The City Council held a meeting on Wednesday, January 29, 2020, at 5:30 p.m. in the City Council Chambers, 10 North Main Street, Cedar City, Utah.

MEMBERS PRESENT: Mayor Maile Wilson-Edwards; Councilmembers: Ron Adams; Terri Hartley; Craig Isom; W. Tyler Melling; Scott Phillips.

STAFF PRESENT: City Manager Paul Bittmenn; City Engineer Kit Wareham; City Attorney Tyler Romeril; City Recorder Renon Savage; Finance Director Jason Norris; Police Chief Darin Adams; Leisure Services Director Ken Nielson; Economic Development Director Danny Stewart; Public Works Director Ryan Marshall; City Planner Don Boudreau.


CALL TO ORDER: Councilmember Melling gave the invocation; the pledge was led by Councilmember Isom.

AGENDA ORDER APPROVAL: Councilmember Adams moved to approve the agenda order for the City Council, RDA & MBA meetings; second by Councilmember Hartley; vote unanimous.

ADMINISTRATION AGENDA – MAYOR AND COUNCIL BUSINESS: STAFF COMMENTS: ■Phillips – I was touched by the Bald Eagle DAR for Wreaths Across America and I know the power of that program. I want to urge us to continue to support the effort. I have been able to secure $1,000 for that project. I am not chairing the committee, only supporting it. Hartley – when they come to the Cemetery, is it designated for every year? Phillips – you will have to pay for the wreaths each year. I don't know how it will impact the Veterans Cemetery when it comes online. ■Melling – we did the walk with last Friday, Scott Phillips and Darin Adams attended from the City with 8-10 other community members. I am working on a report for the Mayor and Staff, faded paint in front of fire hydrants, etc. along with good conversations with residents and work for long term solutions. The next walk will be Saturday, February 22nd from 10-noon in Northfield Road and North Cedar Blvd area. This Saturday I will start my drive a car 1 day a week campaign as we start the General Plan for those that cannot drive we need to be aware of that as a City in finding ways to plan for those residents that cannot drive, and document days in that live through February. I will post it on social media.

PUBLIC COMMENTS: there were no public comments.
CONSENT AGENDA: (1) APPROVAL OF MINUTES DATED JANUARY 8 & 15, 2020; (2) APPROVE OF BILLS OF JANUARY 24, 2020; (3) APPROVE A SINGLE EVENT ALCOHOL PERMIT FOR SUU ART MUSEUM ON MARCH 7, 2020. JESSICA FARLING; (4) APPROVE VICINITY PLAN FOR JUNIPER GROVE SUBDIVISION LOCATE AT APPROXIMATELY 1575 SOUTH 1200 WEST. GO CIVIL ENGINEERING/DON BOUDREAU; (5) APPROVE 2020 BOARD APPOINTMENT. MAYOR WILSON-EDWARDS: Phillips – one question on the bills, architecture Campbell, is it for the Fleet Building? Yes.

Councilmember Isom moved to approve the consent agenda items 1 through 5 as written above; second by Councilmember Hartley; vote unanimous.

CONSIDER AN ORDINANCE RESTRICTED PARKING ALONG COLLEGE AVE, FOR EAST ELEMENTARY SCHOOL FOR STUDENT PICK-UP. HUNTER SHAHEEN/KIT WAREHAM: Phillips – I was just wondering where it is and what it looks like. Hartley – will that just be a drop off, not no parking? Tyler – correct.

Councilmember Hartley moved to approve the restricted parking ordinance along College Ave for the East Elementary School student pick-up zone; second by Councilmember Isom; roll call vote as follows:

- Ron Adams  -  AYE
- Terri Hartley -  AYE
- Craig Isom   -  AYE
- Tyler Melling -  AYE
- Scott Phillips -  AYE

