

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
May 8, 2012

PRESIDING:	Don Wood	Mayor
PRESENT:	Kent Bush	Councilmember
	Mike LeBaron	Councilmember
	Kathryn Murray	Councilmember
	Mark Shepherd	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Brian Brower	City Attorney
	Greg Krusi	Police Chief
	Scott Hodge	Public Works Director
	Eric Howes	Community Services Director
	Bob Wylie	Administrative Services Director
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: There were no visitors.

Mayor Wood called the meeting to order at 6:06 p.m.

DISCUSSION ON THE PURCHASE AGREEMENT FOR THE FIRE STATION

Brian Brower, City Attorney, informed the Council of the need for additional language to the purchase agreement with the North Davis Fire District (NDFD). He explained the City owned some fiber-optic communications, routed through the Fire Station, which come to the dispatch center here in the City building. He continued the concern prompted a discussion with Felshaw King, NDFD Attorney, and language had been drafted which would protect the City's interest. Mr. Brower read the additional paragraph to the purchase agreement. Councilmember Bush requested some clarification regarding the fiber optic lines specific to emergency communication. Mr. Brower explained the fiber optic lines originated at the building near the towers behind the old city building, currently the Community Arts Center, entering the fire station and then routed to the dispatch center at City Hall. He pointed out the NDFD benefitted from the communication lines because it used the City's dispatch center but he wasn't aware if the NDFD alone had communication lines specific for its use.

DISCUSSION ON AN INTERLOCAL AGREEMENT WITH THE NORTH DAVIS FIRE DISTRICT REGARDING THE COLLECTION OF IMPACT FEES

Brian Brower, City Attorney, referred to a handout and indicated the language was nearly identical to the interlocal agreement the City had with the North Davis Sewer District in relation to impact fees. He continued there was nearly identical language included in a Resolution adopted by the North Davis Fire District. He expressed staffs' concern specific to the indemnification and the enforceability of the outlined provisions and didn't believe the City had any legal recourse from an enforcement perspective. He proposed the language be included as an addendum to the interlocal agreement between Clearfield City, West Point City and the NDFD and indicated the addendum would also need each entity's approval as well.

He stated if there were no objections from the Council, he would then enter into discussions with West Point City and NDFD prior to coming before the Council for formal adoption in a future policy session.

DISCUSSION ON HOUSE BILL 95 GOVERNING RETAIL TOBACCO LICENSES

JJ Allen, Assistant City Manager, distributed a handout explaining House Bill 95 which directly affected retail tobacco specialty businesses, otherwise known as smoke shops. He reviewed the regulations which would become effective after July 1, 2012 with the Council:

- Smoke shops could not be located within 1000 feet of a community location such as schools, churches, parks, playground or library etc.
- Could not be located within 600 feet of another retail tobacco specialty business
- Could not be located within 600 feet from an agricultural zone or residential zone

Councilmember Murray inquired where the businesses could locate within the City. Adam Lenhard, City Manager, responded the City would have to create a map reflecting the allowed locations. Mr. Allen pointed out the bill stated any tobacco specialty business legally operating on or before May 8, 2012 would be exempt from the new regulations.

Brian Brower, City Attorney, stated the City's Business License Official provided notice to a recent applicant of the May 8, 2012 deadline as it related to the new regulations. Mr. Lenhard pointed out the terms for abandonment of these types of businesses was different as well. Mr. Allen stated the City would be updating its ordinance to become compliant with the new legislation.

Councilmember Murray inquired if Houka was available in establishments located within the City. Greg Krusi, Police Chief, responded he would have to inspect each establishment and mentioned the City had encountered issues regarding the selling of spice as opposed as to what could be used in a Houka pipe. Mr. Brower stated he wasn't aware of any tobacco establishments within Clearfield which allowed the consumption of Houka. Mayor Wood clarified the

paraphernalia could be sold; however, Houka bars were not allowed due to the Indoor clean air act.

Councilmember Bush inquired about the new tobacco regulations and how they would be enforced specific to private parks owned by Homeowners Associations because those parks were not considered “public”. Mr. Allen responded the residential component wouldn’t allow for that use. Mr. Brower indicated he would complete additional research specific to that concern, if needed, once the allowed areas were identified on a map. He stated it wouldn’t be his recommendation to make the City’s ordinance more restrictive than the State statute. Mayor Wood commented recent legislation was also passed which precluded health boards from adopting ordinances which were more restrictive than the State statute.

DISCUSSION ON TITLE 4, CHAPTER 2 – ALCOHOLIC BEVERAGE CONTROL ORDINANCE

JJ Allen, Assistant City Manager, reviewed the City’s current alcoholic beverage ordinance with the Council and pointed out the provisions in which the City could deny or revoke a license based upon certain criminal convictions. He explained the City had been conducting the background check only for the individual whose name appeared on the application, as opposed to any partner, owner, manager, officer, etc., which was identified in the ordinance. He requested direction from the Council whether the City should enforce the ordinance as it was written or as it was being practiced. He suggested if the Council directed staff to enforce the current ordinance it would be a good idea to update the ordinance with additional provisions.

Brian Brower, City Attorney, pointed out if the Council directed staff to enforce the current ordinance, it could preclude some businesses from obtaining a license if a silent partner or capital investor had a previous criminal conviction. Mayor Wood clarified in the case of a Limited Liability Corporation (LLC), the business could be denied a license based on a private stockholder’s previous criminal conviction. He expressed his opinion that this was too restrictive and would not be considered to be business friendly. Councilmember Shepherd expressed his opinion the ordinance was too restrictive.

