

**Tooele City Council
Business Meeting Minutes**

Date: Wednesday, January 18, 2012
Time: 7:00 p.m.
Place: Tooele City Hall, Council Chambers
90 North Main Street, Tooele Utah

Council Members Present:

Scott Wardle, Chair
Steve Pruden
Dave McCall
Shawn Milne
Brad Pratt

City Employees Present:

Mayor Patrick Dunlavy
Roger Baker, City Attorney
Glenn Caldwell, Finance Director
Michelle Pitt, City Recorder
Lisa Carpenter, Deputy Recorder
Chief Ron Kirby, Chief of Police
Cary Campbell, Public Works Director
Rachelle Custer, City Planner
Jaclynn Sagers, Communities that Care Director
Shannon Wimmer, Assistant Finance Director

Chairman Wardle called the meeting to order at 7:00 p.m.

Minutes prepared by Elisa Jenkins

1. Pledge of Allegiance

The Pledge of Allegiance was led by Boy Scout Troop 960.

2. Roll Call

Scott Wardle, Present
Steve Pruden, Present
Dave McCall, Present
Shawn Milne, Present
Brad Pratt, Present

3. Mayor's Community Recognition Awards

Presented by Mayor Dunlavy, Jaclynn Sagers, and Chief Ron Kirby

Mayor Dunlavy thanked everyone for coming. He explained that this award is given to very special young people in the community. This program was started about six years ago and is under the Community that Cares program which is led by Jaclynn Sagers. These young people will be recognized for the good things they do in the community. He is honored to present these awards on a monthly basis. He also noted that Chief Kirby is involved in presenting these awards because his officers are involved in the schools helping kids.

Ms. Sagers said that they take pride in recognizing the youth in the community. She stated that the students will receive a bag full of goodies with items donated by businesses in the community and a certificate signed by the Mayor. Ms. Sagers explained that sixth grade students are involved with the police officers in their schools with a program called Lions Quest. There is also a secondary education program called Life Skills Training and a family program called Guiding Good Choices.

Ms. Sagers then presented the Mayor's Community Recognition Award to the following students:

Hunter Nelson, Settlement Canyon Elementary School
Garrett Bresee, East Elementary School
Vyvyan Mulari, Cooper Canyon Elementary School
Chanelle Millburn, Overlake Elementary School
Collin McEachern, Harris Elementary School
Victoria Fidler, Copper Canyon Elementary School
Ryan Peterson, West Elementary School

Ms. Sagers thanked all those who came to support these students. She thanked the teachers and faculties at the schools for their support of this program.

Mayor Dunlavy recognized Melanie Castagno and Heidi Schofield who are part of Ms. Sagers staff on the Communities that Care program. He explained that this program was brought to Tooele from the University of Washington on a grant and when the grant was over Tooele City decided to keep this program going and are they are very proud of it. He congratulated the students again and thanked them for their hard work. He thanked the parents for their support. He also thanked the extended families members for the roles they play in these young people's lives.

A brief recess was taken for a picture with the Mayor.

Chairman Wardle stated that there has been a request to make amend the agenda and make item #7 next on the agenda.

Councilman Milne moved to amend the agenda to move item #7 to be presented next on the agenda. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, "Aye", Councilman Pratt, "Aye", Councilman Milne, "Aye", Councilman Pruden "Aye", and Chairman Wardle, "Aye".

7. PUBLIC HEARING & MOTION on Ordinance 2011-19 An Ordinance of the Tooele City Council Amending Tooele City Code §7-16-3 and §7-16-6 Regarding Land Use Regulations for Tobacco Specialty Stores

