

1 **NORTH OGDEN CITY COUNCIL MEETING MINUTES**

2  
3 January 17, 2012

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5 The North Ogden City Council and Planning Commission convened in a special training session on  
6 January 17, 2012 at 5:30 pm in the North Ogden City Council Chambers at 505 East 2600 North. Notice  
7 of time, place and agenda of the meeting was delivered to each member of the City Council, posted on the  
8 bulletin board at the municipal office and posted to the Utah State Website on January 13, 2012. Notice  
9 of the annual meeting schedule was published in the Standard-Examiner on January 16, 2012.

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12 PRESENT: Mayor Pro Tem Kent Bailey  
13 Council Member Wade Bigler  
14 Council Member Dave Hulme  
15 Council Member Justin Fawson  
16 Council Member Cheryl Stoker

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18 Planning Chairman Ken Kiser  
19 Planning Vice Chairman Allan Dalpiaz  
20 Planning Commissioner Larry Residori  
21 Planning Commissioner Joan Brown  
22 Planning Commissioner Blake Knight  
23 Planning Commissioner Eric Thomas

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25 EXCUSED: Mayor Richard Harris  
26 Planning Commissioner Steve Quinney

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28 STAFF: Annette Spendlove City Recorder/HR Director  
29 Dave Carlson City Attorney

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31 VISITORS: Jim Suhr

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33 Annette Spendlove, City Recorder, called the meeting to order and turned the meeting over to the City  
34 Council to select a Mayor Pro Tem.

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36 **Council Member Bigler moved to appoint Council Member Bailey as the Mayor Pro Tem. Council**  
37 **Member Hulme seconded the motion.**

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39 **Voting on the motion:**

40 **Council Member Bailey** yes  
41 **Council Member Fawson** yes  
42 **Council Member Bigler** yes  
43 **Council Member Hulme** yes  
44 **Council Member Stoker** yes

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46 **The motion passed unanimously.**

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48 Mayor Pro Tem Bailey welcomed all those in attendance.

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50 Council Member Stoker gave the invocation and led the audience in the Pledge of Allegiance.  
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52 **ACTIVE AGENDA**

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54 **2. Arbitrary and Capricious, working within the scope of authority, and how public officials**  
55 **liability will or will not protect them and other related issues.**

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57 Annette Spendlove, City Recorder, introduced the training instructor, Curt Oda who is the broker for our  
58 liability insurance. He serves on the State Legislature and is a former Council Member for Clearfield  
59 City. He said he would like to keep things very informal. He stated that the Council Members will  
60 receive training from the Utah League of Cities and Towns or may have already attended. It doesn't hurt  
61 to have additional information and training especially when you ask the questions what can happen if I  
62 make the wrong decisions or if I do things not quite the right way. He asked, "Where does the City's  
63 authority come from?" Council Member Hulme replied that it comes from the State. Mr. Oda said yes,  
64 the City exists under the authority of the State. Everything you do has to be in line with statute and also  
65 whatever ordinances you have created to run the City within the bounds of the law. You can institute  
66 policy as a body. You cannot do it as an individual or a few; you do it within the law. You also have the  
67 rules of conduct that were established by your City Council according to State Law. You cannot institute  
68 policy on your own; it has to be under the authority given by State Law. In some cases if you want to  
69 make changes, you instigate the change and take it through the proper channels. Then you are not going  
70 to cause yourself any problems. What are some of the consequences if you do something that does not  
71 follow the law? He gave an example of a newly elected Council Member who thought it would be nice to  
72 help citizens repair their sidewalks around their homes. He started having it done then realized the  
73 problem that once he does it for one he has to do it for all. People started expecting that the Council  
74 Members would come out and do the work. As you know, sidewalks are the responsibility of the citizen  
75 unless the City Council decides by policy that certain sections will be done by the city. You want to stay  
76 away from some of those expectations, don't make promises you cannot keep. The City may or may not  
77 be held liable whether they allowed you to continue repairing the sidewalks or you as a person could be  
78 held liable not just from a civil standpoint but if you get sued you could be held personally responsible.  
79 Depending on the situation you could possibly be charged with criminal charges. You want to protect  
80 yourself. There are ways to get things done within the proper processes. If you don't agree with the  
81 process, then work to change it through the proper channels. Don't put yourself in a bad situation; an  
82 offending official could be held 100% liable and the City could be held totally not responsible.  
83 Everything you own is at stake here. This applies to any Boards or Committees. When it comes to  
84 insurance on these issues, if it can be shown that the individual didn't follow policy and did things  
85 egregiously, the insurance is not going to be there for you and if the City can prove they had nothing to do  
86 with it, the insurance will protect them. As long as you are acting within the proper scope of your  
87 authority the insurance is going to respond and protect you. The City has an indemnity clause within the  
88 City by-laws that protects you if you are held responsible. Dave Carlson, City Attorney, said that is  
89 correct as long as you are within the scope you are protected; outside of the scope you are not protected.

