

1 **NORTH OGDEN CITY COUNCIL MEETING MINUTES**

2
3
4 October 12, 2010

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7 The North Ogden City Council convened in regular session on October 12, 2010 at 5:30 p.m. at the City Offices.
8 Notice of time, place and agenda of the meeting was delivered to each member of the City Council, posted on the
9 bulletin board at the municipal office and posted to the Utah State Website on October 8, 2010. Notice of the
10 annual meeting schedule was published in the Standard-Examiner on January 24, 2010.
11

12
13 PRESENT: Richard G. Harris Mayor
14 Wade Bigler Council Member
15 Ronald Flamm Council Member
16 Martha Harris Council Member
17 Brent Taylor Council Member (by phone)
18 Carl Turner Council Member
19

20
21 STAFF PRESENT: Annette Spendlove City Recorder/HR Director
22 Julia LaSeure Deputy City Recorder
23 Gary Kerr City Building Official
24 Dave Carlson City Attorney
25 Debbie Cardenas Finance Director/Acting City Manager
26 Craig Barker Community Development Director
27

28
29 VISITORS: Sandy Price Owen Allen Jason Hardee
30 Brian Bott William Asay Rachel Trotter
31 Brady Fuller Heather Fuller Jack Fuller
32 Betty Stephens Tammy Clemen Lyman Barker
33 Taylor Spendlove LaRon Zundel Mac Erickson
34 Sandra Salas Ryan Jones Cyd Jones
35 Scott Critchlow Dave Peterson Dean Ayala
36 Kent Greenwood Pam Trimble John Barrett
37 Matt Hartvigsen Charles Crippen Jim Harris
38 Troy Erickson Richard Kay Brimhall Dave Hulme
39 Mary Carter Tom Baguley Loren Baguley
40 Dale Swenson Karen Swenson Lisa Hunter
41 Don Mathewson Mel Blanchard Kelsey Boyer
42 Walt Neibauer Katie Money Susan Watters
43 Darin Dean Carson Dean Ryan Jones
44 Shawn Maynard Vivian Suarez Jay Thornock
45 Guy Thornock
46

47
48 **CONSENT AGENDA.**

49
50 **Council Member Harris moved to approve the consent agenda. Council Member Bigler seconded the**
51 **motion.**

52 **Voting on the motion:**

53

54 **Council Member Bigler** **yes**

55 **Council Member Flamm** **yes**

56 **Council Member Harris** **yes**

57 **Council Member Taylor** **yes**

58 **Council Member Turner** **yes**

59

60 **Motion passed.**

61

62 **PUBLIC COMMENTS.**

63

64 Irene Carter, 684 E 3125 N, said she is here to let the Council know that owning rental properties is a tough
65 business. She asked if anyone on the Council has owned rental properties and said if they have they know that it's
66 tough and labor intensive. You put your money at risk and you could lose your shirt if you don't manage
67 properly. Your rents have to pay for utilities, taxes, insurance, maintenance, replacements, mortgages if you have
68 one and if there's anything left over that's your income. All owners screen their renters, my application used to
69 say "Have you ever been arrested for drugs? Yes. No." "Have you ever been convicted of a felony? Yes. No."
70 Sometimes a company hires a person and then later on they have to fire them. We have the same problem;
71 sometimes we let people in because they'll lie just to get in. Then you find out that you have to get rid of them.
72 She said she managed and owned property for 30 years until she retired in 2007 and is here as an interested
73 person.

74

75 **Council Member Bigler moved to move items 9, 10 and 11 to the front of the agenda. He said he has to be**
76 **to another meeting a little later and if everyone else will be here the whole time he would like to move those**
77 **items if it won't make a difference to anyone else. Council Member Flamm seconded.**

78

79 Discussion on the motion:

80

81 Council Member Harris said she feels that we have people here for the items published since Thursday expecting
82 to be able to anticipate their place on the agenda. She would not be in favor of the motion.

83

84 Mayor Harris noted that item 4 is a presentation from the City Engineer. He would like to at least leave item 4 in
85 place as we are being charged for their time. He would like them to do their presentation and then leave.

86

87 **Council Member Bigler amended his motion to move items 9, 10 and 11 after item 4. Council Member**
88 **Flamm seconded the amended motion.**

89

90 Council Member Harris said if there are two Council Members not in favor of that the motion dies. Dave
91 Carlson, City Attorney, said that is correct.

92

93 **Voting on the motion:**

94

95 **Council Member Bigler** **yes**

96 **Council Member Turner** **yes**

97 **Council Member Taylor** **no**

98 **Council Member Harris** **no**

99 **Council Member Flamm** **abstained**

100

101 **The motion failed.**

102

103 **PRESENTATION ON THE CITY'S STORM WATER PLAN AND PERMIT.**
104

105 Matt Hartvigsen, Jones and Associates, stated that the City currently has a storm water plan administered by the
106 State through the Environmental Protection Agency (EPA). This year a new permit has been issued that requires
107 more inspection. Consequently the State has given the Cities a deadline to update the plan for compliance. Dean
108 Ayala, also of Jones and Associates, attends those meetings with the State and will go over those requirements.
109

110 Dean Ayala stated that the City's Stormwater Management Plan was done in 2002 and this is an update to it that
111 is needed. He said that another reason he wanted to do that is that sometimes the Public Works staff gets the
112 training on this and there has been a concern that this information isn't making it up to the decision makers in the
113 cities. This is part of the Clean Water Act administered by the EPA. The EPA requires the State to enforce these
114 regulations and the State pushes it down to the cities to make this happen. The previous permit that we had was
115 good for five years; that five year timeframe expired sometime last year. Effective August 1, 2010 this new
116 general permit went into effect. It basically says that the plan has to be updated by December 1, 2010. There are
117 additional requirements under this permit including written procedures or SOPs for all municipal actions that can
118 potentially contaminate storm water. There will also be increased inspection intervals; a weekly interval for City
119 facilities and a monthly for construction sites. There will also be an audit within a five year period. The
120 presentation is on file at the City.
121

122 Mayor Harris asked whether Dean Ayala has any recommendations for us. Dean said the two big things to be
123 aware of is the ordinance needs to be updated and some requirements have changed. Mayor Harris said this is just
124 an awareness item and asked if there were any questions from the Council? There were no comments.
125

126 **DISCUSSION AND/OR ACTION TO APPROVE AN ORDINANCE AMENDING PORTIONS OF**
127 **TITLES 4, 5, 6, 7, 8, AND 11 OF THE NORTH OGDEN, UTAH CITY CODE TO SPECIFY PENALTIES**
128 **FOR VIOLATION OF CERTAIN PROVISIONS OF THAT CODE.**
129

130 Dave Carlson, City Attorney, said this Ordinance looks more complicated than it really is. A lot of sections are
131 affected. This is essentially a cleanup of the criminal penalties. Animal Control, Court, Police and Code
132 Enforcement have been working on this for a couple years. This is also to clear up some inconsistencies and
133 ambiguities. For the past two years staff has worked to clean up the penalties to bring them in line with the State
134 bail schedule. A lot of these changes that you see are more in the way of clarification than imposing a new
135 penalty but there are some changes. Most of the instances to change the penalty have been to reduce the penalty
136 but there may be some cases where the penalties have increased. There is one provision here on animal nuisances,
137 these were already on the book and were already violations but to determine that they were violations was
138 circuitous. We brought those definitions into the body of the ordinance so it is a lot clearer. Additions are
139 underlined, deletions are struck out. The Police, Courts and Animal Control were the ones who made the
140 recommendations on what the penalties should be.
141

142 Council Member Flamm said Section 6-1-7-A7 indicates that the owner of an animal that barks, whines or howls
143 is guilty of a Class C misdemeanor but the owner of an animal that molests a passerby is guilty of an infraction.
144 He said that seems backwards; he doesn't know where they came up with some of them. Dave Carlson said there
145 is a different provision regarding an animal that attacks another animal and also a dangerous animal section.
146 Those are all still Class B misdemeanor, the highest penalty the City can assess. All the recommendations in the
147 animal control ordinance come from the animal control officer. Recommendations can be made, it has taken two
148 years to get to this point; two more weeks won't make a difference. Dave Carlson said he thinks there is a typo
149 there, he thinks the 1st offense is an infraction. Mayor Harris said staff will strike "Class C misdemeanor" there.
150 Dave Carlson said if that is the only concern the Council could make that change tonight and continue with this
151 tonight.
152

153 Council Member Taylor said that he looked at 6-1-3-A4 which states that it is a class c misdemeanor for failure to
154 have the dog licensed. That's not a lot of latitude; what if someone forgot to get the license renewed. He said he
155 thinks it's pretty steep to go right into a misdemeanor offense which goes onto to someone's criminal history. He
156 said he would hate to see that over something that they just didn't get the license renewed or the dog was barking.
157 He also asked whether State law gives us any guidance on these areas or if this just varies city by city. Dave
158 Carlson said it varies city by city. He said regarding the dog licensing issue that is one of those items that was a
159 class b misdemeanor before and is being reduced to class c. If you feel that is too harsh and it should be charged
160 as an infraction, that's a change you could make.

