



**RIVERDALE CITY COUNCIL AGENDA
CIVIC CENTER - 4600 S. WEBER RIVER DR.
TUESDAY –SEPTEMBER 20, 2011**

Minutes of the **Regular Meeting** of the **Riverdale City Council** held Tuesday, **September 20, 2011** at 6:04 PM at the Riverdale Civic Center, 4600 South Weber River Drive.

Members Present: Bruce Burrows, Mayor
 David Gibby, Councilor
 Norm Searle, Councilor
 Shelly Jenkins, Councilor
 Alan Arnold, Councilor
 Don Hunt, Councilor
 Norm Searle, Councilor

Others Present: Larry Hansen, City Administrator, Steve Brooks, City Attorney, Randy Daily, Community Development Director, Shawn Douglas, Acting Public Works Director, Doug Illum, Fire Chief, Sergeant Curtis Jones and Detective Casey Warren, Riverdale City Police, Ember Herrick, City Recorder and 14 members of the public.

A. Welcome & Roll Call

Mayor Burrows called the meeting to order and welcomed all in attendance including all the Council members and staff and the public.

B. Pledge of Allegiance

Councilor Gibby led the Pledge of Allegiance after which Mayor Burrows read a quote from quote Sir William Blackstone who said the laws laid down by God are eternal immutable laws and man’s laws have no validity if they are contrary to God’s laws.

C. Moment of Silence

Mayor Burrow’s quote was followed by a moment of silence when he asked everyone to remember those serving in our armed forces.

D. Open Communications

Mayor Burrows invited any member of the public with questions or concerns to address the group at the open microphone.

Riverdale Business Owner Don Adamson said he was concerned about the proposed Ordinance 790 on the agenda. According to Mr. Adamson, his family owns 30 commercial rental units in the city and he is nervous about staff being able to put his tenant’s business licenses in jeopardy without first giving them a chance to explain themselves. He said that he has consulted with his attorney and believes the proposed ordinance would be illegal if passed by the Council.

There were no additional comments.

E. Presentations and Reports

Mayor Burrows said the new Larry Miller Dealership is now open for business but will wait until spring 2012 for their grand opening. He said Noodles and Co. is scheduled to open October 3rd and he reminded the public that the city's fall cleanup will be on October 8th from 9 AM to 1 PM.

Mr. Hansen said the city has issued fewer police citations for moving violations and has had fewer automobile accidents in the last three years, improvements to safety which he attributed to street widening and completion of construction on Riverdale Road. Mr. Hansen recognized the staff with anniversaries this month and thanked them for their service. He said the city is still operating under authorization and will continue to downsize the fire department to maximize efficiency with fewer staff.

Mr. Fortie gave a report on the condition of the treasury for the months ending June 30, July 31, and August 31, 2011. He said in the first month June 2011, the sales tax revenue redistribution funds were received from the state and on the expenditures side, the city did transfer money to pay for capitol projects. For July 2011, Mr. Fortie said there was an insurance payment for the city buildings and a payment for the fireworks at Old Glory Days as well as a quarterly sewer payment. In the revenue column, he said two surplus motorcycles were sold. Mr. Fortie said for August there were CDBG funds received which were deposited into the water and storm water funds. He said there had been an IT expenditure for a new copier for the court. Councilor Gibby asked if it is normal for the general fund to be in the negative for this time of year and Mr. Fortie said the city receives most of its revenue at the end of year and the insurance payments were early this year, accounting for the current negative balance.

Acting Public Works Director Shawn Douglas gave the Council a status report on the River Restoration Project stating that the city is waiting for lower water levels to evaluate damage to a few more areas. According to Mr. Douglas, the FEMA meeting is scheduled for September 29, 2011 and there will be a final report issued after that date. Councilor Gibby asked if the Corps of Engineers is involved and Mr. Douglas said they won't be consulted until the city is ready to apply for permits to do the repair work. Councilor Gibby asked if that will cause a delay and Mr. Douglas said any time the federal government is involved it takes some time, but he assured the Council that the public works department will work with the necessary agencies to get the work completed as expeditiously as possible. Mayor Burrows said he had heard from Senator Hatch's office offering assistance in moving the bank restoration work forward while water levels are low.

