

**MINUTES OF THE  
MIDWAY CITY COUNCIL  
(Regular Meeting)**

**Tuesday, 19 May 2020, 6:00 p.m.  
Electronic Meeting**

**Note:** Notices/agendas were posted at 7-Eleven, Ridley's Express, the United States Post Office, the Midway City Office Building, and the Midway Community Center. Notices/agendas were provided to the City Council, City Engineer, City Attorney, Planning Director, and The Wasatch Wave. The public notice/agenda was published on the Utah State Public Notice Website and the City's website. A copy of the public notice/agenda is contained in the supplemental file.

**1. Call to Order; Pledge of Allegiance; Prayer and/or Inspirational Message**

Mayor Johnson called the meeting to order at 6:04 p.m. She excused Council Member Orme.

**Members Present:**

Celeste Johnson, Mayor  
Steve Dougherty, Council Member  
Jeff Drury, Council Member  
Kevin Payne, Council Member  
JC Simonsen, Council Member

**Staff Present:**

Corbin Gordon, Attorney  
Joshua Jewkes, Attorney's Office (Started participating at 8:25 p.m. and stopped participating at 10:15 p.m.)  
Michael Henke, Planning Director  
Wes Johnson, Engineer  
Brad Wilson, Recorder/Financial Officer

**Members Excused:**

Lisa Orme, Council Member

Mayor Johnson led the Council and meeting attendees in the pledge of allegiance. Council Member Drury gave the prayer and/or inspirational message.

**2. Consent Calendar**

- a. Agenda for the 19 May 2020 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 5 May 2020 City Council Regular Meeting

**Note:** Copies of items 2a, 2b and 2c are contained in the supplemental file.

**Motion:** Council Member Payne moved to approve the consent calendar.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

**3. Public Comment** – Comments were taken for items not on the agenda.

Mayor Johnson asked if there were any comments from the public for items not on the agenda. No comments were offered.

**4. Department Reports**

Pandemic / Masks

Mayor Johnson stressed the importance of wearing masks in public during the pandemic.

Road / Water / Projects

Council Member Simonsen reported on the current road and water projects.

North Center Street / Speeding / Trail

Council Member Simonsen was concerned about speeding and the lack of a trail on the north section of Center Street. He indicated that the City Engineer would prepare a cost estimate to build the trail.

Parking / West Main Street

Council Member Simonsen asked the Council to consider parking projects along the west section of Main Street.

Trails and Parks Committee / Focus on Parks

Council Member Simonsen reported that the Midway City Trails and Parks Advisory Committee would turn its focus from trails to parks.

Trails and Parks Committee / Tree City USA

Council Member Simonsen reported that a member of the Trails and Parks Committee was drafting language regarding trees on public property for the Tree City USA program.

#### Dutch Fields/River Road Trail / Onsite Review / Contract

Council Member Simonsen reported that there was an onsite review of the Dutch Fields/River Road trail. He added that a contract for its repair now needed to be signed between the City and the Dutch Fields HOA.

#### River Road / Cross-Section

Wes Johnson presented a proposal to change the planned cross-section for River Road. The proposal would replace the two five-foot bike lanes with one detached trail. This was the preference of the neighbors.

**Note:** A copy of Mr. Johnson's presentation is contained in the supplemental file.

#### Midway Irrigation Company / Manager

Council Member Dougherty reported that Mike Kohler still wanted to retire as the manager for the Irrigation Company and a replacement needed to be hired.

#### Midway Crest Subdivision / Pond

Council Member Dougherty reported that the developer, of the Midway Crest Subdivision, wanted to create a pond in the project using Island Ditch water. The Irrigation Company was considering the proposal.

#### Open Lands Board / Midway Representative

Council Member Dougherty reported that Steve Stevens would replace Courtland Nelson as Midway's representative on the Wasatch County Open Lands Board.

#### Open Space Bonds / Interest Rate

Mayor Johnson reported that the City had issued municipal bonds for the purchase of open space with an interest rate of 2.28%.

#### Summit Land Conservancy / Headwaters Preservation

Council Member Dougherty reported that Summit Land Conservancy had received a grant to protect headwaters.

## Signs Promoting Local Businesses

Council Member Dougherty reported that signs, promoting local businesses that were open, would be installed at the entrances to Midway. He added that smaller signs would be placed in front of each business.

