

Minutes of the Work Session meeting of the Syracuse City Council held on March 27, 2012, at 6:00 p.m., in the Council Work Session Room, 1979 West 1900 South, Syracuse City, Davis County, Utah.

Present: Councilmembers: Brian Duncan
Craig Johnson
Karianne Lisonbee
Douglas Peterson
Larry D. Shingleton

Mayor Jamie Nagle
City Administrator Robert Rice
City Recorder Cassie Z. Brown

City Employees Present:
Finance Director Steve Marshall
City Attorney Will Carlson
Police Chief Brian Wallace
Community Development Director Mike Eggett
Planner Kent Andersen
Lieutenant Tracy Jensen

The purpose of the Work Session was for the Governing Body to hear a request to be on the agenda re: an introduction of the Community Covenant Program; hear a request to be on the agenda re: Storybook Park presentation by Cody Hawkes; consider the submittal of an application for grant funding for System Optimization Review through Water SMART; discuss business meeting agenda item 10 – Proposed Ordinance 12-03 amending various provisions of Title 10, the Land Use Ordinance, relating to animals; discuss the appointment to the North Davis Sewer District; receive a presentation from Siemens Corporation regarding a streetlight conversion project; review City Council Rules of Order and Procedure; discuss City Council calendar relative to scheduling a special Council Meeting/Open House; review draft rewrite of Title Four of the Syracuse City Code.

Request to be on the agenda: Storybook Park Presentation by Cody Hawkes.

Mr. Hawkes approached the Council and explained that he is a local pediatrician and he has come up with an idea for a park, which he is referring to as a Storybook Park, where there would be active displays open to the public free of charge. He stated he wants to work with the City to use or lease the land as a non-profit organization that would run, manage, and maintain the park within City limits. He stated he got the idea when he visited a park in other state, but that park was fairly outdated and the kids did not know many of the nursery rhymes and stories included at the park. He stated he wanted to do a more modern take on the park including modern stories that kids would be able to relate to and interact with. He reviewed a PowerPoint presentation including photos of other similar parks. He then reviewed an image of Legacy Park and stated half of the park area is not developed and he would like to propose that Legacy Park could be used for the Storybook Park; it has many of the amenities that he needs for the park. He then stated he thinks the possibilities for the park are endless and he wanted to get the general consensus and feeling from the Council.

Councilmember Peterson stated he visited a park like this in South Dakota and it was very crowded; he believed it would be an attraction that would be good for the City. He asked Mr. Hawkes if he is familiar with the current efforts to construct Chloe's Sunshine Playground. He explained that funds are being raised privately and the City has partnered with the person looking to build the park in order to complete the project. Mr. Hawkes stated that he is somewhat familiar with it. Councilmember Peterson asked Mr. Hawkes what his plans are for generating funds for his park. Mr. Hawkes stated that there are many foundations that he could approach for grant funding and he would look for corporate sponsors. He added he has contacts at several book publishing firms and he felt it would be a good fit for them to sponsor this type of project. He stated he anticipated most of his funding would come from corporate and private donations. Councilmember Peterson asked Mr. Hawkes if he has any idea how much the park will cost. Mr. Hawkes stated he estimates the project will cost about \$1 million.

Mayor Nagle asked Mr. Hawkes when he planned to start the project. Mr. Hawkes stated it would depend on how long it takes him to raise the funds. He stated that he hopes to have sufficient amount of money to start the project within a year.

City Manager Rice asked Mr. Hawkes if he has set up a 501(c)3 entity to use in the fundraising efforts. Mr. Hawkes answered no. Mr. Rice stated that the City may be able to assist Mr. Hawkes in creating such an entity.

Councilmember Peterson stated that he thinks everyone has learned a lot from the Sunshine Playground project and he asked the Council's and staff's thoughts about taking on another similar project. Mayor Nagle stated that she would approach this project differently and she would want to execute a written agreement detailing what each party would do. Mr. Rice agreed and stated that he would ask for a public/private venture agreement and in that agreement the City could commit to provide the land while Mr. Hawkes would commit to the development and maintenance of the park. Mr. Hawkes stated that is the same idea he had; he would ask the City to continue to perform the maintenance they are already performing at the park and he would take on any additional needed maintenance.

