

MINUTES OF COUNCIL REGULAR MEETING – SEPTEMBER 18, 2012

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, SEPTEMBER 18, 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
Karen Lang
Corey Rushton

Wayne Pyle, City Manager
Sheri McKendrick, City Recorder

ABSENT: Steve Vincent

STAFF PRESENT:

Paul Isaac, Assistant City Manager
Eric Bunderson, City Attorney
Nicole Cottle, CED Director
Russell Willardson, Public Works Director
Layne Morris, CPD Director
John Evans, Fire Chief
Kevin Astill, Parks and Recreation Director
Mike Wells, Acting Police Chief
Jeannette Carpenter, Acting Finance Director
Clint Gilmore, Law Department
Steve Pastorik, CED Department

15892 **OPENING CEREMONY**

The Opening Ceremony was conducted by Steve Buhler who read quotes regarding the principles of democracy and then led the Pledge of Allegiance to the Flag.

15893 **APPROVAL OF MINUTES OF REGULAR MEETING HELD SEPTEMBER 4, 2012**

The Council read and considered Minutes of the Regular Meeting held September 4, 2012. There were no changes, corrections or deletions.

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After discussion, Councilmember Christensen moved to approve the Minutes of the Regular Meeting held September 4, 2012, as written. Councilmember Huynh seconded the motion.

A roll call vote was taken:

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

Unanimous.

15894

COMMENT PERIOD

A. PUBLIC COMMENTS

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

Donna Fife, 4644 Carnegie Tech, addressed the City Council. Ms. Fife discussed the current ordinance limiting how many animals a resident could own. She expressed agreement with a limitation of four animals and stated the City should not be able to limit how many of each of dogs or cats.

B. CITY MANAGER COMMENTS

City Manager, Wayne Pyle, stated every ordinance adopted in the City was a balance between regulations and individual rights, and the issue raised by Ms. Fife had been discussed many times. He indicated some people would be responsible owners of more animals, but the current ordinance did restrict two each of dogs and cats for various reasons, which he discussed.

C. CITY COUNCIL COMMENTS

Mayor Winder stated the issue raised by Ms. Fife had been discussed from time to time in the past. He inquired if other cities specified and limited number of dogs and cats.

City Manager, Wayne Pyle, responded that the number of dogs and cats were regulated in other municipalities and varied in numbers and mix from city to city.

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15895

PUBLIC HEARING, ACCEPT PUBLIC INPUT REGARDING APPLICATION NO. ZT-5-2012, FILED BY BRIAN HANSEN, REQUESTING A SIGN ORDINANCE TEXT CHANGE TO ALLOW FULL VIDEO ANIMATION ON ELECTRONIC MESSAGE SIGNS UNDER CERTAIN CONDITIONS

City Manager, Wayne Pyle, stated a public hearing had been advertised in order for the City Council to hear and consider public comments regarding Application No. ZT-5-2012, filed by Brian Hansen, requesting a Sign Ordinance text change to allow full video animation on electronic message signs under certain conditions. He discussed proposed Ordinance No. 12-39 related to the Application to be considered by the City Council subsequent to the public hearing, as follows:

City Manager, Wayne Pyle, presented proposed Ordinance No. 12-39 which would amend Section 11-1-104 of the West Valley City Municipal Code to amend the sign Ordinance to allow video animation on electronic message signs under certain conditions.

Mr. Pyle stated the owner of Valley Fair Mall, represented by Brian Hansen, had requested the amendment to the Sign Ordinance as currently that ordinance did not allow full video animation. He advised the applicant's letter outlining reasons for the request had been distributed to members of the City Council. He explained the Mall desired to utilize full video animation on the sign over the entrance to the Megaplex Theater.

The City Manager reported that given the significant distance of the sign from the frontage road and I-215 (approximately 500 feet), the sign was intended to draw theater patrons from the parking lot to the entrance of the building and not intended to be read from I-215. He further stated given the unique three sided design of the building and placement of the Megaplex sign tower on the east side of the building, the video animation was proposed to emphasize the building entrance. He discussed conditions for use of full video animation, summarized as follows:

- Signs with video animation must be located at least 400 feet from any public right-of-way
- Signs with video animation are only allowed for regional shopping malls
- Signs with video animation must be used to designate the entrance of a building
- Only one sign with video animation is allowed per regional shopping mall

Mayor Winder opened the public hearing. There being no one to speak either in favor or in opposition, Mayor Winder closed the public hearing.