90  
91 Mr. Oda said some basic things to remember are:

92  
93 You cannot meet outside of City Council meeting with three (3) Council members. That is a quorum and  
94 you will need to give public notice if you are going to do that. If you incidentally meet somewhere, for  
95 instance a public function, just make sure you are not discussing city business. If it can be shown you are  
96 talking business, you can be held responsible for breaking the law.

97  
98 You can be charged with a civil lawsuit of being arbitrary and capricious. What does that mean, it means  
99 you had no solid basis to make the decision you made. Be careful of land use issues where this comes up  
100 most often. You need to follow the general plan and make a decision with good facts. Maybe you don't  
101 want a certain business to go into a certain place and you have good solid facts such as the business itself  
102 has some problems, it is a moral problem, you have run criminal background checks on the owners and

103 are concerned. You will have good information and you can deny the business. If the General Plan says  
104 that you allow something and you don't, you could be in violation. For instance, Clearfield City didn't  
105 allow a group home and Davis County filed a lawsuit against Clearfield City. The City Council made a  
106 decision based on what the citizens in that neighborhood wanted. Those citizens didn't want the group  
107 home. One thing you don't want to be doing is basing your decisions on what a neighborhood wants.  
108 One example is that there are federal and state laws that protect group homes. You don't want to make  
109 your decision based on public clamor; you will get yourself in trouble. That is what this Clearfield  
110 Council did. When it comes to land use issues if it is not in the General Plan already, and you want to put  
111 something in the General Plan, revise the General Plan first. When you change your General Plan you  
112 will hold public hearings to allow the public to voice their concerns. You can then decide if it fits the  
113 plans of the city and you change your General Plan. This way if someone was to apply for a permit in the  
114 area you have discussed you can see whether that type of business is permitted in that zone. If it is, great,  
115 if it isn't then you have proof that your 'no' decision was based on what is allowed in that zone.

116  
117 Regarding operational and procedural issues in the city, Mr. Oda told them if they are not aware of the  
118 chain of command get familiar with it. For instance, this last election was the public works complex. If  
119 there is a concern that comes from Public Works and they contact you, bring the information back to the  
120 City Council for discussion. Typically the employees and Department Head know the chain of command  
121 and they are instructed what that is. The main thing about any of these procedures is consistency. The  
122 more consistent you are the more defensible it becomes. The Planning Commission is an advisory board  
123 to the City Council. If there is a Zoning Ordinance change, the Planning Commission's advice will go to  
124 the City Council for their final decision. The Council is a policy making group, you are not to be  
125 involved in the daily operations of the city. You can inquire what goes on but must go through the proper  
126 channels. He said his main goal is to protect the City Council and the City in case of a claim.

127  
128 Dave Carlson, City Attorney, stated that what he heard said tonight is good advice. He said that they  
129 should know the scope of their authority and to stay within that scope. The law is your friend. The policy  
130 is your friend. He said he knows what the policies and laws are and the elected and appointed officials  
131 should learn them. Sometimes when we take an oath of office to obey the laws of the State of Utah and  
132 the Constitution it is kind of an abstract thing, but it is not. As public officials it is our responsibility to  
133 know what the laws are and act accordingly. If you are not sure, that is why cities have legal advisors.  
134 He said he is here to help them out. Don't hesitate to get advice. A lot of us have notions about what the  
135 laws are and it doesn't count unless you are right. We talked about scope of authority and as long as you  
136 are acting within the law, the city is obligated to defend and protect you if anyone sues you. There is  
137 something called qualified immunity. It means that you are immune from liability as long as you are  
138 acting with good faith in the bounds of the law. It doesn't mean what you think the law is. It means what  
139 the law is and how the courts interpret it. If you have any doubt get advice.

140  
141 Commissioner Knight stated, in reference to public clamor, early this summer the Planning Commission  
142 had a situation with The Cove Subdivision. The new developer/owner, who is the third developer/owner,  
143 asked that the original development plan be amended and presented amendments to the plan. The  
144 homeowners had conceded on many items. He said his feeling was that the Planning Commission was  
145 acting in the bounds of their authority when we asked the developer to get with the homeowner and come  
146 up with an agreement they could both live with because there was tension on both sides. He asked with  
147 all the homeowners being present that night, there are only about six homeowners, is that defined as  
148 public clamor. Mr. Oda replied that because it is regarding a specific project it probably could be called  
149 public clamor. That is really something the courts would need to decide. When you said for the  
150 developer to get with the homeowners and come up with a plan did you still require them to bring the  
151 amended development plan and agreement back to you? Commissioner Knight replied yes. Mr. Oda  
152 said, again, it is what the court decides and how the developer presents it to the courts. Just remember  
153 your legal counsel is here to advise you.

