

MINUTES OF COUNCIL REGULAR MEETING NOVEMBER 6, 2012

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, NOVEMBER 6, 2012, AT 6:30 P.M., IN THE COUNCIL CHAMBERS, WEST VALLEY CITY HALL, 3600 CONSTITUTION BOULEVARD, WEST VALLEY CITY, UTAH. THE MEETING WAS CALLED TO ORDER AND CONDUCTED BY MAYOR WINDER.

THE FOLLOWING MEMBERS WERE PRESENT:

Mike Winder
Steve Buhler
Don Christensen
Tom Huynh
Corey Rushton
Steve Vincent

Wayne Pyle, City Manager
Sheri McKendrick, City Recorder

ABSENT: Karen Lang

STAFF PRESENT:

Paul Isaac, Assistant City Manager
Eric Bunderson, City Attorney
Nicole Cottle, CED Director
Russell Willardson, Public Works Director
Layne Morris, CPD Director
Kevin Astill, Parks and Recreation Director
Jim Welch, Finance Director
Buzz Nielsen, Police Chief
John Evans, Fire Chief
Aaron Crim, Administration
Jake Arslanian, Public Works Department
Steve Lehman, CED Department
Brandon Hill, Law Department
Kevin Conde', Administration
Fire Department employees
Public Works Department employees

15941 **OPENING CEREMONY**

The Opening Ceremony was conducted by Mike Winder who noted it was Election Day. He showed a video of President Kennedy encouraging citizens to serve the country by exercising their right to vote on November 6, 1962.

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15942 **APPROVAL OF MINUTES OF REGULAR MEETING HELD OCTOBER 16, 2012**

The Council read and considered Minutes of the Regular Meeting held October 16, 2012. There were no changes, corrections or deletions.

After discussion, Councilmember Buhler moved to approve the Minutes of the Regular Meeting held October 16, 2012, as written. Councilmember Huynh seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Christensen	Yes
Mayor Winder	Yes

Unanimous.

15943 **APPROVAL OF MINUTES OF REGULAR MEETING HELD OCTOBER 23, 2012**

The Council read and considered Minutes of the Regular Meeting held October 23, 2012. There were no changes, corrections or deletions.

After discussion, Councilmember Buhler moved to approve the Minutes of the Regular Meeting held October 23, 2012, as written. Councilmember Huynh seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Christensen	Yes
Mayor Winder	Yes

Unanimous.

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15944 **EMPLOYEE OF THE MONTH AWARD, OCTOBER 2012 – MARY LINDSAY, FIRE DEPARTMENT**

Councilmember Huynh read the nomination of Mary Lindsay, Fire Department, to receive the Employee of the Month Award for October 2012. Ms. Lindsay was nominated for her professionalism regarding her job duties and responsibilities and her recent compassionate efforts for a brother firefighter.

The City Council expressed appreciation and congratulations to Ms. Lindsay.

Mary Lindsay addressed the City Council and acknowledged fellow firefighters and family members in attendance at the meeting.

15945 **EAC QUARTERLY DIVISION AWARD – FLEET DIVISION, PUBLIC WORKS DEPARTMENT**

Councilmember Buhler read the nomination of the Fleet Division of the Public Works Department to receive the EAC Quarterly Division Award. The Fleet Division had been nominated for the purpose of expressing appreciation for their continued support of the Fire Department and all other City departments.

The City Council offered congratulations to the Fleet Division and expressed appreciation for their service to West Valley City.

15946 **ESSENTIAL PIECE AWARD – SHELLIE'S SCHOOL OF DANCE**

Councilmember Rushton read a narrative and presented the Essential Piece Award to Shellie's School of Dance. Shellie's School of Dance had been nominated to receive the award in recognition of being a successful and essential piece of the business community existing in the West Valley area for the past 46 years.

The City Council congratulated the award recipient and Shellie Pearson addressed the City Council expressing appreciation for the honor. She expressed pride in her roots and heritage in West Valley City, and introduced family members and friends in attendance at the meeting.

