

COUNCIL MINUTES
JUNE 26, 2019

The City Council held a meeting on Wednesday, June 26, 2019, at 5:30 p.m., in the Council Chambers, 10 North Main Street, Cedar City, Utah.

MEMBERS PRESENT: Mayor Maile Wilson-Edwards; Councilmembers: Ron Adams; Paul Cozzens; Terri Hartley; Craig Isom; Scott Phillips.

STAFF PRESENT: City Manager Paul Bittmenn; City Engineer Kit Wareham; City Attorney Tyler Romeril; City Recorder Renon Savage; Finance Director Jason Norris; Police Chief Darin Adams; Leisure Services Director Ken Nielson.

OTHERS PRESENT: Ryan Brindley, Tyler Melling, Don Oswald, Jennie Hendricks, Tom Jett, Tina Dickinson, Vickie Graham, Carter Wilkey, Leslie Brindley, Mikelle Lloyd, Father Adrian Komar, Sara Ridgel, Ken Stevens, Jared Hatch, Nickk Willis, Brett Brindley, Coy Brindley, Dallin Staheli.

CALL TO ORDER: Father Komar of Christ the King Catholic Church gave the invocation; the pledge was led by Ken Nielson.

AGENDA ORDER APPROVAL: Cozzens – we can bump the ice rink to the end, Dallin is flying back into town.

Councilmember Cozzens moved to approve the agenda order with moving the ice rink to the end of the agenda; second by Councilmember Hartley; vote unanimous.

ADMINISTRATION AGENDA – MAYOR AND COUNCIL BUSINESS; STAFF COMMENTS: ■Phillips – I don't know, does the City own a machine to spray weeds along sidewalks and streets? Paul – we had money in the budget for Jeff to buy a truck, sprayer and tank, but I am not sure if it is the current budget or next year budget. Phillips – something like that needs to happen, the weeds are everywhere. Cozzens – the County has a weed abatement program. Paul – we pay them every year to kill scotch thistle. Phillips – Sage Drive is really bad. Isom – we took those weeds out during the sparkle campaign. Phillips – if we can look into that. ■Hartley – thank you Ken for getting on the Aquatic Center weeds sprayed. Weeds are a big complaint all over. Wade was planting a new tree and the crew was by the South interchange. Make a plea to all of the community to try and clean their property up, even the businesses on Main Street. Also, when reviewing the bills there was a payment to GenPak for tax incentives, I want to compliment them, when we see the incentives paid out means they companies have made investments, created jobs that pay above the county median, that means they did what they said they would do, so I want to compliment them. Cozzens – Chip Sasser is the manager of the east plant. ■Adams – I want to thank Kit and his people, we have had several accidents in front of Homestead Park, I suggested we contact UDOT and have them post construction speed zones. Cars are backed up at the light at Coal Creek to the Cemetery and they are driving too fast. Kit is meeting with UDOT tomorrow. Maybe

mention that reduction in all the areas we have construction. Phillips – I know the Mayor has mentioned it in her newsletter, but the construction will go on for 3-4 months and it will be nice when it is done. Take time and be cautious when driving through the construction zones. ■Paul – we replaced 8 trees at the Aquatic Center, they have done a great job. Cozzens – do we have a watering system? Ken Nielson – this is my first summer, I think those were all this year’s culprits; I don’t know that it happens every year, they are all in the islands. Wade checked the drip system to make sure it was working.

PUBLIC COMMENTS: ■there were no comments.

CONSENT AGENDA: (1) APPROVAL OF MINUTES DATED JUNE 5 & 12, 2019; (2) RATIFY BILLS DATED JUNE 17, 2019; (3) APPROVE SINGE EVENT ALCOHOL PERMIT FOR A BEER BLOCK PARTY ON JULY 27TH AT 233 NORTH 100 WEST. POLICY KINGS BREWERY, LLC; (4) APPROVE A SINGLE EVENT ALCOHOL PERMIT FOR A BEER GARDEN AT THE JULY JAMBOREE CAR SHOW. MARK BARUFFI; (5) APPROVAL OF BID FROM MUNFORD GENERAL CONTRACTING IN THE AMOUNT OF \$165,553.00 FOR THE WASTEWATER TREATMENT PLANT DEWATERING BUILDING LIFT STATION. KIT WAREHAM; (6) APPROVE ANNUAL BLANKET CONTRACTS & 2-YEAR STREET LIGHT MAINTENANCE CONTRACT.