Councilmember Johnson asked Mr. Hawkes if he is asking for the City to expand Legacy Park. Mr. Hawkes stated that he would like to develop the existing land the City already owns. Councilmember Johnson asked if the storybook structures that would be located at the park are permanent features. Mr. Hawkes stated they are semi-permanent features and some would be permanent and other things could be changed every five years.

Councilmember Duncan stated he always appreciates people being ambitious and he thinks it would be great for the community.

Mayor Nagle suggested that Mr. Hawkes come forward with a complete proposal; she feels there is a will to entertain the idea and everyone needs to have a clear understanding of the project going forward. Mr. Rice added that City Attorney Carlson and Recreation Director Robinson could start working on a draft public/private venture agreement. Mr. Hawkes asked if he would be able to obtain a letter of intent from the City that he could use to assist in his fundraising efforts. Mr. Rice answered yes. Mr. Hawkes thanked the Council for their time.

Request to be on the agenda: Introduction to Community Covenant Program.

Lieutenant Earl Simmons introduced himself and explained that he works for the Family Program Department in the Utah National Guard. He explained his mission tonight is to talk about the Community Covenant Program; provide them with a brief description of the program; and determine if the City is interested in being part of the program. He stated if the City is interested, they will establish a military liaison to begin working with him to develop the program for Syracuse City. He stated he would also like to schedule a signing ceremony for the program for May 22, 2012. He then reviewed a PowerPoint presentation that provided an overview of what the program is. He noted it was initiated by the Secretary of the Army in 2008 when he realized there were not a lot of programs for former members of the military. He stated they developed a program that would allow them to communicate with local community leaders to inform them of the benefits available to current and former members of the military. He explained the program was brought to Utah in 2010; it was adopted by the Legislature and it is the Guard's goal to have each community sign a document creating their own community covenant program. He stated there is no contract or anything binding in the document; it is simply a document that says the community is willing to support the military in their community in any way possible. He then explained what would happen at the signing ceremony and the purpose of the ceremony. He stated the ceremony could be held during a City Council meeting and they would like to have it done two months from now. He then explained family assistance centers are the main thing that the Guard is trying to promote through the program; the center is a "one-stop shop" experience for families of military members and there are 13 located throughout the State. He stated that the center can help with a myriad of problems that a military member or their family may have; they have several contacts as well as licensed professionals that can provide counseling, etc. Councilmember Peterson inquired as to the local of the center closest to Syracuse. Lt. Simmons answered Ogden.

Mayor Nagle asked how this program differs from the Key Spouses Program that is used at Hill Air Force Base (HAFB). Lt. Simmons stated he is not familiar with that program, but stated it is likely a fairly similar program. He stated the Army has programs just like the Community Covenant Program at their major installations; the Guard put a twist on the program because there was nothing like the program available to its members because most members do not live next to a major installation. He stated that there are likely many service members in the community that are members of the Air Force and can access programs at HAFB, but there are many other members of different military branches living throughout the State and it would be good for them to have access to benefit programs as well. Mayor Nagle stated she thinks the City can figure out how to mesh this program with other things that the City is participating in. She stated she has been asked to be an Honorary Commander at HAFB and by proxy the City has adopted the 388th Maintenance Squadron. She stated that has gotten her involved in the Key Spouses Program, which offers assistance to families of deployed members and host community events for them as well. She stated she does not want the City to over-commit and then not do justice to either program. She asked if there would be any way to "marry" the two.

