a. Shaun Kelly, representing the Town Council.
- b. Ken Jensen, representing Brian Head Resort.
- c. Mike Saemisch, representing the OHV community.
- d. Bret Howser, representing the Town Staff.
- e. Jess Hancock will act as an advisory member representing the Forest Service.

Bret reported that once the appointments are made, the committee will begin to review the Master Trails Plan.

Motion: Council Member Marshall moved to give the Council's advice and consent for the following individuals to serve on the Trails Committee: Shaun Kelly, Ken Jenson, Mike Saemisch, Bret Howser, and Jess Hancock as an advisory member representing the Forest Service. Council Member Mulder seconded the motion.

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

2. NIGHTLY RENTAL CODE DISCUSSION. A discussion on potential amendments to the Nightly Rental Code.



1 Bret Howser, Town Manager, reported that Jim Ortler approached the Council with a request to
2 amend the Nightly Rental Code as it relates to the condominium. Mr. Ortler submitted a list of
3 changes to the Town Code that specifically focused on condominiums rather than single-family
4 residential nightly rentals (see attached). Bret reported the Council directed staff after the last
5 amendment to the Nightly Rental Code in 2020 to wait to see what improvements have been made
6 once the Code Enforcement Officer was hired and if the code was sufficient. The staff has been
7 moving forward with Council's direction in which the Code Enforcement Officer was hired in July 2021
8 and has been working with bringing businesses into compliance.
9

10 Bret explained one item identified on Mr. Ortler's recommendations had to do with second homes and
11 property taxes. According to state law, a primary resident is identified as someone who resides in the
12 home for a minimum of 183 consecutive days for property tax purposes. Staff cross-checked all
13 licensed nightly rentals with the County's list of primary and secondary home status and identified six
14 nightly rental units that identified as a primary residence. Bret explained a primary residence pays
15 45% of the property taxes whereas a secondary home pays 100% of the property taxes. The staff has
16 submitted the list of the six units to the Iron County Assessor's office for follow-up. Staff will update
17 the Nightly Rental Business License Application to identify if the property has a primary or secondary
18 home status.
19

20 The Council discussed the following:

- 21 a. Mayor Pro Tem Freeberg commented the Council decided not to become involved in
22 regulating the Homeowner's Associations and allow them to manage their properties.
- 23 b. Bret reported the Council made a conscious decision not to extend regulations on occupancy
24 or parking for the nightly rental businesses that are in a condominium and allow the HOA to
25 regulate it.
- 26 c. Some condominium residents complained to the Town that they were treated as second-
27 class citizens and the Council responded that the HOA's can identify their regulations through
28 their CC&Rs if they chose to.
- 29 d. Council Member Mulder commented she appreciates the reminder and good policy the Town
30 currently has in allowing the HOA's to regulate their properties. If there is a serious situation,
31 anyone can call the Marshals to respond to the incident. Council Member Mulder
32 recommended the Council remain with the current code and allow the HOA's to regulate their
33 properties and not the Town.
- 34 e. Council Member Marshall reported she has received reports from some of the HOA's who
35 reported they have limited enforcement powers. There have been some conflicts of interest
36 with HOA board members who own nightly rentals vs. condominium owners who do not have
37 nightly rental businesses and they feel their hands are tied in trying to enforce a policy with
38 their HOA. Council Member Marshall went on to comment that it would be too difficult for the
39 Town to enforce occupancy and parking within a condominium complex.
- 40 f. Council Member Marshall explained that she would like to discuss the recommendation for
41 regulating the advertising of occupancy levels that are greater than what the Fire Code
42 allows; one person per two hundred square feet. Bret reported after speaking with the Town
43 Attorney on the state code that prohibits a municipality from enforcement measures on short-
44 term rental advertisement sites. State Code is currently uncontested in a State Court and if
45 the Town chose to enforce the occupancy identified on a short-term rental advertising site,
46 the Council would need to know that it could go to court. Bret went on to report that if it were
47 reviewed by a court, it could be a first amendment issue and could be commercial speech vs.
48 other types of speech. Bret reported he believes the Town would prevail in this case.
- 49 g. Bret reported that he believes the Town could enforce a provision that the nightly rental
50 business cannot advertise above the maximum occupancy level.
- 51 h. Bret reported the Town has recently purchased software from Granicus that identifies all
52 nightly rentals operating in Brian Head. The program identifies more than advertising sites on
53 nightly rentals. Mayor Pro Tem Freeberg inquired if the Granicus program could identify the
54 maximum occupancy number.



- i. Chief Benson reported the occupancy number is based on the Fire Code which is one person per 200 square feet and for condominium units, it would include the living space of the condominium (anything past the front door).
- j. Council Member Marshall inquired about small condominiums that have very little square footage and how they would meet Fire Code. Chief Benson explained they would look at it from a hotel room standard for those small condominiums.
- k. Bret reported staff has not been collecting maximum occupancy information from the condominium owners.
- l. Council Member Kelly expressed his concerns that the Town regulates cabins with occupancy but not the condos.
- m. Chief Benson explained they would need a warrant signed by a judge to enter a private residence to see how many people were staying there.
- n. Council Member Kelly stated that he believes it is a nuisance enforcement issue and if there is a complaint filed, then the Town should follow up with it. Council Member Kelly went on to state that he believes the HOA's should enforce regulations on their properties for occupancy and parking and that residents need to understand that it is part of living in a condominium complex, but that the Town needs to be firm on the basic regulations.

