

Minutes of The Price City Council Meeting

City Hall: Price, Utah

January 13, 1998, 5:30 p.m.

Present:

Mayor Lou Colosimo

Councilmembers: Roy A. Nikas, Betty P. Wheeler, Joe L. Piccolo, Steve Bringhurst, Stephen L. Denison

Joanne Lessar (City Recorder), Pat Larsen (Finance Director), Nick Sampinos (City Attorney), Gary Sonntag (PW Dir/City Eng.), Aleck Shilaos (Chief of Police)

Excused: Vernon W. Jones, Administrative Assistant

Others Present: Gilberto R. Madrid, Debi Madrid, Eddie Horvath, Andy McCullough

Mayor Colosimo led the Pledge of Allegiance. Roll was called with the above members in attendance.

1. MINUTES - November 12, 1997

MOTION. Councilmember Nikas moved that the minutes of the November 12, 1997 meeting be approved as written. Motion seconded by Councilmember Wheeler and carried.

2. MINUTES - November 18, 1997

MOTION. Councilmember Wheeler moved that the minutes of the November 18, 1997 meeting be approved as written. Motion seconded by Councilmember Denison and carried.

3. VIETNAM MEMORIAL, PRICE CITY PEACE GARDENS - Concept Approval

Gilbert Madrid requested permission to erect a memorial in the Price City Peace Gardens as a tribute to those servicemen from Carbon and Emery Counties who lost their lives in the Vietnam War. He presented a preliminary sketch drawn by local artist Gary Prazen. He has been in contact with the DAV and VFW. **MOTION.** Councilmember Piccolo moved that the request be given concept approval and that Mr. Madrid work with Councilmembers Nikas and Bringhurst. Motion seconded by Councilmember Bringhurst and carried.

4. SUN ADVOCATE - Ad For Carbon/Emery County Energy Edition

Mayor Colosimo reported that the Sun Advocate is inviting the City to place an ad in the Carbon/Emery County Energy Edition. Joanne Lessar presented a copy of the 3 X 8 ad placed in last years Energy Edition at a cost of \$236.00.

MOTION. Councilmember Bringhurst moved that a 1/5 page ad in the amount of \$128.05 be approved and that the ad provide a message from the Mayor and Council supporting the heritage of energy. Motion seconded by Councilmember Piccolo and carried.

5. LIBRARY - Permission To Submit Grant To School and Library Universal Services

MOTION. Councilmember Wheeler moved that the Library receive permission to submit a grant application to the School and Library Universal Services. Motion seconded by Councilmember Bringhurst and carried.

6. LIFEGUARD/INSTRUCTOR/SUPERVISOR VACANCIES - Tabled

7. TIM FISHER CONSTRUCTION DRYWALL, BEACON RAILROAD SERVICES, CARBON CAB COMPANY - Home Occupied Businesses Approved

Councilmember Piccolo reported that the Planning and Zoning Commission gave a favorable recommendation to the following home occupied businesses.

Tim Fisher Construction Drywall, 251 South 700 West, Tim Fisher-Owner

Beacon Railroad Services, 161 East 900 North, Jeffrey Bracken-Owner (Transportation Services)

Carbon Cab Company, 41 East Smith Circle, Diane Truscott-Owner (Transportation Services) - Relocate To New Address

MOTION. Councilmember Piccolo moved that the businesses be approved upon payment of the business license fee. Motion seconded by Councilmember Denison and carried.

8. O'BRIEN PLUMBING & HEATING - Tabled

9. TACO TIME RESTAURANT, HELPER AUTO SALES - Conditional Use Permits

Councilmember Piccolo reported that the Planning and Zoning Commission gave a favorable recommendation to the following requests for conditional use permits.

Taco Time Restaurant - 640 West Price River Drive - Sign

Helper Auto Sales - 410 East Main - Sign

MOTION. Councilmember Piccolo moved that the signs be approved and that conditional use permits be issued. Motion seconded by Councilmember Denison and carried.

10. MARKET EXPRESS/BURGER KING/CAR WASH - Returned To Planning and Zoning Commission - Tabled

Councilmember Piccolo reported that the Planning and Zoning Commission reviewed the request of Market Express/Burger King/Car Wash for preliminary and final approval and gave a favorable recommendation. However, due to the large number of contingencies, he felt this is not ready for final approval. One of the largest concerns was the request by UDOT for a sidewalk on the north side of 1st North from their project to the river. His concern is that this was not required by Taco Time. Does UDOT want sidewalks on both sides of the highway at this location? **MOTION.** Councilmember Bringhurst moved that due to the large number of contingencies, that the item be tabled and referred back to the Planning and Zoning Commission. Motion seconded by Councilmember Wheeler and carried.

