

**CITY COUNCIL MEETING**

Tuesday, April 21, 2015 6:00 p.m.  
Community Recreation Center  
10640 N Clubhouse Drive, Cedar Hills, Utah

Present: Mayor Gary Gygi, Presiding  
Council Members: Trent Augustus, Rob Crawley, Mike Geddes, Jenney Rees, Daniel Zappala  
David Bunker, City Manager  
Chandler Goodwin, Assistant City Manager  
Jeff Maag, Public Works Director  
Greg Gordon, Recreation Director  
Courtney Hammond, Transcriptionist  
Others: Lt. Sam Liddiard, Marisa Wright, Ken Cromar, Doug Ahlstrom, Peter Stirba, Craig Smith, Katie Stephy, Jeff Gibbs, Shane Topham, Spencer Topham, David Shaw, Joel Wright, Chris Bramhall, Lisa Dishman, Drew Clark

**COUNCIL MEETING**

1. This meeting of the City Council of the City of Cedar Hills, having been properly noticed, was called to order at 6:02 p.m. by Mayor Gygi.

Invocation given by C. Crawley  
Pledge of Allegiance led by David Bunker

2. Approval of the Meeting’s Agenda

**MOTION: C. Rees—To approve the meeting’s agenda.** Seconded by C. Augustus.

Yes - C. Augustus  
C. Crawley  
C. Geddes  
C. Rees  
C. Zappala Motion passes.

3. Public Comment  
No comments.

**CONSENT AGENDA**

- 4. Appointment of April Hancock to the Cultural Arts Citizen Advisory Committee
- 5. Minutes from the March 17, 2015 City Council Meeting

**MOTION: C. Zappala—To approve the consent agenda.** Seconded by C. Augustus.

Yes - C. Augustus  
C. Crawley  
C. Geddes  
C. Rees  
C. Zappala Motion passes.

## CITY REPORTS AND BUSINESS

### 6. City Manager

Timpanogos Special Service District is considering reducing the district's debt. Getting rid of the old series bonds will increase the district's negotiation power in future bonds.

Tot soccer starts next Tuesday.

T-ball registration is open.

Co-ed soccer has started.

Cedar Hills was recognized at a recreation banquet for highest participation among cities with 15,000 residents or less.

Eight residents participated in Golf Resident Day.

The first city play was a huge success.

First IFA class took place. There will be another one next month.

### 7. Mayor and Council

C. Zappala: The Lone Peak Public Safety District discussed sustainability of the budget. They are looking at staff raises. The fire department budget was approved. Lone Peak police is looking into wearing body cameras.

C. Rees: The Planning Commission approved the final plans for the Lakeview Trails subdivision. The Rosegate item was tabled because of concerns about architectural renderings. They will hold a special meeting to review the updated plans. The Family Festival planning is going well. The Cultural Arts Committee is discussing plans for the summer and rest of year. They would like the city to consider purchasing a stage for plays. Renting a stage costs about \$1,200. Purchasing a stage costs about \$4,700. Some of that money can be recouped by renting the stage at the Community Recreation Center.

Mayor Gygi: Mountainland Association of Governments discussed the state legislature passage of the gas tax. Money will start being collected in January 2016. It may lead to about \$150,000 more a year in B&C road funds. The local option would be determined by the county and would need to be on the ballot.

C. Augustus: North Pointe Solid Waste reviewed the annual audit and the budget.

C. Geddes: Utah County Dispatch approved the preliminary plan for the new building. An RFQ has been prepared and approved. The Beautification, Recreation, Parks & Trails Committee met and discussed the Beautification Day on May 2.

C. Crawley: He read an email from Jeremy Reitzel where he requested an opportunity to present his firm for consideration for legal services.

## SCHEDULED ITEMS

### 8. Discussion/Review of Request for Qualifications (RFQ) or Legal Services

#### Public Comment:

Ken Cromar: Mr. Cromar stated that he has a great interest in legal services. He sent an email to the council this afternoon about this decision. He congratulated the council for seeking legal services. Stirba & Associates served the city in 2012 to represent the mayor and city manager. Representing the city was a conflict of interest for Mr. Stirba, which was acknowledged by the county attorney because Mr. Stirba has also represented the county. The city was billed for those services. The relationship between government and residents is tenuous. In the past the city attorney worked exclusively for the mayor and city manager rather than the citizens. The city attorney should represent the citizens first.

Mayor Gygi stated that he has hired or used Smith Hartvigsen; Callister, Nebeker and McCullough, Kirton McConkie and Stirba.