Presented by Roger Baker

Mr. Baker stated that several months ago some members of the Council asked him to research the potential negative effects of having smoke shops located too closely to certain public uses, residential areas, and to each other and what the effects might be. They asked him if he found such effects to craft a zoning ordinance that would help to mitigate the adverse effects. The research he found is summarized and incorporated in the ordinance. The primary negative effects of tobacco have been clearly established in more than 30 reports from the US Surgeon General from 1964 through 2010. What is of additional interest to the City is identifying secondary effects which aren't directly related to the product itself, but are related secondary to the sales of the product, the manner the product is marketed, and the location in which the products are marketed and sold. It is not measured in direct health effects but effects such as crime rates and uptakes in new users and other such effects. He found proliferation of recent research from academic institutions that have studied the density of tobacco specialty stores. They have found that the density of tobacco stores around schools has been linked to adolescent smoking initiation and purchasing habits. The density of tobacco outlets around homes has been associated with the number of cigarettes consumed per day among adult smokers. They have found that greater smoker sensitivity to point of sale advertising at tobacco outlets predicted a reduced likelihood to quit smoking 18 months later. This was a group of people who were trying to quit smoking and participated in a study of the effect of density and proximity of tobacco stores and to their efforts to quit and found there was a direct correlation to the closeness of these establishments and their ability to quit. As a result of all this research some institutions have recommended that because of the connection of negative secondary effects between density and proximity of tobacco retail outlets that a zoning regulation is an appropriate public policy mechanism to address the negative secondary effects. The research suggests to increase the distance of these stores from public uses, such as schools, churches, libraries, and parks, and to increase the distance to each other. One of the concerns the City has is a tobacco specialty store on Vine Street which is the principle youth pedestrian corridor in the City to and from schools (Tooele High School and Tooele Junior High).

Mr. Baker has also researched "designer drugs" which are drugs that are not listed as controlled substances in federal or state law, therefore they are legal. They are drugs that have mind altering properties and can be very dangerous. The youth population has been prey to these "designer drugs" which have various names such as, Spice, potpourri, bath salts, incense and even plant food; they are none of the above they include drugs discovered in the 1920's and rediscovered in 2003, and have now reached epidemic proportions especially in the youth. These "designer drugs" are also found and sold most commonly in "smoke shops". Not only do you have the negative effects of concentrated tobacco sales in close proximity to public uses and residential uses but couple that with the negative effects of "designer drugs" to populations and particularly the vulnerable youth population. Mr. Baker referred to the New York Times Article attached to the ordinance. In the article it says that large doses of sedatives do not work on people that have

taken these “designer drugs”, when admitted to emergency rooms. One director of the Louisiana Poison Center said “If you take the worst attributes of meth, coke, PCP, LSD and ecstasy and put them together that’s what we’re seeing sometimes”. These “designer drugs” are considered legal in most states. States are trying to ban these drugs but many times only one molecule can be changed to make them legal again. These drugs remain in the opinions of academics and health officers very dangerous substances.

Mr. Baker explained that this ordinance proposes that “tobacco specialty stores” be located a minimum of 1,500 ft. from schools, churches, libraries, parks, youth centers, homes, and residential zoning districts, and from each other, and that they not be permitted on Vine Street. This recommendation is supported by the research. There is a legitimate government interest in regulating this area to mitigate the negative effects of these substances and the way in which they are marketed. This ordinance does not regulate the marketing; they are not regulating speech, they are not regulating the right of retailers to market their products. They are making a zoning and land use regulation that says where “tobacco specialty stores” can and cannot go, not what they can and cannot say. It is important to note that existing “tobacco specialty stores” are not affected by this regulation; you cannot pass a retroactive zoning ordinance that kicks them out; that cannot be done legally. It is the intention to limit the placement of future stores in relation to vulnerable populations. There is an important caveat for existing business; if they let their business license lapse or their business license is revoked the condition of receiving a new business license will be full compliance with all City land use ordinances. He then asked for any questions from the Council.

Councilman Pruden asked if the “tobacco specialty store” on Vine Street went out of business, another type of tobacco specialty store would not be allowed at that location.

Mr. Baker said that was correct. The City ordinances further says that if that business sold the business to a new owner, they would have to get a new business license because business licenses are not transferable, and they would not be able to locate there.

Councilman Pruden said he appreciates the time and effort Mr. Baker has put in the ordinance. He said that he teaches students for a living and watched a student on the way home from school enter into the store on Vine Street. He gave the proprietor the benefit of the doubt that they were escorted out the door, but noted that because the students were walking by they were adventurous and walked into the store.

Chairman Wardle stated that this is a public hearing if anyone would like to come forward and address this issue.