5. **Ordinance 2020-13 / Identification of Streets** (City Planner – Approximately 15 minutes) – Discuss and possibly adopt Ordinance 2020-13 repealing Ordinance 96-6 requiring that all streets be identified with a number and houses have an identification number on the exterior.
6. **Resolution 2020-13 / Standard Specifications and Street Signs** (City Engineer – Approximately 5 minutes) – Discuss and possibly adopt Resolution 2020-13 amending the Midway City Standard Specifications and Drawings regarding street signs.

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Proposed language
- Fire District response
- Sign formats
- Midway's current specifications for street signs
- Heber City's specifications for street signs
- The format requested by Wasatch County

Mr. Henke also made the following comments:

- The proposed ordinance included feedback from the Council.
- It replaced Ordinance 96-6.
- It would help prevent duplicate street names.
- Some streets could have a name and no number.
- All street signs would have to meet the adopted standards.
- Street signs improved health and safety.
- Sign variances were allowed.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

**Motion:** Council Member Dougherty moved to adopt Ordinance 2020-13 dealing with street signage and house numbering as drafted and presented that evening.

**Second:** Council Member Payne seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

The Council, staff and meeting attendees discussed the following items:

- The specifications for street signs should include the appropriate color and logo.
- They would have to meet UDOT standards.
- The style of the signs would not be determined that night.

**Motion:** Council Member Simonsen moved to approve Resolution 2020-13 amending the Standard Specifications and Drawings, regarding street signs, and authorizing the City Engineer and staff to modify them to match what had been passed including the style, color and icon once established.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

A participant asked how the City chose the new logo. Mayor Johnson responded that the Council discussed it and made the choice. She added that the current seal was difficult to read and see at a distance. The logo was designed by a resident at no charge.

**7. Tentative FY 2021 Budget / Public Hearing** (Financial Officer – Approximately 30 minutes)  
 – Receive public comment on and possibly discuss the adopted tentative FY 2021 Budget for Midway City (**Public Hearing**).

Brad Wilson gave a presentation on the budget and reviewed the following items:

- Introduction
- Organization
- General Fund 5-year trend
- FY 2020 point of sale taxes compared to FY 2019
- Revenue, expenditures, and significant items for each fund

**Note:** A copy of Mr. Wilson’s presentation is contained in the supplemental file.

## **Public Hearing**

Mayor Johnson opened the hearing and asked if there were any comments from the public.

A member of the public asked about the repair of the Dutch Canyon/River Road trail. Council Member Simonsen responded that the repair was planned. Mayor Johnson added that the project was in the budget.

A member of the public asked about the roundabouts on River Road. Mayor Johnson responded that they were being installed and paid for by the Whitaker Farm developer. Wes Johnson also responded that the project would be completed by June 15<sup>th</sup> if an issue with wetlands could be resolved.

Mayor Johnson indicated that the cost for the solar panels, for the roof of the Community Center, was being determined.

Mayor Johnson closed the hearing when no further public comment was offered.

### **8. Café Galleria / Liquor License (Andy Jenkins – Approximately 30 minutes) – Discuss and possibly grant local consent for a continuation of a limited service restaurant liquor license for the Café Galleria located at 101 West Main Street (**Public Hearing**).**

Michael Henke gave a presentation regarding the request and reviewed possible findings and a proposed condition.

Mr. Henke also made the following comments:

- Café Galleria had a new owner which required a new liquor license and local consent.
- A proximity variance was also required because the restaurant was near the Town Square.
- The license type would not change and would allow the sale of beer and wine.
- The City did not have any concerns with the request.
- Recommended that no alcohol related signage be visible from the street.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

## **Public Hearing**

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

**Motion:** Council Member Simonsen moved to approve local consent and grant a proximity variance for a liquor license for Café Galleria with the following findings and conditions:

- The proposed license would continue to allow the sale of beer and wine at Café Galleria.

- The proposal was the same as the current approval for alcohol sales at Café Galleria.
- The restaurant property was located within 200 feet of public property.
- The State required a proximity variance because of the location near the Town Square.
- No alcohol related signage would be visible on the exterior of the building or on the inside, visible from the outside.

**Second:** Council Member Drury seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

**9. Ordinance 2020-11 / Food Truck Amendments** (City Planner – Approximately 30 minutes)  
 – Discuss and possibly adopt Ordinance 2020-11 amending Section 7.05.050 (Periodic Sale of prepared Food by Mobile Vendors) of the Midway City Municipal Code (**Public Hearing**).

Mayor Johnson reported that the ordinance had already been discussed but the Council wanted the public’s input. She added that Council Member Dougherty had discussed it with the Midway Business Alliance.

