

NORTH OGDEN CITY COUNCIL MEETING MINUTES

January 17, 2012

The North Ogden City Council and Planning Commission convened in a special training session on January 17, 2012 at 5:30 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 January 13, 2012. Notice of the annual meeting schedule was published in the Standard-Examiner on January 16, 2012.

PRESENT:	Mayor Pro Tem	Kent Bailey
	Council Member	Wade Bigler
	Council Member	Dave Hulme
	Council Member	Justin Fawson
	Council Member	Cheryl Stoker
	Planning Chairman	Ken Kiser
	Planning Vice Chairman	Allan Dalpiaz
	Planning Commissioner	Larry Residori
	Planning Commissioner	Joan Brown
	Planning Commissioner	Blake Knight
	Planning Commissioner	Eric Thomas
EXCUSED:	Mayor	Richard Harris
	Planning Commissioner	Steve Quinney
STAFF:	Annette Spendlove	City Recorder/HR Director
	Dave Carlson	City Attorney
VISITORS:	Jim Suhr	

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

Council Member Bigler moved to appoint Council Member Bailey as the Mayor Pro Tem. Council Member Hulme 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.

Mayor Pro Tem Bailey welcomed all those in attendance.

Council Member Stoker gave the invocation and led the audience in the Pledge of Allegiance.

ACTIVE AGENDA

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

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

Mr. Oda said some basic things to remember are:

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

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

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

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

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

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

1. Training on harassment/sexual harassment.

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

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

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

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

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

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

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

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

3. Council/Planning Commission Comments.

There were no comments.

4. Adjournment.

Council Member Bigler moved to adjourn. Council Member Stoker 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.

The meeting adjourned at 6:27pm.

Richard G. Harris, Mayor

S. Annette Spendlove, MMC
City Recorder

Date approved