

**MINUTES OF THE
SOUTH OGDEN CITY COUNCIL MEETING
Tuesday, February 17, 2015 – 6:00 p.m.
Council Chambers, City Hall**

COUNCIL MEMBERS PRESENT

Mayor James F. Minster, Council Members Sallee Orr, Wayne Smith, Brent Strate, Russ Porter and Bryan Benard

STAFF MEMBERS PRESENT

City Manager Matt Dixon, City Attorney Ken Bradshaw, Parks and Public Works Director Jon Andersen, Chief of Police Darin Parke, Fire Chief Cameron West, HR Specialist Patti Randolph, Information Systems Administrator Brian Minster and Recorder Leesa Kapetanov

CITIZENS PRESENT

Jim Pearce, Gary Boyer, Allie Holden, Mikayla Hargrove, Marissa Gonzales, Brenton Strate, Kylee Strate, Michel Strate, Nancy Fagg, Ashley Andersen, Jerry Cottrell, Walt Bausman, Riley Sample, Gary Gibson, Victor Dea, Becky Heaton, Katy Hall, Robert & Debby Bliss, Peggy Boyer, Kim Kidier, Sheridan Sheffield, Sherman & Rudy Strate, Wes & Debbie Rollins, Laurel DeGroot, Syd Hensley, Addison Weeks, Lanette Weeks, Mark Rogers, Greg Dumas, Marilyn Woolf and others

I. OPENING CEREMONY

A. Call to Order

Mayor James F. Minster called the meeting to order at 6:03 pm and entertained a motion to convene.

Council Member Porter moved to convene as the South Ogden City Council, with a second from Council Member Benard. In a voice vote Council Members Strate, Orr, Porter and Benard all voted aye.

Note: Council Member Smith arrived at 6:04 pm and was not present for the vote to convene the meeting.

B. Prayer/Moment of Silence

The mayor led those present in a moment of silence.

C. Pledge of Allegiance

Council Member Benard directed everyone in the Pledge of Allegiance.

Mayor Minster then indicated it was time for public comments and invited anyone who wished to come forward. He asked that those speaking limit their comments to three minutes.

II. PUBLIC COMMENTS

Gary Boyer, 5925 S 1075 E – gave the definition of complacency found in the dictionary. He said both government and the public can become complacent. He gave an example of complacency concerning Ogden City. He asked that South Ogden’s elected officials engage in the issues that would affect the city. They should not turn the city over to others to run; professionals and attorneys did not have a vested interest in the city as the elected officials did. The Fair Housing Act was to protect all citizens, not just a few. He asked that the leaders fight for their rights and give heed to the voters in the community. He felt it would have been helpful for the council to attend critical meetings so they could have better understood the issues. He asked that they council vote with their heart after weighing the things they felt were important.

Richard Reeve, 5996 Park Vista Dr. – Mr. Reeve disclosed for the record that he was also a plaintiff in a petition for judicial review concerning the decision made by the planning commission and upheld by the appeal authority. He was there to speak to the code revisions being considered by the council concerning facilities for people with disabilities. He said the reason they were in litigation was because the city did not have an effective code; it did not provide enough guidance. He acknowledged the ability of Mr. Lindberg who had been retained by the city, but did not agree with Mr. Lindberg’s advice. Other cities, such as Highland, Alpine and Salt Lake County, had crafted statutes that dealt with residential facilities for people with disabilities and have put in more than a subjective reasonable accommodation; they included objective guide points. The version proposed by South Ogden lacked the objective standards. Subjective standards invited litigation. Mr. Reeve encouraged the council to take the time they needed and disregard the expiring moratorium. He suggested the city council have a workshop and invite city attorneys, project managers, and planning staff from other cities who have drafted ordinances with objective guidelines and ask questions as to why they drafted the ordinances the way they did. He also said owners and operators of drug treatment facilities should be invited to find out how they determine if their clients are using drugs. He asked the council to consider three objectives the code was missing: 1) geographical limitations between group homes, 2) objective standards for providers to follow to verify if an individual is dangerous, and 3) make a division between institutional facilities and residential facilities for people with disabilities that would address properties such as the monastery; the International Building Code made the differentiation between the two at sixteen occupants.

Council Member Benard pointed out this was the first time he had heard that the expiration of the moratorium was not a concern and asked Mr. Reeve to comment.

Mr. Reeve said he did have some concerns about the expiration of the moratorium, but he had weighed the risks and was more concerned with not having a code that addressed all the issues. He felt everyone was better served by a code that works than by rushing one through.

