

**Tooele City Council
Business Meeting Minutes**

Date: Wednesday, November 18, 2009
Time: 7:30 p.m.
Place: Large Conference Room
90 North Main Street, Tooele Utah

City Council Members Present:

Steve Pruden, Chair
John Hansen
Mike Johnson
Scott Wardle
Dave McCall

City Employees Present:

Mayor Patrick Dunlavy
Glenn Caldwell, Finance Director
Roger Baker, City Attorney
Sharon Dawson, City Recorder
Lisa Carpenter, Deputy Recorder
Cary Campbell, Public Works Director
Rachelle Custer, City Planner
Jackie Sagers, Communities that Care Director
Kathy Bell, Parks Director
Chief Dave Gillette, Assistant Fire Chief

Others Present:

Shawn Milne, Planning Commission
Debbie Winn, Chamber of Commerce

Minutes prepared by Elisa Jenkins

Chairman Pruden called the meeting to order at 7:31 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Chairman Pruden.

Chairman Pruden welcomed Boy Scout Troops 438, 1430, 153, and 165 who were working on their Citizenship in the Community Merit Badge.

2. Mayor's Community Recognition Awards

Presented by Mayor Dunlavy, Councilman Wardle and Chief Kirby

Mayor Dunlavy welcomed all those who have come to support these young people. He feels that the youth in the community are very important. This is part of the Communities that Care program. He appreciates the opportunity to say “Thank You”.

Councilman Wardle explained that each recipient will receive a bag with a certificate from the Mayor, and some goodies from various businesses in the community.

Councilman Wardle then presented the Mayor’s Community Recognition Awards to the following students:

Aaron Gubler, East Elementary
Leland Blum, West Elementary
Isabelle Johnson, Settlement Canyon Elementary
Kyle Cuevos, Harris Elementary
Hillary Gonzalez, Copper Canyon Elementary
Courtney Hathaway, Overlake Elementary

Mayor Dunlavy congratulated the recipients of this award. He thanked the parents and families who have helped make a difference in the lives of these students. He explained that the Communities that Care program helps students deal with the trials, struggles, and pressures of the world today. There is another program called “Guiding Good Choices”, this program helps parents be better parents. These programs are run through City Hall and Jackie Sagers is the Director. He encouraged anyone interested to contact Ms. Sagers.

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

3. Open Forum for Public Comment

Chairman Pruden invited anyone who would like to come forward and address the Council to do so.

Tracy Shaw, 946 W 370 S addressed the Council. Ms. Shaw inquired as to what is being done about a sidewalk on 200 South.

Chairman Pruden indicated that the Council is aware of the situation and they are looking into what can be done.

Ms. Shaw indicated that the property owner may be willing to deed a right of way to the City, but she would like to sell this piece of property. Ms. Shaw’s concern was that West Elementary sent a letter home to parents telling students to walk on 200 South and she does not feel that 200 South is a safe place to walk.

Mayor Dunlavy indicated that he has met with the property owner and she is in process of selling the property. He indicated that there are many of these same problems around the

City, and they are trying to prioritize them. They are looking at the situation to see what can be done. Mayor Dunlavy encouraged Ms. Shaw to keep in contact with him.

Chairman Pruden closed the open forum at 7:58 p.m.

4. **Resolution 2009-58 A Resolution of the Tooele City Council Authorizing the Sale of Surplus City Property to Shepherd Bud and Sons Poultry**

Presented by Mayor Patrick Dunlavy

Mayor Dunlavy explained that state statute requires the Council to surplus property owned by the City. The property has to be declared by resolution and the City has to get fair market value for it. He stated that this piece of equipment was put in the waste water treatment plant many years ago and because of upgrades it is not being used anymore. The City has had an offer to buy this piece of equipment for fair market value. Administration recommends the approval of this resolution.

Councilman Wardle moved to approve Resolution 2009-58. Councilman McCall seconded the motion. All members present voted “Aye”.

5. **Resolution 2009-57 A Resolution of the Tooele City Council Implementing A Cemetery After-Hours Burial Fee**

Presented by Kathy Bell

Ms. Bell explained that she would like to propose an after hour fee be imposed at the cemetery to help control the over time for employees for late funerals. This would be after hours during the week, Saturday’s are handled differently.

Councilman Johnson asked for clarification on when a burial is considered completed? Is it when the service is complete?

Ms. Bell explained that they are trying to control the late hours. The employees’ shifts end at 3:30 p.m.

Councilman Johnson asked how Ms. Bell anticipates when a funeral will end.

Ms. Bell indicated that they can judge by the time of the funeral.

Mr. Baker indicated that the reason they can’t establish a fee by the time of the funeral is that funerals can take place in a number of places. If it takes place in Tooele it is easier to judge, but if it takes place somewhere out of town and the interment is in Tooele it will take longer and the workers will have to stay and work overtime. The department will know by when and where the funeral takes place whether they will be done by quitting time or not.