Mr. Allen requested feedback as to where the line should be drawn in regards to the criminal conviction. Councilmember Shepherd believed it should be applicable to anyone actively involved in the management of operating the business. Councilmember Young pointed out the difficulty in obtaining information substantiating that fact and inquired what would be the desired impact in enforcing the current ordinance as it was written. Mr. Brower reviewed the restrictions and shared some examples. He suggested the verbiage could be added to include on-site management responsibilities. A discussion took place regarding different verbiage and the possible inclusion of “moral turpitude.”

Mayor Wood clarified the proposal of writing the ordinance with the inclusion of the verbiage reflecting any person actively involved in the ongoing management, supervision, or day to day operations of the business, which would restrict individuals from selling beer to those to whom it should not be sold. A discussion took place regarding stakeholders being subject to the ordinance if they had no day to day management responsibilities for the operation of the business.

Councilmember Bush expressed his opinion verbiage should be included requiring background checks on individuals with involvement in the management or selling of the beer. Councilmember LeBaron suggested the inclusion of a twenty percent involvement in management of the business or selling of the beer but expressed concern regarding investors or silent partners.

Councilmember Murray inquired if the inclusion would include clerks at grocery stores. Mr. Allen read the ordinance and a discussion followed. Mr. Allen requested direction from the Council. He asked if it desired adding language to exclude a passive owner. Mr. Brower pointed out how many individuals would be required to have background checks completed if a convenience store similar to 7-Eleven were allowed to sell beer. A discussion took place regarding a definition of "management" and possible verbiage which could be included.

Councilmember Shepherd pointed out the City hadn't encountered a problem in how the City had been enforcing an ordinance and suggested the verbiage in the ordinance could be modified to reflect the current practice. Councilmember Murray expressed agreement with that suggestion.

Councilmember Bush suggested staff draft an ordinance based on its knowledge of information and bring it to the Council for further discussion and possible approval. Mayor Wood believed the ordinance should be less restrictive allowing the management to prove itself but if a mistake were made the City should be prepared to enforce the ordinance. The Council was in agreement and directed staff to proceed in drafting an ordinance based on the City's current practice.

Councilmember Shepherd moved to adjourn the City Council work session and reconvene as the City Council in a policy session at 6:52 p.m., seconded by Councilmember Murray. All voting AYE.

The City Council reconvened in a work session at 8:03 p.m.

DISCUSSION ON TITLE 11, CHAPTER 3 - DEFINITION OF THE WORD "FAMILY"

Mayor Wood stated it was necessary to revisit the City's ordinance regarding the definition of a family because of recent legislation. Adam Lenhard, City Manager, informed the Council of the City's definition of a family and pointed out it specifically addressed unrelated individuals. He continued the City's definition restricted the unrelated individuals to that of two. He reported

LUDMA (Land Use Development Management Act) had designated the unrelated number of individuals to three and four. He indicated the legislature had strengthened and reiterated a bill passed during the previous legislative session and concluded the City's definition was not in compliance with State statute.

Mr. Lenhard revealed the reason for the number designation in the ordinance was to allow the City the opportunity to use it for enforcement purposes. He indicated the issue specific to the number of unrelated individuals had been brought up numerous times at the State and suggested the City might want to reconsider modifying the language in its current ordinance. He clarified the City could simply change the number in its definition from two to three in order to comply with State statute. He added modifying the ordinance would require approval from the Planning Commission because it was a land use ordinance. He requested opinions from the Council prior to noticing the public hearing for the Planning Commission.

Councilmember LeBaron inquired why the Legislature would specify a number of three. Mayor Wood reminded the Council the City had previously used a number of four in its definition. He also reminded the Council of the events that led to the City's change. He pointed out since Weber State University was located within a portion of the City, the legislation allowed the City to decrease its number to three. Brian Brower, City Attorney, clarified the public university component could result in a higher volume of individuals in a co-op status and believed that was the reason for that caveat included in the legislation.

Councilmember Shepherd stated the City had not experienced an enforcement issue with the number of four unrelated individuals living in a residence. He suggested if there were a need for enforcement, the State statute could be used for the citation. Mr. Lenhard responded it would be better for the City to enforce its ordinance first, in addition, the City would want to take a proactive approach in amending its ordinance to become compliant with State statute.

Mr. Brower reported on previous discussions with the Utah League lobbying contingency and its surprise with the City's current ordinance. He responded to Councilmember Shepherd's comments specific to the City deciding what should be enforced: State statute or City ordinance. He clarified the State statute was designed to instruct cities that this would be the new minimum and would therefore invalidate the City's ordinance. Councilmember Shepherd retracted his previous comments and agreed to move forward in becoming compliant with the new legislation.

Councilmember Bush believed the legislature would debate the topic several more times and inquired if the City could adopt an ordinance with verbiage reflecting "as per State code" which would eliminate the City having to revisit the issue in the future. Mr. Brower commented the State had not created a clear definition of "family," but rather indicated any ordinance couldn't restrict the number to less than three. Adam Lenhard, City Manager, added the State didn't distinguish the relationship by blood; therefore, he believed the City's definition was more complete.

Mr. Brower read from the State statute which outlined what the City could and could not do in enforcing its ordinance instead of clearly identifying what definition constituted a "family". Mr. Lenhard commented there were other issues related to Title 11 which would need to be addressed by the Council and indicated it was staff's intention to notice and address them all at once in order to minimize costs associated with the public noticing.

The meeting adjourned at 8:12 p.m.

**APPROVED AND ADOPTED
This 14th day of August, 2012**

/s/Don Wood, Mayor

ATTEST:

/s/Nancy R. Dean, City Recorder

I hereby certify that the foregoing represents a true, accurate, and complete record of the Clearfield City Council meeting held Tuesday, May 8, 2012.

/s/Nancy R. Dean, City Recorder