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the current code.

Mr. Henke also made the following comments:

- The owners of restaurants on Main Street had been notified of that night’s meeting and the proposed ordinance. Had not received any comment from them.
- There were no issues with the current code.
- The proposal was to allow food trucks on the City’s property. This was not clear in the current code.
- Food trucks should not be allowed on private residential property unless they were catering an event.
- Food trucks could have a negative visual impact.
- Was seeking input and the ordinance would be adopted at another meeting.
- Would contact UDOT regarding food trucks in its rights-of-way.
- The most difficult requirement was that food trucks had to have access to a restroom. They usually contracted with an existing business for such access. Would talk to the Wasatch County Health Department to see if this was still one of its requirements.

**Note:** A copy of Mr. Henke’s presentation is contained in the supplemental file.

**Public Hearing**

Mayor Johnson opened the hearing and asked if there were any comments from the public.

Krista Lewis

Ms. Lewis stated that food trucks should not exacerbate the existing parking problems.

Mayor Johnson closed the hearing when no further public comment was offered.

The Council, staff and meeting attendees discussed the following items:

- Food trucks should be allowed on the Town Square if it was in conjunction with renting the area or one of the City's buildings on the block.
- Food trucks should be allowed in the public right-of-way under certain conditions. The City should have discretion on allowing them in the public right-of-way.
- The owner of the Midway Mercantile restaurant thought that food trucks were a different offering and experience from his business and did not oppose them.
- Some areas had more parking than other areas.
- Food trucks would be parked in certain areas only occasionally.
- The City should have flexibility to insure additional parking.
- Food trucks were safer off the street.
- Parking should be increased rather than food trucks prohibited.
- A food truck operated on Heber City Main Street without access to a restroom.

**Motion:** Council Member Drury moved to continue the item since a copy of the ordinance had not been provided to the Council.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

**10. Ordinance 2020-14 / Amend Planning Commission Bylaws** (City Attorney – Approximately 5 minutes) – Discuss and possibly adopt Ordinance 2020-07 amending the by-laws for the Midway City Planning Commission.

Michael Henke made the following comments:

- The number of votes, by planning commission members, needed to approve a motion had to be clarified.



- Currently the commission chair only voted to make or break a tie. Proposed that the chair vote on every item when only four members were present.
- A tie vote would move an item to the Council.
- Clarified that the chair could make a tie when desired.

**Motion:** Council Member Drury moved to adopt Ordinance 2020-14 amending the planning commission bylaws with the language as stated by staff and in the packet for the meeting.

**Second:** Council Member Payne seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

**Motion:** Without objection, Mayor Johnson recessed the meeting at 8:16 p.m. She reconvened the meeting at 8:25 p.m.

**11. 970 South Transmission Line / Burial** (City Attorney – Approximately 30 minutes) – Discuss and possibly approve burying the 970 South transmission line, determine the sections to be buried and pay the applicable costs of burial.

**12. Facilities Review Board / Appeal** (City Attorney – Approximately 30 minutes) – Discuss and possibly appeal the decision of the Utah Utility Facilities Review Board regarding the 970 South transmission line.

Corbin Gordon made the following comments:

- The transmission line was discussed at length at the previous council meeting.
- Council Member Payne wanted to meet with Rocky Mountain Power (RMP). That meeting occurred but he had not received any further information from them.
- The Council could appeal the decision of the Utah Utility Facility Review Board.
- It had to enter into a payment agreement by May 27<sup>th</sup>.
- The Council had 15 days to choose the length of the line to be buried and 20 days to enter into a payment agreement.
- The Review Board accepted RMP's bids and determined the excess and above ground costs.
- The City did not have the money to bury the line.
- The City would have to appeal and challenge the bid amounts. It should not enter into a payment agreement without knowing the actual cost to bury the line.
- The City would have to seek a stay and petition to the Review Board to appeal its decision. If it did not prevail then it could appeal to the appellate court.

- Wasatch County appealed a decision by the Review Board but did not seek a stay. Because a stay was not sought, the associated transmission line was built while the appeal was being decided.
- A stay may or may not be long enough for the City to bond to bury the line.
- The appellate court could take a year or more to decide the case. The court could require the Review Board to get new bids and release the stay when those bids were provided.
- The cost to appeal could be \$40,000 to \$50,000.
- Seeking a stay could cost \$10,000 to \$15,000.
- A stay was needed so the City did not have to enter into a payment agreement by the 27<sup>th</sup>.
- The burial cost might be \$5 million if the appeal was successful and excess costs were deducted.
- The Council could not choose a burial length because the bids were unreasonable.

