

City of Taylorsville
Work Session
Minutes

Wednesday, March 14, 2012
Council Chambers
2600 West Taylorsville Blvd., Room No. 140
Taylorsville, Utah 84129

Attendance:

Mayor Russ Wall

Council Members:

Chairman Jerry Rechtenbach
Vice-Chairman Dama Barbour
Council Member Ernest Burgess
Council Member Larry Johnson
Council Member Kristie Overson

City Staff:

John Inch Morgan, City Administrator
John Brems, City Attorney
Cheryl Peacock Cottle, City Recorder
Jessica Springer, Council Coordinator
Del Craig, Chief of Police
Mark McGrath, Community Development Director
John Taylor, City Engineer
Donald Adams, Economic Development Director
Aimee Newton, Communications Director

Others: Charles Christopher, Royce Larsen, John Gidney, Marjorie King, Christian King

18:01:08 Chairman Jerry Rechtenbach called the Work Session to order at 6:01 p.m. and welcomed those in attendance. City Recorder Cheryl Peacock Cottle conducted a Roll Call, wherein all Council Members were present.

18:01:31 Council Member Dama Barbour **MOVED** to move Agenda Item No. 1 to the end of the meeting. Council Member Larry Johnson **SECONDED** the motion. Chairman Rechtenbach called for discussion. There being none, he called for a vote. The vote was as follows: Johnson-yes, Overson-yes, Rechtenbach-yes, Barbour-yes, and Burgess-yes. **All City Council members voted in favor and the motion passed unanimously.**

1. Development Code Update – *Mark McGrath*

18:59:52 Community Development Director Mark McGrath distributed the final draft of the Land Development Code, representing all suggested changes over the last several months. He requested the ability to make additional changes as needed in order to eliminate redundancy and improve formatting. He relayed that photographs will be added after the rest of the code is finalized. He noted that changes are red-lined. He stated that the final draft of the code will be placed on the City Website tomorrow. Mr. McGrath explained that he is working with City Attorney John Brems to ensure legal conformity and expects to have the Code back for consideration in April. He agreed to investigate placing the code on iPads.

19:03:18 City Administrator John Inch Morgan and City Engineer John Taylor agreed that the Code will be placed in one of the iPad applications by March 15, 2012. It was relayed that e-mail notification will be sent regarding where the Code may be viewed.

2. Discussion of an Ordinance Amending Chapter 2.28, Employee Appeal Board – *John Brems*

18:02:17 City Attorney John Brems referenced the re-write presented to the City Code regarding the Employee Appeal Board (EAB). He cited conversations held with Attorney Ryan Hancey, who represents quite a few City employees. He described two remaining issues that Mr. Hancey has, as follows: (1) The request for an affirmative duty to disclose information about proportionality. Mr. Brems explained that this issue is two-fold and addresses whether the punishment or discipline fits the crime and also whether it is comparable with others who have had similar types of discipline. Mr. Brems said that Mr. Hancey is requesting some affirmative duty for the City to disclose these issues. Mr. Brems suggested that the alternative is to make a discovery request for any information needed.

18:03:58 (2) Burden of Proof – Mr. Hancey's position is that no deference should be given to Administration, resulting in a new trial before the EAB, known as a "Trial de Novo." Mr. Brems stated that his position on the matter is that substantial evidence would give deference to the decision maker. He explained that in this scenario, once the City meets its burden of proof, a decision is considered to be right unless found to be unreasonable. He gave an example of a supervisor who has given an employee discipline and that employee appeals the decision; under the position of Attorney Ryan Hancey, a brand new trial would be needed with no deference given to the supervisor. Mr. Brems suggested that the supervisor is the person with full knowledge surrounding background of the decision and should, therefore, be given some deference. He said that a supervisor's analysis should be presumed correct unless the employee can overcome the burden of proof.

Council Member Barbour called for clarification regarding the burden of proof under Attorney Hancey's recommendation and inquired how such would affect the authority of the supervisor. Mr. Brems replied that the issue would become a new case and would be weighed 50/50.

18:06:05 Council Member Johnson cited information that he recently requested from City Recorder Cheryl Cottle regarding the last change to the code for the Employee Appeal Board. Ms. Cottle clarified that the code relating to the Employee Appeal Board was last changed in November, 2007. Mr. Johnson questioned the need for changing this code again now. Mr. Brems stated that the amendment needed some cleanup. He also cited a case that is being appealed. He further noted there was no standard of review in the previous language of the ordinance. Mr. Johnson questioned the reason/justification behind the proposed changes. Mr. Brems stated that over the past 4 to 5 years, the City has become aware of amendments that need to be made. He noted that the grievance provision has also been completely removed from the proposed version. He explained that the grievance provision was being used by employees to appeal matters that are not appealable.

