

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

MONDAY, OCTOBER 17, 2005

The City Council of Salt Lake City, Utah, met in a Special Session on Monday, October 17 2005 at 5:00 p.m. in Room 315, City Council Chambers, City County Building, 451 South State.

The following Council Members were present:

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| Carlton Christensen | Van Turner | Jill Remington Love |
| Eric Jergensen | Dave Buhler | Nancy Saxton |
| Dale Lambert | | |

Mayor Ross C. "Rocky" Anderson; Cindy Gust-Jenson, Executive Council Director; Edwin Rutan, City Attorney; Larry Spendlove, Senior City Attorney; Boyd Ferguson, Senior City Attorney; Sonya Kintaro, Election Coordinator; and Chris Meeker, Chief Deputy City Recorder, were present.

Councilmember Lambert presided at and conducted the meeting.

#1. RE: Receive an update from the City Attorney, City Recorder and County Elections Clerk (tentative), **regarding the October 4, 2005 Primary Election and ballot processing.** (See Unfinished Business #1).

#2. RE: Consider a motion to **enter into Executive Session for attorney-client matters** that are privileged **pursuant to Utah Code Ann. § 78-24-8.**

Councilmember Buhler moved and Councilmember Christensen seconded, to **enter into Executive Session**, which motion carried all members present voted aye.

UNFINISHED BUSINESS

#1. RE: The Mayor and City Council **convened as the Board of Canvassers** to examine the validity of the absentee ballots, and then direct the absentee ballots and provisional ballots to be counted electronically by the Salt Lake County Clerk. The Board of Canvassers will charge the City Recorder's Office to prepare a canvass to be presented to the Board of Canvassers later in the evening at a second meeting at 6:30 p.m. on Monday, October 17, 2005.

Councilmember Saxton moved and Councilmember Christensen seconded that the **City Council re-open as Board of Canvassers and reconsider 30 ballots which were found**, which motion carried, Mayor Anderson and Council Members Christensen, Turner, Saxton, and Lambert voted aye and Council Members Jergensen and Buhler voted nay.

Mr. Spendlove read a statement provided by the County Attorney's office. (See File M 05-1). He said a County employee picked up the mail from the Post Office between 8:00 and 10:00 a.m. on Tuesday, October 11,

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

MONDAY, OCTOBER 17, 2005

2005. Councilmember Lambert asked why this was not reported to the City until Friday afternoon. Mr. Spendlove said a County employee decided not to count the ballots because they were not received in the office by the 12:00 p.m. deadline. He said on Thursday, October 13, 2005 the County Clerk made the decision that the ballots should be counted because a County employee had them in possession by 12:00 p.m. He said the County Clerk contacted County legal counsel and the County mailroom delayed contacting Salt Lake City one more day.

Councilmember Lambert said his understanding was that a County mailroom employee used the normal course of delivery and did not deliver any mail to the elections office until after 12:00 p.m.

Councilmember Christensen asked if a recount had been requested in District 7 and if the recount had taken place. Mr. Rutan said that was correct. He said Utah Code 20A-4-401(1)(a)(ii) gave three working days from the Board of Canvassers meeting for a request of recount for the Municipal Primary Election. He said for the General Election code gave seven working days from the Board of Canvassers meeting for a recount request.

Councilmember Lambert asked if the Council could reopen the decision of the Board of Canvassers recognizing the election. He said the Council had met with the City Attorney and Utah law was unclear and did not answer the question. He asked if the Council was prepared to accept the ballots under the circumstances that the County picked up the ballots before 12:00 p.m. but delivered them to the Elections Office after 12:00 p.m.

Councilmember Saxton said the issue was uncomfortable and unfair. She said it was essential that people who chose to vote for a candidate were recognized. She said she would want every ballot counted.

Councilmember Buhler said the situation was difficult. He said he agreed all ballots should be counted but it was unfortunate the County had not given the 30 ballots to the City in a timely manner. He said finality was an important factor and confidence in the process was important. He said he did not want to reopen the Board of Canvassers because other ballots might be found.

Councilmember Christensen said considering the lack of knowledge divulged to the City by the County and normal business conduct of the City Council he felt the ballots in question should be counted.

