

PROCEEDINGS OF THE MUNICIPAL COUNCIL MEETING JANUARY 8, 2008

**THE MUNICIPAL COUNCIL MET AS A COUNCIL OF THE WHOLE ON JANUARY 8, 2008
AT 7:00 P.M. THE COUNCIL CHAMBERS, PROVO CITY CENTER, PROVO, UTAH.**

UPON ROLL CALL, THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION
WERE PRESENT:

Council Member George O. Stewart	Council Member Steven C. Turley
Council Member Cynthia R. Dayton	Council Member Cynthia J. Clark
Council Member Midge Johnson	Council Member Sherrie Hall Everett
Council Member Cindy L. Richards	Wayne Parker, CAO
Terry Ann Harward, Council Executive Director	Neil A. Lindberg, Council Attorney
LaNice Groesbeck, City Recorder	

CONDUCTING: Outgoing Chair, George O. Stewart/Newly elected Chair, Cindy Richards

EXCUSED: Mayor Lewis K. Billings

OPENING CEREMONIES:

INVOCATION: Melanie McCoard

PLEDGE OF ALLEGIANCE: Coy Porter

ACTION AGENDA

A. A resolution acknowledging the election of the Chair and Vice-Chair of the Provo Municipal Council for calendar year 2008.

Chair Stewart explained the process to be followed in electing the Chair and Vice Chair of the Council.

Chair Stewart opened nominations for Council Chair. Council Member Dayton nominated Cindy Richards to serve as the Council Chair for 2008, an action seconded by Council Member Hall Everett. There were no other nominations and nominations were closed. The nomination passed 7:0.

Nominations were opened for Vice Chair of the Council. Council Member Clark nominated Council Member Stewart to serve as Vice Chair, an action seconded by Council Member Dayton. There no other nominations and nominations were closed. The action was approved 7:0.

Council Member Dayton moved to adopt the following resolution, an action seconded by Council Member Hall Everett and approved 7:0.

RESOLUTION 2008-01

**A RESOLUTION ACKNOWLEDGING THE ELECTION OF THE CHAIR AND VICE-
CHAIR OF THE PROVO MUNICIPAL COUNCIL FOR CALENDAR YEAR 2008.**
(Chair, Cindy Richards and Vice Chair, George Stewart)

Council Member Johnson moved to adjourn the Council Meeting and convene as the Redevelopment Agency Board, an action seconded by Council Member Hall Everett and approved 7:0.

PROVO REDEVELOPMENT AGENCY MEETING

B. A resolution appointing the Chair and Vice-Chair of the Redevelopment Agency of Provo City for calendar year 2008.

Board Member Stewart moved to appoint Cindy Richards Chair of the Redevelopment Agency Board and George Stewart Vice Chair of the Redevelopment Agency Board, an action seconded by Board Member Clark and approved 7:0.

RESOLUTION 1-1-1-08

A RESOLUTION APPOINTING THE CHAIR AND VICE-CHAIR OF THE REDEVELOPMENT AGENCY OF PROVO CITY FOR CALENDAR YEAR 2008. (Cindy Richards and George Stewart)

Board Member Hall Everett moved to adjourn the Redevelopment Agency meeting and reconvene as the Municipal Council, an action seconded by Board Member Johnson and approved 7:0.

PROVO MUNICIPAL COUNCIL MEETING

The Council honored Council Member Stewart for his two years of service as the Council Chair. Chair Richards said it has been a privilege to work with Mr. Stewart as the Chair. The love and respect she had for both he and his wife have increased as she has come to know them better and work with them on a regular basis. Mr. Stewart has been a good leader, and a good mentor. He has set a great example and, as demonstrated by a pair of his shoes, it will be difficult to attempt to “fill his shoes” as Council Chair. His desire to serve is his motivation for being on the Council. He was presented a plaque in honor of his two years of chairmanship.

APPROVAL OF MINUTES

_____ Council Member Dayton moved to adopt the December 18, 2007, Council Meeting minutes as written, an action seconded by Council Member Clark and approved 7:0.

C. A public hearing on a resolution authorizing the Mayor to execute an agreement with the Downtown Alliance of Provo, Inc., for economic development promotion activities in downtown Provo.