11. BILL'S HOME FURNISHINGS WAREHOUSE - Preliminary and Final Approval - Tabled

Councilmember Piccolo reported that the Planning and Zoning Commission reviewed the request of Bill's Home Furnishings Warehouse for preliminary and final approval. They discussed some of the items left undone from the last project. The catch basin on the corner of 1st South and 3rd East was never completed. With the current weather, the Commission placed this in the new project. There was also some concern regarding the easement on the east side of the property to access a power pole behind the old building. As he reviewed this piece of property, he was not sure if there was enough room to allow an easement unless there is a retaining wall between Peczuh's and Bills to level the ground. Staff has confirmed the fact that there is not enough room. **MOTION.** Councilmember Piccolo moved that until the elevations are placed in writing and the City assured they have an easement to the power pole, that the item be tabled. Motion seconded by Councilmember Nikas and carried.

12. CJ'S DO IT CENTER - Preliminary and Final Approval

Councilmember Piccolo reported that the Planning and Zoning Commission reviewed the request of CJ's Do It Center (lumber business) for preliminary and final approval. There were a few contingencies on this project. The biggest concern was the drainage. Mr. Krompel stated that he would fill an old dry well in the middle of the parking lot, and allow the

water to flow along 7th East. However, he does not believe this is possible due to the 3 to 4 foot drop from 7th East to the building elevation. After review by himself and staff, it was determined that the water flows through the parking lot and eventually ends up in Meads Wash to the east. This drainage needs to be clarified. There were also questions on fire hydrants, street lighting, landscaping, and the overhead sign and if it is on private property. In addition, there was discussion about street improvements on 1st North from 7th East on the backside of Mr. Krompel's property. There is about 150 feet that could become a liability either to the City or a future developer. **MOTION**. Councilmember Piccolo moved that preliminary and final approval be given contingent upon landscaping as agreed to in front of the building, on 7th East and underneath the sign, fire hydrants, clarification of drainage, and that future use of 1st South not be allowed unless development takes place to dedicate it. Motion seconded by Councilmember Bringhurst and carried.

13. DIVERSITY - License Revoked

Nick Sampinos reported that this is a hearing on the business license of Diversity, a body piercing business, and whether the license should be suspended or revoked based upon the allegations that have been presented. He previously forwarded a letter to Mr. Horvath setting forth certain allegations based upon reports submitted to his office by Police Chief Aleck Shilaos. Mr. Sampinos introduced Andy McCullough, who Mr. Horvath has hired to represent him.

Andy McCullough stated that there are three allegations against Mr. Horvath. These are body piercing, tattoos, and complaints from his business neighbors. His neighbors complain that Mr. Horvath's customers stand in front of his business and smoke and spit on the sidewalk. One of the allegations by the City is that in the past there has been some concern over underage people. There are no rules or regulations in place in the State of Utah concerning body piercing. His client has said that he will not tattoo or perform any body piercing on anybody under age 18 unless a parent is present and signs for them, and even then, he is not going under the age of 16. The other major problem other than body piercing, is the sale of pipes sold on the premises. Mr. McCullough presented a brochure on the different types of pipes that may be on display at Diversity, all of which are legal and sold to smoke different types of tobacco and legal smoking blends, and not to be sold to anyone under 18 years of age. In addition to the sale of pipes, Mr. McCullough presented a sample of smoking blends that is also sold. Mr. McCullough stated that his client feels very strongly that he is not breaking the law in selling these items. Mr. McCullough stated that there is a large colorful sign on the door of Diversity that states "if you come in here looking for a bong or a pipe for smoking illegal substances, you will be thrown out".

Mr. Sampinos stated that with respect to the complaints against Mr. Horvath, there is a little more to the story than just spitting on the sidewalk. The complainants stated that there are pictures being taken outside the store of body piercing, chest and nipple piercing, and discussions of genital piercing. The City would prefer that all of these activities take place inside the building rather than outside. Mr. McCullough stated that his client has not seen any of these activities. His employees sometimes walk outside to smoke.

Mr. Sampinos stated that it has been indicated that tattooing is being done on the premises. This activity was never part of the business license. Mr. McCullough stated that if this was never a part of the business, that it would be discontinued as of tonight. He is not aware of a specific ordinance on tattooing. Mr. Sampinos stated that his concern throughout this whole procedure is the license issued for Mr. Horvath was to conduct body piercing. It has now been expanded to tattooing and the sale of what the Police Chief believes is drug paraphernalia. The Council seems to be offended by this sort of conduct, and the fact that Mr. Horvath has gone beyond the scope of the original license application.