CONSIDER LEASING CITY PROPERTY ON HIGHWAY 14, WEST OF RIGHT-HAND CANYON ROAD FOR ADVERTISING. DAN ROBERTS/TYLER ROMERIL: Marcus Hansen, Principal Broker of Caldwell Banker. Thank the council for your service and all you do for us as well as the Mayor and City Staff and employees. I would like to share our position. We feel it is self-evident there is a mutual agreement. There have been no problems in 40 years until a competitive venture brought it to the attention. It has been here since 1979, we have a State and UDOT permit. I consulted with the City Attorney and maybe the records had not been searched in depth, I know Renon pulled up the original deed that it was purchased in 1979. We don’t have anything further. Was it donated by the Corry’s traded for water or what? A little history, until that .46-acre parcel was deeded to the City in May 1979 it was a portion in the bounds of Highway 14, the easement was 400 feet. At that time UDOT shrunk the easement a few hundred feet to 100 feet from center line, allowing Ilia Corry to deed that to the City and create the small adjoining property. The research I have done was to create a parcel for the City to place a chlorination plant, the waterline was already there. It was a small portion where UDOT shrunk the easement. From what I found the sign has been there when the City acquired the property based on Utah Billboard information and it was grandfathered non-conforming use. Our sign is 55 feet from centerline at this time it
would have to be 100 feet. We feel there must have been a mutual agreement at the time the property was deeded to the City. We would be agreeable for a lease to keep the sign. There has been talk of a sunset clause. I found a Utah Citizen Guide to Land User Regulation from Craig Call. I would like to pass out a few copies. I did a lot of work to see where we stand. See Exhibit “A” started by reading billboards, and referenced State Code 10-9a-912.

Paul – you have a lot of hats, sometimes a regulatory hat, sometimes when you are asked to make a donation to a good cause, sometimes as a property owner, when you wear that hat you have all the rights of a property owner. What was cited is Municipal Land Use. It is not about zoning or a sign ordinance or any regulation you can pass, only a business having a sign on our property and if you want to lease it. All regulations are not on point here. As a city do we want a billboard. Marcus – I just wanted to give research on billboard laws.

Phillips – billboard companies are very savvy. I have been to the legislature a lot. My thoughts were that the canyons need to remain pristine and as we grow, we can still drive up Highway 14 and enjoy the outdoors. I am not comfortable to entering a lease on the sign. However, if you feel there is an agreement we haven’t located I am willing to table this item. Give 90-120 days to have the sign removed. Marcus – what about a sign alteration permit and have Welcome to Cedar City on the back of the sign. There will be no other signs allowed. I don’t know if that would be a misnomer or not. The City owns 80 acres+/-.

Adams – I am not inclined to enter a lease either. We don’t lease off-premise signs. I know it has been there forever and sad it was brought to the attention. When you mentioned that Renon had the deed, if there was a lease it would have ran with the deed. That being said, it doesn’t sound like there was an easement or allowance for the sign to be there. In my mind I could not support the city leasing that, it opens a can of worms. I think you can see my honesty in that where we are in the same business. Rightfully you do comply with State law, I have read statutes. It is in the County verbiage that they go by State law. Melling – I am inclined to agree for future agreements, I don’t want the City to get in the sign leasing business. A lot of agreements were on a handshake. I would look at formalizing a handshake and having a sunset clause and having you update the sign. It is important for the City to honor handshakes if they can, but it needs to be formalized. Hartley – I agree with Melling, while there was good evidence of a handshake agreement, but there really is no evidence. I would like to offer a compromise with a sunset. Because of the unknown factors I would leave it for a period of 5 to 8 years. Melling – I don’t want to go beyond 10 years. It is Tyler’s arena for the negotiations, but it needs to look good, finding ways to negotiate. I don’t want it to go another 40 years. Isom – you are tending toward an understanding something has been in place for a long time. Ultimately, we want to conform to the Scenic Byways, so some time of a clip on this. Marcus – maybe it could be addressed prior to the sunset.
Tyler – let’s not forget we are the property owner; we have the upper hand. I would ask what you want, 5 or 10 years and I will craft the terms. Phillips – also a reasonable lease amount attached to it. Tyler – I will do research on the price.

Councilmember Hartley moved to leasing city property on Highway 14, west of Right-Hand Canyon Road for advertising with a reasonable market rent and it would expire in 5 years and it also have a maintenance clause; second by Councilmember Phillips; vote unanimous.