There were no comments or questions on the Community Development Projects Status Report or Recorder's Report.

F. Consent Items

1. Review of meeting minutes from:

September 6, 2011 City Council Work Session
September 6, 2011 City Council Regular Session
August 30, 2011 City Council Executive Session

Mayor Burrows asked if there were any changes or corrections to the meeting minutes and Councilor Jenkins said she had some corrections to the way the previous meeting minute corrections by her were recorded. The Recorder noted her changes. Councilor Jenkins said that she also had some questions about the Strategic Planning meeting minutes and requested that a copy of the recording be sent to the Council. Mayor Burrows asked for consensus to postpone voting on the Strategic Planning meeting minutes until the Council could listen to the recording, consensus was reached.

2. Review and comment by September 27, 2011 on proposed amendments to RCC 4-5-10 and 8-1-3.

3. Review and comment by September 27, 2011 on releasing a request for proposals (RFP) for Engineering Services

Mayor Burrows said there are two items for review and comment by September 27, 2011. There were no questions or comments from the Council on these items.

Motion: Councilor Gibby moved to approve the consent items excluding the Strategic Planning meeting minutes but including the meeting minutes from September 6, 2011 with the corrections requested by Councilor Jenkins. Councilor Hunt seconded the motion.

There was no discussion on the motion.

Call the Question: The motion passed unanimously.

G. Action Items

1. Consideration of Resolution 2011-26 declaring unclaimed property as public interest use.

Mayor Burrows excused Police Chief Dave Hansen who is out of town at a training this week and stated that Sergeant Curtis Jones would be presenting the unclaimed property list in his place. Sgt. Jones stated that this is a list of items recovered by the police department that have not been claimed or cannot be returned to the original owner and he asked the Council for any questions.

Motion: Councilor Hunt moved to approve Resolution 2011-26 declaring unclaimed property as public interest use. Councilor Gibby seconded the motion.

Mayor Burrows asked for discussion on the motion and Councilor Jenkins asked if firearms should be destroyed rather than resold to avoid the possibility of the weapons possibly being used to commit future crimes. She also asked if all the used weapons were in good enough condition to resale. Sgt. Jones said the guns are sold to a reputable gun dealer licensed with the state in accordance with all federal statutes. He said that the dealer would not purchase weapons that were not in good resale condition.

Roll Call Vote: Councilor Jenkins, aye; Councilor Hunt, aye; Councilor Searle, aye; Councilor Arnold, aye; Councilor Gibby, aye. The motion passed unanimously.

2. a. **Public hearing to declare certain personal property as surplus.**
- b. **Consideration of declaring certain personal property as surplus.**

Mr. Fortie asked if there were any questions from the public or Council about surplus items during the public hearing on the declaration of personal property as surplus. There were none.

Motion: Councilor Gibby moved to close the public hearing to declare certain personal property as surplus. Councilor Arnold seconded the motion.

There was no discussion on the motion.

Call the Question: The motion passed unanimously.

Councilor Searle stated his concern that more people do not attend these public hearings and asked that whenever possible these notices be included in the city publications like the newsletter. Mr. Hansen said the September newsletter had been sent to the printer before the Council had met to set tonight's public hearing. He said once an auction date to sell these surplus items is set it will be noticed in the October newsletter and in the past this has resulted in a good response from residents and public participation in these sales.

Motion: Councilor Gibby moved to approve Resolution 2011-26 declaring unclaimed property as public interest use. Councilor Hunt seconded the motion.

There was no discussion on the motion.

Call the Question: The motion passed unanimously.