161
162 Mayor Harris said the problem with taking this licensing lightly is the fact then that you don't have records or
163 rabies shots or things that would enable you to control a dangerous situation if one should arise. That's probably
164 why they felt that should be a little more punitive in nature. Council Member Taylor said a lot of this is coming
165 from the experience of the animal control officer. He said he would be interested in knowing how consistent is
166 this with other cities; are these pretty standard? Are we more aggressive, less aggressive? Do we have some level
167 of comparison? Dave Carlson said he can't answer that; he is not aware that any comparison has been made. We
168 would have to ask Animal Control.

169
170 Council Member Flamm said if a person doesn't license their vehicle are they given a misdemeanor? Dave
171 Carlson said yes. Council Member Flamm asked if it is Class A, B or C? Dave Carlson said he doesn't know off
172 the top of his head. Council Member Flamm said it seems like on the licensing that if within a certain period of
173 time if the person did get them licensed and get the shots there should be a way to reduce the penalty. Dave
174 Carlson said from a policy direction, there are a lot of ways you can go with an animal control violation; several
175 cities have gone to a civil penalty. There may be some animal control issues where you want to keep a criminal
176 penalty in there; vicious dogs for example.

177
178 Council Member Turner said item 7-1A-1 Civil Penalties states "The City shall have sole discretion in deciding
179 whether to file a civil or criminal judicial case or pursue an administrative enforcement action for the violation of
180 any of its ordinances or applicable code requirements. The enactment of this Chapter shall not be construed to
181 limit the City's right to prosecute any violation as a criminal offense." He asked doesn't that allow us to charge
182 them criminally. Dave Carlson said that is in the traffic section. Dave Carlson said section 6 doesn't have
183 anything similar. Council Member Turner asked if we could add that. Dave Carlson said yes, that could be added
184 for animal control violations.

185
186 Council Member Harris said this has been contributed to by Animal Control, Police, Code Enforcement and
187 Courts. Dave Carlson said yes. Council Member Harris said some of the things that have been reviewed by the
188 courts; if we had been blatantly out of line with other communities our Judge would have spotted that. Dave
189 Carlson said the recommendations that the Police and Animal Control have made are based on their experience
190 with enforcing these types of things and what seems appropriate and fair. It's also his understanding that very
191 few if any of the recommendations are to increase the penalty. By and large if they have recommended a change
192 it has been to reduce what it already is. Council Member Harris said she recalled a former Council Member who
193 had numerous issues with a neighbor's barking dogs and we fought that battle quite frequently without having
194 enough teeth in the ordinance to make the problem stop. She is hoping we haven't diluted the penalties but
195 maybe enforcement is the biggest issue. Dave Carlson said that the barking dog doesn't seem like that big an
196 issue unless you're the one who can't sleep.

197
198 Mayor Harris said the Council has some options. They can adopt this as amended or go back and study it further.
199 Dave Carlson said the only proposed change is to Section 6-1-7 "Nuisance Animals and Abatement" number 7, to
200 eliminate the words "Class C misdemeanor" and add "an" in front of infraction.

201

202 Council Member Harris said if that is the only change she would be in favor of just doing that. She asked if we
203 are legal to do that. Dave Carlson said yes you can change that by interlineation and Annette Spendlove, City
204 Recorder, can make that change permanent when she sends it to the codifiers.

205
206 Council Member Taylor said that he was bitten by two dogs while passing out fliers during the last election. He
207 said if he had gone to the police on that, the owners could have gotten a misdemeanor on their criminal record; he
208 would have thought that is excessive. He would rather in the first offense be an infraction.

209
210 **Council Member Harris moved to approve Ordinance 2010-11 amending portions of Titles 4, 5, 6, 7, 8, and**
211 **11 of the City Code as amended. Council Member Turner seconded.**

212
213 **Voting on the motion:**

214
215 **Council Member Bigler** **yes**
216 **Council Member Taylor** **no**
217 **Council Member Turner** **yes**
218 **Council Member Harris** **yes**
219 **Council Member Flamm** **no**

220
221 **Motion passed 3 to 2.**

222
223 **PUBLIC HEARING ON AN AMENDMENT TO THE CITY ZONING ORDINANCE REGARDING**
224 **OUTDOOR DISPLAYS.**

225
226 Craig Barker, Community Development Director, stated that the Council Members should all have a copy of the
227 proposed zone and the Planning Commission minutes. This proposal has been made by the Business Development
228 Committee which was recently renamed the Economic Development Committee (EDC). He said we have well-
229 rounded input into any action that we take. The present C-2 zone, Section 11-8A states “ All business shall be
230 conducted wholly within an enclosed building, except for the sale of gasoline and oil by service stations, the
231 parking of automobiles, service to persons in automobiles, Christmas tree sales, fruit and vegetable stands,
232 fireworks stands and garden supplies.” The business community has said they would like to do other things
233 outdoors. The EDC’s proposal was slightly modified by the Planning Commission. This deals with permanent
234 outdoor displays; the Planning Commission took out any reference to temporary outdoor displays.

235
236 Mayor Harris summarized that the existing ordinance allows very few outdoor displays and this would allow
237 many other types of outdoor displays. Craig Barker said there are a number of requirements and restrictions
238 including maintaining the minimum number of parking stalls. It can’t be in the public right of way and the display
239 must be kept in good condition.

240 Council Member Bigler asked regarding #9, “If merchandise is to be left unassembled or in shipping materials the
241 City...” will the Planning Commission have to review each of these. Craig Barker said the intent is to keep this
242 from being used as additional storage space. The Committee said if you’re going to do that it may be desirable
243 for the Planning Commission to review it and make some determination. He said Smith’s for instance, in the
244 summer, has several grills out on the walk but behind that there are many more in the boxes.

245
246 Council Member Bigler asked if there is a change to this proposal does it have to be noticed again. Craig said it is
247 not required; if it liberalizes something more you probably do need to but it is not required. The Council has to
248 make that call.

249
250 Mayor Harris opened the public hearing on this item at 6:28pm.

251
252 There were no public comments.

253 **Council Member Flamm moved to close the public hearing. Council Member Bigler seconded.**

254

255 **Voting on the motion:**

256

257 **Council Member Harris** **yes**

258 **Council Member Flamm** **yes**

259 **Council Member Bigler** **yes**

260 **Council Member Taylor** **yes**

261 **Council Member Turner** **yes**

262

263 **Motion passed.**

264

265 The public hearing closed at 6:29pm.

266

267 **Council Member Harris moved to pass this Ordinance 2010-12 regarding outdoor displays. Council**
268 **Member Flamm seconded.**

269

270 Discussion on the motion:

271

272 Council Member Taylor had a question on this. In the BDC which is now the EDC we discussed temporary
273 displays as well. He asked if that is moving forward separately or did it get stripped out in favor of only
274 permanent displays. Craig Barker said it is moving through separately; they wanted to address permanent first.

275

276 **Voting on the motion:**

277

278 **Council Member Turner** **yes**

279 **Council Member Harris** **yes**

280 **Council Member Flamm** **yes**

281 **Council Member Bigler** **yes**

282 **Council Member Taylor** **yes**

283

284 **Motion passed.**

285

286

287 **CONSIDERATION AND/OR ACTION ON A REQUEST FOR APPEAL OF A CONDITIONAL USE**
288 **PERMIT FOR AN AUTO REPAIR SHOP AS A HOME OCCUPATION.**

289

290 Mayor Harris stated Dave Carlson will give us instruction on the process; Craig Barker, Community Development
291 Director, will give us a synopsis; we'll ask Mr. Neibauer if he would like to present his side and then allow the
292 audience to make comments if they desire.

293

294 Dave Carlson, City Attorney, explained the City Council's role in this appeal of a Planning Commission decision.
295 He provided a memo to the City Council Members outlining their role and will go through that memo. This is an
296 appeal. In North Ogden the Planning Commission has been designated as the Land Use Authority, the body that
297 makes the first decision regarding Conditional Use Permits. Generally a conditional use is a use within a zone that
298 may or may not be appropriate depending on its location. It may not be appropriate everywhere, but may be
299 appropriate if you can impose conditions to mitigate the negative impacts. The Planning Commission granted this
300 Conditional Use Permit for an auto repair business out of a residential garage. The City Council is designated as
301 the Appeal Authority for that decision. An appeal by an affected resident has been made. The standard of review
302 is what is called "de novo". The Council is not bound tonight by any findings that the Planning Commission
303 made. You look at this with a set of fresh eyes, listen to the arguments on both sides and make your decision. The

304 appellant has the burden of proof. If you decide that both sides weigh evenly the tie would go to upholding the
305 Planning Commission's decision. The City Council generally acts as the legislative body and has more latitude.
306 Sitting as the Appeal Authority you weigh the evidence only. There has to be substantial evidence to support
307 your decision. This is not a contest of how many citizens are for it, how many citizens are against it, or which
308 group is the loudest. You need to make your decision based on the facts. In this case those facts are what are the
309 reasonable foreseeable negative impacts that will be imposed upon the neighborhood and are there reasonable
310 conditions that could be imposed to mitigate those negative impacts? Generally speaking under State law if an
311 applicant for a particular use of property can demonstrate that their intended use meets the City Zoning Ordinance
312 they are entitled to approval of that use. The City Code actually mirrors what the State Code says about
313 conditional uses. It explains what a conditional use is and under what conditions are you compelled to grant them
314 or deny them. This is a mixture because it is also an application for a home occupation and the City Code allows
315 home occupations to occur in the garage. The Code says that if the home occupation is going to be carried on in
316 the garage it is a conditional use. The Code says that a conditional use shall be approved if reasonable conditions
317 are proposed or can be proposed to mitigate the reasonably anticipated detrimental effects of the proposed use in
318 accordance with applicable standards. If they cannot be mitigated by the imposition of reasonable conditions the
319 conditional use may be denied. That's the task; to consider how this use might negatively impact the surrounding
320 neighborhood and determine if there are conditions that could be imposed to mitigate those.