Legal Presentations:

Doug Ahlstrom: Mr. Ahlstrom has been the city attorney for Draper and Tooele, as well as a county attorney. His career has been in municipal government. He has worked with many city councils and county commissions as well as state and local officials. He is a one-man shop and works from home. He knows how to give good, competent legal advice. His goal is to keep the city off the front page of the newspaper. His opinion is not the end-all, be-all. Times of disagreement are okay. He would not work for any one person on the council or staff. He does not know the politics of Cedar Hills but can sense there have been tensions. His goal would be to guide the city through trouble spots. He has no conflict of interest with the Local Government Trust. He has experience dealing with sovereign citizens. He feels that the best approach is to acknowledge they are there and proceed accordingly, treating them as courteously as possible. He has dealt with GRAMA every day of his career. He has not appeared before the State Records Committee. Cities lose before the committee 95% of the time. He takes a conservative approach. He would encourage disclosing everything unless it clearly violates personal privacy protections. If a developer satisfies the code, the city cannot deny development. Gray areas are matters of interpretation. Any denial cannot be construed as arbitrary and capricious. He is looking for a full-time position, and does not know what he would do if a full-time position elsewhere comes through. He does not want to leave the city in the lurch.

Chandler Goodwin clarified that Mr. Ahlstrom filled out an application for employment, then provided a fee and retainer schedule. All the information that the city needs has been provided.

Stirba P.C.: Peter Stirba has been a city attorney with Centerville and Gunnison. He has represented dozens of cities in the state in litigation. In those interactions, he works with many levels of city government and staff. He routinely provides opinions and consultations with city matters. He has represented Cedar Hills in a Board of Adjustment hearing. He was asked to respond to allegations of a conflict of interest when he represented Konrad Hildebrandt and Eric Johnson at the same time he was representing the county. He stated that as a lawyer he knows a lot of people. When that issue surfaced there was a request to the county attorney to do an investigation on the mayor. There was no conflict of interest because there was nothing adverse between the county and the city's mayor. He felt that, if anything, the fact that the county knew him was a benefit to this city. He does not represent the Local Government Trust, but has cases whereby a city has liability insurance through the Trust. He would have to look at the case to determine if there was a conflict, though there is no substantial relationship between his firm and the Trust. His legal dealings with the county attorney's office were unrelated to the case. Representing the mayor, he suggested to the county attorney that the investigation was without merit. It is difficult to deal with sovereign citizens and vexatious litigants. Judges are reticent to forestall people going to court. Sometimes you can work with them, and sometimes you can't. It can be difficult, expensive and wasteful. A city attorney should be a problem solver. There may be times when communication can help to avoid too much conflict. There is a certain amount of judgment in every situation that needs to be gauged. As a city attorney he would need to understand the person and situation. The better relationship, the more likely the city will be able to avoid legal problems. He has not appeared before the State Records Committee. His office is

quite familiar with GRAMA and the exceptions to GRAMA requests. The important thing is for the city to respond to requests, play it straight and provide documents. Typically his office handles all the documents and redactions. He feels that he has been successful as a city attorney. Of course he has lost some, but generally he has been successful at his endeavors. The stated retainer amount includes about 20-25 hours per month. He doesn't see a problem with council members coming to him to talk about a city legal issue. Ultimately he reports to the collective body as a whole.

Smith Hartvigsen: Craig Smith, Katie Stephy and Jeff Gibbs presented. They represent cities as legal counsel and as counsel for land use and other issues. They have a preventative law and team approach, which means that they like to keep clients out of trouble. They will put together a team that can best address the issue. They currently represent about 5 cities as city attorney. They have no conflicts with the Local Government Trust. They have sent them letters about coverage for a few clients and were able to get coverage for those cities. They have dealt with sovereign citizens and vexatious citizens. With those citizens it is clear that you can't talk them out of their conduct. The best approach is to show the court what is happening. For communication, there would be one person designated as the city attorney, and a back up as an assistant. Behind the scenes the attorney with the most expertise in that area would be assigned to the issue. They feel that GRAMA law is pretty straightforward. Their experience with GRAMA has gone smoothly, and they have not had to appear before the State Records Committee. They have a continued good working relationship with Eric Johnson. The biggest difference with Eric Johnson's approach is that Smith Hartvigsen favors a team approach. There is a possibility of reducing the retainer based on the city's needs, priorities, etc. He would guess dedicating about 15-20 hours/month to the city. To a developer who threatens to sue, they would say that they have a reputation for not being pushed around.

