

NORTH OGDEN CITY COUNCIL MEETING MINUTES

June 12, 2012

The North Ogden City Council convened in a regular meeting on June 12, 2012 at 6:30 pm in the North Ogden City Council Chambers at 505 East 2600 North. Notice of time, place and agenda of the meeting was delivered to each member of the City Council, posted on the bulletin board at the municipal office and posted to the Utah State Website on June 7, 2012. Notice of the annual meeting schedule was published in the Standard-Examiner on January 16, 2012.

PRESENT:	Richard G. Harris	Mayor
	Dave Hulme	Temporary Council Member
	Cheryl Stoker	Council Member
	Kent Bailey	Council Member
	Wade Bigler	Council Member
	Justin Fawson	Council Member
STAFF PRESENT:	Ronald F. Chandler	City Manager
	Annette Spendlove	City Recorder/HR Director
	Jennifer Thomas	Deputy City Recorder/Community Dev. Coord.
	Mel Blanchard	Public Works Director
	Gary Kerr	Building Official
	Gina Kochendorfer	Police Office Manager/Administrative Assistant
	Bryan Steele	Finance Director
	Dave Nordquist	Community Services Director
	Polo Afuvai	Police Chief
	Bill Aeschlimann	Detective
	Clark Crowther	Sergeant
	Jerry Wade	Animal Control Officer
VISITORS:	Kole Fawson	Marlene Welling
	Blake Welling	Darla Beutler
	Daniel Beutler	Karmen Sanone
	Julie Anderson	Cydney Barker
	Austin Barker	Rachel Trotter
	Scott Hinrichs	Daniel Hinrichs
	Martha Urban	Toby Mileski
	Courtney Colunga	

Mayor Harris convened the meeting at 6:30 pm and welcomed those in attendance. Mayor Harris offered the invocation and led the audience in the Pledge of Allegiance.

CONSENT AGENDA

1. **Consideration and/or action to approve the minutes of the May 23, 2012 City Council meeting.**
2. **Consideration to approve Business Licenses.**
3. **Consideration and/or action to set a public hearing on July 10, 2012 to receive comments regarding amendments to the PRUD Ordinance.**

Council Member Bailey moved to pull the minutes and approve items 2 and 3 of the consent agenda. Council Member Fawson seconded the motion.

Voting on the motion:

Council Member Bailey yes
Council Member Fawson yes
Council Member Bigler yes
Council Member Hulme yes
Council Member Stoker yes

The motion passed unanimously.

Council Member Bailey referred to line 476 of the May 23, 2012 City Council minutes and stated that ‘catastrophe’ should read ‘catastrophic’. He also referred to line 791 and asked that it read ‘Council Member Bailey asked if...’ rather than ‘Council Member Bailey said...’ He said he asked the question, it was not a statement.

Council Member Bailey moved to approve the May 23, 2012 City Council minutes with these corrections. Council Member Fawson seconded the motion.

Voting on the motion:

Council Member Bailey yes
Council Member Fawson yes
Council Member Bigler yes
Council Member Hulme yes
Council Member Stoker yes

The motion passed unanimously.

ACTIVE AGENDA

4. PUBLIC COMMENTS.

Mayor Harris asked the audience to hold any comments related to the scheduled public hearings until that time.

Julie Anderson, 940 E 2600 N, representative of the Junior Posse, introduced Karmen Sanone. Karmen Sanone said she is privileged to be the Junior Posse leader. She said they have a wonderful group of kids. She introduced two members of their royalty; All-around Cowboy Austin Barker and Queen Courtney Calunga.

Austin Barker, 2238 N Fruitland Drive, invited the Mayor and Council Members to attend the North Ogden Junior Posse Cherry Days activity at the Equestrian Park on July 3, 2012 at 6pm. He said they know Cherry Days is a very busy time but hope they will attend.

Mayor Harris asked if they will have the mounted shooters this year. Julie Anderson said she isn’t sure but added that in North Ogden this year they have eighteen kids and in the junior posse system they have 220.

Karmen Sanone read the names of the rest of their royalty and their officers.

Blake Welling, 1098 E 2830 N, mentioned a street light located at 1050 E 3100 N that is out. He said they called it in several times and received numerous excuses.

There were no other comments.

5. DISCUSSION REGARDING STREETLIGHTS.

Ron Chandler, City Manager, said this item is a follow up from a request made by a resident a few weeks ago. He said he and Gary Kerr, Building Official, have been doing some follow up and wanted to provide this report and some of the options. He showed a picture of the Hall Tree Subdivision light pole at 2850 N 1375 E. He said all new subdivisions are required to install streetlights at each intersection and at a maximum distance of 600 feet apart. He said the developer is required to pay for the construction and the method they do that is for the developer to pay the City and the City to coordinate with Rocky Mountain Power to install the lights. He said that did take place. The developer paid the City to install the light at the intersection of 1375 E and 2750 N. However, a decision was made to install it at 2850 N. There are also some streetlights located on 2750 N and some others that are located on 2850 N including the one that should have been installed at 2750 N. The other two locations they were asked to look at were 500 E at 2175 N and 515 E at 2175 N. The light on 500 E is in a PRUD that was constructed in 1994. Because it was a PRUD it did not include streetlights in its construction. He said about ten years ago the Home Owners Association (HOA) contracted with Rocky Mountain Power to install those lights and the HOA pays that monthly bill. There is not one at the intersection of 2175 N and 500 E.

Ron Chandler said we have two approved decorative streetlights in a gated community. He said if a streetlight is installed in a gated community there must be some coordination. He stated that they went out and measured the strength of the streetlights and there is a 90 foot distance between those two lights and you lose about 98% of the light value in that distance. At 515 E it is a little bit different in that the streetlights are owned by the City. It was done in a PRUD but the streets are built to City standards. The lights were installed 150 feet apart. The closest light to the corner is 150 feet and you lose about 97% of the light when you get out to the corner. The City does not have anything in its policies, Public Works Standards or ordinances to address requests for streetlights or address areas where there are no streetlights or where they do not meet our Public Works Standards. He said for example between 2600 N and 3100 N almost all of the corners have streetlights but there are distances that are greater than 600 feet. Technically that area is not in compliance with our ordinances but we don't have anything in place to bring it into compliance. He said he and Gary Kerr talked about the intersections we may have without streetlights and their best guess without going out and counting each one is somewhere between 50 and 100. The estimate of the cost to put in the wood pole lights is about \$2,100. The decorative lights would be about \$1,000 more than that. In the area of 500 E and 515 E we would have to cut through someone's yard for the transformer to be installed in order to put the light in.

Council Member Bigler asked if administration has a recommendation. Ron Chandler said, as it pertains to the light in Hall Tree, obviously that is something that we should have done. He said, regarding how to fund that, one of the places they looked is that we are transferring \$170,000 in the amended budget. That could be used to pay for this. He said as it pertains to the other two that is a broader question because it does set a precedent for requests that come in about streetlights. One of the things that ought to be part of the discussion is should the City have a policy for adding streetlights. Council Member Bigler asked if residents could come to the City and tell us we are not in compliance and demand a streetlight. Ron Chandler said it would depend on when the subdivision was developed because it could be more of a non-conforming feature. He said if someone came in with a subdivision that had been built since these Public Works Standards went into effect he thinks they could make a good argument. He said if the Council decides to put these lights in on 500 E and 515 E you could set a precedent.

Council Member Bailey asked about the light on 2175 N 515 E which is a private road, would we be putting a streetlight in on a private street. Ron Chandler said 2175 N is a public road. Council Member

Bailey asked why they didn't have them because it was a PRUD. Ron Chandler said in the case of 500 E they were not planned as part of the PRUD and they didn't come in until five to six years after that.