3. Consideration of Ordinance 788 amending RCC 6-6 for conditions of ATV use on streets and roads in Riverdale City.

Mayor Burrows said Ordinance 788 had been drafted by Mr. Brooks for the Council's consideration following a request from Riverdale resident G.L. Faust to drive his street legal all terrain vehicle (ATV) on city streets as he is allowed to do on state roads. Mr. Brooks said in the proposed ordinance he had set a maximum speed of 30 mph. Councilor Gibby said 30 mph could tie up traffic and he recommended the maximum speed match the posted speed for city roads. Councilor Hunt said he is concerned this ordinance will allow three wheeled vehicles with dangerous balloon tires on city roads and Mr. Brooks said he had copied the state's definition of Type 1 and 2 vehicles for Riverdale's ordinance. Mr. Brooks said if the Council wants to restrict certain vehicles they can do that but he doesn't think a vehicle with dangerous tires would pass inspection by the state. Councilor Searle asked about a reference in the ordinance to state code and Mr. Brooks said the state statute was extensive so he chose to reference the code rather than listing all the provisions in Riverdale's city Ordinance 788. Councilor Gibby asked about seat belts and Councilor Searle asked about liability insurance and Mr. Brooks said

the state regulates all of that through an annual inspection and requiring insurance for all licensed drivers.

Motion: Councilor Arnold moved to approve Ordinance 788 with a change in the language so that maximum speeds for ATVs are the same as the posted speed limits for each city street. Councilor Searle seconded the motion.

Mayor Burrows asked for discussion on the motion and Mr. Brooks recommended that the line stating that vehicles should travel at a speed no greater than is reasonable be left in the ordinance to require drivers to take into consideration the driving conditions and adjust their speeds accordingly. The first and second agreed to add the provision to the motion.

Call the Question: The motion passed unanimously.

4. Reconsideration of final site plan for Aunt Nancy's Assisted Care Facility approval conditions.

Mr. Daily said at the joint Strategic Planning meeting on August 30, 2011 the consensus was to remove the rezone condition, making it a condition of a developer's agreement to be changed prior to completion of construction. He recommended the Council approve Aunt Nancy's site plan.

Motion: Councilor Gibby moved to approve the final site plan for Aunt Nancy's with an agreement in place requiring the developer to have the property rezoned before construction if complete. Councilor Jenkins seconded the motion.

Mayor Burrows asked for discussion on the motion and Councilor Arnold asked that the rezone language be clarified to indicate what rezone request would be appropriate. The first and second agreed to add the clarifying language to the motion.

Call the Question: The motion passed unanimously.

5. Consideration of Ordinance 789 to correct LH Miller Subdivision lot lines with Weber County.

Mr. Brooks said he had been contacted by Weber County about a lot line discrepancy when the Larry Miller Automotive Group went to record their new property with the county. According to Mr. Brooks, Weber County is requesting that Riverdale City correct the lot lines that were left on the recorder's map from the old Tullis Business Park and Ordinance 789 will do this.

Motion: Councilor Hunt moved to approve Ordinance 789 to correct the Larry H Miller Subdivision lot lines with Weber County. Councilor Searle seconded the motion.

Mayor Burrows asked for discussion on the motion and there was none.

Call the Question: The motion passed unanimously.

6. Consideration of Ordinance 790 amending RCC 3-1-12 business licensing to allow admin staff to suspend business licenses and require businesses to show cause to the City Council why the suspension should be lifted.

Mr. Brooks said under current city code, if a business is doing something illegal or harmful there is nothing that can be done to protect the public until an emergency meeting of the Council is called together and there is consensus to take action against the offending business. According to Mr. Brooks, the proposed Ordinance 790 would create a temporary injunction allowing the city administrator, on the advice of the city attorney, to temporarily suspend a business license in an emergency situation. The business owner would then have an opportunity to attend a hearing at the next regularly scheduled Council meeting where the City Council would decide whether to revoke, suspend or place conditions on the business operating in Riverdale.

Councilor Hunt asked about the city's liability and Mr. Brooks said if a business is doing something illegal they can't sue the city for closing them down and he said that he would only use this provision when he was satisfied that the law was on the city's side and a court would agree with Riverdale. Councilor Arnold said he is concerned this ordinance will give too much power to administrative staff and he said in the event of an emergency he feels the Council should be convened and consulted in a special session.