Councilmember Turner said the issue was not a City process problem. He said the Council needed to be fair with voters and count the ballots.

Councilmember Jergensen said the situation was unfortunate. He said there was a point at which a vote count should be final. He said the

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

MONDAY, OCTOBER 17, 2005

count should have been final after three working days in which a request of a recount could be performed. He said he would vote against the motion.

Councilmember Lambert said it was unfair to candidates because one candidate had not campaigned because he thought he had lost. He said the other candidate who was certified as the winner had continued to work and raised funding. He said there was no question what the Council would have done if the County had told the City in a timely manner. He said he felt the ballots were legally cast. He said the ultimate unfairness was to not count the properly cast votes.

Councilmember Saxton said State Code did not instruct the use of the recount time as a guide. She said that was an individual choice.

Councilmember Buhler said State Code did give recount times of three working days for the Municipal Primary and seven working days for the General Municipal Election. He said this provided recognition that there was a time to count votes. Councilmember Jergensen said State Code did not indicate at what point an election count was final.

Mayor Anderson said he felt all ballots should be considered.

Councilmember Buhler asked why the ballots in question had been opened and were stapled shut. Sonya Kintaro, Elections Coordinator said the County Election Office said their procedure was to slit open the envelope, remove the application for absentee ballot for the General Election and compare the signature of application with the signature on the primary absentee ballot. Councilmember Buhler said previous ballots that the Council reviewed were not opened.

Mr. Spendlove said State law was unclear regarding ballots being opened. He said 20A-4-303(2), Utah Code, said in canvassing returns, the Board of Canvassers may not:

(a) reject any election returns if the board can determine the number of votes cast for each person from it;

(b) reject any election returns if the election returns:

(i) do not show who administered the oath to the judges of election;

(ii) show that the election judges failed to fill out all the certificates in the poll books; or

(iii) show that the election judges failed to do or perform any other act in preparing the returns that is not essential to determine for whom the votes were cast; or

(c) reject any returns from any voting precinct that do not conform with the requirements for making, certifying, and returning the returns if those returns are sufficiently explicit to enable the Board of Canvassers to determine the number of votes cast for each person and for and against each ballot proposition.

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

MONDAY, OCTOBER 17, 2005

Councilmember Buhler said at the last canvass all the envelopes were sealed. He said he was uncomfortable with them being opened and then stapled. He said he wanted the County Clerk to tell the Council about the envelopes.

Ms. Gust-Jenson phoned the Salt Lake County Clerk's Office using a speaker phone and spoke with Sherrie Swensen, Salt Lake County Clerk, Rozan Mitchell, Assistant Elections Manager, and Julio Garcia, Elections Manager.

Councilmember Lambert asked why the ballots had been opened and then stapled. Ms. Mitchell said the ballots were from a vote by mail precinct and had arrived late. She said they were opened because they contained an application with the voter's signature. She said they wanted to be able to use that application for the general election. She said the integrity of the process was protected by having at least two people with the ballot at all times. She said at the time the ballots were opened election staff thought they would not be counted. She said the procedure was to remove the application, leave the ballot in the envelope, staple the envelope shut and file the ballot.

Mr. Garcia said as a point of clarification, when absentee ballots were received before the election they were opened and readied for counting with all ballots cast on Election Day. He said any absentee ballots received after Election Day and postmarked correctly were presented to the Board of Canvassers for determination.

Councilmember Lambert asked if the Clerk's Office would certify that the ballots had not been tampered with. Ms. Mitchell said that was correct and the ballots had never been removed from the envelopes.

Councilmember Lambert asked the County to confirm that the ballots were picked up on Tuesday, October 11, 2005 by a County employee between 8:00 and 10:00 a.m. Mr. Garcia said that was correct and referred to an E-Mail from Jason Yocom, County Chief Deputy Clerk. (See File M 05-1)

Councilmember Lambert asked why the City was not informed of the situation on Tuesday, October 11, 2005 before certification of the ballots. Mr. Garcia said that was an unfortunate logistical problem. He said that afternoon between 2:00 and 3:00 p.m. election staff tabulated absentee ballots through card readers for nine cities which contracted with the County Election Office. He said four of the nine cities had representatives present when the late absentee ballots were delivered. He said the four cities present were made aware of the ballots and the consensus was that the ballots were late and would not be counted. He said he told Ms. Swensen on Thursday, October 13, 2005 and she said it was a city issue and the cities needed to make the final determination. He said the County was contracted to do the logistics and administration of the election only.