Council Member Fawson recommended that the Council have the Planning Commission look at when they put the lights in and in what order. He said the Council needs to address the repair of lights and he thinks we ought to have some service level that we maintain. He suggested within 3-5 days possibly or some other reasonable time period. Council Member Bailey said in addition to the installation cost there are ongoing operation costs. He asked if we know what the cost is to run a streetlight for a year. Gary Kerr said the cost is \$3 and some cents per month. Mayor Harris said there are no meters and we pay a set fee per light.

Council Member Hulme said at 150 feet away most of the light is gone and yet our standard is 600 feet. He said that means there is about 300 feet minimum that's less than 5%. Ron Chandler said light is measured in a foot candle and when they measured the distance underneath the lights at 500 E and 515 E it is measured at about .92 foot candles. He said at the 75 feet mark between the two lights it dropped down to .13 because you are getting light from two different sources. When they went the other way to where there was no light, 75 feet beyond, it dropped down to .02. Council Member Hulme asked if the decorative lights that we have approved are providing as much light as traditional lights and if not, should they be approved. Mayor Harris said you can't light the whole City; you just have a spot of light here and there for guidance. It is better than pitch black so you can see but you cannot read. He said that is the kind of thing the standards are based on. Ron Chandler said they put them at the intersections not only to cast light down but also to mark an intersection. He said you are dealing with the amount of light that is cast down but you also have to deal with the glare. Council Member Bigler asked if the City could start on Hall Tree a.s.a.p. Ron Chandler said yes and suggested amending next year's budget to include that expense.

Council Member Fawson asked if the City could look at some potential apps that could allow residents tell the City about these issues. Council Member Bigler said in the meantime residents need to know that they can click one button to email all City Council members. Council Member Bigler asked if they could address the light that Mr. Welling is referring to which is at a major intersection. Mayor Harris asked Mel Blanchard to talk about the maintenance schedule and process.

Mel Blanchard, Public Works Director, said former City Manager, Edward O. Dickie III, wanted the City to get involved with the repair and replacement of lights. When we used Rocky Mountain Power it took up to three months. He said they thought that we could do it at least within a month. He said they didn't really do their homework in terms of how you legally and safely accomplish this and they were turned into Rocky Mountain Power because they were working too close to live power lines. He said they reevaluated their process because they knew then that they had to hire a certified electrician. They decided if they suffered a loss because of that the liability issues are much greater than the cost of hiring an electrician and having him on board. He said once the electrician was on board it was decided that it isn't cost effective to go out on a single light. They now go out on the first and the fifteenth because during that time you always accumulate 20 lights. He said now they are having some trouble again because there are some lights that we have turned over to Rocky Mountain Power because they don't have power to them. Until Rocky Mountain Power does the physical work there isn't anything we can do. He said this resident is referring to one of those issues. He said a Council Member challenged him to do some work on Mountain Rd. and said you can see how slow the progress is. Gary Kerr and Bruce Higley are quick to respond but the problem is trying to get the utility to come out and respond. Council Member Bigler asked how it happens that they put a light pole in with no electricity. That seems very odd. Mayor Harris said at the corner of his house Rocky Mountain Power installed a new transformer and they did not hook the light pole back up and it took over a year to get them to come back out and physically wire the transformer to the pole.

Council Member Bigler asked if Rocky Mountain Power puts a light pole in our City does the City pay them to put it in. He said he wouldn't think they do it for free and if the City is paying for it don't we go out and check to make sure it works. Mayor Harris said Rocky Mountain Power didn't install a new pole, that pole has been in for a long time. Mayor Harris said the City cannot hook up live power if it is not there. Mel Blanchard said the City responds as soon as we get notified. If it is a repair Scott Felter goes out but if it is a power issue they send it to Rocky Mountain Power. Mel Blanchard said there are probably eight work orders pending with Rocky Mountain Power. He said they found a situation in Legacy where someone had run a sprinkler system through the line from the pole and severed the line. He said the City wouldn't have known this existed if we hadn't taken over the poles. He said there are a number of poles that are ten feet higher than our lift will go so we have to hire those out. He said there is also a ten foot rule, when you get within ten feet of a live power line you have to not only have a certified electrician you have to go a step above that and you also have to hire a certified line man.

Council Member Fawson asked if there is an opportunity to look at an ordinance that would allow us to assess a fine or penalty of some sort if the work was not completed in a certain amount of time. He said he would like to look at that and see if there are other cities that have similar ordinances. He said this is a liability issue and asked if the City could assess a fine could we have Rocky Mountain Power do the lights again? Mel Blanchard said the only drawback that he could find for Rocky Mountain Power is the time they take to come out and repair a light. He said they were faced with three months in the past and were heavily criticized. Council Member Fawson said he would like to have something done. Council Member Hulme asked Mel Blanchard whether he has considered having one public works employee become a certified electrician. Mel Blanchard replied that will never happen. The amount the City would have to pay a certified electrician is way over what we should be prepared to pay and they wouldn't stay here to do that. They would go where they would make what electricians can make. Council Member Bailey asked if we have any leverage with Rocky Mountain Power. Mel Blanchard said he has tried. Ron Chandler said he and Gary Kerr discussed the fact that Rocky Mountain Power has governmental liaison employees and they could look to see who is in that position. Council Member Stoker said it is Steve Rush.

Council Member Bigler asked if the Council could be notified when Rocky Mountain Power responds to that particular light. He said that is a major intersection. Council Member Fawson asked how many years it has been that we have had the additional poles up on Mountain Rd. Mel Blanchard said it has been a long time. Council Member Hulme said he is half joking but maybe we should give people a copy of the work order and direct them to Rocky Mountain Power. He said ultimately that is what they respond to, not a handful of Council Members. Mayor Harris said we will work on it. He said we want to replace the one in the Hall Tree Subdivision and we need to amend the budget to do that. We want to have the Planning Commission look at the process. Council Member Bailey asked if the Planning Commission is the right process or if there is a phased approach. He suggested staff looking at places where we are not in compliance with our own rules. Mayor Harris said we need to get with the engineers for safety reasons as well. He added that it all takes time, effort and money to work on these things.

6. CONSIDERATION AND/OR ACTION TO GRANT FINAL ACCEPTANCE TO THE COLD WATER COVE SUBDIVISION.

Gary Kerr explained Cold Water Cove is located just off of 2600 N at 1300 E. This is a subdivision that has been completed; they received a conditional approval a year ago. Staff recommends granting final approval at this time. Council Member Bigler asked whether they have put in a streetlight with electricity. Gary Kerr replied yes.

Council Member Fawson moved to grant final acceptance to the Cold Water Cove Subdivision. Council Member Bailey seconded the motion.

Council Member Hulme asked if this is the development that has a long cul-de-sac. Mayor Harris said they did have to move the intersection to line up with the existing 1300 E street and we did have a discussion about the length of that cul-de-sac. He said there may have been some sort of special allowance for that because it was land-locked and couldn't be developed otherwise.

Voting on the motion:

Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes
Council Member Fawson	yes

The motion passed unanimously.

Mayor Harris proposed moving item 12 to this next slot because it's the discussion of disproportionate fees and business licenses and that discussion may generate additional decisions or changes with respect to items 7, 8 and 9.

Council Member Fawson moved to consider agenda item 12 at this point in the meeting. Council Member Bailey seconded the motion.

Voting on the motion:

Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes
Council Member Fawson	yes

The motion passed unanimously.