Mr. Hansen said he appreciated the comments from Council but pointed out that under city ordinance the Building Inspector and Community Development Director and Fire Chief all have the ability to shut down businesses that have building code or fire violations without consulting the Council and getting consensus. He said staff already intervenes in cases of health, safety and public welfare and this provision is designed to give that same flexibility to law enforcement once they report an emergency situation where a business is endangering the community or breaking the law, without calling the Council together. Mr. Hansen said the Council will still have an opportunity to ultimately decide what to do with the violator at a hearing at the next regularly scheduled Council meeting.

Mayor Burrows said he knows of only two businesses that have been closed down in Riverdale during the 18 years that he has been in public service. Councilor Jenkins said businesses are the life blood of this community and it wouldn't be in the city's best interest to shut down revenue generating businesses. Mr. Brooks said since he has been with the city no emergency situation has arisen that would qualify under this provision but is a good idea to have one on the books just in case. He said that the two businesses scheduled for hearings at tonight's Council meeting are not emergency situations, which is why they are still open for business pending the outcome of a Council hearing. Mr. Brooks said in section C the hearing and processes are still in place, this is just a way for staff to take temporary action in emergency situations where time is a factor.

Councilor Gibby suggested the Council be polled in a telephone survey to save time in the event of an emergency rather than convening a special session with the Council all present. Mr. Hansen said section 8-B could be changed to read that the City Administrator consults with the City Council. Councilor Searle suggested leaving the reference to the City Attorney and adding the City Council.

Councilor Arnold said the fire department has the authority to shut these businesses down right now under the current ordinance and he doesn't think an amendment is necessary. Mayor Burrows said the Council is currently the appeal authority for businesses that have had their application for a license rejected by staff, so getting their approval to

temporarily revoke a business license pending a hearing could be a violation of due process. Mr. Brooks asked that the Council postpone making a decision on this proposed ordinance amendment until he can reword it and do some additional research to address the concerns brought up tonight.

Motion: Councilor Jenkins moved to table Ordinance 790 so that Mr. Brooks can insert the new suggested language and address the Council's concerns. Councilor Hunt seconded the motion.

Mayor Burrows asked for discussion on the motion and there was none.

Call the Question: The motion passed unanimously.

7. Consideration of business license revocation for businesses not operating in accordance with city ordinances.

- a. Smokes 4 U 2 address 4062 Riverdale Road**
- b. Frankie's address 4510 S. 900 W.**

Mr. Brooks said Smokes for U 2 is the new name of the former Smoke Shop, which carries the same products and has some of the same employees as the former store where the police have had numerous problems ranging from selling spice to underage sales of tobacco to minors. Mr. Brooks said as soon as the new owner applied for a business license he sent Mr. Daily to visit the establishment and explain to the new owner that the city will not tolerate violations of the law. According to Mr. Brooks within a few days Riverdale police did an undercover sting and an employee at Smokes 4 U 2 sold tobacco to a minor. Mr. Brooks said that he hadn't heard from the business owner or their legal counsel. Councilor Searle pointed out the hearing was scheduled for 8 PM. Detective Warren said he spoke to someone at the Smoke Shop today and they are planning to attend at 8 PM. Mayor Burrows suggested the Council address any discretionary items while waiting for the 8 PM hearing to begin.

Mr. Brooks said he had received a request to postpone the hearing for Frankie's from their attorney Elizabeth Dunning.

Discretionary Items

Mayor Burrows asked if there were any discretionary items and Councilor Jenkins suggested that the RDA areas be depicted on a map on the city website. She said this would make it easier to identify these properties for interested individuals. Mr. Hansen noted the change.

Councilor Searle complained about unleashed dogs on the trail and Mayor Burrows said citations are issued but the city doesn't have the manpower to police the trail around the clock. Councilor Jenkins said she has been injured by dogs jumping on her on the trail. Mayor Burrows recommended these violations be recorded using camera phones so that the city can follow up.

Councilor Searle asked about setbacks on PRUDs and suggested some language to add to the city's ordinance requiring the city building inspectors stop construction if there are setback disputes until civil matters are resolved. Mayor Burrows asked Councilor Searle

to forward his proposed changes to Mr. Brooks so that he could evaluate it from a legal perspective. Councilor Jenkins suggested the depth of lots be measured at the time roads are constructed. Mayor Burrows said these measures won't catch all discrepancies and he referenced the fact that the Larry Miller Group had conducted new surveys before building their new automotive lot but still found a lot line overlap when they recently went to record their new property lines with Weber County.