Chairman Pruden asked if this fee will be included up front.

Ms. Bell stated that the fee will be paid up front.

Councilman Wardle noted that in Ms. Bell's memorandum it indicates that the burial will need to be complete by 3:00 p.m. and in the ordinance it states 3:30 p.m.

Mr. Baker stated that they discussed that and decided the time to be 3:30 p.m.

Councilman McCall asked if the funeral goes over the anticipated time if they will be charged.

Ms. Bell said "no". This is more for funerals that are held out of town.

Councilman McCall moved to approve Resolution 2009-57. Councilman Wardle seconded the motion. All members present voted "Aye".

6. Ordinance 2009-16 An Ordinance of Tooele City Amending Tooele City Code Chapter 5-1, Business License Regulation Title of Tooele City

Presented by Lisa Carpenter

Ms. Carpenter indicated that as stated in the ordinance this will (1) more clearly establish the purposes of the Chapter, (2) clarify definitions and delete unnecessary definitions, (3) correct errors, (4) clarify violations and penalties (5) modernize processes, (6) repeal outmoded and unnecessary provisions, (7) clarify administrative authority, and (8) provide due process through an appeal procedure. This ordinance is very outdated and administration felt it was time to update it and make it clearer. She also noted that this is just the beginning they plan on going through the entire code and updating it.

Councilman Johnson indicated that in 5-1-16 it used to say that if the City's fee burdens the state commerce the City Recorder will recommend an appropriate license fee to the City Council it now says the Recorder will make a recommendation to the Mayor. He does not feel that this will every happen, but it is his opinion that the recommendation should still be made to the City Council.

Councilman Johnson noted that in 5-1-27 it had a licensee designate an agent for service of process. He asked why that was taken out in case there was a problem.

Mr. Baker stated that the establishment of a registered agent for a business is almost universally handled on a state level with the Division of Corporations at the Department of Commerce. He indicated that in order to be recognized as any type of business association they have to declare a registered agent for the purpose of service of process. It was because of that uniform statewide process that he suggested repealing this section.

Councilman Johnson stated that is only the case if you are a registered business corporation or limited liability company. If you are sole proprietorship, or a partnership there is nothing liable to the state. It is his opinion that the business should tell the City if there is a problem who they should contact for service of process.

Mr. Baker doesn't have a problem with making that change. Mr. Baker indicated that every time he has gone to the state database to check on a DBA or a limited partnership the registered agent is listed and that is how he knows where to send notices. There may be occasions where it is redundant but in cases where they are not listed with the state they would have coverage.

Councilman Johnson indicated that if they are registered by the state, they can tell the City who their registered agent is. He would suggest that change.

Councilman Johnson noted that in 5-1-29 it changes who a person can appeal to from the City Council to the Administrative Hearing Officer. He asked if the revocation of someone's business license should still be appealed to the City Council.

Mr. Baker stated that there is not an appeal process at this time. The ordinance states that only the City Council can revoke the business license and it has to be done after a public hearing. The decision to take back the business license by revocation should be an administrative function. The City Council sets the rules as a legislature as to how it is to be done.

Councilman Johnson agrees with that to a point. He would be comfortable with the ordinance stating that the Records office can revoke a license and if they did not like that decision then they can appeal to the Mayor and then the City Council. He does not feel like the City Council should be the first body, but wondered if they should be the final authority instead of a hearing officer.

Mr. Baker indicated that can be changed. It was his thinking to not subject the revocation of a business license to the political process but rather have it dealt in a quasi-judicial manner with a hearing officer.

Councilman Johnson said that it is a policy decision.

Mr. Baker stated that whether a business license should be revoked may not be a policy decision for the legislature, but is based upon the facts of a specific situation in light of the rules the legislature has established.

Councilman Johnson stated that the process is a policy decision.

Councilman Wardle asked if this starts to create a convoluted system of appeals?

Mr. Baker stated that he is suggesting that they create a simplified system of appeals. All appeals, except for land use, go to a hearing officer. The City Council does not hear

appeals as a rule. Denials of conditional use permits and variances go to the Board of Adjustment. Denials of certain planning commission decisions go to the Board of Adjustment or the District Court. Typically the Council is not an appeal body they are a legislative body. There is not an intent to take away legislative power from the City Council.

Councilman Johnson stated that they would file a request with the City Council and then there would be a public hearing and then the Council would decide.

Mr. Baker stated that the Council would decide to revoke the business license but the appeal would have to go to court. He suggested that the revocation is administrative in nature and the appeal would go to a judicial authority before it would go to court.

Councilman Wardle asked if Mr. Mohlman is the hearing officer.

Mr. Baker stated that they have a contract with him, but the contract needs to be renewed to make sure he is comfortable with the expansion of areas that he would be hearing.

Councilman Johnson indicated that the revocation of a business license could somewhat be political.

Mr. Baker asked if it should be?