Melanie Castagno, 411 W 700 S, addressed the Council. Ms. Castagno has educated students in Tooele County about the dangers of tobacco products for the last several years. She has been an instructor for the Ending Nicotine Dependency Program (END). In talking with these students some of these students have purchased tobacco from “tobacco specialty stores” which is alarming because the students she works with are under age to purchase tobacco products. She voiced her support in approving the ordinance. She stated that the use of cigarettes in sixth grade students in Tooele has gone up over the last few years. She summarized part of an article

printed in the American Journal of Public Health that stated experimental smoking among high school age minors increase when tobacco stores are located near schools. She stated that the number of “tobacco specialty stores” in the state of Utah has tripled since 2004. She would like to continue raising her children in a City that supports healthy habits and encouraged the Council to support this ordinance.

Curtis Beckstrom, 443 E 700 N, addressed the Council. He reaffirmed his support to this ordinance.

Myron Bateman, Director of Health at the Tooele County Health Department addressed the Council. Mr. Bateman thanked Mr. Baker and the City Council for their support on this issue. This is a good way to help the County achieve their goal as well. He also noted that some of the “tobacco specialty stores” are selling paraphernalia and other things that are not related to tobacco smoke. He wondered if something could be put on the business license. He voiced his support on this ordinance.

Zoe Erickson, 1027 S 810 W, addressed the Council. She said that she would like to see the ordinance passed.

Jonathan Zachary addressed the Council. He is a student at Tooele Junior High and he feels like there are kids that do use Spice and other drugs.

Gabe Stefanson, 9653 S. 2200 W, South Jordan addressed the Council. He said that he has seen the negative effects of nicotine and would like this ordinance passed.

David Neville, 190 S 300 E. addressed the Council. Mr. Neville is with the Utah Department of Health he is here to show his support of this ordinance. He stated that Tooele’s smoking rate is 50% higher than anywhere else in the state. He said that addictions start in youth. Ordinances like this promote healthy habits. He said that there are a lot of tobacco advertisements from the tobacco liter on the ground in front of these types of stores. These types of laws are completely constitutional and hold up in court. He encouraged the Council to pass this ordinance.

Ciara Carlsson, 6429 W Martin Way, WVC, addressed the Council. She is part of an anti-tobacco program and she supports this ordinance.

Kim Clausing, 151 N Main Street, Tooele addressed the Council. Ms. Clausing is with the Tooele County Health Department. She conducts compliance checks at tobacco sores to make sure they are not selling tobacco to minors. She also helped with the ordinance to help reduce Spice in Tooele County. Ms. Clausing stated that it takes a community to come together to help against these issues. She applauded Tooele City and the Communities that Care program. She also noted that some of these stores do change the formulas on certain items so they can continue selling them in their stores. She supports the City in passing this ordinance.

Mayor Dunlavy said that he thanked the Council for being pro-active on this issue. He feels that one of the responsibilities of elected officials is to protect the community. He thanked Mr. Baker for his work on this ordinance and the expertise of the City Attorney’s office. He said that Mr.

Baker's responsibility is to protect the citizens of the City and help guide the Council. He also has to protect people's rights and did not take this ordinance lightly; he did a lot of research. He thanked the Health Department for their support. He thanked all of the citizens who had come to support this issue. He also said for those citizens who do not support this ordinance that the City has protected their rights and issues as well.

Councilman Pruden moved to close the public hearing. Councilman Milne seconded the motion. The vote was as follows: Councilman McCall, "Aye", Councilman Pratt, "Aye", Councilman Milne, "Aye", Councilman Pruden "Aye", and Chairman Wardle, "Aye". The public hearing closed at 7:55 p.m.

Councilman Milne said that it may be legal for companies to sell the "designer drugs" but when their intent is known that they are being used differently, it is wrong for these companies to sell products that are so detrimental to the community and citizens. He encourages those businesses to do things not for bottom line but what is right.

Chairman Wardle thanked Mayor Dunlavy and Mr. Baker for their work to protect the community and protect the citizens. When a community comes together to create a healthy community, it creates a healthy community. This is an important step in protecting the community. He said to the students in the audience that they have the greatest effect on other students.

Councilman Pruden moved to approve Ordinance 2011-19. Councilman Milne seconded the motion. The vote was as follows: Councilman McCall, "Aye", Councilman Pratt, "Aye", Councilman Milne, "Aye", Councilman Pruden "Aye", and Chairman Wardle, "Aye".