ACTION: CONSIDER ORDINANCE NO. 12-39, AMENDING SECTION 11-1-104 OF THE WEST VALLEY CITY MUNICIPAL CODE TO AMEND THE SIGN ORDINANCE TO ALLOW VIDEO ANIMATION ON ELECTRONIC MESSAGE SIGNS UNDER CERTAIN CONDITIONS

The City Council previously held a public hearing regarding Application No. ZT-5-2012, filed by Brian Hansen, requesting a Sign Ordinance text change to allow full video animation on electronic message signs under certain conditions.

The City Council considered proposed Ordinance No. 12-39 which would amend Section 11-1-104 of the West Valley City Municipal Code to amend the sign Ordinance to allow video animation on electronic message signs under certain conditions.

After discussion, Councilmember Christensen moved to approve Ordinance No. 12-39, an Ordinance Amending Section 11-1-104 of the West Valley City Municipal Code to Amend the Sign Ordinance to Allow Video Animation on Electronic Message Signs Under Certain Conditions. Councilmember Huynh seconded the motion.

A roll call vote was taken:

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

Unanimous.

15896

RESOLUTION NO. 12-132, APPROVE THE PURCHASE OF A LEICA GEOSYSTEMS SCANSTATION C10 3-D LASER SCANNING SYSTEM FOR USE BY THE POLICE DEPARTMENT

City Manager, Wayne Pyle, presented proposed Resolution No. 12-132 which would approve purchase of a Leica Geosystems Scanstation C10 3-D Laser Scanning System, in an amount not to exceed \$75,000.00, for use by the Police Department.

Mr. Pyle stated approval of the purchase would include a crime scene digitizer with Justice Assistance Grant (J.A.G.) funds from the U.S. Department of Justice Programs. He explained the Police Department had requested authorization to purchase a different system than previously authorized under Resolution No. 12-27. He advised the previously approved system had been the Focus 3D Scene Digitizer from 3rd Tech. He explained this request was for the Leica Geosystems

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Scanstation C10 Laser Scanning System with accessories and a maintenance package.

The City Manager reported the Police Department had received grant funding from the U.S. Department of Justice Program to be allocated to purchase equipment for use by the Police Department. He stated this was a non-matching grant so the Police Department was not required to match funds. He indicated the crime scene digitizer would be used to document crime scenes indoors and outdoors in all types of weather conditions. He further explained the system now being requested had several features making it a better choice, such as safety goggles not being needed to operate the equipment, accuracy was NIST traceable and the system had been subjected to a Daubert hearing in court and passed, and it had better range when used in sunlight.

Mr. Pyle informed this system would be purchased through the Salt Lake City Police Department, and that agency had followed their purchasing requirements for items in this price range.

After discussion, Councilmember Buhler moved to approve Resolution No. 12-132, a Resolution Approving the Purchase of a Leica Geosystems Scanstation C10 3-D Laser Scanning System for use by the Police Department. Councilmember Lang seconded the motion.

A roll call vote was taken:

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

Unanimous.

15897

RESOLUTION NO. 12-133, APPROVE INTERLOCAL COOPERATION AGREEMENT WITH SALT LAKE CITY FOR PURCHASE, STORAGE AND MAINTENANCE OF A LEICA GEOSYSTEMS SCANSTATION C10 3-D LASER SCANNING SYSTEM

City Manager, Wayne Pyle, presented proposed Resolution No. 12-133 which would approve an Interlocal Cooperation Agreement with Salt Lake City for purchase, storage and maintenance of a Leica Geosystems Scanstation C10 3-D Laser Scanning System.

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Mr. Pyle requested the proposed Resolution be stricken from the Agenda without further consideration by the City Council.

After discussion, Councilmember Rushton moved to strike proposed Resolution No. 12-133 from the Agenda. Councilmember Buhler seconded the motion.

A roll call vote was taken:

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

Unanimous. Proposed Resolution No. 12-133 stricken from the Agenda.

15898

HEAR AND CONSIDER APPEAL FROM NATE CARLISLE, SALT LAKE TRIBUNE, REGARDING DENIAL OF A RECORDS REQUEST

City Manager, Wayne Pyle, stated a hearing had been scheduled to consider an appeal from Nate Carlisle, Salt Lake Tribune, regarding the denial of a records request related to the missing person case of Susan Cox Powell.

