

OFFICIALS PRESENT: Mayor Karen Cronin presided and conducted the meeting.
Esther Montgomery, Todd Christensen, Peter Gerlach, Brady
Lewis

OFFICIALS EXCUSED: Jana Nelson

CITY STAFF PRESENT: Greg Westfall, City Administrator
Malone Molgard, City Attorney
Shanna Johnson, Chief Deputy Recorder

OTHERS PRESENT: Lani Braithwaite, Shelly Gomez, Darren Thompson, Lawrence
Gunderson

ITEM 1: CALL TO ORDER

Mayor Cronin called the meeting to order.

A. INVOCATION

Council Member Lewis offered the invocation.

B. PLEDGE OF ALLEGIANCE

Mayor Cronin led the audience in the Pledge of Allegiance.

C. REVIEW AND ADOPT THE AGENDA

MOTION: Council Member Montgomery made a motion to approve the agenda. Council
Member Lewis seconded the motion.

ROLL CALL: Council Member Christensen, Yes Council Member Montgomery, Yes
Council Member Lewis, Yes Council Member Gerlach, Yes
Motion Approved. 4 Yes, 0 No.

ITEM 2: PROCEDURAL ISSUES

A. CONFLICT OF INTEREST DECLARATION

None.

B. PASS OUT WARRANTS TO COUNCIL MEMBERS (AND POSSIBLE DISCUSSION)

Shanna Johnson passed out the warrants. She explained that there is an extra warrant that
has been included for Screen Printers Plus. She advised that this is for our 4th of July T-
Shirts which will be delivered tomorrow.

C. BUSINESS LICENSE(S)

- None

ITEM 3: PUBLIC HEARING

A. PUBLIC HEARING REGARDING ORDINANCE 15-J AMENDING THE DISPOSAL OF PUBLIC OWNED PROPERTY

Council Member Christensen asked if the word disposal could be changed to sale. Malone Molgard stated that property is not always sold. He said that this is term used in the State statute.

MOTION: Council Member Gerlach made a motion to open a public hearing to discuss Ordinance 15-J Amending the Disposal of Public Owned Property. Council member Montgomery seconded the motion.

ROLL CALL: Council Member Christensen, Yes Council Member Montgomery, Yes
 Council Member Lewis, Yes Council Member Gerlach, Yes
Motion Approved. 4 Yes, 0 No.

Jerry Nelson: said he is in support of the City passing ordinances that comply with state law. He asked when property or parcels for sale would be listed for public to make comment. He said in the ordinance it states that this will be 2 weeks prior to property being listed. He said there are a lot of ½ acre parcels in town that people would like to see become parks.

MOTION: Council Member Gerlach made a motion to close the public hearing. Council Member Montgomery seconded the motion.

ROLL CALL: Council Member Christensen, Yes Council Member Montgomery, Yes
 Council Member Lewis, Yes Council Member Gerlach, Yes
Motion Approved. 4 Yes, 0 No.

ITEM 4: ACTION ITEMS

A. APPROVAL OF THE WARRANTS

MOTION: Council Member Gerlach made a motion to approve the warrants including the additional warrant for Screen Printers Plus (4th of July T-Shirts). Council Member Montgomery seconded the motion.

ROLL CALL: Council Member Christensen, Yes Council Member Montgomery, Yes
 Council Member Lewis, Yes Council Member Gerlach, Yes
Motion Approved. 4 Yes, 0 No.

Approx. 7:15p.m.

B. ORDINANCE 15-J AMENDING THE DISPOSAL OF PUBLIC OWNED PROPERTY

Council Member Christensen asked after approval of the ordinance how long it would take to get it online. Malone Molgard answers a few days to a week. Mayor Cronin asked if there are any other questions regarding the ordinance. There were no questions. Mayor Cronin asked if there was anyone else in the public that had any further comments regarding the ordinance. There were no comments.

MOTION: Council Member Lewis made a motion to approve Ordinance 15-J Amending the Disposal of Public Owned Property. Council Member Montgomery seconded the motion.