Mr. Rice inquired as to the enduring aspect of the Community Covenant Program and he asked how the program is funded. Lt. Simmons stated it is funded through the yellow ribbon funding program and there is some indication that some of the staff of the program may not be in place next year due to budget cuts, but the local director wants to get the network built

in Utah so that the program can continue on even after the loss of some employees. He stated they want to identify a military liaison in each community, which could be a City Councilmember or an employee; the job is not intensive, but the liaison is given information by those running the program and they are listed as a point of contact for military members.

Councilmember Duncan stated that he wondered how the military liaison would respond to requests from the community. Lt. Simmons stated the liaison may be the middle man that turns military members over to contacts at the family assistance centers or other facilities. He stated there will be seven training sessions a year that liaisons will be invited to so they can be informed on how to respond to request from members of the military. He added that all information will be sent to the liaison for distribution throughout the community in whatever means possible, likely through the City newsletter.

Mayor Nagle asked Lt. Simmons if he has contacted the Falcons on HAFB; they are people that have been honorary commanders that are still interested in supporting the military infrastructure in the area. She stated she wondered if that may be a better approach because they are community leaders that have a lot of resources and they are familiar with the resources on HAFB as well. She stated she is nervous that the City may over-commit and one of the programs will not receive the attention it needs from the City.

Councilmember Johnson stated that Lt. Simmons indicated the program can be customized to meet the needs or wants of the community. Lt. Simmons stated that is correct and he noted some cities are hesitant just like Mayor Nagle is expressing. He stated the first step is to recognize that the community supports the military and get that information publicized in the press. He stated that it may be possible to “piggy back” this program onto any other program the City is already involved in he is willing to do that as well. He stated that nearly every city in Utah and Salt Lake Counties has signed up and the Guard is now moving into Davis and Weber Counties to try to get them all involved as well. He asked for more information about the Falcons, which Mayor Nagle provided.

Mayor Nagle suggested that she meet with Lt. Simmons one-on-one and try to determine a way to join the two programs without diluting either program. Lt. Simmons stated he is in favor of that approach and he appreciated having time to address the Council this evening.

Consideration of submitting an application for grant funding for System Optimization Review (SOR) through Water SMART.

A staff memo from Public Works Director Whiteley explained that in a proactive effort to optimize the distribution and energy costs of our secondary water system, we are anticipating an opportunity that may arise for grant funding that would assist with a review of the current operating system and provide recommendations to improve efficiencies in the long term. The final product would be a report identifying specific improvements that will lead to improved water management in our water system and a plan of action for implementing the recommendations described in the report. This grant is funded through the water SMART (Sustain and Manage America’s Resources for Tomorrow) program established by the U.S. Bureau of Reclamation. It is a 50% match with a cap of \$300,000. The opportunity to submit an application for this grant typically occurs this time of year. Once an application is prepared, it must be reviewed by the city council and be supported with a resolution. We have provided some information concerning the grant in order to introduce the city council to the potential opportunity. We are asking the council for direction whether this is a grant that the council would like to pursue once the opportunity becomes available. With the uncontrolled rising costs of energy used to power our pumps, as well as water delivery costs, on top of operation and maintenance costs, it is our suggestion that we look for ways to improve efficiencies in order to continue to maintain a low cost service to our citizens now and in the future.

Mr. Whiteley and Mr. Rice summarized the staff memo. Mr. Rice explained staff intended to apply for the grant to fund the program to meter secondary water. He stated there are two different grants available to the City and this year the City will seek the smaller of the two grants because the reporting requirements of the smaller grants is much less intensive.

Councilmember Johnson asked if the grant is relative to culinary or secondary water. Mr. Whiteley explained it is for secondary water and it is very similar to the program recently completed by Weber Basin Water; they were successful in securing the same grant and they added radio read meters to 10 percent of their customer’s meters.

Councilmember Peterson stated the amount listed in the staff report is \$300,000 and he asked if that is the amount the City would receive and then be required to match with \$150,000. Mr. Whiteley answered \$300,000 is the cap that would be awarded. He stated that he would not apply for that amount. Mr. Rice stated staff plans to only apply for about \$150,000.