18:07:55 Mayor Wall noted that the change in the ordinance was principally due to Mr. Hancey's request for clarification concerning burden of proof and related standards. The Mayor cited too many recent appeals of grievances that weren't appealable. Chairman Rechtenbach questioned whether the City's current appeal board is qualified to conduct a Trial de Novo. He cited the need for qualified representatives on the Appeal Board, including attorneys, judges, etc. Mr. Brems stated that if the Council feels Appeal Board appointees are qualified, they are deemed qualified. He said that the basic question is to determine at what level a supervisor's decision may be appealed. Mr. Brems clarified that he believes the supervisor should be given some deference, but Mr. Hancey does not believe any deference to the supervisor's decision should be offered.

18:09:40 Council Member Johnson cited the section of the City Code dictating the make-up of the Employee Appeal Board. It was explained that the Mayor may recommend removal of any member from the Appeals Board during the three-year term, with the advice and consent of the Council.

18:10:08 Mayor Wall noted that a member has never been removed from the EAB pre-term, although some members have not been reappointed. Mr. Brems relayed that this is the first full term of the EAB, as previous boards consisted of employees only. He explained that the make-up of the Board was changed in 2007 after the decision was made to appoint members who are independent of employees. Mr. Brems reiterated that appointments are based on the recommendation of the Mayor, but are only appointed with the advice and consent of the Council; any removal of a member would also have to be done with consent from the Council.

18:11:59 City Administrator John Inch Morgan gave two possible models for the EAB, as follows: (1) Treating the appeal as a new trial with new evidence/witnesses and not taking into consideration the authority of the supervisor; or (2) Using the same protocol as a Court of Appeals and making a determination as to whether the supervisor followed appropriate process and procedures. He cited the Court of Appeals' function to review the evidence in place and make determination whether or not the supervisor adhered to rules, policies and fair practices in the implementation of discipline. Mr. Morgan said that Administration's concerns have been with the standard of review and not with decisions. He observed that a standard of review needs to be stated, so that the EAB has a consistent measure to ensure that the process is the same for every appeal. He suggested that the City's EAB standard of review should mirror the Court of Appeals to examine fairness in implementing discipline, etc. Mr. Brems also noted that the standard of review should adhere to the City's Employee Manual and examine the supervisor's interpretation of such.

18:13:47 Council Member Ernest Burgess inquired about the criteria for appointment to the EAB. Mayor Wall relayed that it is preferable to have people who have been involved in the City. He suggested that a human resource background is also valuable. He noted that, although a previous EAB Member was an attorney, his interpretation became an issue because his background was in civil human resources rather than with law enforcement personnel. The Mayor observed that having an attorney on the EAB is valuable for writing opinions. Mayor Wall said it is important to note that the City Attorney's role now is not to defend the City, but rather to counsel the Employee Appeal Board on their role. He explained that an outside attorney is hired to represent the City's position in an appeal.

18:16:11 Council Member Johnson asked the Mayor whether the Employee Appeals Board was created for employees. Mayor Wall responded that the EAB was created to protect the interests of the City and was not created to support the employee. He said that the role of the EAB is to remain neutral and determine whether or not the employee was treated fairly according to policy. The Mayor cited a pending appeal of Police Department authority and relayed that the EAB agreed with the police department's allegations toward the employee, but felt the punishment was too harsh. Mr. Brems noted that the Employee Appeal Board does not have the authority to disagree with the disciplinary action taken. He said that the purpose of the re-write is to allow the EAB to look at procedures and make decisions based on policy. Mr. Brems said that it is critical that a standard of review definition be added to the EAB Ordinance.

Mr. Brems confirmed that it is Administration's responsibility to interpret actions and disciplinary action that is not specifically outlined in the Employee Manual; the EAB would then determine whether that interpretation was correct.

Chairman Rechtenbach noted that reference to the grievance process portion of the Employee Manual has been removed from the proposed ordinance. He questioned why this was done.

18:21:07 Mr. Brems stated that the City will not allow appeals of grievances to go before the Employee Appeals Board. The Mayor further explained that the Employee Appeals Board can hear matters of discipline, but grievances must go before the City Administrator. He noted that if an employee is not satisfied with the determination of a grievance by the City Administrator, the next course of action would be to take the grievance to the Courts.