Chair Richards introduced the resolution and invited Paul Glauser, Redevelopment Agency Director, to comment. He said the proposal is a collaboration of efforts of the Alliance Chair and Board, and Mr. Lindberg, Council attorney. The agreement is “acceptable” to everyone, although each would probably have different items they would either include or exclude. The agreement presented has been signed by Bill Bancroft, Downtown Alliance, the Mayor, and is now subject to Council approval.

Mr. Lindberg said he quickly reviewed the document which they received late afternoon. He raised several questions, the most substantial was Paragraph 9 regarding the 60-day required notice should the Council decide to discontinue the otherwise ongoing funding for the Alliance. He felt this notice would be difficult because of the associated noticing and action on the budget. He agreed with the intent, but felt the wording should be reviewed.

Mr. Stewart reviewed his proposed changes. He felt the Council Chair, rather than the Council, should designate a member of the Council to serve on the governing board of the Alliance. Mr. Parker felt the Council should establish the appointment procedure by ordinance rather than include it in the Alliance agreement. Mr.

Lindberg said this provision could be addressed by amending Ordinance 2007-43, and then referencing in the agreement the appropriate section of the ordinance. The intent is for the Council Member appointed to not be a voting member of the board, but a liaison for reporting purposes to avoid any conflicts between the obligations and duties to the Council and to the Alliance.

Regarding a proposed amendment on paragraph 9, Mr. Parker said the contract is between the City and the Alliance and not between the Council or Administration and the Alliance. As such, references are made to the City rather than the Council or Administration. The only exception is the quarterly report. Mr. Lindberg agreed. Mr. Stewart wanted the last sentence in Paragraph 9 stricken from the agreement. Mr. Lindberg said, as long as the Alliance does not default on the agreement, it should expect the funding to continue. This provision implies that the city could unilaterally choose to not fund the Alliance. Mr. Parker said the Alliance is comfortable with this provision as negotiated with the Administration. The agreement is now submitted for Council approval or disapproval. Mr. Stewart suggested deleting the last sentence of paragraph 9, Term, and presented language to insert as follows: "In such event, this agreement will be extended 60 days with payments made on the same basis as in the current fiscal year." Mr. Glauser said the extension could read "up to 60 days." Mr. Stewart and Mr. Lindberg agreed. Mr. Parker said the other alternative would be to allow the 60-day notice, triggered by termination and intent to not fund, with the Council appropriating funds for any number of days that extension would go into the new fiscal year. Both parties would be obligated to perform during the 60-day period. Mr. Stewart felt the added sentence supported Mr. Parker's statement and clarified exactly what would happen in the event funds were not appropriated for the Alliance.

Responding to Ms. Dayton, Mr. Stewart said he was confident the proposed changes were in keeping with the intent of the original agreement drawn by Mr. Lindberg. Also, a time would be given to see how the relationship works out and to make any needed adjustments. Mr. Parker said the insurance numbers in the agreement were correct.

Responding to Ms. Johnson, Mr. Parker said agreements are managed by the Administration, and Mr. Horton, Economic Development Department, who has a long history working with the Alliance, will manage the contract. Ms. Johnson supported the quarter report of activities to be submitted to the Council.

Ms. Dayton felt the agreement was "watered down" as compared to the ordinance language regarding Council's direct responsibility in the Alliance, particularly regarding overview of the Alliance. Changes suggested by Mr. Lindberg would give the original oversight as intended.

Mr. Lindberg asked if the Articles of Incorporation of the nonprofit would need to be amended to meet certain criteria set out in the ordinance. Also, any other needed changes could be made through an ordinance amendment.

At the invitation of Chair Richards, Bill Bancroft said the Alliance has been organized under a 501C 6, and allows the appointment of two directors outside of the Alliance boundaries. He felt the City could be one of those members; however, the City lies within Alliance boundaries and is technically a member. Directors would typically be voting members, but the City member would be restricted from voting. Mr. Lindberg preferred maintaining the distinction between the duties of the Council Member and the duties of a voting Alliance board member to avoid any potential conflict.

Mr. Bancroft said the Articles of Incorporation do not include language allowing a liaison to the Alliance. Mr. Lindberg said it is not anticipated to change the Articles, but simply to have a Council Member attend the meetings. Mr. Bancroft said that scenario does not create a problem, and would not require an amendment to the Articles.