Council Member Benard then asked if by setting a limit at sixteen occupants for reasonable accommodation it didn’t invite a reasonable accommodation of fifteen in a residential zone? Mr. Reeve said that was a possibility, however, a code needed to be developed that worked for a 3,000 square foot home as well as a 30,000 square foot monastery. Other cities had done that by distinguishing between an institutional and residential facility.

There were no more comments from the public.

III. RECOGNITION OF SCOUTS/STUDENTS PRESENT

No scouts or students were present.

IV. CONSENT AGENDA

A. Approval of February 3, 2015 City Council Minutes

Mayor Minster asked if there were any changes to the February 3, 2015 Council Minutes. Council Member Orr said she had no changes, but noticed neither she nor Council Member Smith had been excused from the meeting. She asked that in the future those who had indicated beforehand they would not be in attendance at the meeting be excused. The mayor then called for a motion concerning the consent agenda.

Council Member Porter moved to approve the consent agenda, followed by a second from Council Member Smith. The voice vote was unanimous in favor of the motion.

V. DISCUSSION / ACTION ITEMS

A. Discussion on Amendments to the City Code Having to Do With Residential Facilities For Disabled Persons

City Manager Dixon indicated the planning commission had held a lengthy discussion on this topic during their last meeting. They had determined to move the issue forward to the city council, but hold the record open until noon that day for written comment for the council to consider. Mr. Dixon then turned the time to Attorney Neil Lindberg to review the recommendation by the planning commission.

Mr. Lindberg gave a brief overview of the Federal Fair Housing Act (FFHA), stating that there had been 25 years of case law to help interpret the act since it had been passed. He then reviewed the circumstances that would allow a person who thought they had been discriminated against to make a claim and noted that the claim could also be brought by the provider of a facility for disabled people if he felt he was being discriminated against. Mr. Lindberg also stated that the reasonable accommodation within the FFHA had been tested many times through case law. Others had tried to make reasonable accommodation more objective, but case law had construed it to what it was today. The city could make the statute more objective, but if the effect of the statute limited where people with a disability could live, it would be problematic. Mr. Lindberg cited the case of Pacific Shore Properties vs. The City of Newport Beach. The City of Newport Beach had come up with additional objective rules for group homes they thought were defensible, however their rules had not been upheld by the district court. Mr. Lindberg advised South Ogden to not do the same thing. He felt the ordinance before the council that evening was defensible, but adding objective restrictions would open it to litigation. Other cities may have ordinances with additional criteria, but he had yet to find anyone who had litigated those ordinances and found them proper. He also pointed out the fact that when cities lost litigation concerning the FFHA, they were fined punitive damages that reached into millions of dollars. Some cities had been forced to raise taxes in order to pay the fines.

Mr. Lindberg then spoke to the difference of the meaning of "occupancy" in the building code and the zoning code. Zoning codes regulated land use whereas building codes regulate building safety. The language used in both codes was similar and sometimes confusing. The purpose of occupancy in a zoning code was a limitation in the number of people who could occupy a building. The purpose of occupancy in the building code was a performance standard, i.e. if a building needed to hold twelve people, these standards applied.

Council Member Strate then asked Mr. Lindberg a question about 10-14-16(D)(4)(a and b) and (5)(b)(i) of the proposed code concerning dangerous individuals. He asked if the terms in the code were defined somewhere else. Mr. Lindberg said the language was taken directly from the FFHA and the courts had construed their meaning through litigation. If there was an issue in the future concerning any section of the code just referred to, staff would be able to look at the latest case law to determine how best to handle it. Council Member Strate asked if he had any examples. Mr. Lindberg said he would be happy to

send some to Mr. Strate the next day, but cautioned that if the city put itself in the position of determining who was dangerous, and it was different from what the courts had determined or there were additional rules that the court found were at odds with case law, it put the city in a weakened defensible position. The same theory was applied a few years ago by the state when it removed a number of rules concerning residential facilities for disabled persons that were too specific. The state code now says cities can regulate group homes to the extent the FFHA allows. To know what the FFHA allows, one must read the FFHA and the most recent case law in the jurisdiction in which one resides. Mr. Lindberg went on to say the city should not put itself in the position of being a psychologist or other professional in determining if someone were dangerous or not; the burden should be on the group home provider to make the certification. Mr. Strate said Alpine city had specified the steps that needed to be taken in certifying whether an individual were dangerous or not and had a monitoring agreement with the facility as well. Mr. Lindberg replied that if the city did not have a monitoring agreement with every household in the city to determine if the people in each household were dangerous, requiring a residential facility have a monitoring agreement was disparate treatment and could be construed as discrimination. Council Member Strate pointed out there needed to be a balance between the rights of disabled individuals and all individuals and both needed to be protected. He felt like the city couldn't do anything to protect its citizens. Mr. Lindberg said the council could do what they wanted and choose to push the boundaries of the law. He had taken a conservative position in his recommendation.