Councilors Jenkins and Searle brought up the Henryk Doliwa matter again.

Mr. Brooks said in Utah under adverse possession laws, the property owner who pays taxes on the land has the claim to ownership. He said Mr. Doliwa never paid taxes on that disputed land therefore has no legal claim to it and Kent Hill who has paid taxes on the land owns it and can do anything he wants with his land as long as it is an allowed use for the zone. Mr. Brooks said setback requirements change over time and to survey every lot in every new subdivision is not economically feasible for the city.

Councilor Arnold said he believes the legal advice the Council has been given by Mr. Brooks to let the courts settle this civil matter is sound. He said when setbacks are determined by the city they need to take into consideration how neighboring property owners will be affected.

Mayor Burrows stated for the record that the owners of Smoke 4 U have arrived for their business license hearing, but their attorney is not present. Councilor Arnold asked about revoking a license that hasn't been issued yet and Councilor Gibby said he doesn't believe the Council should issue licenses to people doing illegal business. Mayor Burrows suggested the Council take a short break to allow the petitioner's attorney a few more minutes to arrive.

The meeting adjourned at 7:55 PM.

The meeting reconvened at 8:04 PM.

Mr. Brooks said he had been given a business card for Attorney Rich Gallegos by the owner of Smoke 4 U who said he had been retained as their legal counsel. The owner of Smokes 4 U 2 told the Council that he owns three smoke shops, one in West Valley City, one in Salt Lake and now the Riverdale store formerly known as the Smoke Shop. He said as the new owner of this business he should not be held responsible for the previous owner's law violations. Mr. Brooks said this new business did sell tobacco to a minor days after being warned by a city official that any violations of the law would result in the business being shut down by the city.

Detective Casey Warren passed around photographs of Smokes 4 U 2 showing their merchandise to the Council. He said the tobacco products are only sold on the back wall of the store and he pointed out several items including glass pipes and hookahs which he said in his experience are commonly used to ingest illicit drugs like marijuana, not tobacco. He also pointed out a product known as clean urine that he said people use to

pass drug tests and glass tubes used to hold a rose in water but also commonly used by addicts to ingest methamphetamine or cocaine. Detective Warren said although the new owner claims that the shop is under new ownership since August, the same products are being sold and many of the same employees work in the shop that were cited for violating laws and selling to minors when the business was called the Smoke Shop.

The new owner said he purchased the business between August 2 and 13, 2011 with all the inventory from the Smoke Shop and that all of his products are intended to be used for tobacco consumption only. He said he has only been in the store two or three times for short periods and his business operates as a retail store selling items commonly sold in all of the over 100 smoke shops currently operating in Utah. He said one employee selling to a minor is his businesses' only violation and he said if this happens again or if the police find spice in his shop, they are welcome to shut him down. Councilor Jenkins questioned if a new owner would purchase a business without first evaluating the inventory and assessing its value.

Mr. Brooks asked what assurances the city has that drugs won't be sold at Smokes 4 U 2 and that tobacco won't be sold to minors and he asked the new owner to enter into an agreement with the city to guarantee further illegal behavior won't happen and to conduct training to ensure that his employees won't sell tobacco to minors. The new owner said he would be willing to enter into such an agreement with the city and promised the Council that he will train his employees personally to prevent future violations.

Mr. Brooks recommended to the Council that they consider granting a temporary business license with an agreement where any violations would be grounds for revocation of the license. Councilor Jenkins asked if there are any items in his inventory that he doesn't plan to continue selling and he said that the glass container for the flower is one item that he will discontinue. Mr. Brooks said all the items in his store need to be tobacco related as that is the stated purpose for the business license he applied for and the new owner said he had asked to be considered as a retail store too on his application.

Mr. Brooks asked why Smokes 4 U 2 would sell urine and the new owner said he isn't sure why people buy it but it sells. He said the stated purpose on the package is that people can use the product to help clean out their system. Councilor Jenkins asked if the individuals working in the store understand the instructions given to them and what the law is or if there is a language barrier and Detective Warren said everyone who works at the establishment speaks English and is able to carry on a conversation with customers including describing their products and what they can be used for.

