

MINUTES OF A REGULAR CITY COUNCIL MEETING HELD AUGUST 21, 2008 AT THE CIVIC CENTER, 83 WEST MAIN, HYRUM, UTAH.

CONVENED: 6:30 p.m.

CONDUCTING: Mayor Pro-Tempore Stephanie Miller

ROLL CALL: Councilmembers Martin L. Felix, Paul C. James, Thomas C. LaBau, Stephanie Miller, and Craig Rasmussen present.

EXCUSED: Mayor W. Dean Howard

CALL TO ORDER: There being five members present and five members representing a quorum, Mayor Pro-Tempore Miller called the meeting to order.

OTHERS PRESENT: City Administrator D. Brent Jensen. City Recorder Stephanie Fricke recorded the minutes.

AMENDED

08-21-08 **WELCOME:** Mayor Howard Pro-Tempore Stephanie Miller welcomed everyone in attendance and invited audience participation.

PLEDGE OF ALLEGIANCE: Councilmember Felix led the governing body and the citizens in the Pledge of Allegiance.

INVOCATION: Councilmember James

APPROVAL OF MINUTES:

The minutes of the August 7, 2008 were approved with the following amendment on Page 8, Paragraph 8 after "City Treasurer Lynn Coulam said the Library and Museum Foundation is responsible for the accounting of its funds." add "The State of Utah requires the Library and Museum Foundation to be audited annually. Last year the foundation was audited by the same firm Hyrum City uses for its audit.".

ACTION

Councilmember James made a motion to approve the minutes of the regular meeting held on August 7, 2008 with the above amendment. Councilmember Rasmussen seconded the motion and all five councilmembers voted aye.

AGENDA ADOPTION: A copy of the notice and agenda for this meeting was faxed to The Herald Journal, mailed to each member of the governing body, and posted at the Civic Center more than forty-eight hours before meeting time.

ACTION

Councilmember Rasmussen made a motion to approve the agenda as written. Councilmember Miller seconded the motion and all five councilmembers voted aye.

AGENDA

8. SCHEDULED DELEGATIONS:
 - A. Ana Lopez, Azteca Reception Center - To request approval for a Class C retail license to sell beer on draft and in original containers for consumption on and off premises at the Azteca Reception Center located at 290 West Main.
9. INTRODUCTION AND ADOPTION OF AN ORDINANCE:
 - A. Ordinance 08-19 - An ordinance amending Title 16 and Title 17 of the Hyrum City Municipal Code to replace all references of the Board of Adjustments and the Board of Appeals with an Administrative Appeals Hearing Officer, and other miscellaneous housekeeping items.
10. OTHER BUSINESS:
 - A. Consideration of declaring certain property as surplus and ordering the sale thereof (a portion of Salt Hollow Park).
 - B. Mayor and City Council reports.
11. ADJOURNMENT

SCHEDULED DELEGATIONS:

ANA LOPEZ, AZTECA RECEPTION CENTER - TO REQUEST APPROVAL FOR A CLASS C RETAIL LICENSE TO SELL BEER ON DRAFT AND IN ORIGINAL CONTAINERS FOR CONSUMPTION ON AND OFF PREMISES AT THE AZTECA RECEPTION CENTER LOCATED AT 290 WEST MAIN.

Ana Lopez was not in attendance at the meeting.

ACTION Councilmember James made a motion to table Ana Lopez's request for a Class C Retail License to sell beer on draft and in original containers for consumption on and off premises at the Azteca Reception Center located at 290 West Main until the end of the meeting. Councilmember LaBau seconded the motion and all five councilmembers voted aye.

Discussion and action on this item was held after the Mayor and City Council reports.

INTRODUCTION AND ADOPTION OF AN ORDINANCE:

ORDINANCE 08-19 - AN ORDINANCE AMENDING TITLE 16 AND TITLE 17 OF THE HYRUM CITY MUNICIPAL CODE TO REPLACE ALL REFERENCES OF THE BOARD OF ADJUSTMENTS AND THE BOARD OF APPEALS WITH AN ADMINISTRATIVE APPEALS HEARING OFFICER, AND OTHER MISCELLANEOUS HOUSEKEEPING ITEMS.

Mayor Pro-Tempore Miller said Title 16 and 17 still contain

references to the Board of Adjustments and/or Board of Appeals which have been replaced by an Administrative Appeals Hearing Officer. The proposed ordinance will replace the Board of Adjustments and/or Board of Appeals with and Administrative Appeals Hearing Officer.

ACTION Councilmember Rasmussen made a motion to adopt Ordinance 08-19 amending Title 16 and Title 17 of the Hyrum City Municipal Code to replace all references of the Board of Adjustments and the Board of Appeals with an Administrative Appeals Hearing Officer, and other miscellaneous housekeeping items with the following amendment to Section 17.08.100 change "The applicant shall appeal..." to "The applicant may appeal...". Councilmember LaBau seconded the motion and all five councilmembers voted aye.

OTHER BUSINESS:

CONSIDERATION OF DECLARING CERTAIN PROPERTY AS SURPLUS AND ORDERING THE SALE THEREOF (A PORTION OF SALT HOLLOW PARK).

Mayor Pro-Tempore Miller said at the last City Council Meeting the City Council asked Lee Leavitt to submit a map with dimensions of the Salt Hollow Park property he wanted to purchase from the City. Lee Leavitt wants a 60' x 275' piece of property on the northwest side of the park.