Council Member Smith said people had the constitution and criminal law to protect them in many situations. When government tried to fine tune or make those laws more restrictive, it invited people to manipulate the law; too many restrictions invited people to find a way around them. Mr. Smith said he liked the wording in the ordinance as it was.

Council Member Porter asked what would happen if someone falsified the certifications concerning dangerous individuals. Mr. Lindberg said the city would investigate and take enforcement action with the potential that the provider could lose their license.

Council Member Benard commented he liked the language in the ordinance that was not so specific; that way it did not become outdated by recent case law. Including wording like "as defined by the FFHA or ADA", the code became a living document and could rely on the latest case law for the definitions. Council Member Smith agreed.

Council Member Porter asked if Mr. Lindberg could speak to the distance requirement.

Mr. Lindberg said he knew of one case in 1991 that upheld a distance requirement between facilities; however case law since that time had not upheld a distance requirement.

The council then discussed setting maximum numbers for facilities, determining it was problematic. There was also some discussion on how the current definition of "family" in the City Code limited a residence to four unrelated people and how they applied to residential facilities for disabled people and requests for reasonable accommodation.

Council Member Benard said he was very concerned about the expiration of the moratorium and still having the old code in place. He felt that the code being proposed was far better than what was on the books now; he would rather adopt the proposed ordinance that evening and not run the risk of having someone file for another project under the old ordinance. Mr. Benard did say he would like to add some minor language to the ordinance but felt it was good.

Council Member Orr suggested an extra meeting be held the next week to further discuss the item and get input from others and then pass it. Council Member Porter said the ordinance being proposed was very defensible and agreed with Council Member Benard that they should adopt it that evening.

Council Member Orr then asked how the word "residence" was defined. Mr. Lindberg said case law had defined "residence" under many different situations and gave some examples.

Ms. Orr said she struggled with the fact that the monastery was very large and might be considered an institution rather than a residence. Mr. Lindberg explained how development standards might allow a large residence on a large lot, and said the Council

could limit the size of future homes in residential zones if they chose to do so. Ms. Orr asked how the city could prohibit group homes from buying existing churches and converting them to residential facilities for disabled persons. Mr. Lindberg said the City could create public facility zones for things like churches and schools that could limit residential facilities from existing in them. There was then some discussion on density and how it affected residential facilities for disabled persons, as well as how the current reasonable accommodation for the monastery would remain the same for any future applicants, whether or not the zoning ordinance was changed.

Council Member Porter reminded everyone that the proposed ordinance would protect the whole city, not just one property.

The Council then discussed the definition of “disabled” and how facilities had to certify if someone was disabled. Mr. Lindberg also explained the difference between a zoning conditional use that ran with the land and a reasonable accommodation that did not run with the land.

The Council then had a discussion on who should decide reasonable accommodation for group homes. Council Member Strate said other cities had created committees who determined the reasonable accommodation. Mr. Lindberg pointed out the current ordinance had no procedure for a reasonable accommodation request, but the proposed ordinance did. The proposed ordinance also specified that the planning commission would determine the reasonable accommodation.

Council Member Strate said he was willing to move forward and pass the proposed ordinance that evening, but he would like to revisit the ordinance later to determine if they could make it more objective; other cities had done so with their attorney’s approval. He would like to see if some improvements could be made at a later time. The other Council members agreed. There was no further discussion.

B. Consideration of Ordinance 15-07 – Amending Title 10, Chapter 14 of the City Code Having to Do With Residential Facilities for Disabled Persons

Mayor Minster called for a motion to adopt Ordinance 15-07. Council Member Benard indicated he had two proposed amendments to the Ordinance. The first was in Section D, Paragraph 5.B. Another line should be inserted to read “not meet the definition of a person with a disability under the Federal Fair Housing Act and Americans With Disabilities Act,”. This line would become line “i”, and the present lines “i and ii” would become “ii and iii”. After some discussion, it was determined to reword the body of paragraph 5b to say “Certify in a sworn statement that no non-resident staff occupant will reside or remain in the facility whose tenancy would:”

Council Member Strate then asked for some clarification of what it meant to “certify” something, and how it was treated under the law. City Attorney Bradshaw answered his question.

