

Approved

MINUTES OF THE REGULAR MEETING OF THE GRANTSVILLE CITY COUNCIL, HELD ON MARCH 7, 2012 AT THE GRANTSVILLE CITY HALL, 429 EAST MAIN STREET, GRANTSVILLE, UTAH. THE MEETING BEGAN AT 7:00 P.M.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE.

Mayor and Council Members Present: Mayor Brent Marshall and Council Members Mike Johnson, James Vera, Scott Stice, Mike Colson and Neil Critchlow.

Appointed Officers and Employees Present: City Attorney Joel Linares and Deputy City Recorder Christine Webb.

Citizens and Guests Present: Sheldon Riches, Kim Clausing, Kent Liddiard, Melodie Waldron and Colleen Brunson. Mayor Marshall welcomed Scout Troop 903 and Cub Scout Troop 3378 to the meeting.

Mayor Marshall asked Porter Whitworth to lead the audience in the Pledge of Allegiance. Mayor Marshall announced that Item #3 (Consideration of revocation of LA Smoke Shop's business license for violation of State Law) would be moved to the end of the meeting.

AGENDA:

1. Youth Awards.

The following students were recognized for their accomplishments and were awarded certificates and gifts by the Mayor and City Council:

- Miles Wilson
- Aaron Taggart
- Taylor Pitt
- Andrew Harrell
- Mathew Waldron
- Kendyl Penney
- Christian Kelley

2. Summary Action Items:

- a. Approval of Minutes of the February 15, 2012 City Council meeting.
- b. Approval of Bills in the sum of \$230,808.40.
- c. Personnel Matters (none).

Motion: Councilman Stice made a motion to approve the summary action items. Councilman Johnson seconded the motion. All voted in favor and the motion carried.

3. Consideration of revocation of LA Smoke Shop's business license for violation of State Law.

Mayor Marshall reiterated this agenda item will be addressed after item 7.

4. Consideration of Lease of City Concession Stand at Rodeo Grounds. (Jose Ramos- Taco Man)

Mayor Marshall stated that Mr. Ramos' lease for the City's Cherry Street Park concession stand will expire on March 31 and Mr. Ramos has requested the City Council to consider leasing him the concession stand at the City's Rodeo Grounds. Councilman Colson asked if the terms would be the same as the prior lease agreement with the City. Mayor Marshall indicated the terms would be set by the City Council. Councilman Johnson stated Mr. Ramos has improved the condition of the concession stand at the Cherry Street Park. Mayor Marshall stated Mr. Ramos will complete improvements to bring the concession stand at the Rodeo Grounds up to code.

Motion: Councilman Johnson made a motion to approve a lease agreement for the City's Rodeo Grounds Concession Stand with Jose Ramos "The Taco Man" for \$300.00 a month for the term of one year with 30 days written notice for termination and the following terms: That tenant provide his own heater, liability insurance covering the City, pay for all power used in the facility and that the City cover all other utilities. Councilman Colson seconded the motion. All voted in favor and the motion carried.

5. Consideration of Declaration of Surplus Property.

Mayor Marshall stated there had been one additional item added to the list which had previously been approved. The additional item is a popcorn machine. The items include: Sixteen bikes, two scooters, military generators, a 125 cc motorcycle, Savage model 99 rifle, Ruger 10-22 and a popcorn machine. Mayor Marshall stated the City would like to hold the auction on April 13, 2012 at 3:00 p.m.

Motion: Councilman Vera made a motion to approve the declaration of the surplus property and hold an auction on April 13, 2012 at 3:00 p.m. Councilman Stice seconded the motion. All voted in favor and the motion carried.

6. Consideration of selling City property located at 160 West Main Street.

Mayor Marshall stated the City owns 0.127 acres of ground between Richard's Barbecue and Gezal's at 160 West Main Street. The owner of Richard's Barbecue approached the Mayor in regards to the possibility of buying or leasing the property. He stated the Council members had been provided with an appraisal of the property and the appraised amount was \$11,702.13. Councilman Stice indicated that a house is located behind Gezal's and expressed concerns about the sale of the property limiting access to the home. Attorney Linares stated there should not be a problem unless the property is a prescriptive easement. Mayor Marshall stated the house has been vacant for many years. The Mayor stated due to the small size of the property it would be beneficial to sell it.