Grant Writer Cindy Gooch stated that in the past the City has used in-kind services in lieu of matching funds. She stated that can be done in the case of this grant as well. She stated that will be based on how much time the Public Works Department will spend on the project. She stated that major data analysis will be necessary and they prefer that the City to hire a consultant to work on the project. She stated that if the City decides not to hire a consultant the City will likely not receive any funding; the reason for that is that the data and information that many of the awardees have submitted in the past has not been sufficient for the bureau of reclamation in their final plans. Mr. Rice noted the consultant fee could be included

in the grant and the overall cost of the project. Ms. Gooch agreed. She added the project will include the costs of the test meters, the hiring of the consultant, and creation of the project plan. She stated that JUB Engineers, who she is employed with, has worked for Syracuse City for a number of years and they have done a number of these types of grants. She stated that last year the bureau accepted eight applications and three of those were generated by JUB Engineers. She stated the applications written by JUB are well written and they feel they have a good grasp on what is needed to secure this type of grant.

Councilmember Johnson asked if some of the money to match the grant can be taken from the secondary water fund. Mr. Rice stated that is where all the matching money will come from. Councilmember Peterson asked Mr. Rice if he was referring to secondary water impact fees or user fees. Mr. Rice answered user fees.

Councilmember Duncan stated his understanding is that application for the smaller grant will catapult the City towards applying for a larger grant next year and he asked what the City would get with the larger grant. Ms. Gooch stated that the amount available through the larger grant is \$1.5 million and the City would need to match that amount. She stated one new aspect of the larger grant is that it can be funded over a three year time frame. She stated that the project can be completed over three years with \$500,000 each year and it is easier to budget for and manage. Mr. Rice stated that it will cost the City between \$800,000 and \$1 million to install radio read meters on the entire culinary and secondary water system. He stated that the cost for secondary water will be around \$500,000. Ms. Gooch agreed, but stated that in the SOR grant there is a public involvement and education portion and funding will be spent on educating the public on water conservation and how much water the City does use in order to understand the necessity for meters.

Councilmember Duncan stated that someone told him the other day that if the City does not use the secondary water it just travels to the Great Salt Lake and is not wasted. He stated water saved by the City that ultimately flows to the Lake is saved for nothing. Ms. Gooch stated that is a common misconception; there are people living east of the City that are conserving water that is then passed through the system to Syracuse City. She stated the Lake needs water; that is a reality because there is an ecosystem that depends on the minerals in the Lake. She stated that is not a waste in her mind. She stated that the population of the City will grow from 20,000 to 40,000 in a number of years and all water will be needed. She stated that some water may be conserved now and some of it will go to the Lake, but in the future that saved water will go to the new residents of the community. Mr. Rice stated that the goal is to conserve water and use the same amount of water every year even with population growth.

Councilmember Duncan asked if the City will recoup the funding put towards the project. He stated he knows this is about water conservation, but he inquired as to the fiscal implications of the project. Mr. Rice stated there will be an in depth discussion about water infrastructure, cost, and other fiscal implication of this type of project at the retreat scheduled for this weekend. Ms. Gooch clarified that the costs are not only related to water, but to the energy costs to run the pumps that distribute the secondary water throughout the City, which is thousands and thousands of dollars each year.

Mayor Nagle stated tonight the staff is simply asking for the authority to begin the grant application process. Mr. Whiteley stated that is correct. Mr. Rice stated that the bureau will want to know that the Council approved the application for the grant.

Discuss business agenda item 10 – Proposed Ordinance 12-03 amending various provisions of Title 10, the Land Use Ordinance, relating to animals.