ROLL CALL: Council Member Christensen, Yes
Council Member Lewis, Yes
Motion Approved. 4 Yes, 0 No.

Council Member Montgomery, Yes
Council Member Gerlach, Yes

C. AUTHORIZE THE MAYOR TO SIGN A CONTRACT WITH BOX ELDER COUNTY FOR ELECTION SERVICES

Mayor Cronin explained that Susan Obray asked we put forth action to authorize the Mayor to sign a contract with Box Elder County for election services. She said that we did look at the vote by mail option, but it was more expensive than the traditional election process. Council Member Christensen confirmed that these services were included in the budget. Shanna Johnson said yes.

MOTION: Council Member Christensen made a motion authorizing the Mayor to sign a contract with Box Elder County for Election Services. Council Member Montgomery seconded the motion.

ROLL CALL: Council Member Christensen, Yes
Council Member Lewis, Yes
Motion Approved. 4 Yes, 0 No.

Council Member Montgomery, Yes
Council Member Gerlach, Yes

D. Citizen Concern Regarding Residency & Fire Restrictions

Mayor Cronin advised that she received a written letter with concerns regarding a couple of issues:

- 1. Fire Restrictions:** Mayor Cronin explained that the citizen addressed concerns with fireworks and requested that fireworks be banned except in public parks where a fire department can oversee and be involved. She said that fire restrictions were discussed in the last meeting and fireworks were restricted in the areas outlined by Brigham City Fire Chief Bach (restricted 1 block west of the foothills on the east side of town and west of the tracks on the west side of town). Council Member Christensen said that in the past fireworks have been restricted east of Highway 89. He said that the current restriction is confusing and recommended extending this to East of Highway 89. Mayor Cronin said that east of Highway 89 is the restriction that Police Chief Weese recommends; she and Greg Westfall were also in support of this restriction being extended to all areas east of the Highway. Council Member Lewis said that there is a map on the website that clearly outlines the restricted area. He said he can see their concern but there was a good conversation about this last meeting and he is confident with the decision that was made. Mayor Cronin said she is concerned that if there is a fire in the foothills that is a huge liability on the City. She said that there was a discussion about this, but she felt it was worth discussing this again. Council Member Montgomery said she is comfortable with the restrictions that were set last time, but also thought that Chief Weese's recommendation was fine, restricting all fireworks east of the Highway and offering those who would like to light fireworks to do this at the Perry Park. Council Member Lewis said that the current restrictions have been set and placed on the City website. He said that many people have already purchased fireworks based on the current restrictions and he feels that some may see it as negative to change this

2. Residency of Council Member Lewis:

Mayor Cronin read a letter received a resident concerning the residency of Council Member Brady Lewis. The citizen was concerned that he had moved outside of Perry City limits, yet was still acting as a City Council Member and making decisions that affect the City and them as a tax payer.

Mayor Cronin said that she received an email from Council Member Lewis a couple of months ago stating that he had moved out of the city limits due to some issues with housing. She said that she consulted with Greg Westfall regarding the issue and after receiving his input she also went to our City attorney Malone Molgard to get his input. She said after gathering input she asked Council Member Lewis to come in and talk with them. She said she has talked with a few residents have come to her with concerns and she advised that if they have deep concerns she would appreciate the concerns in writing. She said that this is the first one she has received in writing and that is why she is addressing the issue at this time.

She asked Greg to share with the Council the input he gave her regarding this issue and any other information he may have regarding this situation. Greg said that when he was asked to look at this he referred to State code. He said there are two codes that apply:

- 10-3-301:
 - 4A: which states that each elected officer of a municipality shall maintain a residence within the boundaries of the municipality during their term of office; and
 - 4B: which states if an elected officer of a municipality establishes a principle place of residence as provided in section 20A-2-15 outside of the municipality during the officer's term of office the office is automatically vacant.

Greg stated we must look at section 20A-2-105 to identify what the code is trying to talk about.