The Council then reviewed the proposed amendments from Jim Ortler's request:

a. Delete Single-Family Residential for specific regulations to identify all nightly rentals.

Bret reported the existing code states that condominium units will use their best efforts in regulating occupancy while single-family residentials are required to post and regulate the max occupancy and parking for their locations.

- a. Council Member Kelly stated that all nightly rentals should be responsible for following the Town Code.
- b. **Consensus of the Council:** No changes to be made.

b. Parking

Bret explained that Mr. Ortler recommended a table identifying the number of parking spaces that could limit the number of nightly rental licenses that are issued.

- a. Bret explained that parking at the condominiums has not been an issue for the Town and are private parking lots owned by the HOA and not public parking regulated by the Town.
- b. Chief Benson reported that only during busy holidays and if there is a large gathering happening that parking becomes an issue for the Town.
- c. Council Member Marshall reported there are several HOA's that are working on their nightly rental issues and are making progress with their CC&R's. Council Member Marshall suggested the Town work with the HOA's in bringing them together to discuss their issues and possible solutions and the staff could assist with information for the HOA's on nightly rentals.
- d. Mayor Pro Tem Freeberg recommended the Town remain out of the discussions with the HOA's but encourage them to work together.

3. Primary Residence Status

- a. Council Member Marshall reported that Mr. Ortler emailed her the state statute 59-2-104 which talked about the different residential property but did not include transitory property, but State Code 59-2-102-34(c) identifies short-term rentals and primary residence status.
- b. Bret explained this section of code is a definition that is different than a regulation. Council Member Marshall suggested staff research Utah Code further.
- c. Bret explained that short-term rentals cannot be claimed as a primary residence and the Town Code would not need to be amended since the Town Code states that all federal, state, and county regulations must be adhered to as part of the application process.

4. Advertising



- a. Member Marshall recommended the Town stay away from regulating advertising for nightly rentals since State Code states that a municipality cannot enforce advertising on a short-term rental. It would also require a lot of manpower to review all of the advertising sites, but staff could identify a couple of nightly rentals that have complaints filed on them to determine the occupancy they are identifying.
- b. Mayor Pro Tem Freeberg agreed unless it becomes an issue for staff's time.
- c. Council Member Mulder explained the HOA's and R-1's has maximum occupancies that can be enforced and there are still means to follow through if not posted in the advertisement of the nightly rental.
- d. Bret explained if a noise complaint was received and it was determined that the nightly rental exceeded the fire code for occupancy, then there would be the option to cite on a fire code violation. Chief Benson explained they could be cited, but his department has not done so but would submit the information to the Code Enforcement for a nightly rental violation in which the licensee would be cited.
- e. Chief Benson explained the nuisance violation would be issued to the visitor. Chief Benson reminded the Council the Fire Code is a preventive code and not something the Town goes after.
- f. Council Member Kelly suggested this item needs further discussion and information and recommended it be addressed during the annual Strategic Retreat in January. This would give more time for Code Enforcement to gather more information with the nightly rental businesses.
- g. Mayor Pro Tem Freeberg commented that staff would not be able to enforce the fire code for occupancy violations nor check the nightly rental's advertisement, but if an issue arose and the Town Code addresses it, then the Town should enforce it.
- h. Linda Ames, a resident, inquired as to the fire code and occupancy (1 person p/200 sq. ft). Ms. Ames commented that her nightly rental neighbors are advertising 16 people and have a 3,200 sq. ft home. They have five beds, with two in the home and two in the loft, and if the Town should be regulating that. Chief Benson responded the Town does not regulate the number of beds for a nightly rental.
- i. Ms. Ames recommended the Town make the owners responsible for their occupancy and that the threat of suspending a license would be more effective than issuing fines.
- j. Ms. Ames went on to comment that nightly rentals who are claiming primary residence status, are a tax implication for the state since primary residence receive a 45% reduction on their property taxes and are required to file their state tax returns in Utah. Ms. Ames stated she would be interested in participating in a nightly rental workshop as a resident. Bret reported the discussion would take place during the annual Strategic Planning Retreat which is open to the public. Ms. Ames thanked the Council for their efforts.
- k. **Consensus of the Council:** The HOA's will continue to regulate their parking for their complexes.

HOA Approval for all Nightly Rentals

Bret explained this item is a request that all nightly rentals receive approval from their HOA's as part of the licensing process.