321
322 Council Member Turner asked if everyone knew what conditions the Planning Commission imposed. Annette
323 Spendlove, City Recorder, passed out a copy of the Planning Commission's motion to the City Council Members.

324
325 Craig Barker stated that thirty two people were in attendance at the Planning Commission meeting when this was
326 discussed. He said if you follow the minutes you see that he got up and informed the Planning Commission that
327 they were acting as the Land Use Authority. They had some general guidance on the types of restrictions they
328 could impose on the proposed conditional use. A number of people got up and spoke on behalf of the applicant;
329 some were from as far away as West Haven. They spoke very highly of the applicant and his work.

330
331 There were others that felt they were severely affected by this. Sometimes the noise was very difficult to deal
332 with. The number of cars at times would block the sidewalk. There were those that felt this would decrease the
333 value of their property and would have to be disclosed in the case they wanted to sell their homes. We had a
334 lively meeting that went on for about three hours. The Planning Commission made no decision that night. They
335 reconvened on September 15, 2010 and debated amongst themselves the effect this would have on the
336 neighborhood. Whether they felt the noise generated could be mitigated in some fashion as well as traffic and
337 parking. Mr. Barker said he believes that covers what was spoken among the Planning Commission Members.
338 The Planning Commission granted this Conditional Use Permit with certain conditions.

339
340 Walt Neibauer, 587 East 3600 North, passed out a copy of his appeal to the City Council Members. He said his
341 request is that the City Council make a good business decision and not allow this type of thing to go on in his
342 neighborhood. He asked if he has to sell his house does he have to disclose this to the realtor and potential home
343 buyers. Regarding the photos themselves, he said he took these pictures the day after the Planning Commission
344 meeting and you can see he has five cars there. He stated that Mr. Baguley does not meet City code because he
345 has a trailer parked that is not on a hard surface. Mr. Baguley's garage is 40 feet away from Mr. Neibauer's
346 window. Mr. Neibauer said he is also concerned about potential fire hazards. He said Mr. Baguley has been
347 running this business for 1 1/2 years to 2 years and doesn't have a business license. Mr. Neibauer said Mr. Baguley
348 isn't meeting fire cords and really doesn't care about his neighbors. Mr. Neibauer said he feels that Mr. Baguley
349 is a public nuisance; he is a good mechanic and the price is right but he should probably move his business
350 somewhere else.

351
352 Mayor Harris said at this time the public will be allowed to come up and speak. We ask that you be brief. There
353 will be no outbursts, there will be no applause, or we will end this immediately. There will be no other types of
354 expressions from the audience. You're welcome to come forward and make a statement. We ask you to be civil

355 about it, to be polite and there will be no personal attacks. There are a lot of you here, if we keep hearing the
356 same thing over and over; we got the message. He asked the public to come forward, state their name and address
357 and their comment or concern.

358
359 Kim Hall, 570 E 3600 N, said she is sorry that this has affected the neighborhood the way it has; it shouldn't. She
360 said she wanted to speak on behalf of the Baguley's. If people want to complain about noise from an air
361 compressor, we have several neighbors who use air compressors frequently. She said she is a stay at home mom
362 and several of her neighbors have power washers. She said the congested parking is not because of the business,
363 it is family cars that they have a problem with. They have three adult kids with kids. She said when she has
364 teenagers are they going to have an issue when she has five cars in her driveway. She said she talked to a local
365 realtor who said you do not have to disclose that and she doesn't think the people who would be coming into her
366 neighborhood would be affected. The increased traffic flow, two additional cars on the street, doesn't make a
367 difference. It's no different than having teenagers come visit a friend. The Fire Marshal has already been to the
368 home and checked out the house and that area of the home occupation. The Fire Marshal said they needed a fire
369 extinguisher. The nuisance is the fact that we are here and that is what is causing the stress. Hopefully you will
370 see it in your hearts to approve this.

371
372 Kent Greenwood, 600 E 3651 N, said he lives around the corner from the Baguley's. He said he doesn't know
373 him but is sure he has a fine family. That is not the issue; the issue is the violation of the law. He said when he
374 retired and bought this home eleven years ago he moved into a \$500k house. He has talked to a realtor who said
375 that you have to disclose. I'm not going to sneak and not tell a potential buyer about this. He doesn't want to go
376 over everything that Dave and Craig have said but State law says that if three people are offended it is a nuisance.
377 The Fire Marshal passed off that he only needs a fire extinguisher. He said there was an incident in Time Square
378 a few months ago and that guy only had a couple gallons of gasoline. He said he personally is not affected by the
379 fumes. He is affected by the loss he will take on his house when he goes into a retirement home. He said he was
380 asked to speak as a Commissioner of the Ogden City Civil Service Commission. He feels strongly that we are
381 being taken to the cleaners on this in our neighborhood. Many years ago, he was driving down the street in a
382 1966 Ford on 24th Street and Monroe Blvd. He started down 24th Street and there was the biggest boom he has
383 ever heard. It blew out the windows on the car and splattered everything with shards of glass and debris. Being a
384 public safety person and caring about life and safety he pulled over to the curb and made a quick sweep of the
385 street and judged that there was nobody lying in the bushes. There was significant damage to the back of the
386 home and the house was on fire. He said he was told later that it was gasoline and solvent to clean parts with.
387 The guy was running a motorcycle repair shop illegally. For some reason that thing ignited. The Fire Marshall
388 could not determine what started the fire; all he could figure is that the refrigerator perhaps set the gasoline and
389 other solvents off. Gas doesn't burn, it's the fumes. He said he is opposed to this permit and supports the
390 neighbors who have to live next to that.

391
392 Heather Fuller, 3606 N 575 W, said she lives one home and a street up from the Baguley's. She said she read Mr.
393 Neibauer's appeal and appreciates the opinions on both sides. She said they just moved in the first week of April
394 and for the first three months they didn't know that this was going on. She walks past all the time with her baby
395 in the stroller. She is in support of Tom Baguley running this business out of his garage. It is not a nuisance.

396
397 Tom Baguley, the applicant, said on September 15, 2010 he was granted the Conditional Use Permit unanimously
398 by the Planning Commission. He was laid off in September of 2008 and in October of that year his wife was at an
399 activity at church and somebody asked if her husband was a mechanic. They came over and that's how this
400 began. He does some oil changes and some brake jobs. He said he makes about \$80 on a brake job. He does light
401 work, brakes, hoses, electrical, no engines, and transmissions. He doesn't want to have cars in the driveway. The
402 cars are in the garage and most of the time the garage is closed. As for the gasoline he said we all have lawn
403 mowers, we all have a gas can. That's what he has. His solvent tank is biodegradable; the solvent is
404 nonflammable, it's water based. There's no way for it to explode. It's a strong detergent engine solvent for
405 grease. He said he didn't really get busy until May 2010. He did about 15 cars in May and 10 in July. He was

406 gone for part of June for a funeral. At the end of July someone called the City and said I needed to have a
407 business license. I never considered this a business. It's all word of mouth, friends, neighbors, from Idaho,
408 California. The reason some of these people come from farther away is word of mouth. That brings us to this
409 point. He said he doesn't do body work but has done a couple small Bondo jobs for people. Ninety nine point
410 nine percent is auto repair; when cars break down not when a collision has happened; only when things
411 electrically or mechanically break down. He has been doing this for about 35 years. He said he does about 2.4
412 cars average in a week; sometimes 10 a week, sometimes none. He said this has been going on since August 4,
413 2010 and he is back on unemployment. That's where we're at.

414
415 William Asay, 696 E 3225 North, said the question is whether Mr. Neibauer and Mr. Greenwood have had work
416 done by Mr. Baguley. The answer is they have had work done and Mr. Baguley didn't charge them for it.
417

418 Jason Hardee, 528 E 3600 N, said he moved here about eight years ago with his wife and three small children. He
419 said he appreciates Tom Baguley's willingness to share facts while the appellant has shared opinions. He said he
420 will share facts. Most of the issues that the appellant brings forward have been addressed by the Conditional Use
421 Permit when you go down the list. The status of the appeal is opinions; tremendous hardship. We all have things
422 in our lives that are tremendous hardships. The term "has definitely become a nuisance to his neighbors", he has
423 not. We are going to go opinion against opinion. Noise, he said he has never heard any noise. He wouldn't even
424 have known Mr. Baguley had a business. In that neighborhood, we call it upscale; we need to check our egos. I
425 am completely comfortable with my children riding their bikes on that street. This is not something that needs to
426 be in this forum.