- 20A-2-105:
 - 1A: states a principle place of residence means a single location where a person's habitation is fixed and to which whenever the person is absent the person has the intention of returning.
 - 1B: includes the definition of a resident, as a person whose principle place of residence is located in a specific voting precinct in Utah.
 - 3E-i: except as provided in sub-section 3E-2 or 3E-3 a person has not lost the person's principle place of residence in Utah, or voting precinct if that person moves to a foreign Country, another State, or another voting precinct in Utah for temporary purposes with the intention of returning.

Greg said the way he understands the State Code to be written is that 3E-i applies unless 3E-ii or 3E-iii overrides this rule. He then reviewed these sections:

- 3E-ii: says if a person leaves the State or voting precinct and votes in another State or voting precinct they are no longer a resident.
- 3E-iii: says a person loses their principle place of residence in Utah or in a precinct if after the person moves to another State or another precinct under

subsection 3E-i the person forms the intent of making the other State or precinct the person's principle place of residence.

Greg stated that 3E-ii does not apply and you would need to go to definition of a principle place of residence listed in 1A to clarify 3E-iii. He then reviewed the following sections that may apply:

- 3G: states that a person loses the person's principle place of residence in Utah or precinct if the person moves to another State or precinct with the intention of making the other State or precinct their principle place of residence.
- 3H: details that if a person moves to another state or precinct with the intent of remaining there for an indefinite time as the person's principle place of residence the person loses the person's residence in Utah or the precinct even though the person intends to return at some future time.

Greg stated that these are the sections of State code that he reviewed when he was asked to look at this issue. He said that this information was presented to the Mayor and they have had lengthy discussion regarding the matter. He agrees that there is a little bit of a gray area at times in the code and it can possibly be interpreted in different ways. He stated that his interpretation of the code at this time regarding this circumstance is that the principle place of residence has been changed.

Malone Molgard reviewed the history of this issue, stating that Council Member Lewis came to him back in March of 2015 with some questions. He said Council Member Lewis explained to him that he was living in a rental house and there was a potential that this could be sold leaving him without a place to live. Council Member Lewis reported that he was planning to build a house and was concerned regarding finding another rental home in Perry. He had thought he would have a hole in the ground in a few weeks and would be moving into the new home within 6 months. Malone stated that based on the facts given to him at the time, he had advised Council Member Lewis that he thought he was on solid ground. Malone stated that circumstances have changed and the ways that things have worked out are a little different than planned. He said based on the statute specifically section 3H which refers to moving to another State or precinct for an indefinite amount of time, he agrees with Greg Westfall that Brady Lewis would not be able to stay on as a City Councilman.

Council Member Lewis read a statement that he prepared detailing his intentions so that they are understood:

"When elected I lived in Maple Hills of Perry with no intention of leaving Perry. Without having our house on the market, a family made an offer on our home. We took the offer and immediately bought a lot down the street and began working on plans to build. While we prepared to build we moved into a rental home on 2700 South. In the early part of this year the house we were renting was put on the market. Knowing that we would possibly need to find another home and only after not finding anywhere in Perry to rent, I wrote our City Attorney seeking counsel. On March 23, 2015 I outlined the situation and followed it with the statement that 'I looked into Perry's Ordinance and can't find anything for City Council, but do see some things for Planning Commission, what say ye.' On March 25, 2015 Malone wrote me back citing Utah Code 10-3-301 eligibility requirements for municipal office section 20A-2-105..."

Council Member stated this section was reviewed earlier in the meeting, but highlighted the section referring to moving for temporary purposes with the intention of returning. Council member Lewis continued reading his statement:

“Malone advised me that with my intent to temporarily move outside of the City under the conditions stated while I build my home would not be in violation of the law. I followed up with qualifying questions and subsequent emails to make sure I understood his counsel to which he replied in the affirmative. With this advice well in advance, I continued to look for a new residence in Perry. When the time came that I had to vacate the rental home, I had not found a place inside City limits to reside while I built my home in Perry. In parallel my builder had given a verbal agreement that he would commence construction within the month, but then proceeded to delay because he was too busy. He has since then resorted to avoiding communications with me and I have been forced to start over with another builder. For this reason our construction has been delayed and I am getting bids from other builders. With previous counsel I advised the Mayor on May 4th of my situation and proceeded to move all of our belongings to a storage shed in Perry and began to stay in my parent’s home in Thatcher since they had left on their mission. My current status is this:

