

MINUTES OF COUNCIL REGULAR MEETING – APRIL 10, 2012

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, APRIL 10, 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 PRO TEM RUSHTON.

THE FOLLOWING MEMBERS WERE PRESENT:

Corey Rushton
Steve Buhler
Don Christensen
Tom Huynh
Karen Lang
Steve Vincent

Wayne Pyle, City Manager
Sheri McKendrick, City Recorder

ABSENT: Mike Winder

STAFF PRESENT:

Kevin Astill, Parks and Recreation Director
Nicole Cottle, CED Director
Russell Willardson, Public Works Director
Jim Welch, Finance Director
Layne Morris, CPD Director
Eric Bunderson, City Attorney
John Evans, Fire Chief
Buzz Nielsen, Police Chief
Clint Gillmore, Law Department
Mike Powell, Police Department
Keith Morey, CED Department
Aaron Crim, Administration
Jake Arslanian, Public Works Department

PARKS & RECREATION DEPARTMENT STAFF PRESENT:

Nancy Day
Jamie Young
Valerie Custer
Candace Mayweather
Richard Juricic
Nathan Geving

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Clint Burnham
Chelsey Alberico
Mathewn Ryan Bullock
Ashley Caldwell
Justina Caldwell
Krystyna Jura
April Naegle
Alise Garner
Clayton Preston

15708 **OPENING CEREMONY**

Mayor Pro Tem Rushton informed that Mike Winder had previously arranged for the Opening Ceremony. He introduced Pastor Darrell Evans of Oasis Vineyard Church who offered an invocation.

15709 **APPROVAL OF MINUTES OF REGULAR MEETING HELD MARCH 27, 2012**

The Council read and considered Minutes of the Regular Meeting held March 27, 2012. There were no changes, corrections or deletions.

After discussion, Councilmember Huynh moved to approve the Minutes of the Regular Meeting held March 27, 2012, as written. Councilmember Christensen seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Christensen	Yes
Mayor Pro Tem Rushton	Yes

Unanimous.

15710 **INTRODUCTION OF NEW EMPLOYEES**

City Manager, Wayne Pyle, introduced the following new employees:

Public Works Department: Michael Haskell, Engineer Tech III
Jeffrey Peterson, Custodian

Fire Department: Alex Greaser, Firefighter

Law Department: Daniel Strong, Deputy Prosecuting Attorney

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CPD Department: Katherine Hilse, Executive Secretary
Andres Gameros, Animal Services Officer

Police Department: Karlee James, Support Services Clerk
Hannah Priggemeier, Support Services Clerk
Julie Smith, Support Services Clerk

The City Manager and members of the City Council welcomed the new employees to service with West Valley City.

15711 **KIM OLSEN, UTAH RECREATION AND PARKS ASSOCIATION –
PRESENTATION OF DEPARTMENT OF THE YEAR AWARD TO WEST
VALLEY CITY PARKS AND RECREATION DEPARTMENT**

Parks and Recreation Director, Kevin Astill, introduced Kim Olsen, Executive Director of the Utah Recreation and Parks Association.

Mr. Olsen addressed the City Council and discussed background information regarding the Utah Recreation and Parks Association and stated the West Valley City Parks and Recreation Department had been chosen as Parks Department of the Year. He presented the award to Mayor Pro Tem Rushton, who, in turn, recognized employees of the Parks and Recreation Department in attendance. The plaque was then presented to Kevin Astill, Parks and Recreation Director.

On behalf of the City Council, Mayor Pro Tem Rushton congratulated the West Valley City Parks and Recreation Department for earning the recognition award.

15712 **BILL LEE, DEPUTY STATE DIRECTOR FOR SENATOR MIKE LEE –
RECOGNITION OF WEST VALLEY CITY POLICE OFFICERS
RECEIVING UTAH GANG UNIT OF THE YEAR AWARD FROM THE
UTAH GANG INVESTIGATION ASSOCIATION**

City Manager, Wayne Pyle, introduced Bill Lee, Deputy State Director for Senator Mike Lee.

Mr. Lee addressed the City Council and stated it was his honor to recognize West Valley City police officers receiving the Utah Gang Unit of the Year Award from the Utah Gang Investigation Association. On behalf of the Task Force he presented a certificate to Police Chief Buzz Nielsen.

The City Council expressed appreciation for the recognition received by the West Valley City police officers and offered congratulations.

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15713 **PROCLAMATION DESIGNATING APRIL 16, 2012, THROUGH APRIL 20, 2012, AS COMMUNITY DEVELOPMENT BLOCK GRANT WEEK IN WEST VALLEY CITY**

Councilmember Buhler read a proclamation designating April 16, 2012, through April 20, 2012, as Community Development Block Grant Week in West Valley City.

15714 **SCOUTS**

Mayor Pro Tem Rushton welcomed Scout Troop No. 766 in attendance at the meeting to completed requirements for the Citizenship in the Community merit badge.