Melling – I think we should enter it to soon, within 90 days. Tyler – I will try to have it done by the end of next month.

**CONSIDER DISPOSING OF CITY PROPERTY LOCATED FROM 100 WEST TO 300 WEST ALONG COAL CREEK ROAD. GARTH GREEN/RICHARD BRONSEMA/TYLER ROMERIL:** Isom – this just initiates the process of an appraisal. Paul – it says the council is interested and we get an appraisal, when it comes back you give a thumbs up or down. Tyler – Mr. Green and Mr. Bronsema would get the appraisal, but you also have Mr. Baker. Adams – I won’t approve this with the 300-400 block included until we have a plan submitted to see where the trail will go up to 300. We may have to terminate the trail if we dispose of the property and go across the street to the bridge. However, I don’t want to do the trailer park until we have a plan. Hartley – I would suggest we not do any of it, we are in the process of the general plan and a trail plan. I don’t think we need to act on it immediately. It took 7 years of negotiation of staff to acquire the property. I would table until we know what we are doing with the trail. Phillips – as our city continues to grow in all direction, the industrial road is almost the center of the town. It is not nearly as large as some cities; it could potentially be a green belt in the middle of the city so I would like to be very careful. We may find at the end of the planning process that is what we want to do, but I would like to wait. Adams – Tyler, did you look at the deed restrictions, is it allowable to sell? Tyler – yes, but the deed restriction goes with the property. Paul – no preschools or elementary schools would be allowed. Isom – and the buyer be allowed that there could be toxics in the ground. Tyler – we forwarded that to Mr. Green, Mr. Bronsema. Paul – we will share the environmental information so they could be educated buyers. Adams – there was something about recreational areas. Tyler – it was language we want clearly noted. Melling – if we table, I would like to see if whatever appropriate bodies can take this into account for the trail system, including the part Mr. Baker wants to see if it works in the design process. We have had a number of citizens reach out and express interest, if we can make it work let’s make it a priority in the design process. Mayor – just because someone comes in does not mean we do it. Adams – where are we on the Industrial Road drawings which included the trails. I thought we were going to put it out this spring. Kit – no, and we are not going beyond Airport Road. Paul – engineering can do the work, but there is a whole lot of other work they need to do. These guys are taxed, there is money for trail expansion. Would you have heartburn if we went outside to design the trail? Phillips – no, if it meets the design standards. Isom – I would want to see cost estimates. Paul – we would like to explore it. Isom – it is responsive to the citizens. Adams – the engineering firms, including outside ones are busy.
Councilmember Phillips moved to ask staff to explore having an outside source look at the trails and outdoor facilities and table the potential sale of the property at this time; second by Councilmember Adams; vote unanimous.

**CONSIDER A RESOLUTION AMENDING THE CITY’S PURCHASING POLICY. TYLER ROMERIL:** Tyler – the change says, “The City may reserve the right to select the appraiser; however, once the appraise is selected, the appraisal will be ordered by the City.”

Paul – there is the issue with the Forest Service. Hartley – I agree to work with them, but the City needs to order the appraisal, not the end user. Paul – on the forest service project they have had prepared on their dime, would you like it reappraised. Hartley - no just reassign it to the City, we did that in banking all the time. Paul – I can’t even get a copy. Phillips – would we have similar issues with FAA? Paul – they would probably do their own, FAA tells us, we don’t tell them, not sure with BLM. Hartley – we can negotiate and work with them, but typically we should order it. Paul – I just don’t want to get sideways with Federal agencies.

Tom Jett – one other thought, we could do an addition to so the Forest Service and the City both be on it.

Councilmember Isom moved to approve the resolution amending the City’s purchasing policy; second by Councilmember Hartley; vote as follows:

AYE: 5
NAY: 0
ABSTAINED: 0

**CONSIDER AN ORDINANCE REGULATING THE ZONING OF CANNABIS PRODUCTION, PROCESSING AND DISTRIBUTION. TYLER ROMERIL:** Tyler – I added under cannabis pharmacy subscript 2 and what Councilman Melling asked, if they go in they are on notice for noise, order and dust. Hartley – another question do we want to specify it a pharmacy is allowed in I&M-2 it be attached to the production manufacturing. Phillips – I agree with you. If we allow it should be attached. Paul – on the same parcel of land? Hartley – the same parcel is ok. Melling – attachment could create a technicality, but if the pharmacy is appurtenant to another use, manufacturing or distribution of a drug, another use by the same entity that is well suited for I&M-2 you may have a pharmacy in conjunction with that facility.