15947 **PROCLAMATION DECLARING NOVEMBER AS ALTERNATIVE FUEL VEHICLE AWARENESS MONTH IN WEST VALLEY CITY**

Mayor Winder read a Proclamation declaring November as Alternative Fuel Vehicle Awareness Month in West Valley City.

15948 **PROCLAMATION DECLARING NOVEMBER AS PANCREATIC CANCER AWARENESS MONTH IN WEST VALLEY CITY**

Councilmember Christensen read a Proclamation declaring November as Pancreatic Cancer Awareness Month in West Valley City.

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COMMENT PERIOD

A. PUBLIC COMMENTS

Upon inquiry by Mayor Winder the following individual addressed the City Council during the comment period:

Mike Markham addressed the City Council and discussed community standards. Mr. Markham informed he sat in on a meeting with the City Council and developers of Highbury regarding a pavilion. He inquired regarding community standards as pertaining to other properties. He stated the City needed to enforce codes regarding all properties, as there were double standards in the community. He indicated there was still a vacant, unmaintained parcel that used to be a church on 3650 South and inquired why the City did not do something about it. He stated business licenses should not be renewed for businesses that did not maintain their properties. Mr. Markham informed he lived in West Valley City and cared about the community and expressed the need for standards for maintenance of properties including non-profits such as churches.

Upon inquiry there was no one else who desired to address the City Council during the comment period.

B. CITY MANAGER COMMENTS

City Manager, Wayne Pyle, stated he appreciated Mr. Markham's residency and his care and concern for West Valley City. He explained there were always more needs in terms of actions regarding enforcement of properties in neighborhoods and for businesses. He stated the City continued to make great strides in developing, redeveloping and maintaining properties. He indicated the City Council always appreciated concern and involvement from citizens.

C. CITY COUNCIL COMMENTS

Councilmember Vincent commented regarding the property mentioned above which was owned by the LDS Church and questioned why care by the owner had not been taken on that property. He suggested making contact regarding future development and/or uses for the property.

City Manager, Wayne Pyle, advised the LDS Church had offered to sell the property to the City and they had expressed no interest in doing anything further with it.

Councilmember Christensen offered congratulations to Harmons for recently receiving the *Common Good Award* from Envision Utah.

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Mayor Winder advised he recently received a letter from West Valley City's Sister City friends in Nantou, Taiwan, expressing appreciation for hospitality shown during their visit here in September 2012.

15950 **SCOUTS**

Mayor Winder welcomed a scout from Troop No. 1644 who was in attendance to complete requirements for the Communications merit badge.

15951 **RESOLUTION NO. 12-151, APPROVE APPROPRIATION OF \$15,710.00 FROM THE UNCLAIMED CASH ACCOUNT TO AN ADMINISTRATIVE ACCOUNT IN THE POLICE DEPARTMENT**

City Manager, Wayne Pyle, presented proposed Resolution No. 12-151 which would approve appropriation of \$15,710.00 from the unclaimed cash account to an administrative account in the Police Department.

Mr. Pyle stated the subject Resolution, if found to be in the public interest, would authorize the Finance Director to deposit the subject funds into an account of the Police Department to be used as determined by the Police Chief. He explained, from time to time, the Police Department had funds deposited into the Evidence Room regarding investigations, found property, or for safekeeping. He indicated that when released, the Police Department exercised due diligence to find the rightful owner as required by State law. He further stated when the rightful owner had not been identified the funds became available for appropriation as directed by the City Council.

After discussion, Councilmember Huynh moved to approve Resolution No. 12-151, a Resolution Approving the Appropriation of \$15,710.00 from the Unclaimed Cash Account to an Administrative Account in the Police Department. Councilmember Christensen seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Christensen	Yes
Mayor Winder	Yes

Unanimous.