154 **1. Training on harassment/sexual harassment.**  
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156 Mr. Oda said he will talk about harassment but also discrimination, wrongful termination, workplace  
157 issues. We have to go back to Title 7, the 1964 Civil Rights Act, there are certain protected classes.  
158 They are national origin, race, color, sex and others. You will need to watch out that you don't violate it.  
159 If you do the City is responsible. The city covers you, but you can't be the intentional perpetrator of that.  
160 Sexual harassment can almost be anything now. If you go up to someone and say ooh, you smell nice  
161 today and they say it makes them uncomfortable, back away. You shouldn't be doing that anyway but  
162 courts are getting really tight on stuff like this. You as public officials are held to the same standards as a  
163 city employee. You can't commit harassment any more than any city employee. I don't want to be the  
164 bearer of bad news but that is the reality of our court system. Discrimination on race, sex, age, sexual  
165 orientation in some cases, you can't discriminate based on those factors anymore. Because someone  
166 comes in and makes an application for a sexually oriented business store that has to do with gay material,  
167 you can't discriminate. If you want some control over sexually oriented businesses and those things,  
168 make them a conditional use so you can put conditions on them. Make sure you designate areas that these  
169 businesses can go to but you can't discriminate.  
170

171 Wrongful termination is more of an administrative issue but it may be that a department head is  
172 terminated; they can come back to you. Make sure you go through the correct process. You don't want  
173 to create hostile situations. You don't want to be talking to an employee and say 'you know I could really  
174 make your life miserable if you don't cooperate with me.'  
175

176 Another big issue is Government Records Access Management Act, (GRAMA), public information. This  
177 was first enacted 20 years ago. Back then we had no email, tweeting, text messaging, nothing like that.  
178 Technology has changed considerably. What was happening is the media wanted information coming  
179 across new technology. It used to be person to person conversation. Now the media is saying they have  
180 the right to see it all. What you do on your phone or computer can be brought to public scrutiny. If it is  
181 in an email and gets requested under GRAMA it can't be protected.  
182

183 Council Member Bigler asked where they are on the state level with GRAMA. If you have a resident that  
184 uses the city email to talk about something, where are we with the resident's information? How can we  
185 protect them? Some residents may feel like they can't communicate with City officials and that is a  
186 problem.  
187

188 Mr. Oda replied if it is private say 'call me and let's just talk'. Citizens don't know that what they put in  
189 an email that is requested under GRAMA can be used against them. Advice he got from his legal counsel  
190 was to delete and delete often. If it is something you want to keep private make sure it isn't in writing  
191 anywhere. It is considered a record. How can you tell the public not to do that, that their privacy could  
192 be compromised?  
193

194 Council Member Bigler stated that right now at the State level there is nothing to protect the resident  
195 currently in the law. Mr. Oda replied that it is not all media but this comes about when certain media  
196 groups know what they are after and they go fishing for evidence; they request emails and they can. He  
197 stated that it is the fishing that he has the problem with. He stated that as a legislator he expects his life to  
198 be out in the open, but how can the citizens communicate openly with nothing to protect them. Records  
199 have been a document you keep for a certain amount of time for certain reasons. It is a matter of personal  
200 choice on your part; I am just giving you the information.  
201

202 Mr. Oda said he will be doing more training specifically on sexual harassment and harassment. Dave  
203 Carlson said the Congressman Weiner case demonstrates how you can get yourself in trouble with sexual  
204 harassment claims. The fact is when you are in a leadership position, flirtation and relationships in your

205 official capacity will only get you and the City in trouble. You don't want to bring a bad name to North  
206 Ogden City. You don't want to tarnish the name because it brings more scrutiny and brings more things  
207 into question and makes your job that much harder. Perception by City employees is that you as Officials  
208 in the City have power over them. Be careful about creating new relationships, don't create new ones.  
209 Be friendly but keep them at an arm's length. The chain of command is so important. He stated the  
210 Mayor has complete control over the police department by state statute. The Council may have some  
211 other authority under the by-laws. It varies by City.

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213 **3. Council/Planning Commission Comments.**

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215 There were no comments.

216

217 **4. Adjournment.**

218

219 **Council Member Bigler moved to adjourn. Council Member Stoker seconded the motion.**

220

221 **Voting on the motion:**

222 **Council Member Bailey**            **yes**

223 **Council Member Fawson**       **yes**

224 **Council Member Bigler**         **yes**

225 **Council Member Hulme**         **yes**

226 **Council Member Stoker**        **yes**

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228 **The motion passed unanimously.**

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230 The meeting adjourned at 6:27pm.

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Richard G. Harris, Mayor

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238 \_\_\_\_\_  
S. Annette Spendlove, MMC

239 City Recorder

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241

242

243 \_\_\_\_\_  
Date approved

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