427
428 Loren Baguley, 3590 N 575 E, said she wanted to bring up a couple things. She is a cook at Weber High School
429 and her husband has been out of work for two years. They are trying to make things work. Her home is not an
430 auto shop. She said she lives there and she hears noise every now and then but they have a number of home
431 businesses in our neighborhood. If she had to live with noise and fumes; she actually has asthma and since
432 moving here has not had a problem with her asthma. Her husband worked on one of the gentleman's cars prior to
433 this coming to the City. She said she doesn't hear a lot of things. It's mostly contained in the garage. We had
434 somebody complain from four doors down about the air compressor so we sent one of our kids down and he
435 didn't hear anything. She said her husband works on their vehicles and their children's vehicles. He has done
436 this as long as she has known him. In the 18 months that Tom has done this they have not had anyone complain
437 to them. At this point, with the economy the way it is, he is on unemployment right now. He is trying to be
438 helpful to people and support our family. Her home is not an auto shop; he does work for people one at a time by
439 appointment only.

440
441 Cydnee Jones, 3618 N 575 E, said she appreciates the City Attorney's letter. She appreciates the fact that we have
442 the opportunity to express our opinions. Looking at Mr. Neibauer's main concerns, the increased noise from the
443 air compressor; we are talking about 2.4 cars a week. She said before she left for this meeting tonight her
444 husband asked if she could hear something. Very faintly she could hear a lawn mower. He said if you want to let
445 that bother you, you can. She said she can assure you if there were an issue with the safety of the children you
446 would have a group of us mothers here contesting this. We have heard the conditions set by the Planning
447 Commission. As for the impact on property values, we are dealing with proof. Not one person can prove their
448 property value has dropped because of Tom doing this work in his garage. It's almost becoming harassment for
449 Tom Baguley. He has taken it upon himself to call the City inspector, the Fire Marshal. Anyone else who wants
450 to have a home occupation can do that because it's allowed by the City Code. She asked that the City Council
451 carefully review this and truly look at the facts.

452
453 Charles Crippen, 3576 N 575 E, said he lives next door. Initially when the Baguley's were told to stop their
454 business Loren Baguley came over wanting to know who turned them in. Mr. Crippen said his is a two story
455 house and the garage is on that side so he has a garage between the Baguley's and his living space. Initially it
456 started out as Tom helping out friends but it has grown. This is now a zoning issue. Mr. Crippen said it affects his

457 property and any conditions set upon the business are going to be placed upon those who are directly impacted.
458 That spoils our quiet enjoyment of our residence. Look at the four points for the issuance of a Conditional Use
459 Permit. The proposed use at that particular location is necessary or desirable to provide a service or facility which
460 will contribute to the general well-being of the community, will be compatible with and complementary of the
461 surrounding uses, the proposed use will comply with regulations and conditions specified in the title for such use.
462 This use reduces my quiet enjoyment of my residential property. The last point is that the proposed use conforms
463 to the goals, policies and governing principles of the master plan for the City. He said he does not think the City
464 is planning this type of business for this area of the City. Chapter 11-16-1 under B talks about retaining the
465 residential character of the dwelling. He said this does alter the residential character. Under G, Traffic, it says a
466 home occupation shall not generate more than five vehicular trips per day. He said he thinks through the nature of
467 the business this will be exceeded, someone may bring it there for him to talk about and test drive. He said he
468 interprets one trip to the house a vehicular trip, one trip away is another vehicular trip. The Conditional Use
469 Permit permitted by the Planning Commission does not limit the number of cars he can repair in a day only that
470 he can have no more than two cars on the property at one time. We are in a tough economy; what's to prevent
471 this from continuing to grow. Mr. Crippen said Mr. Baguley is a good auto mechanic and he and his wife like the
472 Baguley's. For all the conditions outlined in the City Attorney's memo, most of those will have to be regulated by
473 the neighbors. His customers enjoy all the benefits of the business, we as the impacted neighbors, do not. His
474 request is that this ruling be overturned.
475

476 Sandy Price, 3589 N 500 E, said she is here as a citizen of North Ogden City. This ruling can affect all citizens in
477 the City. If their neighbors are opposed to their home occupation, it can affect their business. The economy is
478 such that more of us are running a business out of our homes. She said she used to teach music lessons and didn't
479 have any of these conditions. She said she thinks the noise that they are complaining about is normal for a
480 neighborhood. We all have lawn mowers, trimmers, air compressors. We need to have kindness and forgiveness.
481 It is part of being together in a community. Regarding the congestion, parking and traffic flow, she said many
482 times she had her parents' students parking across the sidewalk but never had a complaint. She said she knows
483 the City has ordinances in place to protect against those things. She knows the Baguley's personally but have
484 never been a patron. That doesn't mean she disagrees with the business they are doing. We have people that
485 work on their cars and that is a right that we have. She said she does not find it offensive that he works on cars
486 and she has never noticed the noise or the number of cars. She has adult children but the garage is not large
487 enough so she has cars parked in the driveway and on the street. It is her opinion that we should stay in favor of
488 the Baguley's.
489

490 Vivian Suarez, 2183 E 3100 N, Layton, Utah said he lives in an affluent area. He said he has called several times
491 for Mr. Baguley to work on his vehicle and has been told that he'll have to wait. He said Mr. Baguley does not
492 want to have any cars in his driveway other than the ones he is working on. Mr. Suarez said Mr. Baguley is
493 honest and his character is impeccable. He said he has been to the Baguley's house for family visits and he does
494 have a lot of cars because he has a lot of kids. Mr. Suarez said in his neighborhood they have people who teach
495 dance, one guy who does roofing and is always getting supplies out of his shed and his next door neighbor cuts
496 hair. If you try to figure out how many cars come and go because of those businesses, you will go crazy.
497

498 Dale Swenson, 3519 N 525 E, said he is the Baguley's immediate neighbor right across the street. He said he can
499 assure the City Council that when Mr. Baguley has the compressor going and the hoist going, he can hear it in his
500 library. The impact wrench is used 40-45 times per car for several minutes at a time. He said you can hear it
501 inside his home. The people who got up in favor of this do not live right next to this garage. We hear all those
502 sounds. Those of you in favor live far enough away that you can't hear those sounds. It has affected the quiet
503 nature of my neighborhood. The last five weeks it has been quiet because he hasn't been operating.
504

505 Ryan Jones, 3618 N 575 E, said he lives three houses above Mr. Baguley and most of the people who spoke have
506 addressed the issues and concerns. There is nothing that can be substantiated other than the noise and the
507 Planning Commission has directed him to keep his garage door closed. We need to bring some rational thought

508 here. The question is can he do these things for money. Everything he uses is legal and we all have air
509 compressors. What is being presented by the appellant is exaggeration. Mr. Jones said Jerry Gubler, their postal
510 carrier, couldn't be here tonight but asked that he speak on his behalf. He has never once had an issue delivering
511 mail there. A neighbor two houses above him lived there for months without knowing that this business was
512 being operated. As neighbors we should be kind and considerate. We have had him decline to work on our cars
513 for a couple days because he is considerate. Mr. Jones invited the City Council to visit the home and see how
514 clean the garage is and how Mr. Baguley runs his business.

515
516 Charles Crippen, 3576 N 575 E, agrees that by the noises you hear while driving by you would not recognize as
517 coming from an auto repair business but that's not the issue. The issue is that the noise is above and beyond the
518 noise of the personal use of a residence.

519
520 Tammy Clements, 3637 N 600 E, said her husband was here last time but tonight he is speaking for the Utah
521 Physicians for a Healthy Environment. She said he wanted her to present the message that the air quality is not an
522 issue.

523
524 Michelle Meyer, 584 E 3600 N, said she lives just up the street and had no idea Mr. Baguley had a business in his
525 garage until this last spring. She said it's not fair to use the pictures that Mr. Neibauer presented; it has nothing to
526 do with the business. There are many people in the neighborhood that don't follow every single law that North
527 Ogden City has.

528
529 Tom Baguley, 3590 N 575 E, said Council Member Taylor came up to visit and he turned on the noise for him to
530 hear; maybe he can respond to that. On the noise issue, he said his wife and kids have been out in the backyard
531 between Mr. Crippen's house and their own and heard a low hum with the doors closed. As far as those who have
532 opposed me in my immediate neighborhood, Mr. Crippen, Mr. Neibauer and Mr. Swenson, I have worked on all
533 their cars so it's kind of funny that things have gone from day to night.

534
535 Mr. Neibauer, 587 E 3600 N, the appellant, repeated that he would have to disclose this to a potential buyer. He
536 said this has been detrimental to him and he has lost sleep. If he fails to disclose this he could get sued.

537
538 Mayor Harris said it is time to look at the standards of this. Dave Carlson, City Attorney, has pointed out that it is
539 a conditional use. Can it be mitigated sufficiently to retain the residential atmosphere? He asked the Council to
540 discuss it themselves.

541
542 Council Member Flamm asked Mr. Baguley whether the garage doors are insulated. Mr. Baguley said no but they
543 could be.