A staff memo from the Community Development Department explained that on September 27, 2011, staff presented a recommendation to the City Council for approval from the Planning Commission for an amendment to the Animal Ordinance to include pigeons in the point table as well as a small language change. At the September 27 meeting, City Council discussion moved beyond the changes presented and requested that staff and Planning Commission include additional changes such as a point allocation for quarter-acre lots, an example of the use of the point system, etc. During the period in which staff and Planning Commission was formulating additional recommendations to the Animal Ordinance, Davis County informed staff that the County was considering making changes to the County Animal Ordinance. Davis County requested City staff to hold onto any changes to the Syracuse Animal Ordinance until Davis County was able to make their changes. Davis County also requested that Syracuse amend the Animal Ordinance to mirror the County Ordinance to ease the burden on County animal enforcement officers of knowing every city animal ordinance. Syracuse City is under no obligation to make this change and Davis County has reflected that they will continue to enforce our ordinance as written. On January 3, 2012, Davis County Commissioners approved the attached amendment to the County Animal Control Ordinance, which went into effect on January 24, 2012. Primary changes includes: addition of cat registering and licensing requirements, allowance of maximum of three cats and dogs in any combination, if a third dog is owned the dog must be acquired from a legitimate animal shelter, etc. If the Syracuse City Ordinance does not address a specific issue, then the County Ordinance then the State Ordinance is applicable. On February 7, 2012, the Syracuse City Planning Commission held a public hearing

regarding the proposed amendments to the Animal ordinance, in which comments were received. At that time, the Syracuse City Planning Commission chose to table the approval of the animal ordinance so that additional changes could be included. On February 22, 2012, the Syracuse City Planning Commission approved recommendation to the Syracuse City Council the attached amendments to Title Ten, Chapter 6, General Land Use Regulations within the Syracuse City Code. This amendment includes the following: addition of a point allocation to lots that are a quarter of an acre or larger, examples of use of the point system and square footage conversion, reclassification of large animals, addition of a small fowl group in the points table, maintain that no more than two of the same species for household pets shall be kept, a limit on the maximum number of dogs a kennel permit allows, an additional exception to the point system, language regarding the harvesting of farm animals, the exemption of service animals from number of animals allowed through the use of a minor conditional use permit, a few definition changes, and other minor changes (see attached changes). Two dissenting opinions from Syracuse City Planning Commissioners have also been provided and are subsequently attached. At the February 28, 2012 City Council Work Session, additional comments were received. At the March 13, 2012 City Council Work and Regular Session, additional comments were received. Therefore, these additional changes are highlighted in yellow in the attached proposed changes. The Community and Economic Development Department recommends, following recommendation from the Syracuse City Planning Commission, that the Mayor and City Council amend Title Ten, Chapter Six General Land Use Regulations - Animals within the Syracuse City Code to reflect proposed Ordinance No. 12-03.

Mayor Nagle asked if there were any questions from the Council regarding the changes staff has made to the proposed Ordinance following recommendations made by the Council at recent meetings.

Planner Kent Andersen explained he performed a significant rewrite of the section that refers to lots sizes and zones. He stated that he added lot requirements and a point system to determine the number of animals allowed. Councilmember Johnson asked if the lot size is half-acre and if that applies to all zones. Mr. Andersen stated that it only applies to A-1 and R-1 zones. He stated those are the only zones in Syracuse where farm animal keeping is permitted.

Councilmember Peterson stated the only change he would recommend is that someone is required to live on a parcel of property one acre in size or larger in order to be allowed to keep roosters. Councilmember Duncan stated that a citizen approached him about keeping roosters and said that roosters are no noisier than dogs and everyone is allowed to keep dots. He stated he would rather hear a rooster crowing in the morning than a dog barking in the middle of the night. He stated that his understanding is that there is a way to keep roosters from crowing too early in the morning. Mr. Andersen stated that his understanding is that most people that keep hens and roosters do not typically close them in; rather they are allowed to roost on their own and they come out of their pen in the morning when they are ready to start crowing. Councilmember Duncan suggested letting the issue go at this time and waiting to see if any complaints about roosters kept on smaller lots are lodged with the City. Councilmember Shingleton asked if the City's noise ordinance would apply to roosters. Councilmember Peterson asked how the Police should be expected to respond to those types of issues; he asked how they respond to complaints about barking dogs. Police Chief Wallace explained that an officer will knock on the door of a resident at any time of night and tell them there has been a complaint about their dog and that they must be brought inside. He stated he was not sure that would work with roosters. He stated he would hope that neighbors could work those issues between themselves. Councilmember Peterson stated that he felt that requiring someone to live on an acre before they are allowed to keep roosters would prevent any complaints in the first place. He feels this issue could "open a can of worms".