Mr. McCullough stated that as this is the first of the year, the Council needs to determine what additional licenses are needed. Chief Shilaos stated that customers of the business feel that the pipes are being portrayed for improper activities and use. The search warrant was based on three separate incidents where the pipes were sold. Pipes were taken pursuant to the search warrant, and now pipes of the same type and design are reappearing. Mr. McCullough stated that his client denies that he ever suggested to anyone that these pipes could be, should be, ought to be, or might be used for any illegal substance. Mr. McCullough stated that by looking at the pipes, you cannot tell if these pipes are drug paraphernalia or not.

Councilmember Piccolo stated that Mr. Horvath's business license application is pretty explicit. Mr. Horvath agreed that he would not body pierce anyone under the age of 18 without having a signed affidavit. Mr. McCullough stated that his client says that is exactly what he is doing. Councilmember Piccolo further stated that to his personal knowledge, there has been more than one occasion that this has not been the case, and the Council wants to determine if the business license has been violated. He discussed the fact that on the Internet, there are pictures of kids' tongues, nipples, and other parts of their body that have been brazenly photographed to provide very visible proof that it had been done. How did this happen, if it was agreed not to? Mr. Horvath stated that those pictures are no longer on the Internet. Councilmember Piccolo stated that the business license was not procured to have this type of activity. Should the license be revoked based on the fact that there was some criteria set forth that hasn't been followed? There are sixteen year old kids out there that have their tongues

pierced without parental consent. Mr. McCullough stated that his client does not deny that there have been a couple occasions where people under age have been pierced without specific written permission from their parents. Mr. Horvath tells him this has occurred only two or three times. He now has taken extra precautions that this will not happen again. Mr. McCullough stated that there has been no law violated. Councilmember Piccolo stated that the agreement in the license has been violated. Mr. McCullough feels that these violations are relatively minor infractions.

Councilmember Bringhurst stated that the Council and the City Business License Department were somewhat misled by the business license application because it states body piercing and sale of retail miscellaneous merchandise. He would have preferred Mr. Horvath telling them that he was going to open a "head" shop (sale of drug paraphernalia), and that he was going to provide tattoo services. He is not saying that the license would have been approved or disapproved. He does not like being misled. An individual can say what they want about smoking tobacco in these pipes, but everyone in this room can tell you what they are used for. What else would you do with a bong other than smoke illegal substances. Mr. McCullough stated that his client does not feel he is operating a "head" shop. The literature on the pipes state it is for tobacco. Councilmember Bringhurst questioned the allegation on pornography. Mr. McCullough stated that two movies were sold. His client tells him he had movies at home, but did not have them in his store. One particular customer asked him about them and after a bit of conversation, he told him that he did have one at home. Mr. Horvath states that he does not have any more movies and promises that he will not sell them any more.

Councilmember Nikas stated that he had some concern regarding Mr. Horvath's statement that he did not talk about the use of pipes for marijuana smoking. As stated in the allegations, there is a conflict between the situation on June 16 where Mr. Horvath talked about bongs instead of pipes and about "chucking" the pipe to avoid confrontation by Police Officers. The incident on October 15th specifically talks about marijuana being used in bongs. Relating the two, he has a hard time believing there isn't some concern. Mr. McCullough stated that he read the statements provided by the City Attorney to Mr. Horvath and asked him if this occurred. Mr. Horvath's answer was absolutely not. Mr. Sampinos stated that the CI (confidential informant) is not here and the matter has been referred to the County Attorney's office to consider the matter for prosecution. Councilmember Nikas also stated that just because there are not hundreds of people here does not mean the community is not concerned about the decision the Council makes.

Councilmember Piccolo then stated that he feels Mr. Horvath did not live up to the agreement of his original business license application that is signed by him. Mr. Horvath stated that he did not think about tattooing until several months after he got started in business, and it seemed to go hand in hand with the piercing. The pipes were not originally planned, but it was just another thing he decided to bring into the store. If the Council desired, he would be glad to get another license for tattooing. Councilmember Bringhurst asked if the sale of pipes would fall under Mr. Horvath's business license category as retail miscellaneous merchandise? Mr. Sampinos stated that it would if you take pipes as pipes with no other criteria, with no other information, such as the conversation between Mr. Horvath and the CI. This conversation leads one to believe that the pipes were used for the smoking of marijuana and that Mr. Horvath knew the pipes would be used for the smoking of marijuana when he sold them. The pipes alone are not illegal, but when combined with the other factors, they can be considered paraphernalia. The same applies to the movie, and whether it falls within the criteria set forth under Utah law, as to whether or not it was pornographic.