544
545 Council Member Harris said some of those present know she is their neighbor. She has walked many times
546 through all of the neighborhood and as they have been speaking she has the plat map up here and has been
547 looking exactly where their homes are from the Baguley's. She said she is sure Mr. Baguley is a great guy, the
548 family is a great family and during an economic hardship it is advantageous to be able to use your garage for a
549 supplemental business. We are guided by the issues for Conditional Use Permits as outlined by our Attorney.
550 Unfortunately the business has been operating for 1 ½ years without a license. The neighbors have a history of
551 what this looks like and what it sounds like; it has caused a hardship. She went through the items that were
552 outlined. Is this necessary in this particular area? We have a commercial district with commercial businesses that
553 we are being challenged to support. This is not the only place to get brakes done. She said she is particularly
554 concerned about item B, 'Residential Character Retained'. The Planning Commission motion stated that noise
555 generating repairs require the garage door to be closed. She said that's 100% of the time and not just the one day
556 he is working. No more than two vehicles for repair; Mr. Baguley stated a lot of the parking issues are because of
557 family vehicular traffic. That doesn't take away from the need for driveway parking spaces; no vehicles may be
558 parked to obstruct the sidewalk. Traffic laws must be followed. The requirement that all doors and windows have

559 to be closed causes a definite safety issue if you are working on motors. She said she doesn't think residential
560 garages are designed or constructed for that type of business to be going on. She said she thinks that the safety
561 issue for that type of occupation in that type of facility is a concern. She said she spoke with our Chief Building
562 Official and if this is allowed he would require the same type of ventilation system that is used in a commercial
563 garage and Mr. Baguley would have to do quite a bit of work. She said she feels that we have a business
564 community in the commercial zone. That is where she would like to see this type of business occurring. It doesn't
565 encourage businesses to come into North Ogden if they know we allow this type of cottage industry.
566

567 Council Member Taylor thanked everyone who came. He said he spent some time in the neighborhood last week
568 and got to talk to most of the residents to do an informal straw poll. Half of the people were in favor and half were
569 against; either really in favor or really against. He said his best assessment is that this started out as helping a few
570 friends and neighbors here and there. This probably wasn't intended at the start. Some of the neighbors didn't
571 know it was there and weren't opposed to it but now that it's grown they are opposed to it. He said as he looked
572 at Chapter 11-16-1 Home Occupations, there are three subparagraphs that stick out to him. In item J regarding
573 emissions, noise, dust and odors, he asked what the standards are for that or for item k, dangerous materials? He
574 went to the house and heard the compressor; it could be heard off the property but was not overly loud. He asked
575 how much noise is a violation. Dave Carlson said that City Code mirrors the State law. It states a conditional use
576 shall be approved if reasonable conditions can be imposed to mitigate the noise. Are there reasonable conditions
577 that can be imposed to mitigate that noise? Using the nuisance standards if the noise is such that a person can hear
578 the noise in their home with the windows closed it is probably a nuisance. That is a rough rule of thumb. There
579 are a number of things that may be used that violate that rule. Leaf blowers, trimmers, chain saws, etc... Council
580 Member Taylor asked if there is any kind of standards for dangerous materials. Dave Carlson said it is his
581 understanding that the Fire Marshal has been out to the garage and did not have any concerns. Council Member
582 Taylor said he looked at the General Plan; a conditional use permit has to comply with the General Plan. He asked
583 if it mentions anything about home occupations. Craig Barker said most general plans don't speak to a specific
584 issue like that. Generally they'll talk about the residential character and the maintenance of that residential
585 character. He has never seen anything in our plan that deals with home occupations specifically. Council Member
586 Taylor said this is a tough issue when there are so many neighbors who say there is noise and those who say there
587 is no noise. He said he personally thinks businesses should be in the business district of the City. That's what he
588 ran on and he talked to a lot of people who said they don't want our City to become too much that way. We have
589 a number of home occupations perhaps due to the economy. He wishes we could see if we could come up with
590 enough conditions to reduce the noise. All parties have agreed there is some noise. He wants to make sure this
591 permit is on a time frame and is only for a certain amount of time. The neighbors said things have gotten busier
592 in the last few months. Maybe if these new conditions are put in and the requirements by the Planning
593 Commission are put in it may satisfy all the neighbors. We need to put something in that is not going to allow for
594 additional expansion. Limit it to only doing minor things, no engine repair. Currently there is nothing there that
595 says that couldn't be the case. He said he thinks we need to look at the conditions and see if there are any other
596 ones we can put on and try for a time period.
597

598 Council Member Turner said it is sad that it got to this point. He did go up there and said he has a friend that lives
599 up there. His friend said that if he lived next door he'd be against it too. There is a guy in Ogden who raises bees
600 and goes around every year to talk to each of his neighbors and discusses it. Council Member Turner said he
601 knows all his neighbors by name. It's a hard issue but it's also awful hard for the City Council to tell people they
602 can't have a business. He asked what will happen if a resident calls and says Mr. Baguley has three cars in his
603 driveway. How is that addressed and can we pull the Conditional Use Permit before the year is up? Dave Carlson
604 said the Conditional Use Permit can be revoked if the conditions are being violated. In terms of who would
605 enforce it would be Code Enforcement program and probably on a complaint made basis. A Code Enforcement
606 Officer would investigate and has several options. Council Member Turner said with that stipulation and the
607 conditions by the Planning Commission and annual review we could pull it at any time. He wouldn't have a
608 problem with that.
609

610 Council Member Flamm said he has had people who are neighbors on both sides talk to him. As far as traffic
611 flow, he said he looks across from his house and he has a preschool across the street and around noon there are
612 quite a few cars there. He also has another neighbor that does carpet cleaning and window cleaning and there are
613 vehicles parked in the street. Another neighbor does pest control and is heading up and down the road all the time.
614 He said he went over to this neighborhood and thought those roads are a lot quieter than the road by his house.
615 He went over and looked and across the street from the Baguley's there were several instances where people are
616 in violation of our trailer ordinance. He said when he turns on his chipper shredder he knows it's going to be
617 loud. One side of him is concerned about what the individuals have indicated and the way their values will be
618 changed. On the other side, a lot of those noises, you are going to hear anyway. He said he'd kind of like to give it
619 a trial and see if they meet the ordinances. If it were him, he would get his garage doors insulated. He is having a
620 hard time trying to decide which way to go.

621
622 Mayor Harris said he looks out at the audience and he sees good friends on both sides. He would like to make
623 two or three points. There have been a lot of references to businesses. Our ordinance allows for home
624 occupations and they are required to be licensed. This particular home occupation, located in a garage, required a
625 Conditional Use Permit. The Planning Commission is a very capable body and they have done a good job with
626 these mitigating measures. It is allowed under our ordinance. The Mayor said he is aware of only one other
627 garage that operates as a home occupation and it has been in operation for a number of years. He had to come to
628 the City also and was given a number of mitigating items. He said he knows that if you are not doing it for money
629 you can have all the same things happen. He thinks he has an unlicensed garage going on in his neighborhood and
630 that neighbor has made a mess out of his yard. Mayor Harris was told that he doesn't do it for money so it's not an
631 issue. He would want to see some more conditions on safety and insulation. The fact that this permit has to be
632 reviewed on a yearly basis needs to be considered too. He said if he were voting those would be some of his
633 thoughts.

634
635 Council Member Bigler said that he has talked to people in that area and he feels that the Baguley's should be
636 able to have that license. He said some of those opposed have actually used him to fix their cars. He said he
637 supports this.

638
639 Mayor Harris said we talked about additional mitigation measures that could be imposed and whether it is
640 appropriate in this neighborhood. He said he thinks it's time for the City Council to make a motion and see where
641 it goes.

642
643 Council Member Taylor said the building requirements that were mentioned would need to be part of the motion,
644 compliance with the building codes for an auto repair facility.

645
646 Council Member Flamm asked if we could hear from Gary Kerr. Gary Kerr, Building Official, said just a couple
647 weeks ago he was standing here talking about someone who wanted to have a commercial kitchen in his house.
648 For safety reasons he told the applicant that he would have to follow the rules for a commercial kitchen. He said
649 he felt this business would have to meet the same requirements for a similar commercial business. For safety, the
650 ventilation would have to be there. It's not a real big expense but there would be an expense. He would have to
651 meet the rules for these types of businesses. Ventilation is required and the acetylene tank would have to meet
652 rules which would be a little more restrictive. Mayor Harris said all that depends on the type of work he is
653 actually doing.

654
655 Council Member Bigler asked if there were any stipulations on the type of work from the Planning Commission.
656 Mayor Harris stated that Mr. Baguley said he does not work on engines.

657
658 Council Member Taylor said we have two completely opposite opinions here and we need to try to balance the
659 rights of both of them so neither gets all that they want at the expense of the other. He said he thinks a lot of this
660 will come down to what the neighbors say. It is up to Mr. Baguley to take any measures that he can to protect the

661 neighbors. We will be able to see after a period of time. Let's give it a shot with some conditions and see if it can
662 fit into a residential neighborhood. Council Member Taylor proposed that we make it a shorter period than a year,
663 perhaps six months and see if the mitigations are working and if the neighborhood is satisfied.

664
665 Council Member Harris said she can see the way the discussion is going so to make a motion she is going to
666 include all the stipulations that would mitigate this.