Mayor Nagle stated she remembers the discussions that took place last time the Council considered the regulations regarding roosters and there were a lot of comments made by people that were not in favor of allowing their neighbors to keep roosters. Councilmember Lisonbee stated the conversation during that meeting centered on comments made by former Councilmember Lurlen Knight who said that he would be out of compliance with the new ordinance because he had chickens and roosters kept on his lot, which was a larger lot in a residential zone. She stated that the City Administrator at the time, Rodger Worthen, made the comment that the City would not come after Mr. Knight. She stated that is bad law and this issue needs to be addressed; there are many residents in the City that have roosters and they should be able to keep roosters. Mayor Nagle stated that Mr. Knight lives on more than one acre of ground. Councilmember Lisonbee stated that is correct, but his property is located in an R-1 zone and roosters are currently not allowed in that zone. Mr. Andersen suggested that small steps are better than big steps; if the Council takes big steps now there may be too many complaints, but small steps allow for more small steps in the future. He stated he is concerned that the Planning Staff will be bombarded with phone calls if radical changes are made at this time. Councilmember Lisonbee stated that is why she recommended allowing farm animals on half-acre lots. She stated that she would support a test run, but she is happy with the language about half-acre lots.

City Attorney Carlson explained that regarding disorderly conduct, Utah State Code states that if someone makes unreasonable noise in a private place that can be heard in a public place that is an infraction and if they continue to do it after they have been asked to stop they are guilty of a class C misdemeanor. He stated that the City's Justice Court Judge has

interpreted that to include people that host parties, even if the host is not making the noise. He stated he felt the same judgment would be made for roosters as well. Councilmember Duncan asked if the same would be true for dogs. Chief Wallace stated the Police Department has written citations for barking dogs. Mr. Carlson stated there is County Code specific to dog barking and those violations are considered an infraction.

Mayor Nagle stated this item is also on the business meeting agenda and, for the sake of time, she suggested that the discussion continue during that meeting.

Discuss appointment to North Davis Sewer District Board.

A staff memo from the City Attorney explained that in 2010 Councilmember Kimmel was appointed to serve a four year term on the North Davis Sewer District ("NDS"). In May 2011, after allegations of misconduct, Resolution 11-15 was unanimously passed by the Syracuse City Council, removing Councilmember Kimmel and appointing Councilmember Peterson "to serve for a term concurrent with Councilmember Peterson's term of office as a member of the Governing Body of the City." Councilmember Kimmel was among those voting in support of Resolution 11-15. On Tuesday, January 10, Councilmember Lisonbee made a motion to amend Resolution 12-02 to include language appointing Councilmember Shingleton to NDS. Councilmember Lisonbee's amended motion passed by a majority vote of the council with Councilmember Peterson voting no. Resolution 12-02 did not include language removing Councilmember Peterson from the NDS. At this point, nothing has been presented supporting a "for cause" removal of Councilmember Peterson.

"Whenever a vacancy occurs on any local district board for any reason, a replacement to serve out the unexpired term shall be appointed...[by the City Council] if the person vacating the position was appointed." [Utah Code §20A-1-512\(1\)\(a\)](#). "Before acting to fill the vacancy, the [City Council] shall... give public notice of the vacancy at least two weeks before the [City Council] meets to fill the vacancy." [Id at \(1\)\(b\)](#).

For at least the last three appointments, Syracuse City has not given public notice of a vacancy on the NDS prior to appointing someone to fill the vacancies.