- All of my things are in storage in Perry;
- My children continue to go to school in Perry;
- I do not vote outside of Perry;
- I go to church in Perry;
- I own land in Perry;
- I am soon to reside in Perry permanently once my home is finished;
- I only live temporarily outside of Perry due to external consequences;
- I am serving as a City Council Member of Perry because I love this City and want to serve it;
- I have donated hundreds of hours and have made a significant investment to bring myself to the point of being an asset to the City;
- I intend to continue to serve in my capacity as a City resident, though temporarily displaced.

Thanks for your consideration.”

Council Member Lewis said he prepared this statement at about 3:00pm, before meeting with Greg Westfall. He said until today he did not know that anything he was doing was possibly outside of the law. He said to be honest right now he is a little bit in limbo and is unsure what his and the City Councils next steps should/could be.

Mayor Cronin stated with that she would like to add a couple more things that have been done. She said that she did contact the Utah League of Cities and Towns (ULCT) and asked for a little more definition on the statutes. She said some of the questions the ULCT had were:

- Where was the mailing address for the elected official;
- Where would the individual go at the end of each day; and
- Would the individual be eligible to vote in the precinct they serve?

Mayor Cronin asked Council Member Lewis where his mail is sent. Council Member Lewis answered in Thatcher. Mayor Cronin asked Greg and Malone if his mailing address is in Thatcher would he be able to vote in Perry City. Greg said he was unsure. Council Member

Christensen said it would be more for an election judge. Malone stated that section 4 of Utah Code 20A-2-105 talks about election criteria that an election judge would use in determining eligibility to vote, which includes:

- Where the person's family resides;
- Whether the person is single, married, separated, or divorced;
- Where the person usually sleeps;
- Where the person's minor child attends school;
- The location of the person's income source and business pursuits;
- The location of real property owned by the person;
- The person residence for purpose of taxation;
- And other relevant factors.

Malone stated that these are the things that are considered when reviewing voter eligibility. He said he thinks that what Greg brought up regarding what the intent to return is and the principle residence, there is a lot of gray in the statutes and he personally believes that in March when they exchanged emails and based on the set of facts that were presented: that within 2 weeks they would have a hole in the ground, he would be moved back in to city limits within 6 months, and that he would be living in the rental house as long as possible he was fine to continue as an elected official. He said now it is 3 months later, there is no hole in the ground, and indefinite plans for completion of the home, this situation now falls under section 3H. Malone said there are some options for the Council one is that we can send this to the State Lieutenant Governor's office and ask them for clarification given the set of facts that we have. Mayor Cronin said that the other issue with this is that if challenged by a citizen, council member or the Mayor and if it is found that the office should have been vacant and he voted on something, the action could come back up and be nullified. She said that the last thing that she asked Greg to look at is that there was a situation similar to this in Pleasant Grove. She asked him to look at this situation and the outcome. She asked Greg to review this.

Greg said that Utah Representative Craig Frank from the Pleasant Grove, Cedar Hills, American Fork area. He chose to move to an area he thought was in his voting precinct. He found out after that the boundaries had been changed and it was found that he no longer qualified to hold office and was not allowed to keep his seat. Mayor Cronin advised that if this is sent to the Lt. Governor's office this may be the outcome. Council Member Christensen stated he felt the fact pattern was different in this situation.

Council Member Lewis said that he ran for office to serve the community and the citizens. He said that he does not want to make this a circus. He thought he was working within the law and if he is not he has no intention of continuing my duties. He stated he would like to offer his resignation. Mayor Cronin said she is not sure that is where we are going with this; we are just trying to find out what the law is and how we can abide by it. She advised that might mean that you move back to the city, or another option. Council Member Lewis said that is his resignation and there really is nothing else to discuss.