667
668 **Council Member Harris moved that the Conditional Use Permit for Tom Baguley's auto repair business as**
669 **a home occupation be allowed with these stipulations: all doors and windows be closed, the garage door**
670 **becomes insulated, he comply with all OSHA and commercial HVAC codes to be inspected by Gary Kerr**
671 **before business commences, parking for the business is one car so when it is being serviced or worked on**
672 **we would only have vehicles that are his or your family's. Council Member Bigler seconded.**

673
674 Discussion on the motion:

675
676 Council Member Turner asked Council Member Harris if she would be willing to amend her motion to match
677 what Mr. Hulme had in his motion regarding on car waiting and one car being worked on. Council Member
678 Harris considered that but based on the volume of vehicles there can only go with one.

679
680 Council Member Bigler asked with the closed windows and garage what will happen with the ventilation. Mayor
681 Harris said the motion includes all HVAC codes must be met. Council Member Harris said she feels it is a very
682 unsafe condition to put the family in, so we need to make sure there is safety compliance. Gary Kerr said even on
683 a residential home you have fresh air coming in for the furnace.

684
685 Council Member Taylor said when he's been to the auto repair places it seems like a lot of times they have the big
686 bays open the entire day. Are we creating a safety hazard for Mr. Baguley by requiring that they remain closed?
687 Council Member Harris said those other businesses are in commercial areas that don't have the same noise
688 restrictions that this one would in a residential area. What a commercial business might look like is different than
689 what this will look like. Council Member Taylor said to try to make this work we are creating so many
690 requirements that we may be creating unintended consequences. It may be that this type of business does not
691 belong in this area. Maybe this just speaks to it not being possible to balance all of this in a way that's going to
692 work. Council Member Harris said her point on that is that the mitigations are necessary to preserve the
693 neighbor's quiet enjoyment of their property. Does that make it difficult to have this business in the residential
694 area? The applicant would have to decide if there is a cost benefit to doing business there or if it's not feasible.

695
696 Council Member Flamm said he has been to a lot of garages that keep the garages closed all the time. They have
697 to figure out a way while the car is running to get rid of that exhaust. It's not going to be running the whole time
698 they're working on it. There are ways that OSHA has set rules so you can still have the vehicle and still be safe.

699
700 Council Member Bigler agreed with Council Member Flamm and also agreed with him on allowing a car on the
701 driveway. As far as vehicles and traffic we just approved a home occupation tonight for teaching hula dance. Did
702 we put a stipulation on that as to how many cars? He said he can see both sides but as our City Attorney said the
703 Planning Commission is the Land Use Authority and if it's a tie, we go with what they said. If there needs to be
704 ventilation for something we can talk about it later. There are good people on both sides. He suggested we let
705 them open the window a little bit and don't require expensive professional venting.

706
707 Council Member Turner said that the Uniform Building Code requires ventilation.

708
709 **Council Member Harris amended her motion to allow one car in the garage and one waiting to be worked**
710 **on but with the other contingencies. Council Member Bigler asked if he would be able to open a door.**

711 **Council Member Harris said no, the applicant stated that the doors remain closed anyway. Council**
712 **Member Bigler said he would not second that if he could never open a door or a window.**

713
714

715 Mayor Harris said that without a second the original motion stands.

716

717 Council Member Taylor asked if there is a time frame on this approval. Mayor Harris said yes annually. Council
718 Member Taylor asked Council Member Harris if she would amend the motion to include a 6 month initial
719 requirement because there has been so much controversy around this to allow the neighbors to weigh in sooner
720 than a year.

721

722

723 **Voting on the original motion:**

724

725 **Council Member Harris** **yes**

726 **Council Member Flamm** **no**

727 **Council Member Bigler** **no**

728 **Council Member Taylor** **no**

729 **Council Member Turner** **no**

730

731 **Motion failed.**

732

733 **Council Member Turner moved that we allow the Conditional Use Permit with no more than two vehicles**
734 **at a time for repair one active and one waiting parked in the driveway, no vehicles may be parked to**
735 **obstruct the sidewalk, the ventilation system should meet code for garages, when the compressor or other**
736 **noise generating tools are in use all doors and windows remain closed, an initial 6 month review of this**
737 **Conditional Use Permit, insulate the garage door to mitigate the noise. Council Member Flamm seconded.**

738

739

740 Discussion on the motion:

741

742

743 Council Member Bigler asked for clarification on the 6 month review, what is that for and what would we be
744 doing? Mayor Harris said the City would be ensuring that these conditions are met. Dave Carlson said the
745 hearing would be before the Planning Commission, they are the Land Use Authority for Conditional Use Permits.
746 Council Member Bigler asked if we are saying to do that automatically. Council Member Turner said he is
747 thinking after the first 6 month period it would go to Planning Commission and if everybody is feeling better
748 about the situation then it could be extended for a year. This would allow the neighborhood to review it after 6
749 months.

750

751 **Council Member Turner amended the motion to include a 6 month period initially and then annual**
752 **reviews. Council Member Flamm seconded the amended motion.**

753

754

755 Discussion on the motion:

756

757 Council Member Taylor said one concern he has is the garage door being open. The Conditional Use ordinance
758 prohibits the display of sales or goods. He asked Council Member Turner to amend his motion so to allow the
759 doors and windows to be open but that the garage door is to remain closed at all times when working on all items.

760 **Council Member Turner amended the motion. Council Member Flamm seconded the amended motion.**

761

762 **Voting on the motion:**
763
764 **Council Member Turner** **yes**
765 **Council Member Taylor** **yes**
766 **Council Member Bigler** **yes**
767 **Council Member Flamm** **yes**
768 **Council Member Harris** **yes**

769
770 **Motion passed.**

771
772 Council Member Harris moved to recess. Council Member Turner seconded.

773
774 The meeting recessed at 8:59 pm and reconvened at 9:06 pm.

775
776 **DISCUSSION AND/OR ACTION TO APPROVE A RESOLUTION AMENDING RULE 4 OF THE CITY**
777 **COUNCIL RULES OF PROCEDURE CONCERNING ELECTRONIC CLOSED MEETINGS.**

778
779 Dave Carlson, City Attorney, reviewed that the City Council adopted a rule on electronic meetings. A concern
780 has been brought up that if the closed meeting was being broadcast by some kind of communication means to a
781 remote location the City Council would have no control over who else might eavesdrop on that conversation. He
782 said he was asked to draft a rule that would restrict the practice of holding electronic meetings if there is a closed
783 meeting. He prepared an amendment adding paragraph 17 to rule # 4. That addition reads as follows: Due to
784 the inherent difficulty of controlling confidentiality when a meeting is carried electronically to a remote
785 location, participation by a Council Member electronically at a closed meeting is prohibited.

786
787 **Council Member Harris moved to approve Resolution 20-2010 amending Rule 4 of the City Council Rules**
788 **of Procedure. Council Member Bigler seconded.**

789
790 **Voting on the motion:**

791
792 **Council Member Turner** **yes**
793 **Council Member Taylor** **yes**
794 **Council Member Bigler** **yes**
795 **Council Member Flamm** **yes**
796 **Council Member Harris** **yes**

797
798 **Motion passed.**

799
800 **DISCUSSION AND/OR ACTION ON BUSINESS LICENSES FOR COMMERCIAL BUSINESSES AND**
801 **HOME OCCUPATIONS.**

802
803 Debbie Cardenas, Finance Director, stated that the staff had some information come in after the packets were sent
804 out so we have a new set of schedules to review. She said she could go over them tonight and Council could take
805 them home and think about it for the next meeting or take them home tonight and we can review them in two
806 weeks. Council Member Bigler asked if we could take a look at it. Debbie Cardenas had approximately six
807 scenarios that will be reviewed one at a time. Debbie stated that we can only charge one business license per
808 owner. The study was based on per roof so we needed to go through and extract those duplicate holdings which
809 changed the figures.

810

811 Schedule #1 shows what we are currently receiving. The top half shows what we are charging all the current
812 businesses the bottom is what we are charging to include landlords. We took what we are actually getting for
813 fuel, number of storage units and square footage but could not break it out so there is a total there. That's why you
814 don't see a base figure there for those items you just see the total revenue. Currently we are getting \$8,900.00 for
815 new applications, \$14,050 for home occupation renewals and \$16,720 for business licenses, square footage, fuel
816 fees and beer licenses.

817
818 Schedule #2 Business Base only – What we did there is we charged the new base fee of \$64.00 for all of the
819 businesses and the \$82.34 for all new applications and \$64.00 for all home occupation renewals. If we charge the
820 businesses only we would get \$33,889.26 so we would see approximately a \$6,000.00 loss in business license
821 revenue if we continue to charge the businesses only, as we are doing now.