The City Attorney recommends that Resolution 12-02 be reconsidered. The two problems with Councilmember Shingleton's appointment in Resolution 12-02 are 1- two weeks of public notice was not given prior to his appointment, and 2- Councilmember Peterson was not removed prior to Councilmember Shingleton's appointment.

Addressing the lack of two weeks public notice before Councilmember Peterson's appointment is complicated by the fact that since the appointment in May 2011, he has been serving on the NDS. The time to reconsider Resolution 11-15 has passed. If Councilmember Peterson resigns the NDS, two weeks public notice should be given before filling the vacancy. If Councilmember declines to resign the position, the City Council has three options:

1. Vote to Remove Councilmember Peterson from the NDS.
2. Instruct staff to provide public notice for two weeks of an intention to verify the appointment of Councilmember Peterson on the NDS subject to objections from the public.
3. Take no further action on Councilmember Peterson's appointment to the NDS until the end of his term or his resignation.

The City Attorney recommends either of the latter two options as more legally sound. There is a requirement that a vote to remove a sitting member be by 2/3 and only occur "for cause." Utah Code §17B-1-304(4). At the same time, City Councils are exempt from that section if the Council appoints one of its own members. *Id* at (6). The problem with voting to remove Councilmember Peterson for any reason other than for cause is that it would initially violate section 304 and only later become a permissible action if the Council ultimately appointed another member of the Council after a two week notice of the vacancy. Accordingly, the City Attorney recommends either taking no action at this time or instructing staff to provide public notice of an intention to verify the appointment of Councilmember Peterson.

Mr. Carlson summarized his staff memo.

Councilmember Duncan asked what would happen if the Council acknowledged the appointment process has been done wrong ask Councilmember Shingleton to resign because there is a question about whether he is the current appointee to the Sewer District Board. Mr. Carlson noted resolutions appointing both Councilmembers Peterson and Shingleton have been adopted by the Council. Mayor Nagle stated that Councilmember Shingleton is not the appointee because he has not been sworn in to the position and the Sewer District is not recognizing him as a member. Councilmember Duncan stated tonight the Council could ask Councilmembers Peterson and Shingleton to resign or adopt a resolution removing both of them from the position, advertise the vacancy for two weeks, hold a public hearing, and ultimately make a decision to appoint someone to the position. He stated that would clear up both problems and allow the City to start from the beginning of the process. Mayor Nagle stated that the Council can not remove Councilmember Peterson from the position. Mr. Carlson stated the Council could remove Councilmember Peterson for cause and the for cause requirement does not need to be followed if another Councilmember is appointed to replace him. He stated the idea behind providing public notice is to give the Council

an opportunity to appoint a member of the public to the position. Councilmember Duncan stated the public notice could be that the Council intends to appoint another Councilmember in two weeks, but that the public will be given the opportunity to provide their opinion about who should be appointed. He stated the basic idea is that the voice of the people should be heard, but the Council is in a situation where they must follow certain legal requirements.

Councilmember Lisonbee stated the issue the Council is not addressing is the fact that the last three appointments were not made to fill mid-term vacancies; two of them were, though one is questionable, but Lurlen Knight's appointment was not made to fill a mid-term vacancy. Mr. Carlson stated that he is only referring to Councilmembers Kimmel, Shingleton, and Peterson. Councilmember Lisonbee stated her concern is that because Councilmember Peterson was appointed by a resolution on the same night that Councilmember Kimmel was removed, which is questionable, at that point there was no noticing given so there is a question about whether his appointment was done in a lawful way and is it a viable appointment according to the City Council and according to State Law. She stated that she does not feel that it is a viable appointment because State Law requires the vacancy period. She stated her point, which has not been addressed, is that she does not think Councilmember Peterson is a duly appointed member of the Board, even if he has been sworn in. Mr. Carlson stated that he understands what Councilmember Lisonbee is saying and he is not disputing that the City has never given the 14-day notice for mid-term vacancies and that is contrary to the current Law, but appointments made contrary to the Code do not mean that the whole appointment is invalid. He stated that is the leap that Councilmember Lisonbee is making that is not supported. He stated the Council can choose to address the issue. He stated that when things are done out of order, they are not automatically void.