12. DISCUSSION ON THE DISPROPORTIONATE FEES, BUSINESS LICENSES AND RESIDENTIAL RENTAL FEES.

Ron Chandler explained that as he and Bryan Steele got into the study of the actions by the City and the report from Lewis, Young, Robertson and Burningham (LYRB) one of the things they felt was that if the Council has questions about the study itself, they were not the right people to answer those questions. He said they invited Marc Edminster and Fred Philpot from LYRB to be here tonight. He said he was aware that Council Member Bigler had asked for some information but there were other items that he was unaware of and due to unforeseen circumstances he is not able to provide those tonight. He said he and Bryan Steele started looking at other communities. He said the disproportionate fee study sets the maximum amount of which you can establish your business license and rental license fees. They found that the communities that recently reviewed these and looked at the fees decided not to charge the maximum amount and came up with a lesser amount. Each of them had different reasons. Some reasons are that businesses are an economic generator in our community and bring in increased property tax and sales tax revenues for their city. The City is trying to attract businesses to the community and this will help the community become known as business friendly. Cities are trying to help lower costs. The cities they looked at, including North Ogden, all chose to charge less than what can be charged based on the disproportionate fee studies. Ron Chandler said in North Ogden right now our fees are based on an amount that is less than the study allows. The first \$250 of the disproportionate fee is charged at 100%, the amount at \$251-500 would be charged at 50% and an amount over \$500 would be charged at 8%. An example of that is if the disproportionate fee for a class of businesses was \$1,000 the fee would be \$415.

He said the 2013 budget business license fee revenue is based upon the existing adopted fee schedule. The Council should be aware that any changes to the consolidated fee schedule will affect the budget. Prior to the adoption of this fee structure we had a flat fee that brought in approximately \$30,000 to \$31,000 per year. For the last two years the amount that was brought in under the new fee schedule is about \$51,000 or \$52,000.

Council Member Hulme asked how much revenue the City would bring in if we simply went to the base rate. Ron Chandler said that is some of the information that Council Member Bigler requested but we have not been able to pull that together yet. He said the flat fee was \$100 but if the City does this the fee would be returning to the base fee of \$64. Council Member Bailey said we would be picking up some additional because we were not charging rental units for business licenses before. Mayor Harris said home occupations were \$50. Council Member Hulme said they are currently \$64.

Council Member Bailey asked the consultants on the study why and how the decision was made to use police calls as a basis for disproportionate fees. Fred Philpot, LYRB, replied that those are considered municipal services. Fire services are handled by another agency so they were not included. Other municipal services could be street lighting, beautification, snow removal. They looked at the police services and the call data. Council Member Bailey asked if that is because it is easier to measure. Fred Philpot replied that the calls for service are a little bit easier to collect and there is a nexus between the data and the service being provided. Council Member Bailey asked whether disproportionate fees, from the perspective of the City, are good public policy.

Mayor Harris said this is a Council discussion. Council Member Bigler said he had asked for this to be put on the agenda but his questions are not ready to be answered. He said he needs to see justification for this rather than it just being a way to get more revenue; it needs to be justified. He said the email said the police was taking hours and hours to fulfill his request but that is not his intent. He said the Council has been told repeatedly that the company already had this information. He said this may need to be on another agenda to get these things answered. If we don't have the data how do we justify charging businesses this extra fee? Mayor Harris said we have data for 2007 and 2008. There are thousands of calls for each of those years and all of that data has to be sorted and sifted. Fred Philpot said they have the data but not more recent information. He said from their stand point it takes him more than 40 hours to geocode and analyze the call data and that is by using software that assists in the process. He said processing the data regularly could take quite a bit more time if that were the first go through. He said they can provide the 2006 and 2007 data; he thought that had been provided previously. Council Member Bigler said the Council received a list of calls but it didn't show who the calls came to; which business or the nature of the call. Fred Philpot said it should be listed by the address. Council Member Bigler said we have been through this before and the address is just the street address not necessarily the specific business. Fred Philpot said it would show zero on their table if a business had never had a police call. He said in a strip mall with multiple businesses and a shared street address they remove those so all of those businesses would show zero. If there is a call or multiple calls to a strip mall or a business with multiple locations they analyze the businesses if they are similar but if they are different they have to be excluded. He explained that they can't include those because it would skew the analysis and disproportionately affect that business group. He said the information they try to provide is the raw data and they take it and run it in a GIS program so that the address is mapped for the calls for service and the business address goes in and anything that overlays geographically can be matched and analyzed. Without GIS software they wouldn't be able to analyze those things. He said they are more than happy to provide additional data that can come through Ron Chandler. They are more than happy to continue to facilitate the flow of information.

Mayor Harris said Council Member Bigler wanted information on individual businesses and the report that LYRB furnished us had information by business categories. Fred Philpot said he can provide the

calls that were matched to those businesses but it would be 2006-2007 data. He said it would take a little bit of work to get it but he can take it out of the program itself. It can be done. Council Member Hulme said the Council is disallowed from using that information. The Council has to consider disproportionate fees by business group not individual businesses. Fred Philpot said that is correct; you have to apply it to the group. He said the study does apply a law of averages. You either have a group for each business so you have 1,000 business groups or you apply some average or you apply a global average where all commercial businesses are somewhat averaged as a single group. The law states that the fee has to be uniform amongst the businesses within a specific business group however that is established. The data on the individual level may or may not reflect the information you're looking for.

Council Member Fawson asked Ron Chandler to summarize where the revenue from the fees actually ends up. Ron Chandler replied it all goes into the General Fund and with rare exceptions the General Fund is not so specific that you can say specific revenue goes to a certain location. He said exceptions are the class c road funds and the aquatic center. In the case of taxes and fees they generally go into the General Fund and are expensed. Council Member Fawson asked if some of this is used to fund extra security or police rounds within the business corridor. Ron Chandler said he does not know if there was an increased police presence after this was adopted. It is a little bit difficult to make that direct a tie there. Council Member Bigler said that was said in the meetings.

Council Member Fawson asked when we did the last comparison between North Ogden and other cities on business license fees. He said if we haven't done it for quite some time he would like us conduct that type of survey of surrounding cities. He said the renewal schedule seems to him to not make a whole lot of sense. If, for example, a business registers in October they are forced to renew in January. Annette Spendlove said that is correct but, as a staff, they have not been doing that. Staff has been talking to the applicants about the fee schedule and explaining that to them. She added that it is prorated so they are not paying the full amount. It is prorated January through June and July through December. Gary Kerr said that is correct. He said if someone comes in December the people are told to wait until the following January.

Council Member Fawson said he would love to update the policy. He said he thinks we ought to be doing what the policy says and he recommended looking at a monthly proration. He asked that we consider online registration and renewal as well. Council Member Hulme said the study demonstrated that some of the \$64 fee has to do with processing. He said he doesn't know how you would prorate staff time. If it takes staff time to process, then it takes that time no matter when in the year they do it. He said he would fully support prorating the other portion of it. Council Member Bigler said this is just for new businesses. Council Member Hulme said if it costs us \$30 for staff to do the paperwork and \$34 to do everything else and then come in December the staff time isn't reduced. Council Member Bailey said his understanding is that the \$34 is an average over all, not each license itself. Council Member Hulme said his recollection is that the study determined staff time and the pay rate of the person doing the work. Council Member Bailey asked Mr. Philpot if that is correct. Fred Philpot replied that the process itself has nothing to do with the time at which they apply in the year. It is the process that staff actually goes through to process each license. Council Member Bailey asked if that was validated in some way. If we have a certain number of licenses in the course of a year and it takes that much time. Fred Philpot said you don't know how many licenses are processed so they can't be looked at individually. He added that they do look at the amount of time that is spent on average per year processing new applications versus renewal applications. He said he would be careful tying it to the time at which they apply for a new application. Council Member Fawson said if there is no way to adjust the processing time involved in that downward to prorate that he recommended that if a business registers in April then they renew in April. Fred Philpot said that makes a little bit more administrative work but there are some communities that do that. Council Member Bigler said that seems like it would be more of a headache and cost more than doing it all at once. Council Member Fawson said he thinks it would take the same amount of time whether it is all in

January or spread out over the year. Ron Chandler said staff may be set up to be able to do that monthly through our computer system. Council Member Bailey asked how that would affect City staff; having to deal with licenses all through the year. Would that be less efficient? Annette Spendlove said she doesn't think there is any difference; it still has to be done. Council Member Hulme said he thinks that would be easier.