822
823 Schedule #3 Business & Rental Base only – Mayor Harris said out of necessity we are looking at item 9 and 10
824 together. We wanted to keep them separate but we have to look at them together. Debbie Cardenas said because
825 they are so intertwined we are going to be looking at items 9 and 10 together. This is if we bring the landlords into
826 the mix and start charging a business license for rental units. We would continue to charge the businesses the
827 base rate and also charge the base rate to the landlords. Charging \$64 to each owner for their rentals would give
828 us approximately \$26,752.00, so total revenue coming in from the businesses and the landlords \$60,640.26. That
829 would be just under a \$21,000 increase in business license revenues by charging the base fee only. Mayor Harris
830 said we are talking about a Good Landlord Program with this. Debbie Cardenas said that is correct but there is no
831 Good Landlord Program or disproportionate fee in this scenario this is strictly the base fee for business licenses
832 for businesses and landlords.

833
834 Schedule #4 Business & Rental with Disproportionate Regulatory – Debbie said this one is a little more
835 complicated. On this one we are charging the businesses the base rate, no disproportionate fee; for the rentals we
836 are charging the base rate, which would be one per owner, but we would also be looking at charging the
837 disproportionate regulatory fee of \$23.27. We can charge the disproportionate fee by roof top, it does not have to
838 be by owner only, but in this schedule we are charging the owners only. The base fee covers administrative costs.
839 The disproportionate fee covers compliance and code enforcement; that would be the part for the disproportionate
840 regulatory portion. It does include \$10 toward a Good Landlord Program, if we don't establish a Good Landlord
841 Program we could decide to reduce that fee by the \$10. Council Member Flamm asked Debbie Cardenas to give
842 more detail on this disproportionate fee and what it covers. Debbie Cardenas said if a Code Enforcement Officer
843 goes out, they go out whether we assess a fee or not. What LYRB was trying to say is that you have a cost to
844 administer each business license and we are proposing that we do it also for the rentals. You also have code
845 enforcement and compliance. When they reviewed the steps involved the cost was \$13.27. We have been doing
846 the work all along but we have been paying for it and have not been collecting. The other \$10.00 would be to
847 establish a Good Landlord Program. Council Member Flamm said he would like to know what that really covers.
848 He said if he was a landlord and was getting charged an extra \$13 versus other businesses he would want to know
849 why. Gary Kerr, Building Official, said that whatever the ordinance says they have to do is what they would be
850 verifying. Debbie Cardenas stated that Heather Clark was doing it when she was here. The total here would be
851 \$70,367.12. A little under \$31,000 increase in our business license revenue.

852
853 Schedule #5 Business only plus 10% Disproportionate Fee – Debbie Cardenas stated that this is going back to
854 charging businesses only and not charging the landlords. In this scenario we would be charging the businesses the
855 \$64.00 base fee and the disproportionate fee but the fee would be 10% of the disproportionate fee suggested in the
856 study to a maximum of \$365.00 which would be an equivalent to \$1.00 a day for disproportionate fee. In this
857 scenario our revenue would be \$37,840.46 which would be a \$2,000 decrease from what we are currently getting.

858
859 Schedule #6 Business plus 10% Disproportionate fee at \$365 max. and Rental Base only – Debbie Cardenas said
860 this one would be charging all the businesses the base rate of \$64.00 and 10% of the disproportionate fee that was
861 recommended with a maximum of \$365.00 per year and we are charging the rentals a base fee of \$64.00 with no

862 dis proportionate fee for the landlord or the rentals. They would only be charged the base fee of \$64.00. With that
863 we would see an increase in rental business licenses of \$26,752.00 with total revenue of \$64,592.00 which would
864 give us a little over \$24,000 more in business license revenue.

865
866 Council Member Harris said that the additional fees for convenience stores, fuel, storage, etc., all of those things
867 went away. Debbie Cardenas said they should have. They should only be on the current schedule. Under the
868 current schedule we may have been charging some sort of disproportionate fee so they shouldn't be there. LYRB
869 determined what the cost should be and that is the \$64.00 base fee. We don't know where those fees came from.
870 We removed all those fees under the new scenarios.

871
872 Council Member Harris asked how much one beer license will cost, is that the \$750? Debbie Cardenas stated no,
873 that is how much we have been getting for all of them. Council Member Harris asked how much a beer license
874 costs. Debbie Cardenas said she thinks \$150. Council Member Harris said that if you are a grocery store your
875 business license fee could go down; they would just pay the base fee plus 10%. Debbie Cardenas said that is
876 correct.

877
878 Council Member Flamm said the \$365 maximum came after one of the business owners stood up at the last
879 Council meeting and said she doesn't think it is unreasonable to pay a dollar a day to do business. That's why this
880 is capped at \$365.

881
882 Schedule #7 Business plus 10% Disproportionate fee with no max and Rental Base – This scenario is the same as
883 the last without maxing out at \$365. The highest is \$894.80 for a grocery store. In this scenario we are charging
884 businesses the base rate of \$64 and the full 10% of LYRB recommendation without a maximum for the
885 disproportionate fee. We are charging the base rate to the owners for their rentals but we are not charging the
886 disproportionate fees to rentals. The total revenue would be \$65,862.86 a little over \$35,000 increase in revenues.

887
888 Council Member Bigler asked about the business class for rental units there are different numbers. Council
889 Member Flamm explained that one was based on business owners not roofs. Debbie Cardenas stated she hurried
890 to change schedules that would be impacted.

891
892 Mayor Harris said we have six scenarios plus our current situation. We need to go back to the original purpose of
893 the LYRB study. We are already accruing the cost that the study identified. The bottom line on the study shows
894 that it is costing us \$147,900 now to do business. Debbie Cardenas said that is correct. Anything less than
895 \$147,900 is a cost to the City that is being absorbed by some other entity; property tax revenue or the General
896 Fund, whatever you want to call it. He thinks that's what the Council needs to focus on. We need to keep this in
897 mind as we are deciding.

898
899 Council Member Flamm said that \$147,900 is assuming we charge the higher disproportionate fees to the
900 landlords but without the discounts for the Good Landlord Program. If the Good Landlord Program is set up and
901 those landlords participate that number falls to \$136,000. He said he thinks that the bottom line is the \$136,000.
902 Debbie Cardenas stated the \$136,000 is assuming that the calls to the City will decrease if the Good Landlord
903 Program is established. She said she thinks what the Mayor is referring to is what we are incurring now.

904
905 Council Member Bigler asked has LYRB done this type of study before. Debbie Cardenas said yes. Council
906 Member Bigler said we paid them a lot of money and to have it wrong. Council Member Bigler asked if we can
907 get more specific and look at each specific business and how many police calls they've had and what type of calls.
908 A call to the County indicated that some of these calls are traffic violations that occurred in the road in front of the
909 address. If there is a fender bender in front of Mrs. Cavanaugh's then they are put at that address. Debbie
910 Cardenas said it was our department that was able to break out and determine if it is a crime against the property
911 versus a traffic call and that's what the disproportionate fee was based on. Council Member Bigler said that is

912 different than what the County said. Debbie said that may be how it is at the County but LYRB go their
913 information from the City Staff also. Council Member Bigler said he wants to look at that again.

914
915 Council Member Harris said seeing as how it is 10 minutes to 10 and with this new information; we have a
916 Council Member who doesn't have access to it until it gets emailed, she would like to move to table this until our
917 next meeting. She encouraged Council Members that if there is anything that comes up don't wait until the
918 meeting to contact Ms. Cardenas because we really need to move on this. No surprises at the next meeting.

919
920 **Council Member Harris moved to table items 9 and 10 until next the meeting.**

921
922 Discussion on the motion:

923
924 Mayor Harris said that there is some urgency to this because there is one more meeting before business license
925 renewal forms will be sent out. He said perhaps we can send them out and amend this later. Council Member
926 Bigler agrees with what the Mayor said. He said that he has spent hours going over this information and to have
927 the numbers change now, he can't take the time tonight to look at that and go through them over the weekend.
928 Debbie Cardenas said if the Council Members have questions they can let her know, like Council Member Harris
929 said, so we can address them before the meeting. Council Member Bigler asked if we could charge certain fees,
930 the landlords are a business, could we keep home occupations and landlords at \$65.00 and the regular business
931 license fee at \$100.00? Council Member Flam said that is a form of disproportionate fee. Council Member Bigler
932 said it is a business license fee. Debbie Cardenas said you would have to justify it and that is why we are
933 proposing the \$64; that's what we can justify. Council Member Bigler said since we have been charging them
934 \$100 so do we owe them a refund. Mayor Harris said we don't owe them a refund and that \$100 is arbitrary. By
935 law we now have to be able to justify those fees. Mayor Harris said we have to understand what it costs us to do
936 business. He said he has no problem with us not charging the full disproportionate fee. He thinks the point that
937 Jonathan Badger made about the amount of money they donate to us for events justifies some different types of
938 fees.

939
940 Council Member Taylor said he mentioned two weeks ago that we need to look at the bigger picture and the
941 City's budget. We took just over \$800,000 out of the General Fund to balance the City budget and a lot the year
942 before and the picture isn't pretty for the next year either. He said he is not comfortable taking large amounts of
943 what we have left in the City Reserves. He thinks we are getting close to the minimum required by State law
944 anyway. We either need to cut expenses or increase revenues. We have to fund the operations of government and
945 taking \$800,000 out of the Reserves is not a long term solution strategy. We have to come up with a way to cut
946 expenses and add revenue. The City provides a lot of services to the businesses that enable their customers to
947 come and shop at their location. Council Member Taylor said he thinks we need to make a decision and could
948 come up with a general consensus tonight.