RYAN MARSHALL/JEFF HUNTER: Councilmember Isom moved to approve the consent agenda items 1 through 6 as written above; second by Councilmember Hartley; vote unanimous.

CONSIDER AN ORDINANCE AMENDING THE ZONE FROM RESIDENTIAL AGRICULTURE TO MIXED USE IN THE IRON HORSE RDO, POD 1 LOCATED NEAR THE CEDAR MIDDLE SCHOOL. LEAVITT LAND /TYLER ROMERIL: Tyler – this came through a month ago, it is the SITLA property, this is the first Pod for development. Phillips – this is amending the zone, they will come back with plat review? Yes. Tyler – we will see this for every pod. Kit – they have been to Project Review for the subdivision.

Councilmember Phillips moved to approve the zone change from residential agriculture to mixed use in the Iron Horse RDO, POD 1 located near Cedar Middle School; by Councilmember Hartley; roll call vote as follows:

Ron Adams	-	AYE
Paul Cozzens	-	ABSTAINED
Terri Hartley	-	AYE
Craig Isom	-	AYE
Scott Phillips	-	AYE

CONSIDER APPEAL OF DECISION TO DENY A CLAIM. DUDE BENSON/TYLER ROMERIL: Tyler – the last time we talked one of the suggestions was if the City went in and replaced the curb, gutter and sidewalk. I talked with Jeff

Hunter, he thought 30 feet would cost about \$1500. If the council is comfortable I will make the offer and have him sign the release, if not we will bring it back.

Councilmember Isom moved to approve the offer; second by Councilmember Adams; vote unanimous.

CONSIDER AN ORDINANCE REGULATING THE LOCATION OF CARGO CONTAINERS. TINA DICKINSON /TYLER ROMERIL: Tyler – we talked about this last week. Ms. Dickinson brought forth an ordinance to restrict in residential zone except City property and up to 6 months for construction or remodeling. Also, the containers that are already there could remain if they paint to match their homes. We could treat like sheds to meet the required setbacks for the underlying zone and have a minimum 6-foot setback in the rear, no vertical stacking and no human habitation. Those are the two options, council can come up with their own, or you can table it.

Phillips – the revised ordinance didn't do much of anything other than no have people live in them and a few things. I am not sure we should pass that one. If council is concerned about what the citizens brought forth, then we need to find something more compatible. Since the discussion I have seen them all over town, citizens, businesses, city and private property owners. No one wants them in front of driveways or homes so businesses. We did have a series of them on 100 West behind the old library, I am not sure we want that. There is hesitancy on staff and perhaps council to endorse what the citizens have brought forth.

Tyler – City staff's ordinance is the one that was given a positive recommendation from Planning Commission. You can bring either one or a hybrid.

Tom Jett – nationwide, and I am sure we have all seen creative changes, some live-in trees some in caves, and people have cool cargo container homes, I am not sure it is a craze or something that will stay. We are going through affordable housing problems and Park City and Salt Lake City are using cargo container homes. I had a home with 7 cargo containers designed by an engineer, Heath Oveson before his death. We have to be careful in trying to monitor and engage, I think society will have control over this. We had a healthy discussion about a chicken ordinance and it never realized itself, and I didn't support that. My fears were not realized. People are seeing something will happen that maybe never will. About stacking, mine stacked two and it was beautiful. They don't have to be trash. There are trashy homes in this town, next you will dictate if people need to paint their home, re-roof it, etc. economics will cure the problem. Sometimes we need to live through pain for creative choices.

Phillips – I don't think there is a problem if it is sided or esthetically painted, it is where it is located and how it looks. Tom – I know people that use it for a wood shop, that is better than a lean-two. What is worse, enclosed cargo container or things left out. We are going through a situation, a few years ago my daughter wanted to live in a tee-pee, she was 13.

Isom – I think staff's draft does more than you are giving it credit, it is common sense first step.

Ryan Brindley, Triple A Mobile Storage – I provide cargo containers and have for 30-35 years. Fire work stands come in to play, when stores need to remodel or for storage, they are more permanent when stores use them. As far as residential we have taken containers to people for years. I can see them setback or painted, but residents should have the freedom to do that. They are water tight, dust free and no mice. There is not a better storage solution. Residents should be able to have them. If regulations need to be made, a setback. If they don't want containers move where they have CC&R's that prohibit them. We don't put things on Main Street that has writing. SUU has about 20 of them when you look off the freeway that are painted off-white.