Responding to Mr. Stewart, Mr. Bancroft said he is comfortable with the agreement as long as a 60-day notice is given for termination of the agreement. There is a statement in the indemnification which states the Alliance agrees to hold the City harmless for any events caused by the Alliance's negligent acts, and the City agrees to hold the Alliance harmless for any events caused by negligent acts of the City. He asked to reduce the potential liability to the volunteers of the organization by stating the City would not commence action against any individual board member, unless for fraud. Mr. Bancroft said the Alliance does have director's and officer's liability insurance, but they would like to reduce insurance costs.

Because of issues raised, Council Member Stewart moved to continue action on the agreement for two weeks until the meeting of January 22, an action seconded by Council Member Dayton and approved 7:0.

Mr. Stewart asked Council Members to give input to Mr. Lindberg regarding the proposed changes. Mr. Parker stated this is an area where the Administration felt there had been "some breach of the separation of powers protocol." The Council and Administration both have a vital interest in the Downtown Alliance. However, the ordinance directed the Mayor to prepare an agreement to bring to the Council for approval. He recommended the legal department and Mr. Glauser work with Mr. Lindberg to identify any advice or direction he might give to bring back a revised agreement. Chair Richards requested the agreement be presented "one week from today." Mr. Parker said the Council was advised earlier that, given the holidays, the negotiations on this agreement would likely take place right up to the time of presentation. To follow the ordinance, the Administration needs to negotiate the terms of the agreement. Input from the Council will be readily received.

Mr. Stewart said it would be important that the "agreement come unsigned" in order to be authorized by the Council prior to signing. Mr. Parker said the agreement includes a provision that it is "subject to the approval of the Municipal Council." Whether signed or unsigned will be at the discretion of the Administration. Mr. Stewart clarified the Council's ability to make changes to a proposed agreement from the Administration. Mr. Lindberg agreed stating there are certain kinds of agreements the Administration is authorized to enter into independent of any Council action under the budget authority given the Administration by the Council. There are other categories, like this one, that need Council approval, making the agreement necessary.

Chair Richards explained that, when an item is continued, the public hearing is also continued.

D. A public hearing on a resolution transferring Sick Leave Reimbursement budget internally to the General Fund for buyout expenses and applying to the Fiscal Year ending June 30, 2008.

Chair Richards introduced the resolution and invited Dave Croff, Budget Officer, to comment. He said this action will transfer budget within the General Fund. There was available in the General Fund for sick leave reimbursement \$344,648, of which \$304,635 was spent, leaving an operating surplus of slightly over \$40,000. This request will transfer funds from one department that over spent to another department that had excess. No additional funds are requested.

Ms. Dayton clarified this transfer applies only to sick leave reimbursement in the General Fund.

There was no response to the invitation for public comment.

Council Member Dayton moved to adopt the following resolution, an action seconded by Council Member Johnson and approved 7:0.

RESOLUTION 2008-02

A RESOLUTION TRANSFERRING SICK LEAVE REIMBURSEMENT BUDGET INTERNALLY TO THE GENERAL FUND FOR BUYOUT EXPENSES AND APPLYING TO THE FISCAL YEAR ENDING JUNE 30, 2008.

E. A public hearing on a resolution transferring \$250,658 into the Airport Capital Improvement Fund for the construction of an Airport Fire Station and applying to the Fiscal Year ending June 30, 2008.

Chair Richards introduced the resolution and invited comment from Merrill Bingham, Public Works Director. He presented slides showing the new fire station and the new hanger at the airport. The fire station facility was designed to convert to a full-time firefighter residence when commercial services comes to the airport. There was a cost overrun on the project of approximately \$77,000, most of which related to the fire sprinkler system (not included in the original bid), and increasing the height of some doors. It was anticipated that \$300,000 would be received from the insurance fund, but only \$188,000 was actually received, leaving \$112,000 short of the amount expected. The balance of \$63,000 was already in the insurance fund and needed to be transferred.

Responding to Ms. Dayton, Mr. Bingham said there was an old hanger at the location for the fire station that belonged to Mr. Cross, who passed away a few years back. The hanger and contents were left to his daughter and her children. The lease was originally approved as an air museum, but was never used as such. The hanger was used to storage a large volume of miscellaneous items. Negotiations resulted in the City agreeing to relocate the contents to a storage unit in Logan and paying the rental fee for the first year. It cost about \$35,000 - \$40,000 to get the building emptied, contents moved and the building dismantled

Public comment was invited. Melanie McCoard, Provo, requested an update on all capital improvements at the airport, including both on-site and off-site improvements.