Motion: Councilman Johnson made a motion to approve the sale of the property located at 160 West Main Street (Parcel #01-094-0-0042 – A portion thereof 41.25' wide by 132' deep). Also that the Mayor be authorized to sign the agreement prepared by the City Attorney. Councilman Stice seconded the motion. All voted in favor and the motion carried.

7. Consideration of approval of change orders for new library construction.

Mayor Marshall stated during the construction meeting the architects requested that any change orders to the library come from one office. He stated having the requests processed by the Mayor's office should eliminate confusion and problems which may arise with multiple departments requesting

changes. Mayor Marshall clarified with the Council they had requested a change to modify the planter area on the south side of the library at the January 18, 2012 City Council Meeting.

3. Consideration of revocation of LA Smoke Shop's business license for violation of State Law.

Attorney Linares, Detective Chamberlain and Chief Johnson were present representing Grantsville City. Detective Chamberlain addressed the Council. He gave a PowerPoint presentation on the investigation of LA Smoke Shop's distribution of potpourri. Detective Chamberlain stated the City has seen a large influx of spice or potpourri use. He stated the City has responded to many medical emergencies which have resulted from the use of these substances. He explained that spice is a synthetic cannabinoid that combines certain receptors to produce an effect consistent with naturally occurring cannabinoids with THC or marijuana. He stated the chemical first used in spice was JWH-018 but due to that form being outlawed, new chemical formulas have been created to produce the same effect. He went to the LA Smoke Shop located in Grantsville City on January 30, 2012 and found several jars of potpourri available for sale. He stated he purchased two jars and informed the clerk that he would be taking them to the State Lab for analysis. Detective Chamberlain received the Criminalistic Analysis Report- Controlled Substance Analysis about one week later. The report identified the substance as AM-2201, a structural analog of JWH-018. Detective Chamberlain stated after hearing about some raids on smoke shops in Salt Lake for potpourri he returned to LA Smoke Shop. The potpourri was not on the shelves or counters at that time, so he asked if they had discontinued it and was told they were out. He then went back to the Police Station and called an associate who then went to the LA Smoke Shop and asked to purchase potpourri. The store clerk reached under the counter and sold the associate a jar of potpourri. With the additional purchase of potpourri Detective Chamberlain obtained a search warrant on February 13, 2012 and returned. The Grantsville Police Department confiscated 124 jars of potpourri at that time. Detective Chamberlain presented photographs that were taken at the time the search warrant was served.

City Attorney, Joel Linares, asked Detective Chamberlain why he first went to the smoke shop. Detective Chamberlain stated it was due to all of the complaints about spice and potpourri. He also indicated that there have been no problems with the other smoke shop located in Grantsville at this time. Mr. Linares explained that Utah Annotated Code §58-37-4.2 is the list of controlled substances. It states the substances, their analogs, homologs and synthetic equivalents are listed controlled substances. Mr. Linares pointed out the sixth substance on the list is JWH-018 and the analysis report identified the substance submitted to the lab as AM-2201, a structural analog of JWH-018 which under the Code is a controlled substance. He explained the reason for the additional photographs presented by Detective Chamberlain was to determine that the items shown would be paraphernalia. He stated according to the State Code these items are paraphernalia in relation to their proximity to controlled substances. Mr. Linares stated the legal name of the business listed on the original City business license is Danali Wholesale and he would refer to the smoke shop as such. Mr. Linares explained Grantsville City Code 13-3 states "It shall be unlawful for any person to transact and carry on business, trades, profession, callings and occupations specified in this chapter without first having paid license taxes in the amounts prescribed in this chapter." Attorney Linares stated Danali Wholesale did purchase a business license for the year 2011 but do not have a current business license. Mr. Linares stated under City ordinances the Council is allowed to shut down or revoke a license for a business violating a City ordinance or the State Code. He then explained the sale of spice under the State Code

is a felony. He stated due to the violation of State Code and City ordinance the City Council has ample reason to revoke the business license and shut the business.