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RESOLUTION NO. 12-152, AUTHORIZE EXECUTION AND RECORDING OF A DEED RESTRICTION FOR REAL PROPERTY TO BE USED FOR AFFORDABLE HOUSING UNDER THE FEDERAL HOME INVESTMENT PARTNERSHIP PROGRAM

City Manager, Wayne Pyle, presented proposed Resolution No. 12-152 which would authorize execution and recording of a Deed Restriction for real property to be used for affordable housing under the federal HOME Investment Partnership Program.

Mr. Pyle stated the subject property located at 4478 South Hawarden Drive would be used to meet the required 15 year commitment to provide affordable housing, incurred when the City used HOME funds to purchase property at 3608 South Market Street. He explained the City originally purchased the Market Street property in October of 2004, and operated it as affordable housing as required until demolition in June of 2008. He reported the Deed Restriction was then transferred to the property at 1406 West 3300 South which was operated as affordable housing until disposed of in September of 2012.

The City Manager further reported based on the date of the original investment the City's obligation to provide affordable housing would expire in October 2019. Consequently, the Deed Restriction on the Hawarden Drive property would be in place for seven years from the date of this transfer. He indicated the restriction set a rent ceiling on the property of \$1,410.00 per month and income limits on leasing households. He stated once the time limit had been met the City would own the property free of restriction.

After discussion, Councilmember Christensen moved to approve Resolution No. 12-152, a Resolution Authorizing the Execution and Recording of a Deed Restriction for Real Property to be used for Affordable Housing under the Federal HOME Investment Partnership Program. Councilmember Vincent seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Christensen	Yes
Mayor Winder	Yes

Unanimous.

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Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Christensen	Yes
Mayor Winder	Yes

Unanimous.

15954

HEAR AND CONSIDER AN APPEAL FILED BY CIMARON NEUGEBAUER, THE SALT LAKE TRIBUNE, REGARDING DENIAL OF A WAIVER OF FEES FOR A RECORDS REQUEST

City Manager, Wayne Pyle, informed Cimaron Neugebauer of the Salt Lake Tribune had submitted a GRAMA request for any and all copies of check receipts from donors written out to West Valley City for the Chinese Heritage Gate Foundation and also City Council and Mayor e-mails related to or discussing the Chinese Heritage Gate Foundation and the West Valley Sister City Committee. The City Manager stated a hearing had been scheduled regarding the denial of a waiver of fees for the subject records request.

Upon direction, the City Attorney, Eric Bunderson, reviewed procedures regarding the hearing and reviewed applicable City Code and State Code sections regarding fees. He further discussed the Council's powers and responsibilities as a quasi-judicial body and the option to either uphold the City Manager's decision or waive the fees.

Mayor Winder stated the Council would take written and oral comments and opened the hearing for consideration of the appeal filed by Cimaron Neugebauer, The Salt Lake Tribune.

Cimaron Neugebauer, The Salt Lake Tribune, addressed the City Council and stated information he previously submitted had been distributed to the City Council so he would not review that information point by point. Mr. Neugebauer discussed reasons for his request and stated this was a divisive issue between the Chinese community and donors which had led to his request for e-mails. He indicated there was a lot of speculation brewing that needed to be put to rest with accurate facts which could be in the requested e-mails. He discussed donations through public funds and donors. He stated even though a gate had been erected and set up, there was still an on-going investigation being conducted by the division of occupational licensing regarding Terence Chen and his dealings as chair and in particular regarding funds. He informed the donors were concerned and had called him. He stated the information was of interest to the public and thought the \$150 fee for the requested records was excessive. Mr. Neugebauer indicated he had no idea how many e-mails existed. He stated the law provided the first 15 minutes should not be charged and the breakdown had not indicated