Council Member Benard then proposed a second amendment to the Ordinance in Paragraph E.3. The amendment would change the wording in the paragraph to read “The Planning Commission shall evaluate a reasonable accommodation request based on the following factors as permitted by law, including but not limited to: a. Whether the accommodation is reasonable under all current standards in applicable case and statutory law and this chapter;” The following paragraphs that were previously labeled a thru f would then be reformatted to b thru g.

The mayor asked if there was a motion concerning the ordinance and the proposed amendments.

Council Member Porter moved to adopt Ordinance 15-07, amending Title 10, Chapter 14 of the City Code having to do with Residential Facilities for Disabled Persons and including the amendments proposed by Council Member Benard. The motion was seconded by Council Member Smith. The mayor asked if there was further discussion. Council

Member Orr stated this was a living document that they would discuss again. There was no further discussion or comment. **Mayor Minster made a roll call vote:**

Council Member Porter-	Yes
Council Member Smith-	Yes
Council Member Strate-	Yes
Council Member Benard-	Yes
Council Member Orr-	Yes

Ordinance 15-07 was adopted.

Mayor Minster then asked if someone would like to motion for a five minute break.

Council Member Orr so moved, followed by a second from Council Member Porter. The vote was unanimous in favor of a break. The break began at 9:06 pm.

At 9:27, the mayor called for a motion to reconvene the meeting.

Council Member Smith moved to reconvene as the South Ogden City Council. Council Member Porter seconded the motion. Council Members Smith, Porter, Benard, Strate and Orr all voted in favor of reconvening.

The mayor indicated the next item on the agenda would be a discussion on proposed permitted and conditional uses in residential zones.

Council Member Benard moved to rearrange the order of the agenda so the attorney would not have to wait so long and further moved to recess City Council Meeting and convene into the executive session, item VII on the agenda. The motion was seconded by Council Member Smith. The motion passed by a unanimous voice vote

Note: The Council moved to the adjacent conference room for the executive session.

The City Council returned to the council chambers at 10:26 pm. Mayor Minster called for a motion to adjourn the executive session and reconvene as the South Ogden City Council.

Council Member Porter so moved, followed by a second from Council Member Orr.

The mayor then returned to item V.C. on the agenda.

C. Discussion on Proposed Permitted and Conditional Uses in Residential Zones

City Manager Dixon reminded the Council this was a follow-up discussion from the last council meeting where they had held the public hearing record open for further comment. The comments submitted had been included in their packets. Mr. Dixon referred the Council to a chart staff had prepared showing the public comments; the chart organized the comments by topic.

The Council discussed PRUD's and Cluster Subdivisions. Staff made them aware the Planning Commission had recommended that the uses be made permitted, but the chapters in the code governing them needed to be re-worked so they were more objective and clear. However, there would be a lag time between when they were allowed as permitted uses and when the chapters were re-done.

The council then discussed educational institutions, terminal roads and PRUD's. Council Member Porter commented he had no issue with the uses as proposed, but felt that size restrictions should be put in place for things like private schools, churches and in the higher

density residential zones, assisted living; other council members agreed. The Council wanted the Planning Commission to look at restricting building sizes for some uses, but did feel the issue should hold up passing the ordinance that evening. The council then discussed an issue with the R-5zc(AB) zone in the area of Ridgeline Drive. Council Members Orr and Strate felt an error had been made in the rezoning of some of the properties and they were not meant to be R-5zc(AB); their concern was there was too much high density housing in the area and they did not want to allow any more senior housing. City Attorney Bradshaw suggested they leave the property located at 6086 Ridgeline Drive as R-5zc(F) which allows senior housing and then take senior housing out of the R-5zc(AB) zones as a permitted use. It would be an issue to bring before the Council at another time. There was no more discussion.

D. Consideration of Previously Tabled Ordinance 15-06 – Amending Title 10, Chapters 2,7,12 and 13 of the City Code

Council Member Porter moved to adopt Ordinance 15-06. The motion was seconded by Council Member Smith. There was no further discussion. The mayor called the vote:

Council Member Porter-	Yes
Council Member Smith-	Yes
Council Member Orr-	Yes
Council Member Benard-	Yes
Council Member Strate-	Yes

Ordinance 15-06 was adopted.