Mr. Pyle discussed background information and timing regarding this appeal, and other appeals heard previously by the City Council. He advised Mr. Carlisle had requested records from the West Valley City Police Department which had been denied, as follows:

1. Any recorded interviews or transcripts of interviews with Joshua Powell
2. Forensic reports of possible charred remains found in the west Utah desert
3. GPS data from tracking device on Joshua Powell's vehicle(s)
4. Forensic reports concerning blood found in Powell home at 6254 W. Sarah Circle
5. All reports concerning vehicles rented by Joshua Powell in the days after Susan Powell's December 6, 2009, disappearance
6. Records of all calls for service from January 1, 2007, to December 6, 2009, at 6254 W. Sarah Circle

He further advised that after denial of his request by the Police Department, Mr. Carlisle had made an appeal to the City Manager, which had been denied, and he was now appealing to the City Council.

The City Manager stated the media did not believe an on-going investigation was occurring in the case of missing person Susan Cox Powell. He advised the Police

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Department had no intent to cover up incompetence as had been reported by the Salt Lake Tribune and others, but rather desired to protect the integrity of their on-going active investigation. He recommended the City Council uphold the decisions denying those protected records.

The City Manager stated it had clearly been established from prior appeals that an investigation was still being conducted regarding the missing person case of Susan Cox Powell. He discussed the difficult position of the City Council and advised that at the conclusion of the investigation the records would become available as in any other criminal case.

Upon discussion, Councilmember Rushton requested review of the procedures regarding records and records requests and the City Council's role in that process.

City Manager, Wayne Pyle, advised regarding the Government Records Access and Management Act (GRAMA) request process, including denial, the right of appeal to the City Manager and if denied then the right to appeal to the City Council. He advised the City Council would hear and take into consideration commentary by the appellant and a City representative, take the matter under advisement and issue a decision within five days of the appeal hearing.

Mayor Winder began the appeal hearing and invited the appellant Nate Carlisle to address the City Council.

Nate Carlisle addressed the City Council and stated he had prepared some written remarks. He stated he did not dispute the fact of an on-going investigation. He indicated the Statute said, "if release of the records would reasonably interfere with an investigation." He read aloud his prepared remarks. He stated he was asking for very specific documents this time. Mr. Carlisle expressed it was important to note GRAMA made clear that government had a duty to segregate records so even if the specifically requested records were in a protected file there was still an obligation to review those specific documents and determine if some should be removed from the protected files and made public. He indicated his records request related mostly to Josh Powell and it seemed obvious since Mr. Powell was deceased there would never be criminal charges against him. Mr. Carlisle distributed written information to the City Council and advised the documentation was a copy of a Supreme Court opinion from a 2008 GRAMA case. He gave a synopsis of that opinion which included a citation of the code section and stated the Supreme Court had rejected the argument and directed the records be released. He stated that at each level of an appeal the records were supposed to be reviewed and a determination made as to whether the protected classification had merit. He discussed that with each passing day the argument against releasing the protected records became weakened. He stated the older the

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records the less useful they became, therefore, the less reasons for keeping them protected. He concluded and requested he be allowed rebuttal time.

Clint Gilmore, representing West Valley City Police Department, addressed the City Council. Mr. Gilmore referenced the recent Ann Bremner appeal and incorporated his remarks from that appeal hearing. He stated it remained the Police Department's goal and "bottom line" to want to solve the case which they continued to actively pursue. He advised the case was not just an open case, but was being actively pursued and investigated and the information being requested was case sensitive and would jeopardize the on-going investigation. Mr. Gilmore also stated the Legislature recognized this situation in the GRAMA statute outlining clearly that records created or maintained for criminal enforcement purposes were protected if the release would interfere or jeopardize the investigation and case. He indicated the law was very clear and he reiterated that any release of documents would jeopardize the on-going investigation and the records were protected.

Mayor Winder recognized Councilmembers who had questions of Mr. Carlisle and Mr. Gilmore.

Councilmember Rushton discussed and inquired regarding the six items listed in the appellant's letter of appeal and in particular the response to that request regarding the sixth item related to calls for service between the dates of January 1, 2007, and December 6, 2009, at 6254 W. Sarah Circle in West Valley City. He stated the response to the request had stated there had been no calls for service between those dates and he inquired if Mr. Carlisle was satisfied and agreed with that response.

Mr. Carlisle answered in the affirmative.