Council Member Bailey said he would like to make a proposal. He would like to know what the revenue affect would be if we dropped all business licenses to the base fee of \$64. He said he would also like a survey of the business license fees for the surrounding communities. He said there are some philosophical questions about the whole disproportionate fee concept. He would like to know how the base rate of \$64 what was arrived at. Are they assuming the process of providing a license has no value other than the processing fee? Council Member Bailey asked if we are assuming that the process of providing someone with a business license has no other value in the city. He said somehow a business is receiving something of value from the City; allowed to conduct business within the City. Fred Philpot said they take the time to look at the process. Council Member Bailey said he is questioning the value of the business license; the \$64 base fee has more value than the processing fee. He said, for example, a business owner gets the street plowed in front of their business so he is questioning the concept that anything beyond \$64 isn't justified. Fred Philpot said that is the essence of the disproportionate fee.

Council Member Hulme said the services they receive are funded in part by property taxes. Fred Philpot said he thinks the idea of the disproportionate fee is to try to get at some of those numbers; additional calls for services above some baseline. Council Member Bailey said in the previous business licensing fee structure we had \$100 fee for a business out of a commercial location and \$50 for a home occupation; for whatever reason those were the two numbers that we used. He said as he reads the disproportionate fee study it seems like they are grasping a reason to not charge more than \$64. He said he thinks to say the \$64 fee is unjustified is not warranted given the fact that there is value in giving them a business license. The opportunity to buy and sell goods within the City legally is of value. Council Member Bigler said he is talking about a business license fee not a disproportionate fee. Council Member Bailey said that is correct, he is talking about the business license fees. He said that if we decide to abandon the entire business license fee structure we are not necessarily limited to the \$64. Council Member Bigler said he think we are; we charged \$100 and the \$64 came in because that's the most we could charge by law. Council Member Bailey said no, it is not by law. Dave Carlson said as an example it has always been that licenses were not transferable but the State Legislature decided to change that law so you can actually sell a liquor license. He said this is an example of the concept Council Member Bailey is talking about; there is value to a license. Council Member Bailey said the license has value beyond the cost to the City to prepare that license. He said he thinks if the Council decides to back away from disproportionate fees he thinks there is justification to charge more than \$64.

Council Member Bigler said that they talked multiple times about how \$100 is not justified legally. That's why it was set at \$64. Fred Philpot said as a firm LYRB is not in a position to offer legal advice but his opinion regarding disproportionate fees and business license fees that municipalities assess, in general, have to reasonably reflect the cost incurred by the City. That is the reason for the business license study, to look specifically at the business license fees and then determine what the cost is to administer that license from a procedural standpoint. The disproportionate fees are an attempt to get at the cost of the additional services or the cost of doing business in the community. The nexus is trying to bridge the gap between the costs incurred by the City and the fee assessed. It becomes difficult when you look at all the other elements to analyze and quantify the benefits. He said he doesn't think it is the only way to look at the potential perceived or realized benefits. He cautioned that they have to be quantifiable and there has to be nexus between the cost and the fee assessed. He said it was determined that it costs the City \$64 to administer a license from the time the applicant steps through the door.

Council Member Fawson said, in response to Council Member Bailey's points, the flip side is the value of the license is the value of the business and the sales tax that they bring in. Fred Philpot said it is a cost/benefit analysis and you have to go down the path of what are all the costs and associated benefits. Council Member Fawson said he would think the City would owe the businesses money if we analyze all the benefit we get from the business and it should be a near zero cost on a license fee being we are benefiting so much from that business being in our community. Fred Philpot said LYRB is seeing some communities looking at that; a more comprehensive sustainability plan of the actual costs and benefits. When you look across your General Fund, utility rates, enterprise funds; what is the flow of that revenue and expenditures. He said this way you are looking more in depth at the fees and analyzing it more comprehensively. That is an invaluable approach but it is also a lot more time consuming and costly to do that process. Council Member Fawson said that is a more business friendly approach. Council Member Bigler said LYRB has been here so many times and we appreciate it but he wants to get rid of these so if there is anyone else on the Council who has real doubts as to whether they are justified. He said the businesses have brought in just under \$500,000 in the last 12 months in sales tax revenue alone. It depends how you look at businesses whether they are liabilities or assets. He said there is much more asset to the businesses than just financial which is the sales tax revenue; \$457,093.99 in the last 12 months. He said he thinks the City will end up with more money in the long-run and will end up better financially by being business friendly and attracting more businesses here than by charging disproportionate fees. He said he is ready to put a motion forth to do away with it.

Council Member Bailey said his only concern is the affect it will have on the budget that we need to pass tonight and not knowing what the affect will be. Council Member Hulme said the Council can amend the budget in July. Council Member Bigler said the budget can be adjusted anytime. Ron Chandler said the place to make that motion is on the Consolidated Fee Schedule because that's where the changes will end up. Council Member Bigler said the Council will not be able to make those changes later because we don't know what those changes will be. Ron Chandler said the Council just needs to be aware that if they make a change to the Consolidated Fee Schedule it will affect the budget. For example if you got rid of business license fees it would make the budget \$51,000 short. Council Member Bigler asked if the disproportionate fees brought in \$51,000. Ron Chandler replied no that was just an example if business license fees were taken completely out; if only the disproportionate fees were taken out he doesn't know what that amount would be. Council Member Bigler said for him this issue shouldn't be a budget issue. We shouldn't be collecting a fee for revenue or for budget. He said the only issue is that it is on the budget already. He said Council Member Bailey had a good point that the City has some additional fees that we weren't collecting before that would off-set it. Council Member Bailey said the Council is going to affect the budget as some point. He added that he would prefer to approve the budget tonight and vote on this at the next Council meeting and deal with this as a separate item. Council Member Hulme said they will still need to adopt the Resolution amending the Consolidated Fee Schedule. Annette Spendlove said that is a working document and can be amended at any time. Ron Chandler said the items on the Consolidated Fee Schedule right now are all just housekeeping items. He said none of them are really significant. Council Member Bigler asked if the Council could wait on the motion and amend it after it's been changed tonight does it require us to pay a fee to hold another public hearing or if we do it tonight does it save us \$300. Annette Spendlove said we do not have a public hearing for the Consolidated Fee Schedule but when the budget is reopened a public hearing must be held. Ron Chandler said communities generally reopen the budget twice a year; once at the end of the calendar year and once at the end of the fiscal year and during that time the Finance Director keeps track of the changes the Council has made in the previous six months so you are not constantly paying for public hearings. Council Member Bigler asked if the disproportionate fee is paid just once a year. Annette Spendlove said it is paid when they pay their business license fee. Council Member Bigler said that would work if the Council did it later the business owners just wouldn't pay it next year. Council Member Bailey said that would be true except for new applications. He said his understanding is that the budget could be passed

tonight and the Consolidated Fee Schedule at a later time. Ron Chandler said staff would act as it has been done immediately. Council Member Fawson asked that it be on the next agenda.

Council Member Bigler said some of the police officers are here tonight and he wanted to be really clear to them and on the public record that this whole disproportionate fee discussion that has been going on for about a year has nothing to do with what the police officers have done or didn't do that they should have done or anything that they did wrong. It has nothing to do with something you haven't done that you should have done. He asked whether in the future it is possible to set up a system, without causing them all kinds of paperwork, when there is a call to a business that it is plugged into the database electronically. Ron Chandler said that exists now but it gives the full list including traffic stops. Council Member Bigler said it sounds like all it would take is a little tweak to be able to divide it out if you wanted to. If we have the data we ought to be able to manipulate it however we want to.

Polo Afuvai said, as an example, if they pull up Smith's address they might have 200 calls for last two weeks. That shows everything that happens on that property and takes that address. He said they have to go through each individual call to determine which calls pertain to a traffic stop and which pertain to Smith's. Council Member Fawson asked if there is not a field coded for the type of call in the database. Polo Afuvai said they are limited by the dispatch computer system and added that they are looking at a different system now. Council Member Bailey said dispatch is done through Central Weber. Polo Afuvai said that is correct. Each call is assigned a case number. Council Member Bigler asked whether the database is all done through dispatch. Polo Afuvai replied yes. He said his staff is not professionals with analyzing surveys and their department has other responsibilities.