4. Open Forum for Public Comment

Chairman Wardle invited anyone from the public who would like to come forward and address the Council to do so. No one came forward.

Chairman Wardle closed the open forum at 7:59 p.m.

5. Presentation of Annual Audit Report

Presented by Randy Jensen, Haynie & Company

Mr. Randy Jensen of Haynie & Company presented the annual audit report. A copy is included with the minutes as Exhibit "A". Mr. Jensen indicated that overall this was a positive report and he commended the City Council, Mayor Dunlavy, Mr. Caldwell and Mrs. Wimmer for the operations of the City and for the great job that they do. He said that the City is well managed. He noted that there were a few adjustments where the land acquisition had not been recorded and some of the infrastructure assets were reported on the general funds and they were transferred back over the storm drain funds. He stated that the City is in a good strong asset position.

Chairman Wardle thanked Mr. Caldwell and Ms. Wimmer for the good job that they do.

Mayor Dunlavy thanked Mr. Jensen and Haynie and Company for the work they do for the City.

Mr. Baker asked to comment on finding number two; the land obtained through the settlement agreement with Rocky Mountain Power. He understands the need to record the property as an additional city asset. He said that the land was part of a settlement agreement; the City gave something up of equivalent value in exchange for this cash and property consideration. It was not a gift.

6. MOTION on Final Plat Approval for UID Minor Subdivision No.8 Amended

Presented by Rachele Custer

Ms. Custer explained that Utah Fabrication has requested that the City combine four existing lots into one lot and call it UID Minor Subdivision No. 8 amended. It includes lots 801, 802, 803 and minor subdivision building 691. This is now all under one ownership which is Utah Fabrication. In combining these lots they are also requesting that public utility and drainage easements be vacated. Tonight the plat will be approved with easements vacations and staff will bring a formal ordinance to ratify that action. Staff recommends approval of UID Minor Subdivision No. 8 amended and Planning Commission made a favorable recommendation on January 11, 2012.

Chairman Wardle noted that this was subdivided a year ago.

Mr. Baker stated that statute requires that the Council makes a finding on two different points 1) there is good cause for approving the vacation and 2) the vacation won't injure the public interest or a private person. It is part of the staff's recommendation that there is good cause because of the change in property ownership and the need to consolidate and it does not harm the public at all, they have used this opportunity to clean up some of the public easements that were affected. This will be clarified in the ratifying ordinance. An ordinance is not required but he feels that it is good policy.

Councilman Milne moved to approve the final plat for UID Minor Subdivision No. 8 amended. Councilman Pratt seconded the motion. The vote was as follows: Councilman McCall, "Aye", Councilman Pratt, "Aye", Councilman Milne, "Aye", Councilman Pruden "Aye", and Chairman Wardle, "Aye".

7. Resolution 2012-03 A Resolution of the Tooele City Council Approving Agreements with Unison Site Management for Cell Phone Towers Located on Tooele City Property

Presented by Roger Baker

Mr. Baker explained that Tooele City owns 3 parcels of ground that support cell phone towers. They lease small parcels of property to the cell phone companies and they house their antenna facilities on the towers. The City has 25 - 30 year leases with these companies. Every 5 years the rent increases by a factor of 10% - 20% dependent upon the lease. The City has enjoyed the monthly lease revenue and that revenue would continue into the future depending on when the lease began. The resolution that the Council has before them shows a spreadsheet of what the past revenues have been that the City has collected and what the future revenue would be. Unison is a cell tower site management company that made a proposal to the city in September of 2011 and they have studied it very carefully to resolve any concerns that the City has had. Their proposal is to pay Tooele City a lump sum now in exchange for them receiving an assignment for the leases and they would then collect the monthly revenue stream from the cell tower. The monthly revenue would go directly to Unison but Unison would pay the City now to buyout the leases. The city did a net present value analysis with their outside financial advisor and they feel that the proposal that Unison is offering is fair. The amount that Unison is proposing to pay for the assignment, as well as a 50-year easement on the tower sites, is \$175,000. In addition Unison has included in their proposal that the City would receive a share of future proceeds from any company that collocated their antenna on the existing towers. Unison would share 60% of all revenues from the collocated revenue streams. Mr. Baker stated that attached to the resolution is information about Unison site management. Mr. Baker indicated that the site management officer Hollie Wyllie was present at the meeting and would be happy to answer any questions from the Council. Mr. Baker noted on page 4 of Exhibit B; he said that a land owner that leases property for a cell tower is not without risk, there is a possibility that the revenue stream could disappear for a number of reasons and as of today as the lessor the city bears those risks. When there is a merger of cell providers each provider owns their inventory of towers and when the companies merge so does their inventory and they find that they have tower facilities that are redundant and the lease agreements may be terminated for the redundant sites. Under this agreement the City would be relieved from those risks and Unison assumes them. This proposal makes fiscal sense and it also makes risk management sense. The last exhibits are the one page contracts in terms of agreements that the Mayor has signed and they are asking the Council to ratify, as well as the lease and easement agreements. They will do these agreements for each of the three sites in three separate transactions for a total of \$175,000.