18:22:26 Council Member Dama Barbour questioned whether the differences in grievances and disciplinary action are clearly defined in the Personnel Manual. Mr. Brems confirmed that they will be if this ordinance is adopted. He stated that the City's policy is to try and solve the issue at the lowest level possible; the City Administrator is the last level in the City process. He noted that employees then have other options available, which include civil court. Council Member Johnson expressed concern that every decision can be appealed. Mr. Brems reminded him that it must be an appealable offense.

18:22:55 Council Member Johnson expressed concern over allowing the City to constantly appeal decisions made by the EAB. Mayor Wall clarified that, in the history of the City, only one EAB ruling has been appealed by the City due to issues with putting a police officer who lied back on the street. He referenced Giglio issues and potential problems related to a history of lying in a formal hearing. He defined Giglio as meaning that if an officer has been found to have lied in an official investigation, he/she can no longer testify without disclosing that fact at the beginning of a trial. The Mayor said that the City was put into this situation when the EAB found that the employee lied, but ultimately rendered a decision to reinstate the police officer anyway. He relayed that the City was forced to appeal that decision due to concern that the officer would never be allowed to testify in a court case. He observed that typically a decision of the EAB would not be appealed, but this was a severe case and the City felt it was necessary.

18:25:42 Council Member Barbour said she feels it is appropriate to have the City Attorney work with the EAB to educate members about their roles. She cited her previous experience in sitting on Employee Appeal Boards. She also observed that it is important to maintain the authority of supervisors.

18:26:30 Council Member Johnson cited changes in regard to appeal rights provided by State law. Mr. Brems affirmed that the proposed ordinance follows State Law regarding appeal rights.

18:27:12 Chairman Rechtenbach expressed concern over the potential of the EAB convening with just two people. Discussion was held and Mr. Brems agreed that a requirement could be included for at least three members to hear appeals. Council Members concurred that this should be required. Mr. Brems agreed to make the fix. It was confirmed that the EAB has never previously met with only two members.

18:28:39 Chairman Rechtenbach called for clarification regarding 2.28.060 and inquired why this section was stricken. Mr. Brems explained that the section referenced relates to employee grievances. He clarified that grievances are initially filed at the lowest level possible and, if necessary, ultimately filed with the City Administrator; they are not taken to the EAB.

18:29:36 It was confirmed that the biggest change to the EAB ordinance concerns the standard of review. Council Member Johnson inquired about the need for describing appeal timelines. Mr. Brems noted that Mr. Hancey requested some deadlines to help determine appropriate timelines. Mr. Brems stated that timeframes were not previously included, but have been deemed necessary to ensure that all parties involved understand rules and time limits in advance.

18:31:00 Council Member Kristie Overson asked for clarification as to the terms and duties of the Employee Appeal Board Members. Mr. Brems confirmed that there are currently three members and an alternate appointed. Council Member Overson questioned whether the three-year term appointments are renewable. Mr. Brems stated that there are currently no term limits. Council Member Johnson questioned whether it is appropriate to have EAB members serve longer than three years. Mayor Wall agreed that there may be a need for some term limits. Discussion was held, and Mayor Wall agreed that there should be a limit of two terms. He cited the policy for Planning Commission appointments which states that members may not serve longer than two terms unless otherwise unanimously approved by the City Council. Mayor Wall suggested using the same wording that has been used in the Planning Commission ordinance.

18:34:23 Council Member Johnson observed that two terms may be too long. Mayor Wall stated that sometimes reappointing someone who has done an exceptional job and has learned all the rules can be a benefit. He noted that such an individual would be helpful in training new members. The Mayor reminded the Council that they have the option not to reappoint members. Additional discussion ensued regarding term limits. It was ultimately the consensus of the Council to allow up to two terms, with any additional terms to be based on unanimous approval by the Council.

18:36:52 Mr. Brems advised the Council of two additional technical changes. He suggested adding a requirement that any preemptory challenge must be made before a hearing starts. He also cited a need to better clarify discipline consistency issues and indicated that he will add some additional language in that regard. He stated that the Council will receive documents with the new wording by next week.

18:37:45 Mr. Brems confirmed that Employee Appeal Board appointments are made like other appointments with advice and consent of the Council. Council Member Ernest Burgess questioned how the current Employee Appeal Board is functioning. Mr. Brems relayed that two new members have been appointed to the Board, but the EAB has not yet met officially as a new

body. He noted that there are two pending appeals, but the Board is waiting for ordinance changes to establish rules.

18:38:28 Council Member Johnson inquired whether changes made to the ordinance are a result of Attorney Ryan Hancey's issues. Mr. Brems stated that some issues were already present and relayed that the discussion with Mr. Hancey mostly concerned the standard of review.

Mr. Brems confirmed that final changes to the ordinance will be brought back for consideration at the next Council Meeting.