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

MONDAY, OCTOBER 17, 2005

Ms. Swensen said her concern was that through the process there was delay due to the Columbus Day holiday and the mail route. She said a detailed review with the mailroom supervisor took place on Friday, October 14, 2005 and County legal counsel also reviewed the issue. Ms. Swensen said the amount of ballots coming in late was a concern.

Councilmember Saxton asked why Salt Lake City was not notified earlier. Mr. Garcia said the ballots from the Salt Lake City canvass were brought in for counting at approximately 2:00 p.m. He said election staff waited for other representatives from other cities to bring ballots in so they could be run at the same time. He said the representative from Salt Lake City arrived before other city representatives. He said the representative left and returned later to pick up the report. Councilmember Saxton asked why the Salt Lake City representative was not told when she returned to pick up the ballots. Mr. Garcia said it was the general consensus of the cities represented at the time that the deadline was not met. Ms. Swensen said at that time election staff did not understand all the circumstances.

Councilmember Lambert said the Council would proceed with the review of the series of ballots which were postmarked after October 3, 2005.

Councilmember Jergensen moved and Councilmember Christensen seconded **to not accept seven ballots in question**, which motion carried, all members present voted aye.

The Council reviewed all other ballots for signature and postmarks.

Councilmember Jergensen moved and Councilmember Saxton seconded **accept 23 valid ballots**, which motion carried, all members present voted aye.

Councilmember Christensen sealed the envelope with the twenty three valid ballots inside and presented it to Ms. Kintaro to be taken to the County Offices and counted.

Ms. Kintaro presented the Council with the final Board of Canvassers report.

Councilmember Jergensen moved and Councilmember Turner seconded to **accept the Official Canvass of vote and certify the election**, which motion carried all members present voted aye.

Councilmember Jergensen moved and Councilmember Lambert seconded to **recess as the Board of Canvassers** which motion carried, all members present voted aye.

(U 05-1)

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

MONDAY, OCTOBER 17, 2005

The meeting adjourned at 8:21 p.m.

Council Chair

Chief Deputy City Recorder

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PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

TUESDAY, OCTOBER 18, 2005

The City Council of Salt Lake City, Utah, met in Regular Session on Tuesday, October 18, 2005, at 7:15 p.m. in Room 315, City Council Chambers, City County Building, 451 South State.

The following Council Members were present:

Carlton Christensen
Nancy Saxton
Dale Lambert

Van Turner
Jill Remington Love
Eric Jergensen
Dave Buhler

Cindy Gust-Jenson, Executive Council Director; Mayor Ross C. "Rocky" Anderson; Ed Rutan, City Attorney; and Chris Meeker, Deputy City Recorder were present.

Councilmember Lambert presided at and conducted the meeting.

#1. The Council led the Pledge of Allegiance.

#2. Councilmember Buhler moved and Councilmember Turner seconded to approve the **minutes** of the Salt Lake City Council meetings **held October 6 and October 11, 2005**, which motion carried, all members voted aye.

(M 05-1)

#3. Adopting a **joint ceremonial resolution with the Mayor honoring the officers and enlisted personnel of the USS Salt Lake City SSN-716**. (The USS Salt Lake City will be inactivated at a ceremony in San Diego on October 26, 2005.)

Councilmember Christensen moved and Councilmember Turner seconded to adopt **Resolution 60 of 2005**, which motion carried, all members voted aye.

R 05-1

PUBLIC HEARING

#1. Accept public comment and consider adopting an ordinance **amending Salt Lake City Ordinance 26 of 2005** which adopted the final budget of Salt Lake City, Utah and **Ordinance 48 of 2005 which ratified and readoped the final budget for fiscal year beginning July 1, 2005 and ending June 30, 2006**. (Budget Amendment No. 2).