Tyler – cannabis pharmacy would be allowed in mixed use, central commercial, downtown commercial, highway service and I&M-1 not in I&M-2, if cannabis pharmacy is on the same and it is only in I&M-2. Melling – I don’t like creating rules that gives an exemption for one use. If we grant a variance for a business that is incidental to a retail use in I&M-2 I am ok with that.
Hartley – one question that was raised, under Utah law does is address remote cannabis such as vending machines. In Arizona there were problems with the dispensaries were popping up, but were not designating a certain size, you could have one in a lobby, but not on the street. Tyler – State law does not allow that. There is no intent to drive up and get your marijuana from a dispensing machine.

Councilmember Hartley moved to approve the ordinance regulating the zoning for cannabis production, processing & distribution, and in the table of allowable uses cannabis pharmacy would be allowed in mixed use, central commercial, downtown commercial, highway service and I&M-1 not in I&M-2; a cannabis pharmacy that is located on the same parcel as cannabis production establishment would be allowed in the I&M-2. Cannabis production establishment by itself is allowed only in an I&M-2 zone; second by Councilmember Isom; roll call vote as follows:

   Ron Adams - AYE
   Terri Hartley - AYE
   Craig Isom - AYE
   Tyler Melling - AYE
   Scott Phillips - AYE

CONSIDER PROPOSALS FOR GENERAL PLAN UPDATE. PAUL BITTMENN: Don – recently we sent RFP that was last updated in 2012, we received 3 response from three qualified organizations, Urban Planning International (UPI), Logan Simpson and Rural Community Consultants. City staff evaluated which included scoring of the proposals relating to the scope of work, qualifications, timing and costs. All follow a similar format, visioning, looking at the direction of the general plan, establishing goals and policies, all have a public outreach component, public hearings and develop a plan and approval by City Council.

UPI is an organization led by Michael Clay from BYU, using students from BYU in preparation of the plan. The proposal includes a steering committee with vision, goals, policies, 2 outreach meetings, community survey, and the elements included land use required by the State, moderate income housing also required by the State, environmental and economic development, historic preservation, public facilities and annexation, we can include others. Fast timeline, 4 months for $35,000, that is the lowest bid. It is a quick timeline which could also be a con, that is a pretty quick timeline to get it completed.

Rural Community Consultants, same processing, visioning via a survey, city input, it also has mechanisms to use the web, nontraditional public outreach. This proposal has a 6 months process with the cost of $43,909. They have local experience working with Brian Head, but seemed to be lack of staff, it is a 2-man operation.

Logan Simpson, depth of experience 6-7 experts, their approach included branding, community outreach, use of technology, text polling, and has an initial kick off meeting,
visioning and incorporate the elements from the visioning document. The plan and scope of work more expansive, the price is $99,999 and it would take one year.

Isom – they will incorporate vision 2050? Don – no, that was not included. Isom – did any of these include that or the ASAP? Don – No. Paul – they didn’t exclude that, but they didn’t come out in their scope, they didn’t count it, but they didn’t highlight it either.

Summary – all three are capable, they could all produce quality work. Ultimately staff selected UPI who scored 393, second was Rural Community Consultants with a score of 373 and Logan Simpson with a score of 353. Staff suggestion is to have UPI help us with the vision of the future.

Phillips – I am concerned, time frame concerns me a lot. I reached out to a few communities they worked with, Gunnison City and the City of Mona and I realize both are quite a bit smaller, and they have both had to go back and redo things that did not get addressed. The time frame is so short. I think we are doing a disservice to ourselves. We need to engage our community; we need to show the vision of our city and what they think. I know it is the cheapest, I want to make sure we do it right. I may be off base, but four months, they have to be done by May because school is out. I am sure staff studied them in depth, the fact that none of us have seen the proposals is hard to respond. I am more comfortable with a 6 to 8- or 9-month process.