3. Discussion of Proposed Budget Calendar – *John Inch Morgan*

18:39:24 City Administrator John Inch Morgan presented the proposed tentative budget calendar as provided in packets. He noted that the City is obligated according to State Statute to submit a budget to the City Council by the second meeting in May. He cited intent to present the budget at the May 2, 2012 Meeting. Mr. Morgan proposed the need for a Budget Retreat with the City Council prior to Administration presenting its official budget documents. Mr. Morgan said that Administration would like to give the Council opportunity during the retreat to submit projects and programs (either City-wide or from individual districts) and to review budget initiatives. He suggested that having a retreat will allow the Council to reference the Strategic Plan/major projects and also allow time to make needed changes to the budget before it is presented formally to the City Council on May 2.

18:41:49 Discussion was held regarding the length of time required for a budget retreat, along with possible dates and parties to be involved. Mr. Morgan recommended a half-day retreat and stated that the retreat will involve the Council and City Administration.

18:42:35 Council Member Larry Johnson inquired how the public will be involved in the retreat. Mr. Morgan noted that the public has been involved in two Strategic Planning meetings to date. Council Member Johnson expressed concern regarding the lack of citizens participating in the Strategic Planning meetings. Mr. Morgan called for input from the Council as to public involvement. Chairman Rechtenbach observed that the public is always noticed of public meetings via official notices, advertisements, fliers, notes, and postings on the City's Facebook/Twitter/Web sites. He stated that meetings have been well publicized. He relayed that over the last three years he has personally sent letters inviting every citizen in his district to meetings, but has still seen a poor turnout. He questioned what more can be done to force citizens to attend. Chairman Rechtenbach said that at some point the Council must move ahead, whether or not citizens choose to attend budget discussions.

18:43:25 Council Member Johnson stated that after he informed his own district of meetings during the last budget session, a large turnout was seen. Chairman Rechtenbach suggested that

the large turnout from Mr. Johnson's District was due to inflammatory comments made on fliers that Mr. Johnson distributed about a proposed tax increase. Mr. Johnson stated that he only relayed information presented in the proposed budget. Discussion was held as to past communication that was distributed to the public in order to increase attendance at Council meetings.

18:45:07 Additional discussion was held regarding a possible date and location for the Budget Retreat. Mr. Morgan noted that he would like to have Council input prior to the Budget Committee Meeting scheduled for April 19, 2012.

18:46:20 Mr. Morgan described Administration's approach to this year's budget. He stated that Departments will be asked to review monies they received last year and determine how they would like them allocated this year; additional needs will be presented in an "Add Package." He cited intent to allow the Budget Committee to play a meaningful role in budget discussions during City Council Meetings. Chairman Rechtenbach noted a date correction for the Budget Committee Meeting, as it is actually scheduled for April 26, 2012.

18:47:52 It was ultimately determined to hold a Budget Retreat beginning at 3:30 p.m. on Wednesday, April 18, 2012 prior to the regular Council Work Session.

It was noted that the April calendar for Council Meetings will be, as follows:

April 4th – Regular City Council Meeting
April 18th – 3:30 – Budget/Work Session Meeting
April 25th – Regular City Council meeting

18:55:50 Chairman Rechtenbach recognized Christian King in attendance from Scout Troop #873.

18:56:51 Mayor Wall asked for a personal privilege and recognized Marjorie King, a Taylorsville Crossing Guard in attendance with her son, Christian King. He noted that the King family lives in his neighborhood.

18:57:59 It was confirmed that the April 18th early Work Session will serve as the Budget Retreat. It was also noted that the tentative budget will be ready for review on May 2, 2012 and, per State statute, the City's final budget must be submitted by June 22, 2012.

18:59:25: Chairman Rechtenbach referred the Council back to Agenda Item #1, Community Development Code Updates, which was moved to the end of the Council Meeting (see Item 1 of these minutes).

4. Other Matters

19:03:47 There were no other matters.

5. Adjournment

19:03:48 Council Member Kristie Overson **MOVED** to adjourn the City Council Work Session. Council Member Dama Barbour **SECONDED** the motion. Chairman Rechtenbach called for discussion. There being none, he called for a vote. The vote was as follows: Johnson-yes, Overson-yes, Rechtenbach-yes, Barbour-yes, and Burgess-yes. **All City Council members voted in favor and the motion passed unanimously.** The meeting was adjourned at 7:03 p.m.



Cheryl Peacock Cottle, City Recorder

Minutes approved: CC 04-25-12

Minutes Prepared by: Kristy Heineman, Deputy Recorder & Cheryl Peacock Cottle, City Recorder