Councilman Johnson noted that they are dealing with someone's livelihood. He thinks that there should be some kind of appeal process, with the Council last.

Mr. Baker stated that he is reluctant to have the legislative branch decide whether the elected executive made the right decision.

Councilman Wardle asked why the meeting would be an informal meeting with the administrative officer instead of a formal meeting.

Mr. Baker stated that a formal hearing implies formal rules of evidence, and implies the right to confront witnesses, the right to have legal council. That is not the kind of appeal he is suggesting. He is suggesting a chance for the person to talk with Mr. Mohlman.

Chairman Pruden noted that there are some valid questions regarding this ordinance and he suggests that this be tabled so they can discuss it at a work session.

Councilman Wardle recommended that if there are questions to e-mail them to Mr. Baker.

Councilman Johnson also had a question on 5-1-31, he noted if someone's license is revoked that they could not get another one for six months. He asked why that was taken out.

Mr. Baker said that if it is revoked for failure to pay fees, the City would allow them to pay the fees and have it reinstated. If it is revoked for criminal conduct then the City would pursue criminal prosecution. They did not feel that there was reason they should prohibit someone from engaging in business again if they meet all the requirements of the ordinance.

Chairman Pruden moved to table ordinance 2009-17, and have as an item for discussion in their next meeting. Councilman Wardle seconded the motion. All members present voted “Aye”.

Chairman Pruden indicated that everyone who sales something in Tooele has to have a business license. Door-to-door salesmen have to have a tag permitting them to sell.

Councilman Johnson asked what the process was for someone who renews a business license. Does anyone check on those businesses?

Ms. Carpenter stated that they do not. If the ownership changes or they are moving they have an inspection done.

Mayor Dunlavy stated that sometimes the City gets calls that someone is operating without a business license, they try to make a call first, and then they send Tim Fulmer to talk to them.

Ms. Carpenter said that she usually sends a letter.

7. **Ordinance 2009-17 An Ordinance of the Tooele City Council Enacting Tooele City Code Section 3-3-16 Regarding the Installation of Key Lock Boxes**

Presented by the Fire Department

Assistant Fire Chief Gillette stated that this ordinance will give the fire department access to the inside of buildings instead of waiting for someone with a key, or using forced entry. This would include all new construction. They will request this in their fire inspections. This will not cost the City any money. This is voluntary not mandatory.

Councilman Wardle indicated that this is something that has been talked about for awhile.

Councilman Johnson asked how much they cost?

Chief Gillette stated that it is around \$300. It is \$250 for the box and then whatever the cost is to install it.

Chairman Pruden stated that this would save owners money because the fire department would not have to use forced entry in some situations.

Councilman Johnson asked if the fire department has a master key to the boxes.

Chief Gillette indicated that there are seven keys. There are two of them on engines, which dispatch has to release the key. The other five are in the vault at the County. He stated that the LDS churches have them on all of their church buildings and it makes things a lot easier.

Councilman McCall moved to approve Ordinance 2009-17. Councilman Wardle seconded the motion. All members present voted “Aye”.

Chief Vario thanked the Attorneys office for their work on this ordinance.

8. PUBLIC HEARING & MOTION on Final Plat Approval for UID Minor Subdivision No. 17 a One Lot Subdivision Consisting of 1.4 Acres for Lot 1701 Located at 155 Glenn Court

Presented by Rachelle Custer

Ms. Custer explained that Utah Industrial Depot is requesting to subdivide a 1.4 piece of acre property to be sold for a prospective business located at 155 Glenn Court. The property must be subdivided before any development can be done. Staff recommends approval of this subdivision. Planning Commission made a favorable recommendation on October 28, 2009.

Chairman Pruden stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Councilman Wardle moved to close the public hearing. Councilman McCall seconded the motion. All members present voted “Aye”. The public hearing closed at 8:32 p.m.

Councilman Wardle moved to approve final plat for UID Minor Subdivision No. 17 a one lot subdivision consisting of 1.4 acres for lot 1701 located at 155 Glenn Court. Councilman McCall seconded the motion. All members present voted “Aye”.

9. Minutes; November 4, 2009

Councilman Wardle noted one change on page 2 it said Chairman Wardle and should say Councilman Wardle.

Councilman Wardle moved to approve the minutes with the one change as noted above. Councilman Johnson seconded the motion. All members present voted “Aye”.

10. Invoices

Presented by Sharon Dawson

Ms. Dawson presented the following invoice for payment:

- Holme Roberts & Owen for September 2009 professional services in the amount of \$34,943.50.

Councilman Wardle moved to approve the invoice as presented by Ms. Dawson.
Councilman McCall seconded the motion. All members present voted “Aye”.

11. Adjourn

Councilman Wardle moved to adjourn the meeting. Councilman McCall seconded the motion. All members present voted “Aye”. The meeting adjourned at 8:35 p.m.

Approved this 2nd day of December 2009

Chairman Pruden