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that had been taken into consideration. He explained he also noted on the breakdown that the deputy city recorder had manually looked over some of the printed documents that the IT department had pulled to determine if those records were in the scope of the request. He stated he believed the \$150 to be excessive and unreasonable and cited the GRAMA statute in the Utah Code, "a governmental entity may not charge a fee for reviewing a record to determine whether it is subject to disclosure". He also stated this was an unnecessary and subjective step and that no fee should be charged for time spent in determining whether a record should be released to the public. He referred to a previous request for records by The Salt Lake Tribune relating to a request for e-mails regarding the English initiative and those records had been graciously provided at no cost. He stated documents pertaining to the Chinese gate had not received the same filtering. He reiterated no fee should be charged as this was in the public interest and speculation and allegations needed to be cleared up by reading through e-mails. He explained this would let people know the gate would remain with a good reputation as litigation continued. Mr. Neugebauer stated release of e-mails would show there was nothing to hide and help restore confidence in the heritage gate and workings of the City Council and community. In conclusion, he asked for a full waiver of fees and cited GRAMA statute language stating, "it fulfills a request without charge when it determines releasing a record that primarily benefits the public." He also concluded his request had been made in order to look into allegations and Mr. Chen's dealings with the City, and to clear up this matter would restore confidence in the workings of the City Council and the heritage gate would remain with a good reputation.

Brandon Hill addressed the City Council. Mr. Hill stated he desired to speak in defense of the City Manager's decision to uphold a fee charged for records in the amount of \$149.67. He advised there were two important principles to be considered: first, the media's free access to public records and, second, the taxpayers right to efficient government at the lowest cost possible. He informed these two principles needed to be balanced but sometimes conflicted. He discussed facts behind the request and indicated in this case these principles had been balanced. He stated that on September 5, 2012, Mr. Neugebauer submitted a GRAMA request for records in two categories, the first was copies of all check receipts to West Valley City from donors for the Chinese Heritage Gate Foundation; and secondly Mr. Neugebauer requested all City Council and Mayor e-mails related to or discussing the Chinese Heritage Gate Foundation and the West Valley Sister City Committee. He advised Mr. Neugebauer requested a waiver of fees at that time. Mr. Hill advised that on September 6, 2012, the City provided Mr. Neugebauer with copies of seven check receipts which were easily accessible in the Finance Department office. He stated those records had been provided at no cost but it had taken six and one quarter hours of City staff time to compile all the e-mails requested by Mr. Neugebauer. He advised Mr. Neugebauer had been billed for three hours of the City's network administrator's

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time and three hours of the deputy city recorder's time which totaled \$149.67. He continued that on October 3, 2012, Mr. Neugebauer appealed the fee to the City Manager who denied the appeal on October 8, 2012.

Mr. Hill further gave explanation of the process of searching the e-mail system and e-mails which were kept on an off-site server. He stated there were substantial numbers of filters, in fact dozens, that needed to be applied (i.e., all emails sent to, received by, copied to or blind copied to all members of the Council and the Mayor) which was a substantial number of filters to be programmed into a query. He stated in addition there were numerous content filters which included the Chinese Heritage Gate Foundation and Sister City Committee and so on. He stated those filters could not be used alone in order to obtain and produce an accurate and full picture of the records retained by the City. He discussed an example of query made of the "Chinese Heritage Gate Committee" might have been said with the words "Chinese Gate Committee," or "the Chinese gate." He indicated the process of filtering included a detailed query that would filter out all irrelevant e-mails and produce all records held by the City relating to the request. Mr. Hill stated in order to define the queries broad enough to make certain all responsive records were captured, sometimes unresponsive e-mails were produced. He reported that in this case 851 e-mails had been produced with need to be sorted as some were not responsive to the request. He advised, upon review by the deputy city recorder, 153 e-mails had been determined to be within the scope of the request and could be released. He stated the process was reasonable with the two obligations being balanced, that being regarding the media's right to access records and the taxpayers' rights to efficient and low cost government. He indicated that for requests for large amounts of records the GRAMA statutes permitted charge of fees for precisely the reason of having a balanced approach regarding the media's right to know against the burden imposed on the taxpayers by such large records requests. He concluded that the six and one quarter hours by City staff utilized to provide the records requested by Mr. Neugebauer were reasonable and necessary to process the records request and provide all requested materials.