Mayor Nagle stated there is a lot of confusion around this issue; there is a duly appointed person serving on the Board and the Sewer District wants that person to continue to serve in that capacity. She stated the City has received a legal opinion that acknowledges that there were some mistakes made, but the Council has spent so many hours talking about this and they are showing the residents they cannot get anything done. She stated several items have been tabled regarding this item, but the Council needs to look at the bigger picture. She again acknowledged that there were mistakes, but the Council was acting on the best legal advice available to them at the time. She stated Mr. Carlson, as well as Utah League of Cities and Towns (ULCT) attorneys Gary Crane and Dave Church, have given legal opinions on the matter as well. She stated that in the end the Council needs to consider whether someone was harmed; no one has been harmed and there is an elected official in the position and when his term is up he can be removed and someone else can be appointed. She stated in the meantime she feels the Council needs to move forward. Councilmember Peterson added the attorney for the Sewer District has agreed with the opinions provided by Mr. Carlson, Mr. Crane, and Mr. Church. Councilmember Lisonbee stated that attorney for the Association of Special Districts gave an opinion contrary to the opinion given by counsel for the District. Mr. Carlson stated that the attorney for the Association of Special Districts referred to the Open and Public Meetings Act (OPMA) for a time frame to challenge the appointment, which would be 30 to 90 days, which has also expired since the appointment was made in May of 2011.

Councilmember Shingleton stated that when Councilmember Peterson was appointed the Council determined that he would be appointed until a time when Councilmember Kimmel's issues could be resolved and the City Attorney at the time said that he did not like using that language in the appointment and that, instead, the issue could be revisited at the beginning of 2012. Councilmember Lisonbee stated that is true and the entire Council agreed with that direction.

Councilmember Duncan stated the whole issue is the statute of limitations. Mayor Nagle stated that the whole issue is about money. Councilmember Duncan stated that he does not want to be on the sewer board, but he wants to follow the law and it was not followed in the past. He stated there is a way to start over and revisit the appointment. He stated that if two Councilmembers seek the appointment the entire Council can hear from both of them and make a decision regarding who should be appointed. He stated he wants to go back and fix the mistake that was made.

Councilmember Peterson stated he has remained quiet throughout this discussion, but he wants to say something. He stated that if the Council wants to have the attitude that they want to fix mistakes that have been made in the past, there are a million things that the Council needs to go back and fix. He stated this is an attack on him. He stated if the Council does not want him to serve as the Boardmember, they need to tell him why and they need to tell him why they want to remove him for cause. He stated otherwise the Council needs to verify the appointment because that is what the Sewer District has said they want and their counsel has said he is the duly and legally appointment member. He stated that he wants to know why the Council wants to remove him; do not "play the game" of wanting to fix a mistake. He reiterated there are several other things that need to be fixed in the City. Councilmember Duncan stated that is what he is trying to do and this is not the last thing that is going to be fixed in the City before he is done. Councilmember Peterson stated that the Council can move on and fix things as they go rather than review the minutes of the meetings over the last 10 years to determine what things they need to fix. Councilmember Duncan asked why the Council should not be doing that. Councilmember Peterson stated it is not the Council's job. Councilmember Duncan argued it is the Council's job.

City Council Work Session
March 27, 2012

Mayor Nagle stated that the issue is deeper and she asked why Councilmember Peterson was not consulted about a meeting that the four other Councilmembers have discussed scheduling for April 12. She stated there is clearly a division happening and the Council is spending so much time and proving that government is incapable of moving forward after some pretty good things have been done by past Councils. She stated that things in the City are suddenly coming to a standstill. She stated that she would prefer the Council at least address the issue at hand.

The meeting adjourned at 6:55 p.m.

Jamie Nagle
Mayor

Cassie Z. Brown, CMC
City Recorder

Date approved: September 11, 2012