

MINUTES OF THE CITY COUNCIL MEETING HELD MARCH 27, 2007, AT 7:00 P.M., IN THE COTTONWOOD HEIGHTS CITY COUNCIL CHAMBER

MEMBERS PRESENT: Mayor Kelvyn Cullimore, Councilman Don Antczak, Councilman Scott Bracken, Councilman Bruce Jones, Councilman Gordon Thomas

STAFF PRESENT: City Manager Liane Stillman, City Attorney Shane Topham, Deputy City Manager Kevin Smith, Planning Director Michael Black, Public Relations Specialist Bob Warnick, City Treasurer Gary Harmer,

OTHERS PRESENT: Robby Russo, Corbett Ford, Jim Bacon, Brian Allen, Tom Haroldson, Stephanie Archibald, Jeff Johnson, Scott Rosevear, Dan Bartlett

**1.0 WELCOME/PLEDGE**

1.1 The pledge of allegiance was led by Councilman Thomas.

**2.0 CITIZEN COMMENTS**

2.1 Tom Haroldson, Valley Journals, introduced Stephanie Archibald who will be covering Cottonwood Heights for the Valley Journal.

**3.0 REPORTS/PRESENTATIONS**

**3.1 Unified Fire Authority Report**

3.1.1 Battalion Chief Jeff Johnson presented the February 2007 fire report. There were 150 medical calls, down from 191 calls a year ago; and fire calls were at 81 compared to 79 calls a year ago. He explained that with the change in daylight savings time people should change the batteries in their smoke detectors and also be aware that they should be replaced in a five year rotation. It is recommended that smoke detectors be placed in children's bedrooms so they can hear them. The customer service messages for Station 110 and 116 were reviewed.

**3.2 February Financial Report**

3.2.1 Gary Harmer, City Treasurer/Budget Officer reviewed the February Financial Report. Revenue has exceeded estimates in every case with the exception of property tax. The property tax settlement should be made by the end of March.

**3.3 Public Works Report**

3.3.1 Assistant City Manager Kevin Smith, reviewed the status report for the public works projects. The pavement management contract is approximately 70 percent complete, and the County will be doing a major slurry seal in the area east of 2700 East; south of Forth Union Blvd; north of Bengal Blvd and west of Wasatch Drive. They will also be chip sealing Bengal Blvd. and Creek Road. The County will notice these projects to the residents in the area.

3.3.2 Mr. Smith said that there are five cross gutters that are in very bad condition which he hopes to have repaired this coming year. There are ADA ramps that need to be done which total \$522,000 and the City has budgeted \$175,000 for this purpose. The County believes that when you do an overlay you have a legal responsibility to upgrade the ADA ramps.

4.0 **ACTION ITEMS**

4.1 **Consideration of Ordinance No. 80 Amending and Restating Cottonwood Heights Code Chapter 19.83 Wireless Telecommunications Facilities**

4.1.1 Mayor Cullimore explained that under State law, the City has six months to review and adopt a proposed ordinance. The City has been reviewing the Wireless Telecommunications Facilities ordinance for six months and needs to make a decision. The item has been open for public comment for some time and only one telecommunications company has communicated with the City.

4.1.2 Planning Director Michael Black reviewed the changes that were made after the public hearing was held before the Planning Commission. Concern was expressed about the requirement of requiring the submittal of master plans which extend a mile from the City boundary. Mr. Black explained that because signals carry, the City needs to be able to check coverage and determine if a facility is necessary. Five cities were surveyed and Salt Lake County, Holladay, West Valley City, and Sandy City require the submittal of master plans. Mr. Black said that additional language was added which would allow co-location on public utility polls; that the provider have one business license, updated with the number of facilities on a yearly basis; and that the Planning Commission be able to review the color of the poll one time only.

Mr. Black said that Staff believes a computer generated model should be required, and if the applicant is unable to obtain the simulation for less than \$2,500, they would be able to pay the City to produce the product. The City is also recommending that providers post a deposit with the City of \$2,500 which the City would use to retain experts to review plans, which the applicant would have to replenish so the citizens do not subsidize the facilities.

The Planning Commission and Staff recommended approval of the proposed ordinance.

4.1.3 Mayor Cullimore expressed his concern about the concept of allowing the city to have sole authority to determine the cost to the applicant for their review. The concept of "trust us, we won't be unreasonable" should be replaced by limitations on the fees so the city is constrained financially. Otherwise, there is a tendency, if not on the part of the city, on the part of the consultant to think that they do not have to be fiscally constrained. He indicated he would prefer that we at least impose \$2500 as the limit and then require staff to explain to the applicant why they need additional fees to complete the review. The applicant would then have the option to decline or accept paying the additional fees. Either way, the application advances. He further admonished staff that we need to do all we can to define the scope of the review that will be done and identify consultants who believe they can do the reviews well below the \$2500 threshold.

4.1.4 City Attorney Shane Topham stated that the Telecommunications Act of 1996 is intended to assure that telecommunications will be able to be utilized throughout the nation and that local jurisdictions cannot stand in the way to the extent that personal wireless service is prohibited, or discriminate among providers of equivalent services. He explained it is recognized that local governmental units do have the ability to place regulations on the type of facilities, where the facilities can be located, how high they are, etc., as long as by so doing, the City is not prohibiting service. He said that there are areas throughout the City which will allow these facilities to be housed. Even though the zoning is available, for one reason or another, the provider is not able to

cut a deal with the owners of land in those zones, so they come back to the City and want the City to expand the number of zones where the facilities can be located. He stated that it is not the City's responsibility to assure that providers are able to come to economic terms with the land owners. The city's only responsibility is to not prohibit service and therefore provide a reasonable number of locations in the City where the facilities can potentially be located.