949
950 **Council Member Turner seconded the motion.**

951
952 Debbie Cardenas asked if the Council could narrow down the scenarios.

953
954 Council Member Harris said she is leaning toward scenario 6 or 7.

955
956 Council Member Bigler asked if he could sit down and go through some things with Debbie Cardenas. We need
957 new revenue but that doesn't mean we have to sock it to the businesses. He said he has heard from a number of
958 business owners who said they have never had a police call. Debbie Cardenas said she will check into Council
959 Member Bigler's question about police reports. Council Member Bigler said he would like to see a report on each
960 business or rental unit, the number of police calls to that business or rental unit and the type of offense. Ms.
961 Cardenas stated that she would check into it.

962

963 Council Member Flamm said if you look at Schedule #7 which shows the very most revenue, the businesses will
964 pay less than what they currently pay. He said we can justify this study now without additional expense and time
965 and he feels we need to move ahead.

966

967 **Voting on the motion:**

968

969 **Council Member Turner** **yes**

970 **Council Member Taylor** **no**

971 **Council Member Bigler** **yes**

972 **Council Member Flamm** **yes**

973 **Council Member Harris** **yes**

974

975 **Motion passed.**

976

977

978 **DISCUSSION AND/OR ACTION ON BUSINESS LICENSES FOR LANDLORDS.**

979

980 **This item was tabled until the next meeting.**

981

982

983 **DISCUSSION AND/OR ACTION ON HOW TO PROCEED WITH THE PUBLIC WORKS COMPLEX.**

984

985 Mayor Harris stated that we are back to trying to come up with appropriate properties with respect to the new
986 Public Works complex. The Public Works Committee met last week and talked about a number of things and the
987 fact that we needed a better set of assessment criteria and definitions for those criteria. It was proposed that we
988 have one more citizen on the Committee because Dave Hulme is now a member of the Planning Commission. We
989 would like him to stay on the Committee to represent the Planning Commission but would also like another
990 citizen. We talked about using an architect to help with the site and further down the road, when we have a
991 definitive set of properties to look at, we hire a real estate professional to assist us with the purchase of property.
992 We will be checking with the Council each step of the way. We need to know what the Council wants. Mayor
993 Harris asked for some head nods if that's the way the Council wants the Committee to go.

994

995 Council Member Flamm said he is okay with that. Council Member Harris is also. Council Member Turner is
996 okay. Council Member Bigler asked if this is to look at the different sites and information, not to go ahead to
997 build. Mayor Harris said that is correct, we haven't even looked at financing. We have about \$500,000 set aside.
998 Council Member Taylor asked what the estimated cost is to hire the architect and real estate agent. Mayor Harris
999 said we haven't even decided but we will bring that back to the Council. Council Member Taylor asked whether
1000 we have a time line; he said he would like to see sooner rather than later. We haven't had a large discussion on if
1001 we are doing it or not. Mayor Harris said we don't have a time line yet, we need to get some definitive sites so we
1002 can define costs. We'd bring that to the Council then we can move ahead. We might decide not to do anything
1003 now. Council Member Taylor said he would like the Council to have that discussion before we spend money and
1004 have it as soon as possible. We need an overall discussion on this project.

1005

1006 Jim Harris, Project Manager, said he did wonder if the Council had looked at the criteria and definitions. If they
1007 have questions please let him or the Mayor know. Council Member Taylor asked can we nail down when we'll
1008 have a time line. Council Member Bigler said right now you are not spending money you are doing homework
1009 without cost. We might find a piece of property we can purchase and then go from there. How can we do this
1010 with a time line? Mayor Harris said Council Member Bigler has a good point and we will move ahead. Mayor
1011 Harris said we are not incurring major costs at this time. He got nods that said do it.

1012

1013 **DISCUSSION AND/OR ACTION TO APPROVE APPLYING FOR A SAFE SIDEWALK GRANT**
1014 **THROUGH UDOT AND USING THE MONEY TO PUT IN SIDEWALKS IN OUR SAFE SIDEWALK**
1015 **PLAN.**
1016

1017 Gary Kerr, Building Official, stated that UDOT has a grant on safe sidewalks. We have been putting money into
1018 a program for sidewalks in past years. The Council put a stipulation on it that the property owner agrees to the
1019 sidewalk going in. One stipulation on this grant is no matching funds. We would need to pay for an engineer to
1020 do a cost estimate. The application is due November 1, 2010. The owner of the property, which is the City, has to
1021 apply for the grant and agree to put in the sidewalk. Gary Kerr presented a map; the green indicates the properties
1022 we are addressing (on file). Gary wants the Council's permission to go after the grant but would like the Council
1023 to know that they will be getting calls from those property owners that don't want it. Council Member Flamm
1024 asked if the topography will be addressed. Gary Kerr said he knows the grant will cover the sidewalk and any
1025 landscaping that needs to be done to make it work. The green is where we need sidewalk; the areas in between
1026 are where there is already sidewalk. He said we can only go after 200 linear feet. Mr. Kerr said his understanding
1027 is that the grant has nothing to do with amount of money only the amount of sidewalk and the maximum is 200
1028 linear feet.

1029
1030 **Council Member Turner moved to approve applying for a safe sidewalk grant through UDOT and using**
1031 **the money to put in sidewalks in our safe sidewalk plan. Council Member Bigler seconded.**
1032

1033 **Voting on the motion:**
1034

1035 **Council Member Turner** **yes**
1036 **Council Member Taylor** **yes**
1037 **Council Member Bigler** **yes**
1038 **Council Member Flamm** **yes**
1039 **Council Member Harris** **yes**
1040

1041 **Motion passed.**
1042

1043 **COUNCIL/PUBLIC COMMENT**
1044

1045 Helen Taylor said that she thinks the Council underestimates the opportunity you have here to reduce a major
1046 expense. Lase time Debbie Cardenas indicated that the Police Dept. is 30% of our North Ogden City budget. She
1047 said she believes that number is \$6 million which makes them a \$2 million dollar expense item. We are building
1048 the whole disproportionate fees based on a study that may not be accurately reflecting the disproportionate fee
1049 expense. She said the Council is already ahead \$21,000.00 on fees by using Scenario 3. If we charge the
1050 landlords and business owners for police calls the expense is shifted to the shoulders of who is creating the actual
1051 expense. Stop hiring more police officers.
1052

1053 Council Member Turner said the Parks and Trails Committee meets tomorrow night at 5:30pm. He said the next
1054 meeting will hopefully be an amendment to the Subdivision and PRUD ordinances that addressed trails.
1055

1056 Council Member Bigler said in two weeks it will be too late, regarding special event signage, Neal and Carrie
1057 Barker own the fish farm and have a corn maze for elementary school age kids. They were told they can't
1058 advertise but the City can put up special event signs. Council Member Bigler said he thought we went through
1059 that several months ago. Gary Kerr said that the fish farm is making the money so it is not a special event. Craig
1060 Barker said the ordinance establishes that it is for fund raising for non-profit or community groups holding
1061 traditional City wide events. Council Member Bigler said this one seems different. Craig Barker said just
1062 because he caters to young children doesn't make it a non-profit. Council Member Bigler said he wished we

1063 could help all sides and angles. Craig Barker did give Mr. Barker some options and told him where he can locate
1064 his signs.

1065
1066 Council Member Flamm said the Economic Development Committee meets tomorrow at 5:30pm. He stated that
1067 he will attend by teleconference for the next Council meeting.
1068

1069 Council Member Harris said she and Jim were lucky enough to participate in the City staff Clean-up Day and they
1070 had a great group and a lot of efforts donated by the staff. She said she hopes those 13 trees they planted in the
1071 park thrive because they are beautiful.
1072

1073 Debbie Cardenas said there were two service line breaks over the weekend. The Public Works guys were here for
1074 27 hours fixing those, most of them went home this morning. They are waiting for a part to come in. They will
1075 need to watch that road carefully because the water did run down the sewer trench so they are concerned that the
1076 road may settle. Weber State Credit Union's ribbon cutting ceremony will be this Thursday at 9am.
1077

1078 Mayor Harris said these two major line breaks were very expensive to repair thus the importance of keeping the
1079 City reserves up and available for our use. Council Member Bigler said for the record, some of those lines are
1080 old, so when they are replaced we have better technology that we replace them with. Mayor Harris said the one
1081 break had a lead packed joint cast iron pipe that had been in place for well over 50 years.
1082

1083 **ADJOURNMENT**

1084
1085 **Council Member Bigler moved to adjourn. Council Member Harris seconded.**
1086

1087 **Voting on the motion:**

1088
1089 **Council Member Turner** **yes**
1090 **Council Member Taylor** **yes**
1091 **Council Member Bigler** **yes**
1092 **Council Member Flamm** **yes**
1093 **Council Member Harris** **yes**
1094

1095 **Motion passed.**
1096

1097
1098 The meeting adjourned at 10:45pm
1099
1100
1101

1102 _____
1103 Richard G. Harris, Mayor
1104

1105
1106
1107 _____
1108 S. Annette Spendlove, City Recorder/HR Director
1109
1110

1111
1112 _____
1113 Date approved