Vickie Graham – the ordinance as we perceive that does not ban them, maybe based on lot size you could have a 20 foot versus 40 feet, no graffiti and no lettering, it started when I had a view on one in my neighborhood that had blue hangen painted on it, I bought my lot for a view, not a view of the cargo container.

Tina Dickinson – Ryan makes a good point, I would also suggest that the 40 foot are not legal by building code anyway. Burying them is dangerous and should not happen, stacking is better than burying.

Adams – when we get into telling people how to paint their sheds is a problem without CC&R's. I am wondering if they were painted a color, maybe earth tones, but I found that can be browns to lunar green. I like the ordinance that has been drafted about the setbacks, and if we could put something in about cosmetics, maybe painted a solid color, I don't know how to define it. I agree they should look nice and not a rusted-out piece of junk. Cozzens – we have a house in our neighborhood that is purple.

Phillips – the question Tina brought up about size is that true, if it is, nowhere does it address square footage or size. Tyler – there is a definition at the top of the ordinance defines a cargo container as a prefabricated metal structure designed for use as an individual shipping container in accordance with international standards for overseas shipping or designed to be mounted on a rail car as freight or designed and built for use as an enclosed truck trailer in accordance with US Department of Transportation standards. That is the catch all language. Paul – if they do require a building permit why would you ban it, building code requires an inspection, I don't know what they would inspect for, but I don't know why you would ban them. Cozzens – do you place many 40-foot container in the City? I saw one on Cove Drive today. Ryan Brindley – we do a few 40-foot containers, in Cedar they are about half and half. Also, they are portable unless they are on a foundation. The Cumberland buildings are brought in just like a cargo container. Mayor – do you paint them or does the home owner or business? Mr. Brindley – we do paint them if they want it, but some paint their own. Cozzens – it goes back to be a good neighbor. I had a friend send this to me, it was written in 1869 by John Stuart Mill – "Whenever, in short, there is a definite damage, or a definite risk of damage,

either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.

But with regard to the merely contingent, or, as it may be called, constructive injury which a person causes to society, by conduct which neither violates any specific duty to the public, nor occasions perceptible hurt to any assignable individual except himself; the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom."

I think this goes back to what Tom said when you start saying what size or what color. I have a problem with as many containers that the City has all over town, we want exceptions for ourselves, but we are going to limit others. This is tough, I wouldn't want an orange cargo container next to my house with lettering.

Brett Brindley – I want to address the front yard situation. We had an incident in Enoch where the home was flooded, it was placed in the front yard and people freaked out about it. We do rent to disaster companies. Also, people move with them, we set them in the front yard and fill them up and then we move them. I think that creates fear with some. I don't think we have placed one in a front yard that wanted it there permanent. There are some that put in the back yard that are ugly, and I can understand that. Maybe there does need to be an ordinance for that.

Phillips – I think you are correct in 99.9% of the cases, because there is nothing on how long, originally it says 6 months, some commercial building takes 18 months, but if there is nothing then people can leave them there.

Adams – if they become a nuisance or become unsightly and someone filed a complaint with the City against an ordinance on upkeep of property or a structure, is that already covered? Tyler – the nuisance is more geared to broken down cars, grass 3 –feet high, drug houses and music all night. I don't know if the nuisance ordinance would cleanly address that, it wouldn't address them in the back yard. Adams – the trend is the new moving cubes, people fill them up and the company hauls them away.

Tina Dickinson – there are about ½ that are 40 foot, even though permits are required, people don't get the permits. We don't allow billboard signs, so we shouldn't allow cargo container signs. Even though it is required it is only to move it, not to place it in your yard. We should be talking about the 20 foot only, the 40-foot needs a permit. Tyler – if I renovate my home and put a dumpster you have to get a permit for it. Tina – you can put a shed under 200 square feet without a permit. The 40-footers should be getting permits and no one has. Cozzens – what would you do a permit for? Tina – it is an accessory structure. According to Galen Matheson if it is over 200 feet you need a permit, a different permit for electricity. I want that clarified in an ordinance, differentiate between 20 and 40 feet. Adams – if it is over 200 square feet what do they inspect. I think we need a building official to clarify that. Paul – maybe setbacks. Adams – the setbacks need to be inspected.