Mr. Hill responded to points included in Mr. Neugebauer's appeal letter. He stated Mr. Neugebauer stated the City did not provide a breakdown of incremental costs with regard to the cost of electronic output and formatting. Mr. Hill advised that was correct as no fees had been charged for things like computer time or software license costs. He reported only charges had been applied for City staff time. He stated Mr. Neugebauer stated the City had charged an impermissible charge for reviewing documents to determine if they were subject to disclosure. He advised that had not been the case and the deputy city recorder had reviewed the e-mails for exact responsiveness to the records requested in order to comply with GRAMA statutes that required the City to respond and comply specifically and only to the requested records. He also pointed out the City had not charged

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for the first one quarter hour of City staff time and an exact breakdown had been provided to Mr. Neugebauer.

Mr. Hill concluded and encouraged the City Council to affirm the decision made by the City Manager that the fee charged for the requested records was reasonable and reflected staff time costs associated with the records request.

Mr. Neugebauer addressed the City Council and stated previous letters had not stated it took staff time of three and one quarter hours regarding the request. He advised he would take the 851 e-mails and sift through them himself, as he never requested the City to review the records.

Mayor Winder closed the hearing and called for questions and/or discussion by the City Council.

Councilmember Buhler inquired if Mr. Neugebauer was requesting a lower cost or a waiver of fees. Mr. Neugebauer stated he was requesting a full waiver of the fees, but would be willing to negotiate a reduction in the fees in the range of \$25.00.

Councilmember Vincent stated this was not about access because the records were available but rather about the fees, to which Mr. Neugebauer agreed stating sometimes access could be inhibited by cost.

Councilmember Buhler inquired if there was a way to bill for legal, City Council or City Manager time, and Brandon Hill answered there was not.

Mayor Winder read aloud from the City Code regarding assessing of fees and stated the question was not if there was the right to charge but if we should charge. He indicated disapproval for looking for ways to say no to the media and stated ways should be found to say yes. He explained that because this story would primarily benefit the public and not an individual he would encourage waiver of the fees.

Councilmember Buhler discussed the argument made that sometimes records were released without charging a fee, and perhaps consideration should be given to always charging a fee for records. He stated the City Council had an obligation to see that City staff was compensated for additional work and this had been underwritten by the GRAMA statute.

City Manager, Wayne Pyle, reviewed reasons for his decision regarding the records request. He advised the City often received records requests from all types of media and many times those documents were provided at no charge. He advised that, in fact, even in this case, the initial records (financials) requested had

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in fact been provided at no cost. Mr. Pyle stated he had initially advised Mr. Neugebauer regarding the amount of City staff time that would be required to produce the subject e-mails in his records request. He advised his decision had been based on serving the public interest by providing the records while balancing a significant burden on City staff time to do so. He expressed hope the City could continue to have a relationship with the media where records could be released free of charge when doing so did not significantly impact City staff time, and expect that the media would pay reasonable fees when it was determined to be a significant impact.

Councilmember Vincent stated the initial documents had been provided at no cost which showed good faith on the part of the City.

After further discussion, Councilmember Buhler moved to deny the appeal and uphold the City Manager's decision regarding fees for the records request. Councilmember Christensen seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	No
Mr. Christensen	Yes
Mayor Winder	No

Majority.

The City Manager's decision was upheld regarding the appeal by Cimaron Neugebauer, The Salt Lake Tribune.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY CITY COUNCIL, THE REGULAR MEETING OF TUESDAY, NOVEMBER 6, 2012, WAS ADJOURNED AT 7:40 P.M., BY MAYOR WINDER.

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I hereby certify the foregoing to be a true, accurate and complete record of the proceedings of the Regular Meeting of the West Valley City Council held Tuesday, November 6, 2012.

Sheri McKendrick, MMC
City Recorder