There was no other public comment and the public hearing was closed.

Council Member Turley moved to adopt the following resolution, an action seconded by Council Member Hall Everett and approved 7:0.

RESOLUTION 2008-03

A RESOLUTION TRANSFERRING \$250,658 INTO THE AIRPORT CAPITAL IMPROVEMENT FUND FOR THE CONSTRUCTION OF AN AIRPORT FIRE STATION AND APPLYING TO THE FISCAL YEAR ENDING JUNE 30, 2008.

F. A public hearing on a resolution transferring \$138,000 into the Airport Capital Improvement Fund for the construction of Airport T-Hangers and applying to the Fiscal Year ending June 30, 2008.

Mr. Bingham presented slides showing the 16-unit, nested T-hanger structure. There is about two weeks more of work to be done and the hangers will be completed. When completed, the hangers will generate about \$60,000 annually in revenue. The original budget was \$308,000, which was probably inadequate from the beginning. The building manufacturer suggested using nested T-hangers rather than stacked T-hangers, resulting in 16 rather than 13 hangers, which was more costly overall, but less costly per hanger. The total cost of the T-hanger project will be about \$439,000, thus the need for an additional appropriation of \$138,000. Additionally, a 55-foot taxiway on the north side will be built and excavated in-house. Three public works employees have worked with the contractor which resulted in a credit to the City of about \$30,000. He said this request should cover the costs of the taxiway and no additional appropriation is anticipated.

Responding to Ms. Clark, Mr. Bingham said there are 56 people waiting for a hanger. When these are filled, another row of hangers may be requested for next year, which would “put the airport on solid ground to cover its costs.”

Responding to Ms. Dayton, Mr. Bingham said it would take about seven years to recoup the cost of building the hangers. The hangers will require almost no maintenance. The City is working with owner-occupants of 13 hangers on ground leased from the City to remove the dilapidated hangers and replace them with something that will enhance airport appearance.

Responding to Ms. Hall Everett, Mr. Bingham said the rates at the Salt Lake City Airport are considerably higher than those charged at Provo, and a rates increase is under consideration for the old hangers. The new ones will be marketed at a higher rate.

Mr. Bingham agreed with Mr. Turley that service at the airport will be enhanced with the addition of the hangers. There is a return to the City for those who keep their planes at the Provo Airport through fuel flowage fees, etc. It also helps the Fixed Base Operator to meet expenses and expand his operation.

There was no response to the invitation for public comment and the public hearing was closed.

Council Member Johnson moved to adopt the following resolution, an action seconded by Council Member Turley and approved 7:0

RESOLUTION 2008-04

A RESOLUTION TRANSFERRING \$138,000 INTO THE AIRPORT CAPITAL IMPROVEMENT FUND FOR THE CONSTRUCTION OF AIRPORT T-HANGERS AND APPLYING TO THE FISCAL YEAR ENDING JUNE 30, 2008.

G. LAND USE

G1. A public hearing on a resolution amending the Provo City General Plan to change the land use designation of approximately 59.5 acres of real property located generally at 180 East 1860 South from Public Facilities (PF) to Commercial (C) and to adopt written policies amending Chapter 6 - Land Use. (07-0013GPA)

Chair Richards introduced the resolution and invited Brent Wilde, Assistant Community Development Director, to comment. He said Economic Development and the Boyer Company are requesting this General Plan amendment, which includes a map and a text amendment, to facilitate the Southgate Development. The proposed development will consist of approximately 459,000 square feet of retail space and 225,000 square feet of office space. The proposed amendment will change the designation of the property from Public Facilities to Commercial. The text amendment furthers the development of the 60 acres as a regional shopping center in the SC3 zone. The proposal language requires the project to be of “high quality” and to consist of retail and professional office uses that will complement the existing East Bay Center and the Provo Town Centre Mall. The Planning Commission and staff recommend approval of the proposal.

There was no response to the invitation for public comment.

Chair Richards moved to adopt the following resolution, an action seconded by Council Member Clark and approved 7:0.