Vickie Graham – permanent placement in a residential back yard is what we are talking about, not one for building or moving. The permit covers the setback and being painted, stacked or buried. Adams – a shed can be within 1 foot of the rear property line.

Phillips – why did City staff not do anything about them being buried? Tyler – because if I want to use a ladder that is not safe should the City restrict that.

Tina Dickinson – if you lock from the outside you can't get out so if a kid gets in there they could die.

Carter Wilkey – one thing the council and city needs to do, you have to make a decision is it a structure or mobile, if it is a structure the permit comes into play. Cozzens – on Lund Highway they stacked them, and it is permanent. Carter – define in the ordinance if it is a structure versus a mobile unit.

Tina Dickinson – that is what the building inspector clarified, if they are a permanent structure.

LaMonte DeMille – I am the owner of a property management company, I am working on Bulloch Circle and there is a wood shed deteriorating, and a wood shed is portable. It is splitting liberties of property ownership. I think everyone needs to get along.

Leslie Brindley – I want to talk about legalizing what is slightly and unsightly, I think that is wrong and un-American. I think my neighbors' fence is unsightly and they have weeds and a dog I don't like. I don't like the color of their hair or the tattoo on their arm. People should have the freedom to have and possess what they want. If you want to live in a neighborhood that requires CC&R's then that is a right, but a city should not do that. I don't want a council to tell us to get rid of what they think is not good looking.

Tyler Melling – I think most people if given the choice would rather have a pretty shed than a cargo, but some of the regulations such as 200 foot on out buildings some of those drive up the costs for units larger than that. While the issue is on the table it would be timely, if we are going to legislate that we make it easier and less expensive to build pretty out buildings, maybe expand that to 600 or 800 square foot size before we get building permits.

Adams – I just use slightly and unsightly, not suggesting we put that in ordinance, CC&R's do regulate that. Cozzens – people can choose to live in an area with CC&R's. this reminds me of the sign ordinance.

Isom – where we stand now.

Councilmember Isom moved to accept the ordinance as drafted by staff; second by Councilmember Hartley; roll call vote as follows:

Ron Adams - NAY
Paul Cozzens - NAY
Terri Hartley - AYE
Craig Isom - AYE
Scott Phillips - NAY

Councilmember Cozzens moved to deny the ordinance; second by Councilmember Adams; roll call vote as follows:

Ron Adams - AYE
Paul Cozzens - AYE
Terri Hartley - AYE
Craig Isom - AYE
Scott Phillips - NAY

CONSIDER A RESOLUTION ADOPTING A PERSONNEL POLICY REGARDING THE USE OF PUBLIC PROPERTY. TYLER ROMERIL:

Tyler - the purpose to make sure employees are sure when they can and cannot use city property from vehicles, phones and backhoes. Phillips – this is for all government entities? Yes. Cozzens – I think the legislature went way overboard and feel they need to revisit this. I like the way this resolution is drafted. I think there are abuses and people should be prosecuted. I like we left it vague.

Councilmember Cozzens moved to approve the resolution adopting a personnel policy regarding the use of public property; second by Councilmember Phillips; vote as follows:

AYE: 5
NAY: 0
ABSTAINED: 0

CONSIDER AN ORDINANCE INCLUDING A “NO PARKING RESTRICTION” IN SECTION 35-10 OF THE CITY’S TRAFFIC ORDINANCE ON THE SOUTHWEST CORNER OF COAL CREEK ROAD AND 300 WEST. KIT

WAREHAM: Councilmember Isom moved to approve the no parking zone at the southwest corner of Coal Creek Road & 300 West; by Councilmember Phillips; roll call vote as follows:

Ron Adams - AYE
Paul Cozzens - AYE
Terri Hartley - AYE
Craig Isom - AYE
Scott Phillips - AYE

CONSIDER AN ORDINANCE AMENDING THE CITY’S OPEN BURNING ORDINANCE. MIKE PHILLIPS/TYLER ROMERIL: Councilmember Hartley

moved to approve the ordinance amending the open burning ordinance; by Councilmember Isom; roll call vote as follows:

Ron Adams - AYE
Paul Cozzens - AYE
Terri Hartley - AYE
Craig Isom - AYE
Scott Phillips - AYE

CONSIDER A RESOLUTION ADOPTING BYLAWS FOR THE CREATION OF THE CEDAR CITY ACTIVE TRANSPORTATION COMMITTEE. SCOTT PHILLIPS /TYLER ROMERIL:

Cozzens – what is the purpose, you talked about using the CATS buses to shuttle people. Phillips – that is nothing to do with it, it is trying to get people in the community moving actively without using vehicles. How to get people hiking, biking, roller blading. Also have signs that show how far it is to get from one place to another. If we are resurfacing put bike paths in.