Councilman Milne moved to approve Resolution 2012-03. Councilman Pruden seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Pratt, “Aye”, Councilman Milne, “Aye”, Councilman Pruden “Aye”, and Chairman Wardle, “Aye”.

8. Resolution 2012-04 A Resolution of the Tooele City Council Accepting Completed Public Improvements Associated with Construction of the Shammy Shack Car Wash, 668 North Main Street

Presented by Rachelle Custer

Ms. Custer stated that City Ordinance requires for any work done in the public right of way that a bond be posted. When Pro-Wash expanded to the lot to the south and built the Shammy Shack Car Wash there was side walk and curb and gutter along Garden Street as well as sidewalk on

Main Street that needed to be replaced. The improvements have been completed satisfactorily and they are asking that the one year warranty be started and the 100% bond be released with the 20% retained until the end of the one year warranty period

Chairman Pruden stated that this is a great improvement to this lot.

Councilman Pratt said that he has had a discussion with the owner and congratulated him on improving the community in this area.

Councilman McCall moved to approve the Public Improvement associated with the Construction of the Shammy Shack Car Wash, 668 North Main Street. Councilman Pratt seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Pratt, “Aye”, Councilman Milne, “Aye”, Councilman Pruden “Aye”, and Chairman Wardle, “Aye”.

9. Minutes: January 2, 2012; Business Meeting Minutes and Work Session Minutes and January 11, 2012 (Training Meeting)

Councilman Milne moved to approve the minutes as presented. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Pratt, “Aye”, Councilman Milne, “Aye”, Councilman Pruden, “Aye”, and Chairman Wardle, “Aye”.

10. Invoices

Presented by Michelle Pitt

Ms. Pitt presented the following invoice for payment:

- S & S Roofing to replace the roof at the police station in the amount of \$30,790.00.
- Lewis Young Robertson and Burningham for review of analysis by Tooele Applied Technology College (TATC) and analysis of direct and indirect benefits and costs of TATC College expansion in the amount of \$10,125.00.
- Fatpot Technologies for annual maintenance/license to use Fatpot records management system in the amount of \$23,300.00.
- Aire Serv Heating and Air Conditioning for roof top heating and cooling unit installed at animal control shelter in the amount of \$14,919.00.
- Aire Espresso Heating and Cooling for 2 Lennox furnaces and two Lennox air conditioners to be installed at the police department in the amount of \$11,202.00.
- SVCI, to convert the bus donated to the Drug Task Force to a SWAT command vehicle, the funds will be used from the Drug Task Force grant and the Drug Task Force Seizure Funds in the amount of \$61,600.00.

Councilman Pruden moved to approve the invoices as presented by Ms. Pitt. Councilman Milne seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Pratt, “Aye”, Councilman Milne, “Aye”, Councilman Pruden “Aye”, and Chairman Wardle, “Aye”.

11. Adjourn

Councilman Milne moved to adjourn the meeting. Councilman Pratt seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Pratt, “Aye”, Councilman Milne, “Aye”, Councilman Pruden “Aye”, and Chairman Wardle, “Aye”. The meeting adjourned at 8:26 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this 1st day of February 2012

Chairman Scott Wardle