Councilmember Rasmussen said the property Lee wants to purchase would eliminate the buffer zone adjacent to the playing fields. It would be in the City's best interest to maintain a buffer zone around the playing fields to help prevent balls from being accidentally kicked or thrown over a fence.

Councilmember LaBau said he is concerned about the City selling park property before it has approved the actual layout of the park.

Councilmember Rasmussen said Lee's business is growing rapidly and he needs to look for a long term solution. Even if the City sold Lee the 16,500' feet of park property, it will not provide Lee with enough property for future growth.

ACTION Councilmember LaBau made a motion to not declare any of the Salt Hollow Park property as surplus. Councilmember James seconded the motion and all five councilmembers voted aye.

MAYOR AND CITY COUNCIL REPORTS.

Councilmember Rasmussen said the benches in the old Hyrum 3rd Ward Church are being sold on Saturday, August 23 at noon.

Councilmember James said he has arranged for John Bennett with the LeRay McAllister Conservation Fund to meet with the City Council on Thursday, September 4 at 2:00 p.m. to discuss the possibility of a land conservation easement for the property the City owns in Left Hand Fork Canyon. An on-site visit of the property will begin at 2:00 and then he will attend the regular City Council Meeting that night at 6:30.

Councilmember Rasmussen said he would be interested in hearing John Bennett's assessment and recommendation for the City's property in Left Hand Fork Canyon, but will not be able to attend the on-site visit. He would like to know how the appraisal price for the property is established.

Councilmember LaBau said the upper 40 acre parcel in Left Hand Fork Canyon isn't used by the citizens of Hyrum like the parks in town. He would prefer the City sell the upper 40 acre parcel in Left Hand Fork Canyon and use the money to develop either the Salt Hollow Park or the Blacksmith Fork Park.

Councilmember LaBau said he has received several complaints regarding the increase in mosquitoes over the past two weeks. The mosquito season is at its highest peak and the numbers of mosquitoes should start to decrease. There are areas in Hyrum that have seen an increase in mosquitoes due to detention/retention ponds. When the City approves a detention/retention pond it should inform the Bear River Health Department so the Mosquito Abatement employees can treat the pond. He is also working Bear River Health Department and the Utah State University Water Lab about preparing an information pamphlet/letter on how much water is necessary to flood irrigate. This pamphlet/letter could then be sent to farmers who flood irrigates, so they are aware of how many mosquitoes come from standing water.

Councilmember Miller said the Hyrum City Fire Department Summer Party is tomorrow night on the City Square. The Holidays at Hardware is scheduled for December 12, 2008.

ANA LOPEZ, AZTECA RECEPTION CENTER - TO REQUEST APPROVAL FOR A CLASS C RETAIL LICENSE TO SELL BEER ON DRAFT AND IN ORIGINAL CONTAINERS FOR CONSUMPTION ON AND OFF PREMISES AT THE AZTECA RECEPTION CENTER LOCATED AT 290 WEST MAIN.

Mayor Pro-Tempore Miller said City Attorney Craig Carlston sent a letter to the City Council regarding the issuance of a Class C Retail License to sell beer on draft and in original containers for consumption on and off premises at the Azteca Reception Center located at 290 West Main. Hyrum City Code 5.08-150(A)

provides, "...It is unlawful for a person to sell beer in any dance hall or theater." It is his understanding that this applicant uses the premises as a dance hall. Although it is not specifically called a dance hall, in substance, that is what it appears to be. There is dancing, music, a DJ etc. and it appears that is the primary use of the premises. He believes a court would look at the substance of the use of the premises (not merely how the owners title it) and would opine that because it is a dance hall, as defined by its use, it would be illegal to sell beer therein. It also appears that a variance would be required before a license could be issued. UCA s. 32A-10-201(3) requires the local authority to grant a variance regarding the proximity of the establishment relative to, among other things, a public park. If the premises is located within 600 feet of a public park, a variance must be obtained. Here, the City has taken several steps to construct a park on property that would be within the restricted area. Design concepts have been drawn, the property is zoned for a park, part of the property has been purchased and it was even discussed in the most recent council meeting. As far as a variance goes, a variance can only be granted if the following standards are met: (1) literal enforcement of the zoning ordinance would cause an unreasonable hardship; (2) there are special circumstances that attach to this property that don't apply to other properties in the same district; (3) granting the variance is essential to the enjoyment of a substantial property right; (4) the variance will not substantially affect the general plan and won't be contrary to public interest; and (5) the spirit of the zoning ordinance is observed. This is the land use appeal authority's decision.(UCA s 10-9a-701, 702.) In short, the City Council doesn't need to address the second issue because the first is dispositive--it is illegal to sell beer in any dance hall and the applicant's property appears to be used for a dance hall.

ACTION Councilmember James made a motion, based upon City Attorney Craig Carlston's recommendation, to deny Anna Lopez's request for a Class C Retail License to sell beer on draft and in original containers for consumption on and off premises at the Azteca Reception Center located at 290 West Main. Councilmember Rasmussen seconded the motion and all five councilmembers present voted aye.

ADJOURNMENT:

ACTION There being no further business before the Council, the Council Meeting adjourned at 7:20 p.m.

W. Dean Howard
Mayor

ATTEST:

Stephanie Fricke
City Recorder

Approved: September 4, 2008
As Amended