Councilmember Hartley moved to approve the resolution adopting bylaws for the creation of the Active Transportation committee; second by Councilmember Isom; vote as follows:

AYE: 5
NAY: 0
ABSTAINED: 0

CONSIDER APPROVAL OF THE CERTIFIED TAX RATE. JASON NORRIS:

Jason – the rate is .00231 for general operation, for interest, total is .002494. this is not a tax change, just the calculated certified tax rate from the County.

Phillips – why does it fluctuate: Jason – many years ago the community leadership said we want X amount of dollars, it is divided between all assessed properties. The County said we will get the X amount and the new properties are assessed at the same rate and then the math gets complex. Property values go up and down each year, so they recalculate the base dollar amount and reevaluate new properties. If my home goes up in value and someone else's goes down, we are assessed a different amount of tax. Even though we didn't ask for more money, if your property goes up you may pay more. If we want new revenue we would have to go through Truth in Taxation and say we want an additional \$500,000 from the community and they would add more to the tax rate. The fluctuating cumulative is on the existing property. It fluctuates every year.

Councilmember Phillips moved to accept the certified tax rate; second by Councilmember Cozzens; vote unanimous.

CONSIDER LOCATION OF GYMNASIUM AND ICE RINK. PAUL BITTMENN/MARK WILSON:

Phillips – we know there will be additional costs either

way, but don't know the costs. We need to decide on where each will be located. Before we make a motion or do anything, Dallin just flew in from Bend Oregon, is there anything additional you need to add?

Dallin Staheli – I don't have anything new, I sent an email out, I would just like to get the new estimate started. Phillips – do we know if that is the costs? Dallin – Mark said yes. Hartley – are you asking for that only or for the cost of the plans? Dallin – no, I don't think we can ask for anything because we don't know before we have the plans. If you are uncomfortable don't lead us on with eternal planning. I am willing to pursue if it is something worthwhile. Hartley – I think we all want it to work.

Hartley – can we approve that money, where would the money come from. Phillips – if we make the motion that the gym stays, and the ice rink moves to a location on the property to be determined, this is asking for an additional \$1,000 for cost estimates of the ice rink pavilion. Dallin – yes, that is what I would like, showing good faith.

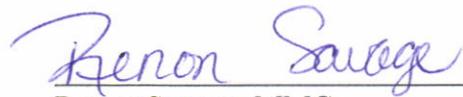
Phillips moved to consider having the gyms located in the original location NE of the Aquatic Center and the Ice rink be relocated to a location on the property yet to be determined and that we help up to \$1,000 for the cost estimates; second by Councilmember Hartley; vote unanimous.

LAND USE LIABILITY TRAINING. TYLER ROMERIL: Tyler – URMMA asks that we do a couple of trainings, ethics, open meeting and this land use liability. We do a good job of doing things by the book. It is important that decisions are geared differently on land use, we just voted on the ice rink, you could vote on what is best for you, the City or public clamor, but land use issues have to be on facts, law and something rationale, not arbitrary and capricious. The presentation is attached as Exhibit "A".

Phillips – can you change the general plan and say from this date forward it is changed? Tyler – someone owns property out west and wants to build apartments, if we switched the general plan and it was zoned property that is a problem. That is why it is the property owner that wants to change the general plan, not the City requesting it. We see that by the Golf Course.

Cozzens – LUDMA is it Utah or others states? Tyler – each state has their own version. Cozzens – Houston Texas comes to mind. Tyler – correct, you can have a home next to Home Depot and then a Dog food manufacturing company, they don't have zoning.

ADJOURN: Councilmember Isom moved to adjourn at 6:55 p.m.; second by Councilmember Phillips; vote unanimous.



Renon Savage, MMC
City Recorder