E. Consideration of Resolution 15-06 – Approving an Agreement With GBS

City Attorney Bradshaw explained to the Council this resolution allowed GBS to have access to employee information and GBS agreed not to illegally disclose it in compliance with HIPPA laws. There were no questions or comments from the Council. Mayor Minster called for a motion.

Council Member Strate moved to adopt Resolution 15-06, followed by a second from Council Member Porter. Seeing there was no further discussion, the mayor made a roll call vote:

Council Member Strate-	Yes
Council Member Porter-	Yes
Council Member Orr-	Yes
Council Member Benard-	Yes
Council Member Smith-	Yes

Resolution 15-06 was passed.

F. Consideration of Resolution 15-07 – Approving a Memorandum of Understanding With the Utah National Guard for Alarm Response at the Browning Armory

Police Chief Parke informed the Council this agreement was mostly for the benefit of the Utah National Guard. It specified that if there were an alarm at the Browning Armory, the Guard would respond first and then contact the city's police department if further assistance was needed. There was no further discussion; the mayor called for a motion.

Council Member Orr moved to adopt Resolution 15-07. Council Member Benard seconded the motion. There was no further discussion by the council. Mayor Minster called the vote:

Council Member Orr-	Yes
Council Member Benard-	Yes
Council Member Strate-	Yes
Council Member Smith-	Yes
Council Member Porter-	Yes

The motion was passed.

G. Consideration of Resolution 15-08 – Approving an Agreement With SeamlessGov for Computer Services Including Online Forms

Information Systems Administrator Brian Minster explained staff had been looking for ways to make things more convenient for residents, especially in providing online services. The city had been considering upgrading Laserfiche to provide the services, however they had found that Seamless.gov could provide them for less. Seamless.gov would also take the place of Sportsites, a company the city had been using for sports registration. Council Member Orr asked how Seamless.gov could be so much less than others. Mr. Minster said Seamless.gov only worked with government agencies and based their prices on population. There were no more questions or discussion. The mayor called for a motion.

Council Member Smith moved to adopt Resolution 15-08, followed by a motion from Council Member Porter. There was no further discussion. Mayor Minster made a roll call vote:

Council Member Smith-	Yes
Council Member Porter-	Yes
Council Member Orr-	Yes
Council Member Benard-	Yes
Council Member Strate-	Yes

Resolution 15-08 was adopted.

VI. REPORTS

A. **Mayor** – nothing to report.

B. **City Council Members**

Council Member Porter – thanked City Recorder Kapetanov and Attorney Neil Lindberg for their help through the zoning process.

Council Member Orr – nothing to report

Council Member Benard – asked everyone to check their emails concerning the retreat on Friday.

Council Member Strate – nothing to report.

Council Member Smith – nothing to report.

- C. City Manager – nothing to report.
- D. City Attorney Ken Bradshaw – nothing to report.

VII. RECESS CITY COUNCIL MEETING AND CONVENE INTO AN EXECUTIVE SESSION

- A. Pursuant to UCA §52-4-205 1(c) to discuss pending or reasonably imminent litigation
- B. Pursuant to UCA §52-4-205 1(d) to discuss the purchase, exchange, or lease of real property

This item was moved to earlier in the agenda.

Mayor Minster then entertained a motion to adjourn City Council Meeting and convene into a work session.

Council Member Porter moved to adjourn city council meeting and adjourn into a work session. The motion was seconded by Council Member Orr. The vote was unanimous in favor of the motion.

VIII. ADJOURN CITY COUNCIL MEETING AND CONVENE INTO WORK SESSION

- A. City Logo Discussion

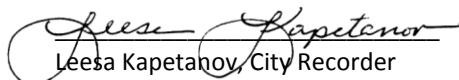
The Council discussed the various logo options proposed by Jibe Media, commenting on the strengths and weaknesses of each. City Manager Dixon said the goal that evening would be to choose one or two and send them back to have color versions made. Council Member Benard said none of the options “jumped off the page”; he wondered if they could come back with some different options. City Manager Dixon pointed out the research that had gone into the logos. The Council discussed some options they would like to see worked into the proposed designs; they would like to see elements of houses worked into option #4 and more of a tree element in option #1. There was no further discussion. Mayor Minster called for a motion to adjourn.

IX. ADJOURN WORK SESSION

Council Member Smith moved to adjourn the work session. Council Member Strate seconded the motion. Council Members Porter, Orr, Benard, Strate and Smith all voted aye.

The meeting adjourned at 11:54 pm.

I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Council Meeting held Tuesday, February 17, 2015.


Leesa Kapetanov, City Recorder

Date Approved by the City Council _____ April 7, 2015 _____