- a. Bret reported there are two types of HOA's: 1. Condominium complexes, and 2. Landowner HOA's such as subdivisions like the Trails @ Navajo and Steam Engine Meadows.
- b. The Trails @ Navajo first prohibited nightly rentals, but due to the lack of real estate sales, they changed their CC&Rs and identified a cap on the number of nightly rentals allowed to operate. They contact the Town on an annual basis inquiring on the number of nightly rental applications submitted that are within their subdivision.
- c. The Town will approve an application if they meet the Town requirements and will also inform the HOA if requested.
- d. Ms. Cheryl McCandice, Alpine Condo owner, commented she agrees with the Town notifying the HOA's of nightly rentals. Bret reminded Ms. McCandice they would need to contact the Town and request it.

3. PUBLIC ART PIECE LOCATION DECISION. Public Art Piece, Brian the Bear, location decision.



1
2 Bret Howser, Town Manager, explained the Council will discuss a location for the public art piece,
3 Brian the Bear. Bret explained the Council discussed earlier on incorporating the playground
4 equipment with the art piece. The playground equipment would be replaced with an interactive low-
5 profile playset that would fit the theme of a mountain area (see attached playground theme). The
6 playground equipment and installation would cost between \$55,000 to \$100,000 depending on the
7 playground pieces and type of ground material. Bret reported he will need to do further research on
8 other options.
9

10 The Council discussed the following:

- 11 a. The total cost of the art piece plus the interactive playground could be \$200,000. Bret
12 reported the Chair #1 restroom project was also for \$200,000.
- 13 b. Council reviewed different renderings of the art piece set in different locations (see attached).
- 14 c. Bret reported he will need the Council to decide on a location for the art piece so staff can
15 move forward with finalizing the cost of the project.
- 16 d. A contract between the Town and artist will be presented at the next Council meeting.
- 17 e. Council Member Kelly suggested the playground equipment be moved to the northwest side
18 of the pavilion area next to the volleyball court area so as not to crowd the art piece and the
19 art piece be located closer to the zigzag fence but closer to the point of the bench that is near
20 the pond on the south side of the pavilion.
- 21 f. Another location for the art piece could be between the horseshoe pits and volleyball court
22 which is on the north side of the pavilion.
- 23 g. Council Member Mulder commented she would prefer to have the art piece as a stand-alone
24 without the playground equipment intertwined with it unless the playground equipment was
25 very low profile.
- 26 h. Council Member Marshall commented she would be in favor of locating the art piece on the
27 south side of the playground area and would recommend a grassy area for the art piece with
28 imaginative playground equipment.
- 29 i. Mayor Pro Tem Freeberg commented the Council has nine months to make the decision and
30 feels it does not have to be made today and feels the Council needs to have further
31 discussion on the playground equipment first.
- 32 j. Council Member Marshall reported she spoke with Mayor Calloway regarding the location,
33 and he recommends the location for the art piece on the south side of the pavilion and would
34 want to find some type of grant funding for upgrading the existing playground equipment.
- 35 k. Bret reported staff has been researching grant funding for playground equipment but has
36 been unsuccessful. He has spoken with Maria Twitchell, Restaurant Tax Board, about grant
37 funding for the public art piece which could qualify. Bret reported the Council could consider
38 using surplus funds from last year along with Redevelopment funds that could be identified.
- 39 l. Mayor Pro Tem Freeberg suggested a field trip for the Council to review the area before a
40 decision is made.
- 41 m. Mr. Terrance Martin, the artist, explained he could submit renderings of the art piece in the
42 area the Council is discussing and also create imaginative playground equipment that would
43 fit with the art piece. The renderings will be of the art piece with an aerial view and will have
44 some with and without the playground equipment. He could also move the firepits as well.
- 45 n. Mr. Martin commented on a scaled-down version of the imaginative playground in which he
46 could create play areas around Brian Head such as a fishing station at a location and a bike
47 sculpture at another location. Another area could have skis/snowboards or snowmobiles that
48 kids could ride that move when standing/sitting on. There could be four to five different
49 stations of a theme for kids, and he would be able to create the imaginative features.
- 50 o. Mr. Martin suggested the art piece not be too close to the fence since there would need to be
51 circulation around the art piece for the public.
52

53 **Consensus of the Council:** Staff will move forward with the contract with Mr. Martin for the art
54 piece and the Council will take a field trip to review the potential locations for the art piece. Staff
55 will apply for a grant for the art piece and will research options for funding the playground



equipment along with options on other locations for the playground and what type of playground equipment.

4. FUTURE AGENDA ITEMS. Potential items for future agendas.

Field Trip for Art Piece Location

The Council will call a special meeting for a field trip to the pavilion area. Staff will contact Council and coordinate the special meeting.

Council Member Marshall reported she is unable to attend the November 9th Council Meeting.

Annual Christmas Party

Council Member Mulder inquired if the annual Christmas party has been scheduled. Bret reported staff is still in the process of coordinating the annual holiday party and if Council has ideas for the upcoming event to please let him know.

G. ADJOURNMENT

Motion: Council Member Kelly moved to adjourn the regular meeting of the Brian Head Town Council for October 26, 2021. Council Member Marshall seconded the motion.

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

The regular meeting of the Brian Head Town Council was adjourned at 3:10 pm on October 26, 2021.

November 9, 2021

Date Approved

Nancy Leigh, Town Clerk