Council Member Fawson asked if the police report is tied into the case report in the database and whether it is accessible. Mayor Harris said the police department has been trying to look at the most recent fiscal year. There are over 10,000 calls in that year and there is no way to sift through all that. Council Member Bailey said with disproportionate fees we would be required, on a regular basis at least, to substantiate the numbers we are using. Is the value of doing that work worth the revenue that we would get from it? Council Member Hulme said the City has the ability to assess it by business. Mayor Harris said this has been valuable discussion but it will take some time for us to analyze it and figure out what is going on. Council Member Bigler said they will get the amount of the disproportionate fees and go from there. If they have the amount they will know. Council Member Bailey said he would like to know what the surrounding cities are charging also; it may be irrelevant but he is curious.

Council Member Bailey said in addition to the base business license fee there is another fee on top of that and asked if that is basically a disproportionate fee. Council Member Bigler said it was done in the same study and they do it for administrative costs. If you have a business license it should cover the fee. It sounds like we are not calling it a disproportionate fee but it was tacked on at the same time as a separate fee and LYRB did it. Council Member Bigler referred to an email from Sue Richey that referred to the minutes of a Council meeting and reads in part that there is a cost to administer each business license and LYRB was proposing that for rentals, because there is code enforcement and compliance, the base cost was \$13.27 which was the bare minimum to cover code enforcement. The business license fee study from LYRB doesn't show the \$13.27 listed as a disproportionate fee. Council Member Bigler said it is not technically called a disproportionate fee but it smells of it. Ron Chandler asked what meeting is being referred to. Council Member Bigler replied October 12, 2010 and added that on February 27, 2012 there was a stream of emails. Mayor Harris asked if the question is what that \$13.27 applies to. Council Member Bigler said that is why he asked that it be on the agenda; it is a concern and he wants to know if it is justified.

Gary Kerr, Building Official, said he did some research and talked with a former Code Enforcement Officer who talked with the consultants from LYRB. Gary Kerr said she told him that she did some code

enforcement services with rentals but his department does not do the items she used to do. Council Member Bigler said the residential rental license is not a home business license which is \$64. They pay \$13.37 more of a license fee than a major business on Washington Blvd. Mayor Harris said his understanding was that everyone was charged \$64 and the \$13.37 was a code enforcement fee that was over and above. Mayor Harris said as Gary Kerr just stated we no longer have a Code Enforcement Officer. As far as disproportionate fees go they are charged the \$13.37 over and above but we could not assess any disproportionate fee to rentals because we don't have the good landlord program in place. We would have to have that good landlord program in place in order to assess disproportionate fees. When the study was done we had a code enforcement officer and that's what they did. Council Member Bigler said we don't have that now. Mayor Harris said we may not do all of it but we do have part time Code Enforcement. Council Member Bigler said there are local North Ogden City residents that may have only one rental unit and they feel like they are getting killed with all the increased rates and fee. Mayor Harris said it is a policy decision that Council will have to make and balance that with the impact to the budget.

Council Member Bailey said they are looking at setting base line business license fees based on LYRB's view of their interpretation of what the State Legislature said. He would really like to know whether that is the only way of doing that. We are hearing that it needs to be based on the actual cost of providing the service. Ron Chandler said as he understands State Law you look on the base line fees and for the disproportionate fees you are given other means in which to assess that fee; police calls is one, fire calls in another, storm drain, and a number of others. He said he is quite confident if he chose a different one he would have a much different outcome. Police is easy because it is easy to measure and that is what most cities are choosing. Council Member Bailey asked if we are locked in at \$64 for the baseline fee. Ron Chandler said he will check it but as he understands it you have to go off your study.

Dave Carlson said there were a lot of old cases about what a City can charge. What the Supreme Court said is that it has to roughly be in the ball park of what the actual cost is to provide the service to the business. The disproportionate fee was an attempt by cities to find additional revenue sources but the argument that they made was that just charging the base fee to everybody didn't allow cities to recoup all the costs for providing all the services. He said the legislature doesn't allow cities to send businesses a bill as has been suggested in the past. The legislature wouldn't go that direction so what they gave cities was this disproportionate fee; you have to do a study to justify it and it has to be updated every three years. The State legislature made this decision for us. Council Member Bailey said the base level as determined by LYRB is \$64 but it was made on some time and motion and how long it takes to do certain things. He said the City could look at it and say a particular item is also included as it costs us some other things in order to do a business license. So we could establish a substantiated, factually based base line fee that is something other than \$64. Council Member Hulme said one thing to consider is one of the reasons you would use an established firm like LYRB would be so it is defensible in court. Dave Carlson said Council Member Hulme is right about that, they use a certain methodology or approach so it will pass peer review. If they did have to go to court Mr. Edminster and Mr. Philpot would have to get on the stand and defend their methodology and their peers would be called to attack their methodology so they all kind of use the same approach.

Council Member Bigler said the disproportionate fee and the business license fee are different. The company was hired because legally you can't charge disproportionate fees without the study but you can assess business licenses but of course if somebody called you on the carpet it has to be within that reason. He said we have been charging a \$100 and if we can only charge \$64 legally to charge \$13 on top of that seems like we are trying to get around it. He said he would rather charge \$75 and get rid of the disproportionate fees. He indicated that he would rather take that approach. You can justify \$75 and it's still \$25 less than they've been paying for years. Ron Chandler said the \$13 is only on certain classes of businesses, it's not applied to all businesses. Council Member Bigler said it is for code enforcement and asked why there isn't code enforcement on the other ones. Council Member Bailey asked if there is

different code enforcement for rentals than there is for businesses. Gary Kerr said the procedure is the same for rentals and businesses.

Mayor Harris said the Council has some things to look at and asked where things stand. Council Member Bigler said he wants someone to look at surrounding cities and their fees. Ron Chandler said he would like to spend a little bit of time finding out about going against the study. Council Member Bailey said a study of what it takes to process a business license doesn't take the same amount of effort as a study of going out and looking at individual police calls; this is not rocket science.

Dave Carlson said State law requires cities to have this study done if they are going to do disproportionate fees. It doesn't require it if you are only charging a base fee but the rule there is that it has to be approximate. Council Member Fawson asked whether it has to roughly approximate or if it is a not to exceed limit. Dave Carlson replied that it has to roughly approximate; it can be higher, it can be lower but it has to be in the ballpark. Ron Chandler asked if Council is asking staff to estimate the cost to process business license applications with the disproportionate part of it. Council Member Fawson said he would like to see if we can do online licensing and added that it would really cut down on the administration. Council Member Hulme said as he was looking through past minutes he found an area where he thought that Debbie Cardenas has said that if they did something it would only result in \$70,000 revenue which is \$30,000 less than we are currently getting. That suggests that she was under the impression we are getting \$100,000 revenue in business license fees and what we are reading tonight is that it is closer to \$35,000 or \$38,000. He said he wonders if anybody knows whether there is any reason for that. Mayor Harris said he thinks they were looking at the maximum amount allowed; the \$64 plus the maximum disproportionate fee allowed.

7. CONSIDERATION AND/OR ACTION TO ADOPT A RESOLUTION AMENDING THE CONSOLIDATED FEE SCHEDULE.

Ron Chandler said all the changes on this are housekeeping items. The changes on page 2 include the convenience fee that we charge for credit and debit card payments and the change from audio tape to CD because we don't really use audio tapes anymore. On page 5 the Administrative Law Judge replaced the Board of Adjustment and the cost for copies has been corrected to \$.10 per page. The Community Services section was reviewed in October 2011 and the changes on pages 5 and 6 formalize those policies. The pageants were taken out on page 7 because the City is no longer sponsoring those.