RESOLUTION 2008-05

A RESOLUTION AMENDING THE PROVO CITY GENERAL PLAN TO CHANGE THE LAND USE DESIGNATION OF APPROXIMATELY 59.5 ACRES OF REAL PROPERTY LOCATED GENERALLY AT 180 EAST 1860 SOUTH FROM PUBLIC FACILITIES (PF) TO COMMERCIAL (C) AND TO ADOPT WRITTEN POLICIES AMENDING CHAPTER 6 - LAND USE. (07-0013GPA)

G2. A public hearing on an ordinance changing the zone classification of 59.5 acres of real property located generally at 180 East 1860 South from Public Facilities (PF) and Planned Industrial Commercial (PIC) to Regional Shopping Center (SC3). (07-0014R)

Mr. Wilde said the zone amendment requests a zone change for property currently designated as Public Facilities and Planned Industrial Commercial to the Regional Shopping Center designation, which is the same zone as the Provo Towne Center and will require consistency in signage, parking, landscaping, etc. The Planning Commission and staff recommend approval.

There was no response to the invitation for public comment.

Council Member Johnson moved to adopt the following ordinance, an action seconded by Council Member Hall Everett and approved 7:0.

ORDINANCE 2008-01

AN ORDINANCE CHANGING THE ZONE CLASSIFICATION OF 59.5 ACRES OF REAL PROPERTY LOCATED GENERALLY AT 180 EAST 1860 SOUTH FROM PUBLIC FACILITIES (PF) AND PLANNED INDUSTRIAL COMMERCIAL (PIC) TO REGIONAL SHOPPING CENTER (SC3). (07-0014R)

QUESTIONS FOR THE MAYOR AND COUNCIL:

Melanie, McCoard, Provo, asked if there is a Victim Assistance Program at BYU or if crime victims at BYU are served through the City Victim Assistance Program. She wondered if there is duplication of services with other programs. Mr. Turley said United Ways provides services that complement City services. Ms. McCoard said there is a national program called "Take Back the Night," which is a program for women and violence. BYU has denied every request to hold this event on its campus. She was also concerned that crime statistics from BYU may not be reported as part of the community crime statistics. She suggested a public safety board be appointed by the Council to review and make legislative recommendations to the Council regarding police and fire issues. Ms. Clark said many BYU students do participate in the "Take Back the Night" event, but not on BYU's campus. Another issue of concern for Ms. McCoard was the pay scale which she will address through written comment to the Council and participation at the public hearing.

Andrew Thompson, Provo, was concerned with the dishonesty of the landlords in the City not returning deposits on time, attempting to cheat tenants out of the deposit, or delaying the process. He explained his situation and suggested the City pass an ordinance, similar to one passed in Washington, requiring that anyone who signs a rental lease within Provo City, has a full disclosure form on the deposit, what it means, and what the tenant responsibilities and landlord responsibilities are regarding what they must pay if they do not return the deposit on time or withhold it without any notification. He felt any landlord who accepts Section 8 money should be penalized if they misuse tax payer money in this manner. State law requires 30 days to return the deposit or explain why the deposit is not being returned. He was encouraged to visit with Mr. Lindberg and Mr. Parker about the possibilities and limitations of addressing this concern. Ms. Dayton asked if this could be addressed through another meeting with the Landlord Association of Salt Lake City or during a work session.

Charles Mcelwee, Provo, referencing a statement attributed to a Council Member at a Foothills area neighborhood meeting that perhaps a car should be sold if there is inadequate parking and a bike should be ridden, suggested Council Members live by that same advice. No Council Member recalled making such a statement at a neighborhood meeting. Mr. Lindberg pointed out that council members live in a place where there is adequate parking for their cars.

Richard Wood, Provo, said he has been “very critical” of the Council in appearances the last few months, but this time he commended the Council on the Southgate project. He thanked Ms. Johnson and Mr. Turley for their stand on the recent “radio tower project.”

Day Cox, Provo, suggested a better way be established for citizens to have an item appear on the agenda—something other than the three minutes allowed in this “Questions for Council and Mayor” forum. Chair Richards said public input for the Council and Administration is also received through emails, phone calls and visits. Items placed on the agenda are those issues needing official action such as ordinances, resolutions, budget, etc., and council members can also place items on a work session. Ms. Day suggested enough signatures on a petition should be sufficient to place an item on the agenda. The Council legislative process and the process for getting items on an agenda were explained.

Shawn Loura, Provo, wanted to organize a 5K run fundraiser to benefit veterans in Provo and Utah County. He was advised to visit with the Administration on this issue.

Council Member Turley moved to adjourn the Council Meeting, an action seconded by Council Member Hall Everett and approved 7:0.

The meeting adjourned 8:41 p.m.