Councilmember Buhler inquired of Mr. Gilmore and stated based on the State's case referred to by the appellant and referenced in the written documents presented to the City Council, what would be the reason not to release records at this time.

In response, Mr. Gilmore advised none of the records requested, specifically the first five items listed in the appeal letter, had been made public and he stated the City's denial of the requested records was on firm ground under specific subsections of the Utah Code as those protected records were sensitive documents to the on-going active investigation. He referenced specific Utah Code Section 63G(2)305(9) and advised denial of all five of the referenced requested documents would fall under the subsections (a), (b), and (c), and the third requested document would also fall under subsections (e) and (e). He briefly explained each subsection as follows: subsection (a) related to on-going

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investigations; subsection (b) made reference to the record being reasonably expected to interfere with enforcement proceedings; subsection (c) referenced depriving a person of a potential fair trial, and subsections (d) and (e) referred to investigative techniques and procedures and policies not generally known outside of the government and sources not generally known outside of the government.

Councilmember Buhler referenced the second item on the appeal letter and inquired how the report of possible charred remains in the west Utah desert would interfere with the investigation or deprive someone of a fair trial.

Clint Gillmore responded to the inquiry and stated no one could anticipate a particular document's potential worth to a future hearing, interview or prosecution of a case. He stated when the Legislature prescribed the exceptions it was made clear that police agencies, legal advisors, city managers, and city councils were not clairvoyant and that was why the exceptions were carved out specifically in the GRAMA statute thereby protecting the integrity of a case regarding any future hearing, interview or prosecution.

Mayor Winder inquired of Mr. Carlisle as to why records had not been requested when Josh Powell was alive and would Mr. Carlisle agree that releasing the protected records at that time could have jeopardized the case. Mayor Winder stated even though Josh Powell was now deceased it would seem reasonable to think the release of protected records now could jeopardize the on-going investigation of other individuals who were not deceased.

Nate Carlisle addressed the City Council in rebuttal and discussed various remarks and points. He stated with regard to scenarios mentioned by Mr. Gilmore, the Supreme Court had addressed those issues and he had provided that documentation to the City Council. He indicated the Supreme Court rejected the idea that releasing the record would jeopardize the case and stated it did not have enough merit to warrant protection. He stated Mr. Gilmore, in reciting the code sections, had omitted the word "reasonably." Mr. Carlisle stated he understood West Valley City wanted to solve the case, but there were some ambiguities and he was not convinced if the records at issue would hurt the investigation. He indicated just because a record was made public did not mean it could not be used in court. He stated regarding his third listed item he had seen warrants, there was a tracking device and that was not a secret. He further stated that was not a technique that would make a difference and since then there had been a Supreme Court ruling regarding GPS devices placed on vehicles.

In response to Mayor Winder's inquiry, Mr. Carlisle stated the progression of time made it unreasonable to think that release of the records would interfere with the investigation.

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Councilmember Buhler stated that what had been done and said by Josh Powell when he was alive had not died with him, and therefore some documents could be important to the investigation and important to proving possible cases against other suspects.

Mr. Gillmore and City Attorney Eric Bunderson responded to inquiries regarding redacting information in documents and explained those procedures.

Mr. Gillmore stated the Police Department had nothing to hide, but this case merited discretion in order to allow for following of the process and for the investigation to be brought to a conclusion. He also stated the Police Department followed the GRAMA laws to the letter and labeled all of their protected records as such. He advised those records remained protected until the case became inactive or went to trial at which time documents were lawfully discoverable.

In response to inquiry by Mayor Winder, Mr. Carlisle advised he viewed his role as a watchdog. He stated the Council should review the records in-camera and then make a decision. He further stated the Council could review and release individual records that could be segregated from larger batches of protected documents. He indicated there should be an individual review of each record requested at each level of the appeal.

Upon inquiry by Mayor Winder there were no further questions from members of the City Council.

After discussion, Councilmember Rushton moved to deliberate five minutes after adjournment of the Regular Council Meeting. Councilmember Buhler seconded the motion.

A roll call vote was taken:

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

Unanimous.

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SCOUTS

Mayor Winder welcomed Scout Troop No. 913 who had come into the meeting and were attending to complete requirements for the Communications merit badge.

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THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY COUNCIL, THE REGULAR MEETING OF TUESDAY, SEPTEMBER 18, 2012, WAS ADJOURNED AT 7:39 P.M., BY MAYOR WINDER.

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, September 18, 2012.

Sheri McKendrick, MMC
City Recorder