Detective Warren said in addition to citations for selling spice and selling tobacco to minors, this location has also been asked to remove signage advertising marijuana or promoting its legalization in the past. He described in detail numerous violations between 2010 and the present at this location including an instance where an employee showed Detective Warren, who was undercover at the time, how leaves are sprayed with acetone to create a psychotropic drug and pointing out four or five products sold behind the counter while describing which would give Detective Warren the best buzz.

According to Detective Warren, shops like these present a significant threat to the health, safety and welfare of the community. He related a call from a concerned father working to get his son off illicit drugs who described how his son has simply switched to using spice because he could still get high and pass a drug test. The concerned father asked the police to stop these smoke shops from selling these substances to his underage son but Detective Warren said this is difficult because the manufacturers keep changing the chemical composition slightly to create products that alter an individual's state of mind, but aren't banned by the state or classified as illicit drugs. He said the current law states that someone can be charged with selling a psychotropic chemical no matter what the chemical composition if the cocktail can alter a person's state of mind.

Detective Warren said after over a year of compiling evidence against the Smoke Shop to present to the city attorney to take action to close this business down, the store was suddenly sold this summer. He said the same products and employees are at this location but it is reportedly under new management. Mayor Burrows asked about violations since the business officially changed hands on August 12, 2011 and Detective Warren said to date there has only been the one sale to a minor. Councilor Hunt said he would like to see proof of the sale of this business and the new owner said he could produce proof of sale with a copy of the cashier's check he used to buy the Smoke Shop. Mayor Burrows asked the new owner if he is related to the former store owner and he said that he is not.

Councilor Gibby said the same individual who has been cited repeatedly for selling to minors should no longer be working at this establishment. The new owner said that he had just recently hired two new employees. Councilor Searle said he is concerned that the new owner will not do business differently since he was warned by Mr. Daily not to do anything illegal and within three days one of his employees sold tobacco to a minor. Councilor Jenkins said she is concerned there is a language barrier and the new owner confirmed he is the only one that speaks English fluently. Detective Warren said although the employees he has dealt with have thick accents and search for the right word at times, they have all been able to carry on a conversation and describe in detail the products they sell and how they can create a drug-induced high. He said many of the items sold in the store like the incense state clearly on their packaging that they are not for human consumption but employees have described in detail to him how to use them to get high. Councilor Hunt asked if there are any illegal items being sold at this location now and Detective Warren said the chemicals aren't illegal if sold as incense it is illegal for an employees to sell them with instructions on how they can be ingested and used as a drug to alter a person's mental state.

Councilor Arnold suggested Mr. Brooks work with the petitioner's attorney Mr. Gallegos to write an agreement with this business clearly stating that if this establishment is caught doing anything illegal, the city has the right to shut them down. He said while many of the items found in this shop may be shocking to the Council, they aren't illegal to sell. Mayor Burrows asked if the Council couldn't refuse to issue this business license based on the tobacco sale to a minor and Councilor Arnold said if they shut down this shop for one violation they would need to apply that same standard to every convenience store in

the city that sells to a minor. Mayor Burrows said they should apply to anyone in the city that sells to a minor. Mr. Brooks said he would like to talk with Mr. Gallegos about a probationary period with an agreement clearly stating that one violation will lead to a revocation of the Smokes 4 U 2 temporary business license. Councilor Gibby said he would like a provision where employees who sell to minors and repeatedly violate city and state laws can't continue to be employed by these establishments. Councilor Jenkins said she would like verification that there are signs in the establishment clearly stating that underage sales are prohibited. Mr. Brooks said the employee training and age verification could be stipulated in the city's agreement with this business.

I. Adjournment:

With no further business to come before the Council at this time, Councilor Gibby moved to adjourn the meeting. Councilor Arnold seconded the motion. The motion passed unanimously. The meeting adjourned at approximately 9:00 PM.

Approved: October 4, 2011

Attest:

Bruce Burrows, Mayor

Ember Herrick, City Recorder