Council Member Hulme made a motion to adopt Resolution 9-2012 amending the Consolidated Fee Schedule. Council Member Stoker seconded the motion.

Voting on the motion:

Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes
Council Member Fawson	yes
Council Member Bigler	yes

The motion passed unanimously.

8. PUBLIC HEARING TO RECEIVE COMMENTS REGARDING THE FISCAL YEAR 2012-2013 TENTATIVE BUDGET.

Ron Chandler stated there are not many changes from our tentative budget and the changes they do have to present are good news. We had provided for a 10% increase on our health and dental insurance for

employees in the tentative budget. Since that time we have finished our negotiations with Blue Cross/Blue Shield Regency and made that switch which is a 5.5% decrease on the premiums. The budget reflects this overall reduction of \$65,300. That is spread out among the funds. Unless Council directs staff otherwise the proposal is to use that savings to reduce the amount from the fund balance. One point of interest that just came in today is that we received our property tax revenue information from the County and the new figures are higher than what we were proposing in our budget. The increase is based on the new growth that the City had. We had proposed a revenue source of \$998,000 but based on what the County has given us it is coming in at \$1,014,128. That is an increase of \$16,128. Staff would propose to use that to reduce the amount that we would need from the fund balance. He explained that is property tax revenue. Council Member Bailey asked what the percentage of the fund balance is. Bryan Steele replied we are between 16% and 16.5%. Ron Chandler said the next item he wanted to talk about is the request from the school to add some traffic control devices and to put a crossing guard in. He said he wanted to talk about funding that; the warning light that was requested can be paid from the Capital Funds. The other expenses like the crossing guard and safety vest need to come out of operational expenses. Council Member Fawson said one item that was not approved during the budget retreat was the additional police vehicle he asked if we can look at that.

Council Member Bailey said the last time they discussed the crossing guard the Chief was going to make a recommendation. Bryan Steele said they would need to install two lights which would put the total cost about \$10,000. He added that those are solar lights. Chief Afuvai said his recommendation would be to shut down the crossing on Washington Blvd. by Bicentennial Park. He said the criteria is that there has to be at least ten or more crossings and they are finding less than that; at the most there are six or seven crossing. He said they did a study at the light at Elberta Dr. and 400 E and for a couple of days there were 13 but it has been more like three or four. He said four or five years ago the school district divided Washington Blvd. Everything on the west side went to Majestic Elementary and everything on the east side went to North Ogden Elementary. They came back and had to change the border again and now they want us to put a light in front of the school. He said as he reads the code it says anything below ten you have the option to pull it. Council Member Bigler said parents are usually taking the kids. Chief Afuvai said they have talked to the parents about carpooling.

Mayor Harris said the proposal is to add \$10,000. Chief Afuvai said if they do close that light they do not have to buy a new one; they would move the lights. Ron Chandler asked if they have a crossing guard at that location. Chief Afuvai replied yes; the light goes with the crossing guard. He said the change would mean that the kids would cross at the light on 2600 N. Ron Chandler clarified the actual cost would be the transferring of those lights. Council Member Bailey asked where the kids live that cross there. Chief Afuvai said they come from behind Lee's. Council Member Bailey asked if they were to make this change would we make sure the school is aware of it. Council Member Bigler said they want to keep the kids safe and he would be more comfortable adding the \$10,000 right now. Chief Afuvai said they did the study for two weeks. Council Member Hulme said there is a crosswalk at 2600 N so he thinks it is more of a convenience issue. He added that he thinks \$10,000 for a handful of people is a lot when we already have a safety mechanism in place.

Council Member Bigler said staff did a good job on the insurance and asked if the insurance is comparable for the employees. He said it is a lot less money and asked if the benefits are decreased. Ron Chandler said it does not cover eye exams or adjustments from a chiropractor. Ron Chandler said he wanted to give credit where credit is due and that is to Annette Spendlove, she did a marvelous job.

Mayor Harris opened the public hearing at 8:41pm.

Martha Urban, 365 E 3250 N, said she is the Chair for North Ogden Elementary Community Council. She said as she listened tonight, as a parent, she feels that the Council doesn't have the whole picture.

She is hoping the City will be able to work with the school as to what is best and safest for their children. She said she knows the Police Department has done studies. She said she doesn't know about other lights and whether they are electric or solar but they suggested that there are lights by the cemetery that are not being used. She mentioned that there is a light in front of the school but it can't be turned on because there is no crossing guard. If the light at the cemetery could be moved to the other end of that school zone and they had a crossing guard those could be turned on. She said she understands what the Chief is saying about the crossing by 400 E and Bicentennial Park and that is a concern. She said in the past the City has said they would provide two crossing guards to the school and the school needed to decide where they wanted them but they had that before the boundary changes. There are kids that cross Washington Blvd. from over by the high school; in the winter they don't get much use but it is such a busy street. Their biggest concern is right in front of the school. If they cannot both be considered she would hope the Council would sit down and work with the safety officer to determine what is best. Council Member Bigler said he appreciates the letter that was sent to the Council; he said he would be comfortable getting the money to keep those kids safe without making it a wash right now but if we add that money now it doesn't mean the Council cannot do that later.

Council Member Fawson asked Martha Urban if she sees a need for additional lights. He said they have lights if they reallocate this budget for crossing guards and move lights to make them work. Martha Urban said they should contact the District Safety Officer and the Principal. They may have Community Council or PTA come in to help represent parents. She said she understands that there are some days that not many kids cross at some of the lights but those aren't the lights she is talking about; there are other lights that could be used.

Council Member Bailey asked if the light over by the school now is in the right place. Martha Urban said there is one in the right place but there is not one on the east end. She said she hopes they keep a consensus on what is safest for the kids. She said she has seen parents drive through the crosswalk when there are kids in it and there is a teacher out there. Council Member Fawson said he is not questioning the safety; obviously we want what is safest for the kids. He said he is asking where the Council can reallocate from and where is the actual need. Chief Afuvai said the light was for the old school but now that the school moved to the east we can't use that anymore. He said the crosswalk they want to use is right there on 550 N. That's why we have to move everything to the east.

Council Member Bigler asked if Ron Chandler, Mayor Harris, the District Safety Officer and the Principal could set up an appointment to discuss the issues with safety and see what would be ideal. That would be helpful. Mayor Harris said the issue is money so if the Council wants to allocate money to that he proposed including Ron Chandler, the Police Chief and a Council Member. Council Member Bigler said he would like to put money toward what was previously recommended. Ron Chandler recommended, in order to take action on the budget tonight, using the capital improvement funds to pay for a portion of it and the excess amount that we were going to get from the property tax to make up the difference on the operational costs of it. Staff will come back with the information. Council Member Hulme asked when you put in something like that and people change their driving pattern to avoid it will it create problems in another area.

Martha Urban said the crossing guard is right in front of the school. She said they did a study and there are a minimum of approximately 50 kids a day and up to over 125 a day. She said that is an area that has stayed static and has always been part of North Ogden's boundaries.

Council Member Hulme moved to close the public hearing. Council Member Fawson seconded the motion.

Voting on the motion:

Council Member Stoker yes
Council Member Bailey yes
Council Member Fawson yes
Council Member Bigler yes
Council Member Hulme yes

The motion passed unanimously.

The public hearing was closed at 8:59pm.

9. CONSIDERATION AND/OR ACTION TO ADOPT AN ORDINANCE APPROVING THE FISCAL YEAR 2012-2013 FINAL BUDGET.

Ron Chandler said, based on the previous discussion, if the Council should choose to proceed with that there are two parts of the tentative budget that they would need to take action on and include in the final budget. Those are to increase the property tax revenue from \$998,000 to \$1,014,128, to include the installation of warning lights of \$6,500 in the capital improvements fund and to increase the cost associated with the crossing guard of \$3,500. The final thing would be to decrease the appropriation of fund balance \$12,628. Council Member Hulme asked about the increase of taxes. Ron Chandler said the increase is because of the growth in the City it is not an increase in the property tax rate.