Heideman and Associates: Heideman and Associates does not represent any cities, but does represent Provo School District and has been involved in counseling 28 cities. They have no conflicts of interest with the Local Government Trust. They have dealt with sovereign citizens and take a specific approach: being direct, open, honest and blunt. Sovereign citizens are litigious, not reasonable. They want someone to listen to them. If you listen to them, you can identify why they might not be correct in their legal theories. A city is a wonderful client, and would be a top client. They can be flexible and accommodating with billing. They have never appeared before the State Records Committee, but have issued many GRAMA requests and are familiar with GRAMA law.

Callister, Nebeker and McCullough: Shane and Spencer Topham presented. The firm has experience representing cities, in particular Cottonwood Heights. Has also done legal work for Taylorsville, Herriman, Eagle Mountain and special service districts. They have negotiated and drafted Interlocal agreements, dealt with GRAMA issues and land use issues. Several members of the firm are experts in municipal employee matters. Their firm is innovative, thorough and responsive. They feel they can handle every aspect of municipal law. Spencer Topham would be the principal legal contact. They have no conflict with suing the Local Government Trust. They have never had to deal with a sovereign citizen, but agree with the prior response of listening and being firm. Spencer Topham has appeared before the State Records Committee on behalf of a city. He felt that they prevailed in that hearing. They are available to dedicate whatever hours the

city needs. Standard attorney services would be 50-60 hours/month. They would work with the city recorder to respond to GRAMA requests. Their firm would review every page to make sure that controlled information is protected. Billing for a State Records Committee hearing would be viewed as administrative.

Kirton McConkie: David Shaw, Joel Wright, Chris Bramhall, Lisa Dishman and Drew Clark presented. Kirton McConkie has main offices in Salt Lake and an office in Thanksgiving Park. They are close and accessible with three in-house attorneys who were former city attorneys. They have a back up bench of 144 attorneys who have served as bond council, police offices, council members, and members of special service districts. They have experience with GRAMA and golf courses. They do not represent any neighboring municipalities. They have the biggest real estate and land use practice in the state. Their proposal is designed to be budget conscious while providing great representation. Joel Wright stated that if Kirton and McConkie are chosen to represent the city he and his wife will adopt the lowest common denominator of political involvement. Chris Bramhall worked with the Salt Lake City attorneys' office for 13 years, and before that was a municipal bond attorney. His principal focus with Salt Lake City was municipal utilities. He also worked on GRAMA and construction and has been general counsel to the Provo River Waters Association. Lisa Dishman worked in Washington D.C. for 7 years and practices in in real estate, purchasing, litigation with developers and cities and some GRAMA work. Drew Clark specializes in telecommunications and technology. The firm represents various cities on various matters. They are not aware of any conflicts of interest with the Local Government Trust. They have dealt with several sovereign citizens. The best approach is to be firm and blunt, and if necessary, go to court to defend against them. The lead attorneys for Cedar Hills would be David Shaw, Joel Wright and Chris Bramhall, all senior shareholders. Though they are a large firm, they treat every client like it is their only client. They are happy to be creative with the fee schedule. The stated retainer would cover all city needs for that cost. David Shaw stated that he has covered GRAMA his entire career. He has no experience before the State Records Committee because it hasn't been needed. A developer's litigation threats are just threats. Nearly all issues can be resolved through discussion and negotiation. City issues are typically business issues and can be handled reasonable and amicably. Chris Bramhall stated that he is not a litigator, but a transactional attorney. He wants to stay out of court. He approaches issues in a problem solving mode.

Break taken at 8:00 p.m.

Reconvened at 8:13 p.m.

#### 9. Review/Action on Authorizing the Mayor to sign a contract for Legal Services

C. Crawley stated that it seems that all the firms are flexible on fees. He liked Doug Ahlstrom comments and feels he has a lot of experience and maturity. However, he has no support staff. He would consider using him as the city attorney if the city decided to hire two firms. He feels that many of the city's past problems would be exacerbated by choosing Stirba. He has reservations with Smith Hartvigsen that he did not want to bring up in this setting. He felt that Heideman seemed too litigious. Kirton McConkie would be his first choice with the caveat that Joel Wright not be part of the city's team. He likes Joel Wright, but was looking forward to not having a resident as an attorney. He worries about conflict of interest. He was not extremely

impressed with Callister, Nebeker and McCullough. His preference would be a combination of Ahlstrom and Kirton McConkie with his stated caveat regarding Joel Wright.

C. Geddes stated that the lowest cost is not always the best. More often than not, you get what you pay for. He was impressed with all the firms and recognizes that this is a tough decision that will likely extend beyond his term. His top two choices are Kirton McConkie and Smith Hartvigsen.