4.1.5 Mayor Cullimore opened the public comment period

4.1.6 Scott Rosevear, Snell and Wilmer, representing T Mobile Corporation, stated that he believes progress has been made. He explained that the telecommunications services continue to be used in growing numbers which is a challenge the industry faces. He said that the proposed ordinance seeks to minimize the total number of monopole facilities in the community and encourages co-location. It allows new monopoles in most instances to be 65 feet if the facility is available for co-location with other companies, but there are very few instances where a 65-foot high pole is desirable for co-location because a ten foot clearance is needed. Unless it is an ideal site without obstructions, it does not make sense to co-locate at that height.

Mr. Rosevear said that 19.83.060(k) allows the Planning Commission, within six months after a facility has been constructed, to tell the provider that they need to change the color of the pole. He stated that they are willing to make it any color the City asks, but expressed concern for the layer of expense that is added if a change of color is required, that is not really necessary. He believes that the color should be decided up front.

19.83.130 allows the City to retain a consultant to help evaluate a wireless application. He explained that T Mobile does not object to the City being allowed to do so, but objects to the fact that it is a 'blank' check. He believes that consultants sometimes take advantage of that provision and suggested a cap of \$2500. He recommended that expenses beyond that amount should be approved by the provider so that there is some kind of check and balance.

4.1.7 City Attorney Shane Topham said that there are many examples of situations where governmental entities can act unreasonably and when they do they get sued. The City has to be able to prove at all times that it is acting reasonably. He said the Council could increase the amount to \$5,000, take out the replenishment language and put in language requiring the City to try to do things as efficiently as it can, which it is required to do.

4.1.8 Mr. Rosevear said that in Section 19.83.040, regarding master plans, T Mobile does not object to having to provide a master plan, but they object to the language that allows the City to request information about sites that are within one mile of the city's boundaries. He stated that in many instances it does not seem relevant to the decision and is proprietary information.

4.1.9 Mr. Topham said that all cities require site masterplans, and anyone can go to any city and look at the site masterplans, so he questioned how the city is making the client more vulnerable by requiring our plan to go a mile outside of the boundaries into the very jurisdictions where site master plans are on file.

Mr. Rosevear said that T Mobile's objection is that except where you are talking about a specific application, data outside the city doesn't have any relevance.

- 4.1.10 Mr. Black will investigate language to be added to a future amendment to this ordinance to provide clarity regarding the scope of review and potential cost to the applicant.
- 4.1.11 Mayor Cullimore suggested the Council proceed with approving the proposed ordinance, recognizing that there are legitimate concerns that could be considered as an amendment to the ordinance if the City feels that they are warranted.
- 4.1.12 Councilman Jones suggested considering future modifications to the ordinance as reasonable explanations are given. If the ordinance is passed the City needs to view dealings with this industry favorably because the City wants the service for the citizens.
- 4.1.13 Mayor Cullimore questioned whether the City would want to have an 80-foot pole if there were more co-locations.

Mr. Topham said Section 19.83.120 dealing with co-locations states that only a co-location on an existing monopole up to 80 feet in height is allowed in the CR zone, and questioned if it would be a beneficial change to the industry to strike the word 'existing' so that monopole can be 65 feet in all zones, except for the CR zone, where it can be 80 feet, and can be a new pole.

Mr. Rosevear answered in the affirmative.

- 4.1.14 Mr. Topham read the following changes to the proposed ordinance:

Section 19.83.060(1) is proposed to read "Height shall be measured from the surrounding natural grade."

Section 19.83.120(a) is proposed to read: "The height limit for equipment and antennae arrays co-located on a monopole shall not exceed 65 feet, except that the Planning Commission may allow a total height limit of up to 80 feet for a co-located monopole in the CR, MU and ORD zones."

- 4.1.15 **MOTION:** Councilman Antczak moved to adopt Ordinance No. 80 as revised and stated by the City Attorney. The motion was seconded by Councilman Thomas and passed unanimously on a roll call vote.

4.2 **Consideration of Resolution No. 2007-11 Approving a "Games and Activities" Contract with Custom Events, Inc. for 2007 Butlerville Days**

- 4.2.1 **MOTION:** Councilman Bracken moved to approve Resolution No. 2007-11. The motion was seconded by Councilman Antczak and passed unanimously on a roll call vote.

4.3 **Consideration of Resolution No. 2007-12 Approving an Agreement with Modern Display to Construct a Cottonwood Heights Float for 2007 Parades**

- 4.3.1 **MOTION:** Councilman Bracken moved to approve Resolution No. 2007-12. The motion was seconded by Councilman Antczak and passed unanimously on a roll call vote.

4.4 **Consideration of Resolution No. 2007-13 Approving an Agreement for Construction Services Between Cottonwood Heights and J & A Excavation & Construction, Inc. for the 2300 East Storm Drain Project**

4.4.1 **MOTION:** Councilman Antczak moved to approve Resolution No. 2007-13. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote.

5.0 **CONSENT CALENDAR**

5.1 **Approval of March 13, 2007 Minutes**

5.1.1 The minutes of March 13, 2007, were approved as submitted.

6.0 **ADJOURN BUSINESS MEETING AND RECONVENE WORK SESSION**

6.1 Councilman Bracken moved to adjourn the business meeting and reconvene the work session. The motion was seconded by Councilman Thomas and passed unanimously on a voice vote. The meeting adjourned at 9:18 p.m.

**Approved: May 8, 2007**

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Kelvyn Cullimore, Jr., Mayor

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Don Antczak, Councilman

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Scott Bracken, Councilman

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Bruce Jones, Councilman

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Gordon Thomas, Councilman