Council Member Bailey moved to adopt Ordinance 2012-12 approving the final budget for Fiscal Year 2012-2013 subject to the adjustments Ron Chandler reviewed. Council Member Bigler seconded the motion.

Voting on the motion:

Council Member Stoker yes
Council Member Bailey yes
Council Member Fawson yes
Council Member Bigler yes
Council Member Hulme yes

The motion passed unanimously.

Mayor Harris instructed Ron Chandler to take the initiative and set up a meeting with himself, Council Member Bigler, Chief Afuvai and the folks from the school that are part of that. That will be brought back to the Council but regardless we have the money in the budget for that purpose.

10. PUBLIC HEARING TO RECEIVE COMMENTS REGARDING AMENDMENTS TO THE FISCAL YEAR 2011-2012 BUDGET.

Mayor Harris explained that the purpose of this item is to amend the budget for this fiscal year. Bryan Steele said we open the budget twice a year; usually at the end of the calendar year and again at the end of the fiscal year. This is to make amendment to the budget for transactions that occurred during the year or that Council has approved during the year. There were a couple of typos on the first page under the General Fund expenditure column at the bottom, the second to the last one is employee benefits for \$13,000 and the last item should say transfer to the Capital Projects Fund. He said the memo has a

description of what each of those amendments is for. He said the first two increase our 'purchase equipment' for the Police and Judicial Departments. We received grants from the State and were able to expend. He said #4 was just a calculation of benefits for an employee in the Finance Department that wasn't done so we had to increase that. #4 was for the increase of the elections. #5 was for the bonding for the animal shelter. We thought it was going to be \$20,000 total but after talking with staff at the shelter we were made aware that the \$20,000 we paid in February was for all of 2011. We will start seeing quarterly bills for \$5,000 so we had to increase that another \$10,000. Mayor Harris said the amount is the same but the City is catching up for the shelter's calendar year. #6 is for increasing Cherry Days expenses offset by the donations we've received for \$30,000. #7 is the \$20,000 that was approved for fireworks for Cherry Days. #8 is for two employees that added health insurance during the year which increased our benefits. #9 for some reason the part-time employee wages were decreased and that had to be added back in. #10 has to do with a combination of #8 and #9. #11 gives us the authority to transfer money from the General Fund to Capital Projects Fund. Bryan Steele said on page 2 Capital Projects Funds include the installation of top soil and irrigation at North Ogden Park. In the Water Fund, the Public Works Director's salary and benefits were all coming out of the General Fund but are allocated by the Water Fund. Mailing services was not included in the original budget. Computer services show a metering system that was not included. The tax assessment was more than we anticipated. Bryan Steele said on the third page the Public Works Director's salary and benefits was shown coming out of the General Fund and that has been corrected. On the last page one employee's salary and benefits were not calculated correctly. The Police motor pool fund for vehicle maintenance was more than what was shown.

Mayor Harris opened the public hearing at 9:08pm.

There were no public comments.

Council Member Fawson moved to close the public hearing. Council Member Hulme seconded the motion. The public hearing closed at 9:08pm.

Voting on the motion:

Council Member Fawson	yes
Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes

The motion passed unanimously.

11. CONSIDERATION AND/OR ACTION TO ADOPT AN ORDINANCE AMENDING THE FISCAL YEAR 2011-2012 BUDGET.

Council Member Fawson moved to adopt Ordinance 2012-13 to approve amendments to the Fiscal Year 2011-2012 Budget. Council Member Bailey seconded the motion.

Voting on the motion:

Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes
Council Member Fawson	yes

The motion passed unanimously.

13. CONSIDERATION AND/OR ACTION TO APPROVE AN INTERLOCAL AGREEMENT FOR WEBER COUNTY ELECTIONS.

Annette Spendlove, City Recorder, explained that this agreement is with Weber County. Weber County started the special election today; this is also the primary election. This is a contract with them to run our special election. She explained that we are numbering our agreements so this will be Agreement 2012-1A.

Council Member Bigler moved to approve Interlocal Agreement 2012-1A for Weber County elections. Council Member Stoker seconded the motion.

Voting on the motion:

Council Member Fawson	yes
Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes

The motion passed unanimously.

14. CONSIDERATION AND/OR ACTION REGARDING CONSENT FOR AN EMPLOYEE COMPENSATION COMMITTEE.

Mayor Harris named the members he selected for the Employee Compensation Committee. They are as follows: Neal Berube as Chair, Thayne Shaffer, Chris Barker, Brett Forsberg, Brock Mortensen, Delone Call, and Linda Boyer. That comprises a seven member committee. Staff support will be provided by Bryan Steele and Annette Spendlove.

Council Member Bigler moved to approve the members of the Employee Compensation Committee as designated by Mayor Harris. Council Member Fawson seconded the motion.

Voting on the motion:

Council Member Fawson	yes
Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes

The motion passed unanimously.

15. CONSIDERATION AND/OR ACTION TO CANCEL THE SCHEDULED JUNE 26, 2012 CITY COUNCIL MEETING.

Annette Spendlove said this is due to the primary and special election on June 26, 2012 in the Council Chambers from 7am to 8pm.

Council Member Fawson moved to cancel the June 26, 2012 City Council meeting. Council Member Bailey seconded the motion.

Voting on the motion:

Council Member Fawson **yes**
Council Member Bigler **yes**
Council Member Hulme **yes**
Council Member Stoker **yes**
Council Member Bailey **yes**

The motion passed unanimously.

16. PUBLIC COMMENTS.

There were no public comments.

17. COUNCIL AND MAYOR COMMENTS.

Council Member Hulme said the presentation of this budget and updates are very readable and he thanked Bryan Steele for that.

Council Member Bigler said the Council had asked that the \$100,000 per year that has been saved for the public works facility continue being saved. He said since we have the new staff members he wants to make sure that is happening. Bryan Steele confirmed that is still happening. Council Member Bigler said he wanted to follow up with an email that Council Member Stoker sent regarding the trees on the parkstrip; did Staff find out anything about that. Were the trees that were put in by the skate park the right ones? Mayor Harris said the ordinance the City has allows only certain species of trees to be planted in the park strip but this is not in the park strip it's inside the sidewalk. The City Forester, Ken Kolb, selected them and disagrees with the concerns. He said there should not be an issue with that. He said he sent an email asking if it would be possible for the Council to recognize the Weber High girls' softball team for winning State. He said that is a big deal and he would like to discuss that. Mayor Harris said he doesn't recall receiving an email. Council Member Bigler asked the Council Members whether they received it. They replied no. Council Member Bigler said the group Council email address is not working. Annette Spendlove said she doesn't know what the problem is with that. Council Member Bigler suggested giving the team members a pool punch pass to allow them and their families to enjoy the pool one night. Mayor Harris said they would follow up on that. Council Member Bigler said there is still an issue with the website distribution list also. The email link to send to all Council Members does not go through.

Council Member Hulme asked if the City can recognize the softball team in Cherry Days. Mayor Harris said we could put them on a float. Council Member Bigler said he sent an email in February regarding the City website and how the 'contact us' messages go to the webmaster. He said the Mayor indicated that was going to be checked into. Council Member Bigler suggested that contact us link be taken completely off because there are links right there for the department heads and Council Members. He mentioned that Ron Chandler is not listed there and suggested that he be added. Council Member Hulme asked if someone will give a proposal to redo the whole thing. Annette Spendlove commented that her staff has not had time to get to this. She said we are not paying anyone; the webmaster is not working for the City so we are trying to do it. Council Member Bigler talked about the issues with the website. Mayor Harris said it is probably time to have someone redo the website. He said we also need to have pictures of all the Council Members and short bios as well. Council Member Bigler said the list of trees for the parking strip could be put on the front page of the website at this time of year. Mayor Harris said it would be a good idea to mention that ordinance in the spring and around Arbor Day. Council Member Bigler thanked Bryan Steele and Ron Chandler; the things they presented tonight are very clear and organized. He said it breeds confidence and shows him that they know what they are doing.