Joshua Jewkes explained the previous Wasatch County petition before the Review Board. He made the following comments:

- An appeal would be complicated.
- There were several problems with the Review Board's order.
- Less than 10% of civil appeals were successful.
- Nothing else mattered if the City could not get a stay.
- A request for a stay had to be filed immediately. Thought that it would be for the entire period of the appeal.
- The City would argue that it would forfeit its appeal right if a stay was not issued.
- There was no reasonable argument that the City would have to provide a bond to appeal.
- RMP could not claim damages if it won the case. This included damages for delaying the project.
- An appeal might persuade RMP to reconsider some of its positions or change its bid specifications.

The Council, staff and meeting attendees discussed the following items:

- VOLT agreed to pay \$10,000 to \$15,000 towards the cost of an appeal.
- A stay could give the City time to bond for the burial costs.
- The bond cost would be similar to the \$10 a month cited by the City in its survey.
- The voters should decide by voting on a bond.
- The City should not make any financial commitments before voters decided on a bond.
- Funding the burial without a bond could bankrupt the City.
- There was no risk in seeking a stay. It would only give the City time.
- If a bond was approved, then the City should enter into a payment agreement.
- The City would have to bond for the worst-case scenario regarding cost. It did not have to issue the full amount of bonds approved by the voters.
- Information for a bond would have to include the property tax increase per \$100,000 of value. A breakdown of the cost per month could also be provided.
- The City had not budgeted for a bond election which could be \$20,000.
- The City should not commit to pay any significant amount of money unless a bond was approved.
- The City should seek the stay and appeal because VOLT would pay that cost.

- The issue of rights-of-way for burial needed to be addressed before the line could be built. The property owners had to address this issue. They could speak with the State's property rights ombudsman.
- The City could withdraw its stay at any time. Damages and legal fees would only be awarded if the court determined the City acted frivolously or to delay.
- The conditional use permit (CUP) issued by the Council anticipated three valid bids. Further information, review and assistance was needed regarding their validity.
- What financial exposure did the City have if a stay was granted?
- A request for a stay should be filed with or without private financial support.

**Motion:** Council Member Dougherty moved that the City Council direct the City Attorney to prepare and file a notice of appeal and expeditiously file a motion to obtain a stay before May 27<sup>th</sup>. If a stay was not granted by that date, then the issue would be brought back to the Council at a special meeting.

**Second:** Council Member Payne seconded the motion.

**Discussion:** Council Member Drury indicated, that if the stay was not granted, then the only options were to waive the conditions in the CUP that the line be buried or pay \$9 million to bury it. Council Member Dougherty doubted the City would ever have to pay that much to bury it.

Corbin Gordon indicated that the above ground conditions of the CUP would remain if the conditions for underground were eliminated.

Council Member Simonsen said that a stay request was prudent, but the City should not agree to pay an unlimited amount of money to bury the line. Council Member Dougherty and Council Member Payne agreed.

Council Member Payne indicated that the \$780,000 raised by VOLT and the \$691,000 in right-of-way costs came close to the \$1.5 million requested from VOLT in the CUP.

Mr. Gordon indicated that the court could pause the requirement for a payment agreement until the stay was decided.

Council Member Dougherty indicated that he did not live in the area proposed for the line and would not be impacted by it.

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

### **13. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation and the Character, Professional Competence, or Physical or Mental Health of an Individual**

**Motion:** Council Member Drury moved to go into a closed meeting to discuss the character, professional competence, or physical or mental health of an individual.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

**Note:** Pursuant to section 52-4-206, Utah Code Annotated 1953, the closed meeting was not recorded nor was written minutes kept. An affidavit affirming the purpose of the meeting is contained in the supplemental file.

**Motion:** Council Member Payne moved to go out of the closed meeting.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

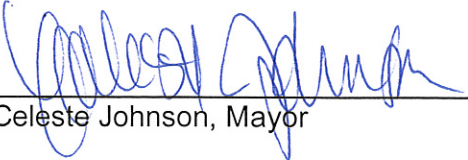
**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

#### 14. Adjournment

**Motion:** Council Member Drury moved to adjourn the meeting. Council Member Payne seconded the motion. The motion passed unanimously.

The meeting was adjourned at 10:15 p.m.

  
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Celeste Johnson, Mayor

  
\_\_\_\_\_  
Brad Wilson, Recorder