MOTION. Councilmember Piccolo moved that to protect the health, safety, and welfare of the citizens of this community, that the business license of Diversity be revoked due to the fact that Mr. Horvath violated the agreement stated in the business license application that he would not body pierce anyone under the age of 18 without having a signed affidavit from their parents. Motion seconded by Councilmember Denison and carried. The Council further stated that if Mr. Horvath chose to, he could reapply for a business license. The Council can then decide if this is the type of business it wants within Price City.

14. GENE MADRID - Resignation

EQUIPMENT OPERATOR - Permission To Advertise

MOTION. Councilmember Nikas moved that the resignation of Gene Madrid be accepted and that permission be given to advertise his replacement as Equipment Operator. Motion seconded by Councilmember Piccolo and carried.

15. FRANCIS DUZENACK - Travel Approved

Mayor Colosimo reported that Francis Duzenack has requested permission to attend the Utah Chapter ICBO Annual Business Meeting and Education Conference in St. George, February 17-20, 1998. **MOTION.** Councilmember Nikas moved that the travel be approved. Motion seconded by Councilmember Bringhurst and carried.

16. DARE PROGRAM - Civic Auditorium Rental Fees Waived

MOTION. Councilmember Piccolo moved that permission be given to waive rental fees for the Civic Auditorium for use by the Police Department Dare Program for February 2 and 3. Motion seconded by Councilmember Wheeler and carried.

17. RESOLUTION 98-01 - Amending Price City Policies and Procedures (Compensation, Section IX; Termination, Section XVII) - Tabled

18. OLSEN RESERVOIR ITEMS - Declared Surplus

MOTION. Councilmember Bringhurst moved that the items stored at Olsen Reservoir be declared surplus. Motion seconded by Councilmember Piccolo and carried. The items include 2 swamp coolers, 1 floor polisher, 1 sewer tape, one bobtail dump truck and 1 Ford flat bed. The Council discussed how to dispose of the items. **MOTION.** Councilmember Piccolo moved that Mr. Sonntag be authorized to follow the City's procedure regarding the sale of surplus property and come back with a recommendation as to how that procedure should be. Motion seconded by Councilmember Bringhurst and carried.

19. TKJ, INC. - Lease Agreement For Price Community Center

Nick Sampinos presented a lease agreement with TKJ, Inc., for lease of Space #235 in the Price Community Center. They are a non-profit organization and will be charged \$7.00/square foot per year. **MOTION.** Councilmember Denison moved that the lease be approved and that the Mayor and City Recorder be authorized to execute the documents. Motion seconded by Councilmember Wheeler and carried.

20. PINNACLE GATE CONVENIENCE CENTER (WESTWOOD BLVD. AND HOSPITAL DRIVE) - Partial Release of Letter of Credit and Extension of Construction Time

Gary Sonntag reported that the Pinnacle Gate convenience Center has requested a release of their letter of credit guarantee for work completed to date. They are eligible for a partial release of \$57,071.00. The remaining amount of \$14,315.70 will be held in escrow until the work is completed. Their letter of credit has expired and will need to be renewed in this amount. Both the developer and the bank appear willing to do this. Secondly, the allowable time for completion of the street improvements has come to an end as well. It is felt that a ninety (90) calendar day extension should give them enough time to finish the work. **MOTION.** Councilmember Nikas moved that the partial release in the amount of \$57,071 and the time extension of 90 days be approved. Motion seconded by Councilmember Denison and carried.

21. PURCHASE OF TWO 2 1/2 TON BOB TAIL TRUCKS WITH 10' DUMP BED AND HYDRAULICS - Permission To Enter Into Lease/Purchase Agreement

Pat Larsen presented the State bid prices for the purchase of two 2 1/2 ton bob tail trucks with 10' dump beds and hydraulics. The price is \$8,000 over on the budget for this purchase. She requested permission to lock in the interest rates and enter into a lease/purchase agreement. **MOTION.** Councilmember Bringhurst moved that Pat Larsen be authorized to enter into a lease/purchase agreement for the above items. Motion seconded by Councilmember Wheeler and carried.

22. DICK PEREA - Payment For Extra Days Vacation Approved

MOTION. Councilmember Nikas moved that Dick Perea be paid for the additional nine days of vacation that he accumulated prior to retirement. Motion seconded by Councilmember Piccolo and carried.

23. TINA HERNANDEZ - Resignation

PROGRAM DIRECTOR - Permission To Advertise

MOTION. Councilmember Wheeler moved that the resignation of Tina Hernandez be approved and that permission be given to advertise for her replacement as a Program Director. Motion seconded by Councilmember Piccolo and carried.

MOTION. Councilmember Nikas moved that the meeting adjourn and that a meeting of the Redevelopment Agency convene. Motion seconded by Councilmember Piccolo and carried.

Meeting adjourned at 8:05 p.m.

Reconvened at 8:10 p.m.

Meeting adjourned at 8:22 p.m.