Council Member Stoker thanked Bryan Steele and Ron Chandler for their work. She said she has a question on the Administrative Law Judge; when people go to him do they get the same questions and outline that were given to the Board of Adjustments. Are they made aware of the requirement to meet the five criteria? Dave Carlson said the criterion for a variance is required by State Law. The application has the five criteria listed and gives the applicant an opportunity to write their view. Council Member Stoker said if the five criteria have been met the judge has to grant the variance. Council Member Bigler said that is a subjective thing because someone has to judge and rule. Council Member Stoker said the Board of Adjustment could not grant a variance if those five criteria were not met. She said there is a concern that some people are wondering if they are being fairly judged. Council Member Stoker said she wonders if the residents understand. Dave Carlson said he thinks Judge Lambert has a good grasp on this, he is very competent and he works for other cities. Ron Chandler said one thing that is helpful is that when a person comes in to request a variance is for staff to spend a little time with them to explain the law. Annette Spendlove said they are given a list of the criteria on the application and they set up an appointment with Craig Barker.

Dave Carlson said the problem is that there are very few situations that meet all five criteria for a variance; it is a real exception, it's not a great option for most people. It doesn't mean the City will give you a break or make an exception. Dave Carlson discussed variances. Council Member Bigler said the issue with Mr. Della Silva was what was said to him back then as to why he put to up; sometimes the five criteria are not cut and dried and if an employee said something. It is a potential concern if it is a review by a board of residents versus a paid employee of the City. The impression is that you are going against a judge that is paid and employed by the City. There seems to be a conflict and that is the concern. Council Member Hulme said all judges are paid; the Supreme Court justices are paid, all appeals judges are paid. Council Member Bigler said he thinks the impression that residents have on how we do business is important. Council Member Fawson asked if they can create an Appeals Board of Adjustment for people to go to if they disagree with the judge's decision. Council Member Hulme said the reason we stopped doing it was because we had very few cases during the year and very high turnover on the Board of Adjustments and as a result the amount of experience the Board as a whole had was absolutely minimal.

Mayor Harris said many times the Board of Adjustments was granting adjustments that should not have been granted; it was illegal because they didn't meet the criteria. Council Member Fawson said the members of the board thought the resident met the criteria and granted the variance; how can you argue with that. Council Member Stoker said you can go back and read the minutes that reflect a member of the Board of Adjustment disregarding the criteria as not important in "this" case and the variance being granted illegally. She explained that every time a variance request was voted on they reviewed each criterion individually. Council Member Bigler said for elected officials it would be easier if there wasn't a perceived conflict. If it were resident members on a Board it would be easier to defend.

Ron Chandler said the biggest challenge you will face with a Board of Adjustments is the training they need so they don't try to act as the Planning Commission. The tendency of the Board is to act as a Planning Commission and help applicant work out what they want and the Board just cannot go down that road. The State law is very specific for granting variances. Ron Chandler said he thinks the appeal should go to the courts because they will have the legal background and you avoid having another group trying to act like the Planning Commission or City Council where the tendency is to try to help people work through their issues. One more way that this makes it better for the City is that it saves the City on staff time. If it were the Board of Adjustment that work would fall upon administration to do the staff work. Council Member Stoker said some more education or they need to understand what the process really is before they go in to see the judge. She said she thinks that would alleviate a lot of these concerns if they were informed. Dave Carlson said staff needs to be careful not to instill false hope in people. We should not be advising a person to petition for a variance where we know the issue they are dealing with

really doesn't qualify for one. He said he thinks that is an escape for staff to tell a person that they can apply for a variance and they really shouldn't be saying that. Dave Carlson said they can always appeal any zoning decision. Council Member Bigler said he thinks Council needs to look at it at another time because any time there is a judge you can have criteria but oftentimes there is other evidence that weighs on the decision. Council Member Stoker said according to the State law no board or judge or group of people can make or change a law; whether the Board thought it was ridiculous or stupid they couldn't approve Mr. Della Silva's variance or they could be sued.

Council Member Bailey said on 400 E there is a house two buildings north of his office building that has a real estate sign on it that says it is zoned commercial but it isn't zoned commercial and it never will be zoned commercial. Do we have any obligation to notify someone about that or is it just buyer beware.

Mayor Harris said he disagrees with Council Member Bigler's arguments and he thinks the Administrative Law Judge is the way to handle these situations. Council Member Hulme said you can argue that Judge Lambert is a City employee but that is not how he views him. Council Member Bailey said the Board of Adjustment members were paid also. Council Member Bigler said the issue is the way residents perceive it. Dave Carlson said the City and the Judge cannot violate the law and play favorites with people. He said sometimes that's what you have to do; you have to tell people the hard things. Everyone would have loved to ignore it and let Mr. Della Silva keep his carport. What about the person that turned him in? He didn't get to put up his carport and that's what he wanted. Council Member Bigler said that is the issue he has with this particular case; three different residents in three different parts of the City who don't even know each other said they contacted the City and were told they could do this. He said if there is a pattern these aren't neighbors that have gotten together to make this up, there is some validity here. Council Member Fawson asked what the City does in the case of a City employee telling a resident they can do something that is in violation of our ordinance. Council Member Hulme said they do not have the authority to do that.

Dave Carlson said there is a doctrine called equitable estoppel. Generally speaking no City employee can give anyone permission to violate a City ordinance. They don't have the authority to do that but equitable estoppel says when someone comes in and is led down a primrose path and they are relying on the city employee or representative and having been led down that path they go out and build something and incur some expense. Dave Carlson argued that they are required to get a building permit. He said there are people who get a building permit from the City allowing them to do something illegal and they are in a much better position than someone who didn't get a building permit. Council Member Hulme said residents should all have a building permit. He said in today's legal environment the bottom line is that if you don't have it in writing it doesn't exist.

Mayor Harris suggested getting more information on this subject. Council Member Hulme said he would like to meet the Judge and talk about his credentials. If people are thinking that he is just there defending the City, he is there defending the law and getting compensated by the City. Council Member Bailey asked how many total cases we deal with. Dave Carlson said initially we told Judge Lambert there would be about two per year and right away there were six.

18. STAFF COMMENTS.

Annette Spendlove stated the July 24, 2012 meeting will have to be canceled because of the holiday. She said she is sending around a sign up sheet for Cherry Days and asked the Council Members to help with the ticket booth.

19. ADJOURNMENT.

Council Member Hulme moved to adjourn and convene in the RDA. Council Member Bailey seconded the motion.

Voting on the motion:

Council Member Fawson	yes
Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes

The motion passed unanimously.

RDA

1. PUBLIC HEARING TO RECEIVE COMMENTS REGARDING THE FISCAL YEAR 2012-2013 RDA TENTATIVE BUDGET.

Mayor Harris opened the public hearing at 9:58pm.

There were no public comments.

Council Member Bigler moved to close the public hearing. Council Member Bailey seconded the motion.

Voting on the motion:

Council Member Fawson	yes
Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes

The motion passed unanimously.

The public hearing closed at 9:58pm.

2. CONSIDERATION AND/OR ACTION TO ADOPT AN ORDINANCE APPROVING THE FISCAL YEAR 2012-2013 RDA TENTATIVE BUDGET.

Council Member Fawson moved to adopt ordinance 2012-12 approving the fiscal 2012-2013 RDA budget. Council Member Bailey seconded the motion.

Voting on the motion:

Council Member Fawson	yes
Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes

The motion passed unanimously.

3. ADJOURNMENT.

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

Voting on the motion:

Council Member Fawson	yes
Council Member Bigler	yes
Council Member Hulme	yes
Council Member Stoker	yes
Council Member Bailey	yes

The motion passed unanimously.

Richard G. Harris, Mayor

**S. Annette Spendlove, MMC
City Recorder**

Date Approved