Council Member Christensen clarified the difference in this case compared to the case referred to. He said that Council Member Lewis is living in a family member's home, he does not pay property tax there, he owns property in Perry City, his children attend school

in Perry City, and he pays property tax in Perry. He said that as he looks at it Council Member Lewis meets 4 of the election criteria. He said there is no doubt that he sleeps in Thatcher. Council Member Christensen said that he has only known about this issue for 4-5 days. He suggested to Council Member Lewis that this case be sent to the Lt. Governor's office and based on their timeframe we put a soft hold on the issue and revisit it in 30 days. He said at that time if he has a contract with a builder and is building a home in Perry; that shows intent to return. He said those are his observations. He said there are some things that show that he has intent to return. Malone agreed that the difference in this case compared to the Craig Frank case is that Mr. Frank moved and there was no intent to return to the voting precinct. He said that there is a lot of gray area and the only way to clarify this is to go to the Election officials which is the Lt. Governor's office and let them issue an opinion. Malone said that he does not think that Council Member Lewis has done anything maliciously, things just changed.

Council Member Montgomery said that although his time to return may be indefinite, she does not believe his intent was ever to vacate his position or the city. Mayor Cronin agreed and said we just need to get clarification.

Council Member Lewis said this is difficult because on one hand some of the things that were said suggested that he was bringing liability to the city and it is just not worth it. It's not worth paying to be on the City Council. He stated that he does this as a service and there are plenty of people who could do this job. On the other hand he put his name on the ballot and feels a duty to the people who voted for him to fulfill the term that he signed up for. He said half of the information brought up tonight is new to him that he has not even had time to process it. He advised that he has no problem in resigning if it is for the good of the city; he is not here for power, or an agenda, or anything else. He said that if everyone would legitimately like for him to stay and this is something we would like to fight for, than he would be open to that as well. He said if it is bringing liability to the city he does not think it is worth it.

Council Member Christensen suggested that Council Member Lewis not attend City Council meetings for 2 meetings or until the Lt. Governor's office has had time to review the case and until he has a contract with a builder. He said this would ensure that Council Member Lewis will not be voting on anything, but will retain his seat.

Mayor Cronin said she took a little bit of exception to the statement regarding the information being new. She said that she and Greg Westfall went over these facts with Council Member Lewis back in May. She advised that she has waited to bring this before the Council until a citizen brought the issue forward in writing. She stated that Council Member Christensen has put out a good suggestion. She said that no one has tried to withhold information. Council Member Lewis explained that he did not mean to insinuate that information was withheld. He said that the only thing that is new is that from previous conversations with Malone regarding the situation he was okay and now it is suggested that he may not be okay to continue as an elected official. Council Member Christensen stated this information is however new to the Council.

Malone agreed with Council Member Christensen's plan and stated that if the information comes back from the Lt. Governor's office in a week and is in favor of Council Member Lewis continuing as an elected official we could reinstate him at that time. Council Member Lewis clarified that the Mayor and Council are denying his resignation. Mayor Cronin said that it would need to be his decision whether or not to withdraw his resignation because at the end of the day it is Council Member Lewis who will have to stand up for his choice and it would be his duty to demonstrate that the position was not vacated. Mayor Cronin said the City is here to support him and provide appropriate resources to him. Council Member Lewis officially withdrew his resignation. Council Member Christensen said he thinks that is a smart move.

MOTION: Council Member Christensen made a motion to send relevant facts from Brady Lewis and the City referencing state code to the Lieutenant Governor's office for review and clarification. The Council will also ask in lieu of any liability issues that Council Member Lewis will forego voting in City Council meetings until a response is obtained from the Lt. Governor's office or a period of 30 days has passed and he has not been able to present a signed building contract (for Brady Lewis's future home in Perry). Council Member Montgomery seconded the motion.

DISCUSSION: Malone Molgard asked that Council Member Lewis forward any information to him that he would like sent to the Lt. Governor's office. Mayor Cronin said it was originally suggested that Council Member Lewis not attend City Council, but she suggested that he should attend but not vote. Everyone was okay with this. Council Member Lewis asked if he should still participate in the Fourth of July activities and continue to read email, etc. or should he abstain from all duties. Malone said he should just not vote. Council Member Christensen advised that he should abstain from voting and from any use of public funds.