(B 05-9)

Councilmember Saxton moved and Councilmember Turner seconded to **close the public hearing**, which motion carried, all members voted aye.

Councilmember Christensen moved and Councilmember Turner seconded

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

TUESDAY, OCTOBER 18, 2005

to amend the final budget of Salt Lake City, including the employment staffing document for Fiscal Year 2005-2006 as proposed by the Administration to establish a special revenue fund relating to Library Square, with the understanding that the funds will be expended in accordance with a written agreement signed by the Library Director and the City Attorney and to Adopt Ordinance 60 of 2005, which motion carried, all members voted aye.

(B 05-9)

COMMENTS TO THE CITY COUNCIL

Rex Sears spoke regarding design review neighborhood by neighborhood. He said he was concerned how the Council would resolve over inclusion and under inclusion problems for each district.

NEW BUSINESS

#1. RE: Adopting an ordinance amending Section 5.76.040, Salt Lake City Code, clarifying the definition of handicapped person; amending Section 5.76.080, Salt Lake City Code, clarifying the definition of special transportation vehicle; and amending Section 5.76.590, Salt Lake City Code, relating to exemption of chapter applicability.

Councilmember Buhler moved and Councilmember Saxton seconded to suspend the rules and adopt Ordinance 61 of 2005, which motion carried, all members voted aye.

(O 05-23)

UNFINISHED BUSINESS

#1. Adopting an ordinance amending Chapter 2.24 and 2.52.130 of the Salt Lake City Code, relating to the Employee Appeals Board, and the employee transfer or discharge.

Councilmember Christensen moved and Councilmember Turner seconded to adopt Ordinance 62 of 2005, which motion carried, all members voted aye.

(O 03-25)

CONSENT AGENDA

Councilmember Turner moved and Councilmember Christensen seconded to adopt the Consent Agenda, which motion carried, all members voted aye.

#1. Adopting Ordinance 63 of 2005, (the "2005" Assessment Ordinance) approving the assessment list and levying an

05 - 140

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

TUESDAY, OCTOBER 18, 2005

annual assessment upon property in Salt Lake City, Utah **Special Lighting District No. 2** now know as **L02** ("the District **L02**"); establishing the effective date of the 2005 Assessment Ordinance; providing for a procedure to contest an assessment; and related matters.

(Q 05-10)

#2. RE: Setting the date of **November 15, 2005 at 7:00 p.m.** to accept public comment and consider adopting an ordinance **amending Section 21A.62.040 of the Salt Lake City Code** pertaining to Zoning Ordinance definition of "**automobile**" so that sales of motor scooters and motorized bicycles will be allowed in zoning districts that otherwise prohibit the sales of automobiles pursuant to Petition No. 400-05-12.

(O 05-24)

#3. RE: Setting the date of **November 15, 2005 at 7:00 p.m.** to accept public comment and consider adopting an ordinance **requesting that properties located within the general area of 405 West 2300 North on the Lake Bonneville Bench Area east of Beck Street to be rezoned an Open Space zoning district to a Natural Open Space District** and confirm the date of **November 1, 2005 at 7:00** to accept public comment and consider adopting an ordinance amending the *Salt Lake City Code*, Section 21A.32.140, **pertaining to permitted and Conditional Uses for Special Purpose Districts**. Pursuant to Petition No. 400-05-20.

(O 05-25)

#4. RE: Approving the appointment of **Christopher Otto**, to the **Open Space Lands Board** for a term extending through March 1, 2009.

(I 05-13)

#5. RE: Approving the appointment of **Christine A. Johnson, Orin A. Howell, Patrick W. Leary, Francisca Blanc, and Adrian Comollo** to the **Human Rights Commission** as outlined in the ordinance, term ending dates will be drawn by lot to expire on a staggered basis of two, three or four years each.

(I 05-28)

#6. RE: Approving the appointment of **Guillermo J. Arce**, to the **Capital Improvement Program** for a term extending through June 2, 2008.

(I 05-18)

The meeting adjourned at 8:41 p.m.

PROCEEDINGS OF THE CITY COUNCIL OF SALT LAKE CITY, UTAH

TUESDAY, OCTOBER 18, 2005

Council Chair

Chief Deputy City Recorder

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