Diane Pittcher was present representing Danali Wholesale. Ms. Pittcher stated she would refer to her client as Tom. She commended the City Attorney for the notice given to her client regarding this hearing and the speed with which he provided the evidence he planned to present to the Council to afford due process. Ms. Pittcher stated the right to pursue a livelihood is a Constitutional right and because there is a fundamental right to make a living, people have a property interest in a business license. She stated taking a property without due process is a taking without just compensation under the Fifth Amendment. Ms. Pittcher explained to take a business license away the person must be given due process, opportunity to be heard and the findings of fact by the City Council must be based on substantial evidence. Ms. Pittcher stated the question is whether AM-2201 is illegal. She explained AM-2201 is not listed on the list of controlled substances. She then stated the definition of an analog is different depending on whether you approach it from a criminalist perspective or a chemist perspective. She also explained that substances which may look structurally similar but they may behave differently and they may have different biological properties. Ms. Pittcher explained Utah Code §58-37-2(g)(i) states "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance. She stated if you listen to the minutes of the meeting discussing HB254, concerns were expressed about ambiguity of analogs of controlled substances. She stated AM-2201 will probably be added to the list. Ms. Pittcher argued that people should know what the law is so they can conform their behavior to the law.

Councilman Mike Johnson asked about the second time Detective Chamberlain went to the smoke shop and why the clerk told him they were out but then sold it to the next person who asked for it. Ms. Pittcher stated she had no idea. Councilman Johnson stated she must have known that it was illegal and did not wish to sell it to the police officer. Ms. Pittcher stated the clerk had no way of knowing if the substance was illegal due to the fact there is no law specifically stating it is an illegal substance.

Councilman Neil Critchlow stated the findings of fact are they were operating a business without a license. Ms. Pittcher agreed and stated she was wondering why she received a notice stating we are revoking your license if there is no license to revoke.

Mr. Linares explained the notice provided states "Notice is hereby given that on March 7, 2012 at 7:00 p.m. at the Grantsville City Hall ... the Grantsville City Council will review the business license issued to Danali Wholesale, dba LA Smoke Shop..." He stated when notice was provided to Danali Wholesale the City had not determined they had not renewed their license. Mr. Linares stated the hearing was set based on the actions of Danali Wholesale. He stated the law says "The following substances, their analogs, homologs, and synthetic equivalents are listed controlled substances" and the report states AM-2201, a structural analog of JWH-018, therefore the substance was illegal. He explained the new law will be to clarify not that this substance was not intended to be part of the law. Mr. Linares stated due to the business operating without a license the City Council has the authority to shut the business down immediately.

Councilman Vera stated the law does not make any statement about the terminology of "substantially" and the law appears to be very clear as to the substance being an illegal substance.

Motion: Councilman Critchlow made a motion to close the interest of Danali Wholesale due to the fact they are operating without a current business license and revoke any interest they held in a license. Councilman Stice seconded the motion. All voted in favor and the motion carried.

Mayor Marshall opened the meeting for public comments. Janet Cook stated good work and way to go! No further comments were made.