C. Augustus stated that attorneys are like buying insurance. You don't know what you are going to need, but know that you do need it. There will likely have diverse legal issues facing the city. He would lean toward spending more on an experienced attorney that can address all the issues. He would not favor choosing two firms. It would become difficult to decide which firm should get which issue. A large firm has the capability to resolve every issue. His top two choices are Kirton McConkie and Heideman.

Mayor Gygi stated that past problems and contention were not the result of the attorney, but rather the attorney works at the bidding of the city council. He felt they were all really good presentations. He has dealt with a ton of law firms in his life and has done business with half of these firms. He tends to favor the groups that already do what the city would ask them to do. His first choice is Stirba. His second choice is Smith Hartvigsen. Kirton McConkie and Callister, Nebeker and McCullough would triple the city's legal bills.

C. Rees stated that she is concerned that Ahlstrom would prefer a full time job; if he finds it, he would no longer be able to represent Cedar Hills. Her top two choices are Smith Hartvigsen because of their experience with municipal law and Callister, Nebeker and McCullough because they were the only ones that appeared before the State Records Committee. The city will be going before that committee in the future.

C. Zappala stated that the advice he received from the current attorney was to not pick lowest bid, but the best attorney. He encouraged the council to think about which group would best represent the city with its current issues. His top two choices are Smith Hartvigsen because of their experience with municipal law, and Kirton McConkie. He did not expect Kirton McConkie to be in the top, but is convinced that the city needs a top-shelf firm. Their fee covers unlimited hours, so he is not convinced they will be more expensive. The \$7,000 retainer is well below what the city is paying per year for legal expenses. They have a deep bench that would serve the city well.

**MOTION: C. Zappala—To authorize the mayor to enter negotiations to retain Kirton McConkie as legal representative.** Seconded by C. Augustus.

C. Crawley would like to see that the caveat that Joel Wright not represent the city be added to the motion.

C. Zappala stated that he has spoken with the Wright's and they have promised to put aside political feelings. He believes them.

**MOTION: C. Augustus—To have two council members present for negotiations.** Accepted by C. Zappala. Vote taken by roll call.

Yes	-	C. Augustus	
		C. Geddes	
		C. Zappala	
No	-	C. Crawley	
		C. Rees	Motion passes.

10. Review/Action on a Resolution Amending Certain Fees to the Official Fees, Bonds and Fines Schedule, relating to Construction, Plan Review, General Inspection, Gas Line Inspection and Temporary & Permanent Power Inspection Fees

Jeff Maag stated that the staff has reviewed inspection fees and plan check fees and found that they are lower than what it costs to do the work. He recommended adjusting the fee schedule to meet the proposed costs to do the inspections and plan reviews. This proposal would increase the residential plan check fee from 53% of the Building Permit Fee to 65%; increase the gas line inspection from \$35 to \$53; increase the general city inspection fee from \$47 to \$53; and increase the temporary power and permanent power inspection from \$0 to \$53 (each). These rates are pass through rates to Sunrise Engineering. The gas inspection typically happens at four-way, but it is a separate inspection with a separate fee. Sunrise would receive 65% of the 65% for the plan residential plan check.

C. Augustus and C. Geddes commented that these new fees significantly increase building fees.

C. Rees stated that these fees just cover the new costs. The city can't decide to not cover costs.

**MOTION: C. Augustus—To approve Resolution No 04-21-2015A, a resolution adding, amending, or deleting certain fees to the official fees, bonds and fines schedule of the City of Cedar Hills, Utah.** Seconded by C. Zappala. Vote taken by roll call.

Yes	-	C. Augustus	
		C. Crawley	
		C. Geddes	
		C. Rees	
		C. Zappala	Motion passes.

11. Review/Action on a Resolution Adopting the Municipal Wastewater Planning Program

Jeff Maag stated that the State Division of Environmental Quality requires an annual report. The city completed the report. The city did well with no flooded basements, spillage, etc. The city does not use a sinking fund for sewer projects which incurred a few points.

**MOTION: C. Zappala—To approve Resolution 04-21-2015B, a resolution adopting the 2014 Municipal Wastewater Planning Program.** Seconded by C. Augustus. Vote taken by roll call.

Yes	-	C. Augustus	
		C. Crawley	

C. Geddes  
C. Rees  
C. Zappala     Motion passes.

12. Review/Action on Authorizing a Structure Lease Agreement with Vivint Wireless, Inc. to include providing Internet Services

Chandler Goodwin stated that he has been working with Vivint Wireless to get this ready for tonight. The new lease agreement includes these changes: Vivint is now requesting 100 square feet of rooftop space; a new sentence that requires a building permit; the tenant needs landlord approval to make changes to the equipment; the term will be renewable every 4 years; the tenant will make its best effort to provide 50 mbps up and 50 mbps down to the landlord; the tenant will pay \$100 per month, paid once a year; termination can be made at any time by the landlord with cause; upon termination the tenant will remove equipment and restore the building; the tenant will pay time and a half for a city staff escort if they need access outside office hours. They have an insurance policy of \$300,000 for any damage. Where the pole is positioned you can see about 3 inches of the dish. They also struck the reference to surrounding property. The new plans have the equipment on a skid that is anchored by a cinder block.