15715 **COMMENT PERIOD**

Upon inquiry by Mayor Pro Tem Rushton the following individual addressed the City Council during the comment period:

Josh Scheuerman addressed the City Council and read aloud a written statement that he previously had submitted to the City Recorder along with a skate park proposal and other information. The written information was distributed to members of the City Council. Mr. Scheuerman noted there were approximately 10 people in attendance in agreement and support of his proposal.

15716 **HEAR AND CONSIDER AN APPEAL FROM AARON FALK, SALT LAKE TRIBUNE, OF DENIAL OF RECORDS REQUEST**

City Manager, Wayne Pyle, stated an appeal had been received from Aaron Falk, Salt Lake Tribune, regarding the City Manager's denial of a records request. He stated this matter had been placed on the agenda for consideration and determination by the City Council.

The City Manager discussed background information regarding the initial GRAMA (Government Records and Management Act) request filed by Mr. Falk, including the City's denial, the appeal to the City Manager, the City Manager's denial, and the pending appeal and hearing before the City Council. He advised that Mr. Falk had requested the City Council hire outside legal counsel. He further advised that the City Attorney, Eric Bunderson, would represent the City Council, and Assistant City Attorney Clint Gillmore would represent and advocate the Police Department's position, in what was called a "Chinese wall" concept.

Mr. Pyle advised that as City Manager, he had been the first level of appeal and therefore would not make any further or additional comments during the hearing.

Mayor Pro Tem Rushton opened the floor to hear testimony regarding the appeal.

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Aaron Falk, Salt Lake Tribune, addressed the City Council, and introduced Nate Carlyle, also from the Salt Lake Tribune.

Upon inquiry by members of the City Council, the City Attorney, Eric Bunderson, advised the Council could handle the hearing in whatever manner they deemed appropriate per the City Code, and he discussed recommended procedures.

Mr. Falk stated he desired to make an opening statement and he referred to supporting documents which had previously been distributed to the City Council. He stated he had requested records pertaining to Josh Powell. He stated the hearing was about public records laws of the State of Utah and he read sections of the Government Records and Management Act (GRAMA). He also discussed law and court rulings regarding access to public records, including definitions. He stated this case meant a great deal to the people of Utah and West Valley City. He indicated he had asked for, but never received, an estimate of funds expended regarding this case. He also stated if the Council determined some documents were protected he would request consideration regarding redaction on other records.

Clint Gillmore addressed the City Council and informed he was a City Prosecutor and Police Department legal advisor. He reviewed the appeal letter submitted by Mr. Falk. He stated the Powell case had created much media interest and West Valley City had maintained a reputation and history of being open and striving for transparency. He advised the ongoing investigation being conducted by the Police Department was about the disappearance of Susan Cox Powell and the investigation could potentially lead to someone with knowledge or involvement in her disappearance. He explained the Police Department supported the rationale behind the GRAMA laws including access and management of records. He cited certain sections of GRAMA in the State Code related to protected designation for documents and, in particular, West Valley City Police Department records.

Mr. Gillmore discussed the Government Records and Management Act Section 63G-2-305 of the Utah State Code regarding protected records. He read aloud Subsection 9 specifying records were protected that could reasonably be expected to interfere with an ongoing investigation or interfere with criminal enforcement proceedings. He also stated some records were protected to insure a fair trial as release of those records could potentially taint a jury pool. In addition he cited examples of releasing records containing the identity of a source like an individual, a search engine, or a program, or others, which would reveal details that would jeopardize the life or safety of an individual, the investigation, or procedural techniques regarding a case. He referenced Subsection 10 and stated the legal burden did not fall on the City or the Police Department but rather on the person seeking disclosure of a protected record. He advised the record would be given only if the person or party seeking disclosure of a record had established by

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a preponderance of the evidence that the public interest favoring access was equal to or greater than the interest favoring the restriction of access.

In conclusion, Mr. Gillmore stated the subject case remained an ongoing investigation and therefore request of the subject records should be denied.

Nate Carlyle, Salt Lake Tribune, addressed the City Council, and stated the burden was on the government to show why records should not be disclosed and the classification was wrong and the records should be public. He referred to and rebutted arguments made by Mr. Gillmore and submitted written information to the City Council including a cover page and other pages from “Open Book”, a publication of the Utah Attorney General, which summarized law and did not list police records as protected. He stated it was not just media interest in this case, but public interest. He stated his contention was that the records were public and should be managed as such or, if in good faith the Council determined some were protected, then other records should be redacted and/or released in their entirety. He indicated some records were surely obsolete for investigative purposes now that Josh Powell was deceased, and he cited some examples. He further stated the request was for records pertaining to both Susan Cox Powell and Josh Powell. He stated Mr. Gillmore recited protected classifications and he discussed information in the documents of search warrants. He stated he already knew some police procedures used in the investigation and gave examples. He explained he did not see how the referenced Statute applied. He discussed the costs regarding the case and stated they had asked many times for cost of the investigation and he believed should be able to get a reasonable estimate of resources if documents were made public.

The City Council members asked questions of Mr. Falk and Mr. Carlyle and commented regarding information and arguments presented.

Upon inquiry by the City Council, the City Attorney, Eric Bunderson, advised that the City Council could review all documents “in camera” per the Code. He also answered questions from members of the City Council regarding the initial GRAMA request and if certain and/or redacted documents could be released. He answered procedural questions regarding deliberations and the decision-making process, and the number of votes required for a final decision.