Melling – when Mr. Clay came here, I got the impression from their work that these are very Utah issues and rural Utah, I talked with someone that worked with Mr. Clay and had nothing but good to say. I am concerned with the timeline, I would see if there is a way to drag it out more, it helps with the ASAP and the vision 2050 plan, we have had hundreds of man hours put into the community. It would be a shame to put all of that to waste. I like the idea of going with Mr. Clay’s proposal but seeing if the timeline could be modified. Hartley – I would echo that, I have concerns with the timeline, I have had community members reach out and I like Scott feel we should have town hall discussions, the timeline is too short. I would also like to review the proposals before making a decision.

Isom – I echo on the work product and the fact it is focused on rural Utah. I don’t know what flexibility they will have if they can continue to summer semester, but I think we need the right amount of time and public input, but I don’t want to go 9 months to a year. We need to manage the process to get it done timely and efficiently. I wouldn’t mind seeing the proposals, but if we go UPI we need to pull the trigger soon. With the price and product, I would recommend them.

Mayor – one possible option is to table it, have Don speak with them on the timeline and send you the proposals and have a special meeting next week.

Councilmember Melling made a motion to table this and hold a special action meeting next week; second by Councilmember Isom; vote unanimous.
Carter Wilkey – as somebody that comes to this each week and sees the emotion, we can’t ever get things perfect, but we have one shot to get it right. The plan that gets the most voices heard is the best option. If they are heard they will swallow the decisions better. Phillips – it is their city, so we need to listen to them.

**CONSIDER A RESOLUTION AMENDING THE 2019-2020 FY BUDGET. JASON NORRIS:** Jason – we have not made any alterations to what was presented last week.

Paul – we could hold the revision for one week, or we could budget the high end and if you go with the low end, we are ok. Jason – I will present another revision in late May after the budget and make adjustments then.

Councilmember Isom moved to approve the resolution amending the 2019-2020 FY budget including a $100,000 in the engineering budget for the general plan amendment; second by Councilmember Hartley; vote as follows:

- AYE: ____ 5 ____
- NAY: ____ 0 ____
- ABSTAINED: 0 ____

**AUDIT PRESENTATION:** Caleb Rees – I want to express thanks to City Staff for their countless hours helping me gather information, Jason, Wendy, Cathy and even the City Attorney, my thanks to them.

Page 1 is one of the most important reports. The purpose is to look at your financial statements to make sure they are materially correct, and we issued an unqualified opinion. Page 77 the purpose is to look at internal controls, 3 main functions we want segregated, custody of assets, authorization and record keeping. When a person has more than one of those functions’ fraud could occur without being easily noticed. We look at cash in and out and payroll and did not have any findings or problems with internal controls. I always want you to keep an eye on reviewing expenditures.

Page 79 the single audit report, you received a significant amount of money for the Airport, the Federal Government requires hoops to be jumped through. It was a pass.

Page 87 compliance with State laws, each year the State Auditor has a list of things they want us to look at, are you establishing a budget and not exceeding that, and do you have a fund balance. Are people hired properly enrolled in URS with tier 1 or 2 and you are in compliance with the laws checked by the State Auditors.

A few things we are seeing that you issued a new bond for the animal shelter, but the long term debt for bonds decreased, page 43, long term debt increased by something out of your control, GASB 68, looking at pensions depending on the market affects your potential liability and it get reported and your pension liability went up about 70% $2.3 million. Page 18 shows balance sheet of your funds, all of them are positive, you are in
good financial health in each fund. I am pleased to report you passed without any findings, there is nothing concerning.

Isom – we had some increases in debt, but statutory limits we are not close? Caleb - nowhere close. I would encourage you to read the first couple of pages. Isom – you thanked staff, but we appreciate you getting it to us in a timely manner.

Councilmember Isom moved to accept the audit report; second by Councilmember Hartley; vote unanimous.