C. Crawley stated that a friend of his in the Internet business told him the city should be able to get at least \$500 rent.

C. Zappala suggested that landlord be notified and approved for any access to the structure.

**MOTION: C Crawley—To approve the proposed structure lease agreement with Vivint Wireless Inc. with the stipulation that they go from \$100 to \$300 dollar rent.** No second. Motion dies.

C. Crawley stated that the expert he talked to said that Vivint would go to \$500. He feels they will definitely go up to \$300.

**C. Zappala—To approve the contract with Vivint Wireless, Inc. as described, with the change that they will get permission from us for access to both the interior and exterior.**  
Vote taken by roll call.

Yes	-	C. Augustus	
		C. Geddes	
		C. Rees	
		C. Zappala	
No	-	C. Crawley	Motion passes.

13. Review/Action on Authorizing a Police Service Agreement with American Fork City, to provide Law Enforcement and Animal Control Services

David Bunker presented the proposed police service agreement with the American Fork Police Department. This proposal suggests going to a two-year term, rather than an annual term. There is just one 2.5% increase, versus an annual 3.5% increase. There would be a 180-day clause to

terminate vs. a 60-day termination in the old contract. The contract would renew every 24 months. He sent the contract to the attorney. He suggested that 2.1 clarify that the amount is for 2 years. Prosecution services are provided through American Fork. If the city wants to do its own prosecution, now would be the time to do it.

C. Augustus suggested using the actual start and end date of the contract in section 2.1.

**MOTION: C. Rees—To approve the Police Services Agreement with the American Fork Police Department with the one change Mr. Augustus suggested with the exact dates.**

Seconded by C. Augustus. Vote taken by roll call.

Yes - C. Augustus  
C. Crawley  
C. Geddes  
C. Rees  
C. Zappala Motion passes.

**14. Discussion on Pressurized Irrigation Water Restrictions**

Mayor Gygi stated that C. Crawley wanted to have a discussion on water restrictions. He is not opposed to implementing restrictions immediately. He listened to governor's address on water issues when he stated that he would be surprised if cities didn't implement restrictions immediately based on snowpack. In the past the city has tried to water by zones. It wasn't successful.

C. Zappala stated that he looked at C. Crawley's plan, but was concerned that the watering restrictions would be the same throughout the year, but water needs change throughout the season. He would favor changing the restrictions based on the time in the season. Water meters would be the ultimate solution.

C. Crawley stated that many people may adhere to the restrictions better if they apply for the entire year. Simple may work better. He suggested neighborhood watch programs for enforcement. He does not want to spend money on enforcement. He feels that enforcement should primarily be after a neighbor has called. His goal is improvement rather than compliance with state watering plan.

C. Geddes stated that arbitrary restrictions become ignored unless there is some enforcement.

C. Rees stated that if there are restrictions, the council should find money in the budget to hire enforcement. Pleasant Grove posts a watering schedule with compliance officers working around the clock to enforce it.

Jeff Maag stated that Payson has proposed a 2-day watering week. Cedar Hills has small reservoirs. If the city switches to watering 4 days out of 7, water pressures will drop and may not have capacity. His suggestion if the city goes to a 2 day a week watering schedule is to divide the city into zones so that watering happens somewhere in the city every day.

15. **MOTION: C. Zappala—To go into Executive Session pursuant to State Code 52-4-204 and 52-4-205 to discuss pending and reasonably imminent litigation.** Seconded by C. Geddes. (9:46 p.m.)

Yes - C. Augustus  
C. Crawley  
C. Geddes  
C. Rees  
C. Zappala Motion passes.

16. **MOTION: C. Zappala—To adjourn Executive Session and Reconvene City Council Meeting.** Seconded by C. Augustus. (10:22 p.m.)

Yes - C. Augustus  
C. Crawley  
C. Geddes  
C. Rees  
C. Zappala Motion passes.

ADJOURNMENT

17. This meeting was adjourned at 10:22 p.m. on a motion by C. Geddes, seconded by C. Rees and unanimously approved.

Approved by Council:  
May 5, 2015

/s/ Colleen A. Mulvey, MMC  
City Recorder