8. Mayor and Council Reports.

Mayor Marshall announced he and Joel Linares met with representatives from Miller Motorsports Park concerning a new event they wish to begin this summer. He attended the 50th Anniversary Gala and Awards at the Grand America Hotel where Jean Didericksen received one of fourteen District Educator Awards. She was called a superstar and it was said she is the kind of teacher every parent wishes their child will have and the kind of teacher every student deserves. The Mayor stated Rachel Wright, Joel Linares and he met with the bond attorneys Ballard and Spahr, Community Impact Board and Bill Prader and signing on the library is now complete and the contract has been signed with the contractor. He attended a meeting at the Deseret Peak Complex for the Wild Horse and Heritage Days. The committee would like to have some displays from the Donner Reed Museum moved to the Complex at that time. The Mayor stated the County Commissioners have offered to take wagons to the Benson Grist Mill to have trained wheelwrights make any necessary repairs with the City paying for materials. The Council agreed to have them repaired. Mayor Marshall stated he met with a fireworks manufacturer and ordered packages for all the shows the County and the City are involved in. He attended the Deseret Peak District 11 Recognition Awards where advisors and Eagle Scouts from the past year were honored. Mayor Marshall attended and signed a proclamation for FFA week and he participated in their program. The Mayor announced City staff and other key people have met to plan the 4th of July festivities. He remarked on the groundbreaking for the library. He stated he met with representatives from the Utah Department of Transportation (UDOT) about the intersection of Quirk and Main Streets. They proposed putting in a warning system to alert drivers when a pedestrian is in the crosswalk which would be activated by pedestrians and be similar to the school crossing areas with flashing lights. The Council suggested having the police patrol the area more. Mayor Marshall stated he attended a caucus meeting at the capital for Tooele County and has met with our representatives regarding issues that pertain to Grantsville City. He attended the Grantsville Opera House Oral History Night at the Senior Citizen Center and the oral history will be at the Old Folks Sociable for everyone to see. He remarked on the bid opening for the City's Capital Facilities Plans, Impact Fees Facilities Plan and Impact Fees Analysis which will be given to the Council in the near future. The Mayor stated he attended a convention of retail and real estate professionals known as ICSC RECON 2012 which was hosted by EDC Utah. Mayor Marshall announced the maintenance department has done a lot of clean up at the maintenance shop and the Clark Farm. He stated the crew has hauled a lot of scrap steel to the salvage yard and cashed in over \$2,000 and would like to use this money to purchase safety equipment for the maintenance employees. The Council approved such purchase with the money received from the sale of the scrap metal. Mayor Marshall stated he met with the Tooele County Engineer about the FEMA money Grantsville City had been approved to receive. He was told the City should receive \$25,417.83 for the money which was spent on flood control last year. The Mayor announced he received an e-mail from Jill Thomas regarding the Easter Egg Hunt held at the Deseret Peak Complex. At the time of the e-mail the Business Alliance only had three sponsors and he asked if the Council wished to participate again this year. The Council determined \$500 had been budgeted for the Easter Egg Hunt.

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Motion: Councilman Mike Colson made a motion to donate \$500 to the Easter Egg Hunt. Councilman Mike Johnson seconded the motion. All voted in favor and the motion carried.

Mayor Marshall stated he attended the Tooele County School District Career and Technical Education Display Fair. He remarked the projects were amazing. He stated he attended the Tooele County Mobility Council Meeting at the Tooele Senior Citizens Center where they discussed providing transportation for veterans to get to hospitals and appointments. Mayor Marshall stated he attended an Eagle Court of Honor for Clay Reed whose project was the playground tot park by the baseball field on Cherry Street. And he attended the County Commission Meeting.

Councilman Stice commended the Police Department. He also expressed his appreciation for Attorney Linares and the information he provides to the City Council.

Councilman Critchlow stated he would be attending the Planning and Zoning Meeting on Thursday, March 8.

Councilman Vera stated he attended a CHIP Meeting with Mayor Marshall where they discussed overall plans for the county to improve the health of citizens. He asked the Council to consider including an amphitheater in the construction of the library. He indicated this needed to be considered prior to completion of the footings. The Council agreed this did not have to be decided on immediately and could be discussed at a later date.

Councilman Johnson requested a letter be sent to Gary Bleazard regarding the Taco Man moving from the concession stand at the baseball field.

Mayor Marshall opened the meeting for any further public comments. No comments were made.

9. Adjourn.

Motion: Councilman Stice made a motion to adjourn. Councilman Critchlow seconded the motion. All voted in favor and the motion carried. The meeting was adjourned at 8:56 p.m.