Aaron Falk addressed the City Council and stated in the first GRAMA request there was mention of a search warrant that was under the jurisdiction of the court, which they understood.

Mayor Pro Tem Rushton opened the floor to discussion by members of the City Council regarding how to proceed with deliberations.

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Upon further discussion, Councilmember Buhler moved to deliberate regarding this matter upon adjournment of the Regular Council Meeting and a scheduled Special Regular Redevelopment Agency Meeting. Councilmember Christensen seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Christensen	Yes
Mayor Pro Tem Rushton	Yes

Unanimous.

Upon adjournment of the scheduled meetings, members of the City Council gathered for deliberations regarding Aaron Falk's appeal of the denial of his records request. In addition to members of the City Council; the City Manager, City Attorney and City Recorder were in attendance.

15717

CONSENT AGENDA:

A. RESOLUTION NO. 12-41, RATIFY THE CITY MANAGER'S APPOINTMENT OF ROSS OLSEN AS EXECUTIVE DIRECTOR OF THE CULTURAL ARTS BOARD (CAB), TERM: JANUARY 1, 2012 – DECEMBER 31, 2012

City Manager, Wayne Pyle, presented proposed Resolution No. 12-41 which would ratify his appointment of Ross Olsen as Executive Director of the Cultural Arts Board (CAB) for the term January 1, 2012, through December 30, 2012.

Mr. Pyle stated Mr. Olsen was an employee of the City and had expressed a desire to serve as the Executive Director of the Cultural Arts Board. He explained the position of Executive Director was an appointment for a one year term by the City Manager and ratified by advice and consent of the City Council.

B. RESOLUTION NO. 12-42, RATIFY THE CITY MANAGER'S APPOINTMENT OF JOHN HAYES AS CHAIR OF THE ARTS COUNCIL, TERM: JANUARY 1, 2012 – DECEMBER 30, 2012

City Manager, Wayne Pyle, presented proposed Resolution No. 12-42 which would ratify his appointment of John Hayes as Chair of the Arts Council for the term January 1, 2012, through December 30, 2012.

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Mr. Pyle stated Mr. Hayes had expressed interest in serving as Chair of the Arts Council. He explained the position of Chair was an appointment for a one year term by the City Manager and ratified by advice and consent of the City Council.

C. RESOLUTION NO. 12-43, RATIFY THE CITY MANAGER'S APPOINTMENT OF D'AN WADSWORTH AS CHAIR OF THE HISTORICAL SOCIETY, TERM: JANUARY 1, 2012 – DECEMBER 31, 2012

City Manager, Wayne Pyle, presented proposed Resolution No. 12-43 which would ratify his appointment of D'an Wadsworth as Chair of the Historical Society for the term January 1, 2012, through December 31, 2012.

Mr. Pyle stated Ms. Wadsworth had expressed a desire to serve as Chair of the Historical Society. He explained the Chair was appointed for a one year term by the City Manager and ratified with the advice and consent of the City Council.

D. RESOLUTION NO. 12-44, RATIFY THE CITY MANAGER'S APPOINTMENT OF TERENCE CHEN AS CHAIR OF THE SISTER CITY COMMITTEE, TERM: JANUARY 1, 2012 – DECEMBER 31, 2012

City Manager, Wayne Pyle, presented proposed Resolution No. 12-44 which would ratify his appointment of Terence Chen as Chair of the Sister City Committee for the term January 1, 2012, through December 31, 2012.

Mr. Pyle stated Mr. Chen had expressed willingness to serve as Chair of the Sister City Committee. He explained the Chair was appointed for a one year term by the City Manager and ratified with the advice and consent of the City Council.

E. RESOLUTION NO. 12-45, RATIFY THE CITY MANAGER'S APPOINTMENT OF SUSAN KLINKER AS CHAIR OF THE UTAH CULTURAL CELEBRATION CENTER (UCCC) ADVISORY BOARD, TERM: JANUARY 1, 2012 – DECEMBER 31, 2012

City Manager, Wayne Pyle, presented proposed Resolution No. 12-45 which would ratify his appointment of Susan Klinker as Chair of the Utah Cultural Celebration Center (UCCC) Advisory Board for the term January 1, 2012, through December 31, 2012.

Mr. Pyle stated Ms. Klinker was an employee and had expressed a desire to serve as Chair of the UCCC Advisory Board. He explained the Chair

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was appointed for a one year term by the City Manager and ratified with the advice and consent of the City Council.

After discussion, Councilmember Buhler moved to approve Resolution Nos. 12-41, 12-42, 12-43, 12-44, and 12-45 as presented on the Consent Agenda. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Christensen	Yes
Mayor Pro Tem Rushton	Yes

Unanimous.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY COUNCIL, THE REGULAR MEETING OF TUESDAY, APRIL 10, 2012, WAS ADJOURNED AT 7:57 P.M. BY MAYOR PRO TEM RUSHTON.

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, April 10, 2012.

Sheri McKendrick, MMC
City Recorder