Councilmember Isom moved to adjourn at 6:50 p.m. to go into the RDA; second by Councilmember Hartley; vote unanimous.

CLOSED SESSION FOR PROPERTY NEGOTIATIONS: Councilmember Isom moved to go into closed session at 6:57 p.m. second by Councilmember Phillips; roll call vote as follows:

- Ron Adams - AYE
- Terri Hartley - AYE
- Craig Isom - AYE
- Tyler Melling - AYE
- Scott Phillips - AYE

ADJOURN: Councilmember Isom moved to adjourn at 7:12 p.m.; second by Councilmember Hartley; vote unanimous.

Rehon Savage, MMC
City Recorder
A Utah Citizen's Guide to
Land Use Regulation
How it works and how to work it

Utah State Department of Natural Resources
By Craig M. Call, J.D. - Private Property Ombudsman
local officials the ability to accept or reject signs based on their opinions without clear standards and guidelines for the issuance of permits. Valid ordinances must be supported by evidence that they seek to further a compelling state interest, directly advance that purpose, and are narrowly drafted to be no more restrictive than needed to achieve the public good desired.42

Once these basic, constitutional standards are accommodated, local sign ordinances become a matter of local discretion. Remember that the highly restrictive sign controls in Scottsdale, AZ, or Charleston, SC, exist under the same constitution that applies in Utah. The most significant aspects of a local sign ordinance are likely to remain political questions decided by majority vote, not the constitutional limits that can be accommodated by skillful draftsmanship.43

6. Billboards

A brief discussion of billboards as distinctly regulated is justified mainly because of the unique status granted them under Utah state law. Such ordinances routinely differentiate between “on premise” signs and “off premise” signs. The off premise signs are usually billboards. On premise signs are generally allowed with much more flexibility and acceptance than those located off premises. At the local level, the sign that a “mom and pop” want to install is usually looked upon with some favor, while the absentee corporate owners of the large billboard panels are sometimes not afforded much hospitality.

At the state and federal level, however, the scale is tipped. The outdoor advertising industry has been very savvy and actively involved in political campaigns, lobbying, and influencing federal and state legislation.

The discretion of local municipal officials and the Utah Depart-
ment of Transportation is somewhat limited by targeted state statutes, which provide that:

Non-conforming billboards cannot be amortized (phased out over time) like other non-conforming uses or terminated by fire or other causality.\textsuperscript{44}

Billboards can only be acquired through eminent domain or voluntary agreement with the sign owner.\textsuperscript{45}

Outdoor advertising is regulated by state law as well, and the number, size, and location of signs can be regulated.\textsuperscript{46} Special licenses and permits are required to install a billboard, but many existed before such laws came into effect. Under the Utah Outdoor Advertising Act, if a state highway project requires the removal of a sign, the owner has a statutory right to relocate it at the expense of the governmental entity funding the road project.\textsuperscript{47} Billboard owners also have the right to raise their signs if visibility is reduced by soundwalls or other highway improvements.\textsuperscript{48}

Local government entities are directed by state statute to allow the relocation or height adjustment as a special exception to the zoning ordinance.\textsuperscript{49}

These protections are not extended to the signs of local businesses. The definition of "Billboard" in the code refers specifically to signs that do not advertise a business located on the same premises as the sign.\textsuperscript{50}

As you can tell, the land use rules that apply to billboards are unique. If one is interested in this corner of the law, state statutes must be reviewed since they will control if there is any conflict with local ordinances.
Utah Code

Effective 5/8/2018

10-9a-512 Termination of a billboard and associated rights.
(1) A municipality may only require termination of a billboard and associated rights through:
   (a) gift;
   (b) purchase;
   (c) agreement;
   (d) exchange; or
   (e) eminent domain.
(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.
(3) A termination under Subsection (1)(e) requires the municipality to:
   (a) acquire the billboard and associated rights through eminent domain, in accordance with Title 78B, Chapter 6, Part 5, Eminent Domain, except as provided in Subsections 10-9a-513(2)(f) and (h); and
   (b) after acquiring the rights under Subsection (3)(a), terminate the billboard and associated rights.

Amended by Chapter 239, 2018 General Session