ROLL CALL: Council Member Christensen, Yes Council Member Montgomery, Yes
 Council Member Lewis, Abstain Council Member Gerlach, Yes
Motion Approved. 3 Yes, 1 Abstain.

Council Member Gerlach advised that he and Council Member Christensen will be at scout camp during the time of the next scheduled City Council meeting and suggested that it may need to be moved in order to have a quorum. Mayor Cronin agreed and suggested moving this to July 23, 2015.

MOTION: Council Member Montgomery made a motion to move the July 16, 2015 City Council meeting to July 23, 2015 at 7pm. Council Member Christensen seconded the motion.

ROLL CALL: Council Member Christensen, Yes Council Member Montgomery, Yes
 Council Member Lewis, Abstain Council Member Gerlach, Yes
Motion Approved. 3 Yes, 1 Abstain.

Mayor Cronin said that this meeting agenda was supposed to be a 15 minute agenda in an effort to complete some needed business and get out to the 4th of July activities. She said

this is the reason that public comment was not put on this particular agenda. She said there has been a statement that was passed out regarding the movie in the park.

Mayor Cronin said that the agenda for the 4th of July activities is something that is set by the committee and herself acting as the Chair of that committee. Items have been added and subtracted over the years. She said that what is being questioned is why the movie in the park is being run through the Brigham Area Chamber of Commerce this year. She asked Greg Westfall to explain this. Greg advised that it was brought to the City's attention that proper licensing is needed in order to show a movie. He said that he has been involved in this process with other cities. He said that there is financial component to this. The City contacted the Chamber of Commerce as they have been doing this in Brigham City and they have a process to get proper licensing and abide by the law in showing films. He said Mayor Cronin and he met with Monica Holdaway of the Chamber of Commerce and found that the City was a little late and may not have time to get licensing. The Chamber already had the licensing for the film that will be showed tonight and they allowed the City to utilize this licensing for a fee. He said that Monica was very gracious and stated as a member of the chamber they would be willing to allow the use of their equipment, concessions, etc. The City felt this was a great thing to do and made a commitment at that point to move forward in utilizing the Chamber of Commerce for our movie in the park. He said it is the right thing to do to ensure that we are following licensure laws, advising that many cases have been settled through the courts for a lot of money if proper licensing is not obtained.

Mayor Cronin said the other item was taken into consideration was that we talked with the City Attorney who had just worked with a client who paid \$30,000 for showing a film without proper licensing. She said that it is also stated in the letter that somebody was told by City Staff to take control and oversee the movie. She said she is unsure what staff told this person to do this, but it did not come from her. She said that she made mention to this person that with Greg Westfall on board the City had the movie covered. She said that the letter also mentioned that there was money (\$1,500) that was offered and not accepted for this event. She said to date the City has collected \$6,500 in donations and she has never discouraged or denied anybody the opportunity to donate. She said that she wanted to make sure the Council new the reasons why the movie in the park was being ran through the Chamber of Commerce and the process that has been taken to ensure that the movie was properly and legally licensed to show.

Jerry Nelson interrupted the meeting declaring that the statements made were not true. He was not showing the movie illegally claiming that he had licensing through Walker Cinemas (to show videos as a movie in the park). Malone Molgard stated that no one accused him of showing an illegal movie. Mayor Cronin reminded Jerry that was an official meeting and she has had asked for input from the Council. Council Member Christensen said it sounds like things for the movie are in place and it starts in about an hour.

ITEM5: EXECUTIVE SESSION – None.

ITEM 6: ADJOURNMENT

None.

ITEM 9: Adjournment

MOTION: Council Member Montgomery made a motion to adjourn the council meeting.

Motion Approved. All Council Members in favor.

The meeting adjourned at 8:11pm.

Susan Obray, City Recorder

Karen Cronin, Mayor

Shanna Johnson, Chief Deputy Recorder