



HURRICANE CITY UTAH

Mayor

Nanette Billings

City Manager

Kaden DeMille

City Council

*Joseph Prete
Dave Sanders
David Hirschi
Kevin Thomas
Doug Heideman*

Hurricane City Council Amended Special Meeting Agenda

February 28, 2022

6:00 PM

City Council Chambers 147 N 870 W, Hurricane

Notice is hereby given that the City Council will hold a Special Meeting in the City Council Chambers 147 N 870 W, Hurricane, UT. Meeting Link on Webex Meeting number: 2630 456 5376 Meeting password: HCcouncil Join from a video or application Dial 26304565376@cityofhurricane.webex.com. You can also dial 173.243.2.68 and enter your meeting number. Join by phone +1-415-655-0001 US Toll Access code:26304565376.

6:00 p.m. - Call to Order

Consideration and possible approval of an **easement agreement with Kenneth Heaton-Arthur LeBaron**

Discussion on the process of annexing property from the County to the City

Adjournment

I hereby certify that the above notice was posted to the city website, (www.cityofhurricane.com) posted to the state public notice website, and at the following locations:

1. City office – 147 North 870 West, Hurricane, UT
2. The Post Office – 1075 West 100 North, Hurricane, UT
3. The library – 36 South 300 West, Hurricane, UT

_____ for the City Recorder

EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made and entered into on this _____ day of _____, 202__, by and between the City of Hurricane, Utah, a municipal corporation of the State of Utah (hereinafter referred to as “City”), and Kenneth W. Heaton Family Limited Partnership III, Kenneth W. Heaton, General Partner (hereinafter referred to as “Heaton”), collectively referred to as “the Parties.”

Recitals:

A. Heaton is the owner of record of a parcel of property designated as Parcel No. H-3-3-34-3217 in the records of the Washington County Recorder in St. George, Utah (hereinafter referred to as “the Heaton Property”), and more particularly described as follows:

Beginning at a point on the South Block line of Highway U-9 at the intersection of the East line of Lot 16, Block 14, HURRICANE FIELD SURVEY and running thence South 128 feet, thence West 178.57 feet, thence North 128.00 feet, thence East 178.57 feet to the point of beginning.

B. City is the owner of record of a parcel immediately adjacent to the Heaton Property which is designated as Parcels No. H-HVHC-1 through 5 in the records of the Washington County Recorder in St. George, Utah (hereinafter referred to as the “City Property”), and more particularly described as follows:

Hurricane Valley Health Center Lots 1-5

C. Heaton has historically gained access into the Heaton Property pursuant to an informal agreement between City and Heaton whereby Heaton has been allowed to cross over a portion of the City Property.

D. The Parties desire to enter into a formal written agreement which will allow Heaton, his, heirs, successors and assigns the continued right to access the Heaton Property by crossing over a portion of the City Property.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and obligations contained herein, the Parties hereto agree as follows:

1. Recitals A through D are hereby incorporated herein as if fully set forth.

2. Subject to the terms and conditions stated herein, City hereby grants to Heaton, his heirs, successors and assigns a non-exclusive easement across the City Property for the purpose of gaining access for ingress and egress to the Heaton Property. This easement shall be thirty (30) feet in width and is described as follows:

Beginning at a point on the centerline of an existing driveway access into the City Property, said point being South fifty (50) feet more or less along the West right-of-way

of 700 West Street from the Southeast corner of the Heaton Property; thence West forty (40) feet, more or less, to the centerline of an existing driveway access, thence North fifty (50) feet along said centerline, more or less, to a point on the common boundary between the City Property and the Heaton Property.

2. Heaton's access across the City Property for ingress and egress to the Heaton Property shall be limited to the easement property granted herein.

3. Heaton shall exercise its right of ingress and egress in such a manner so as to:

(a) not interfere with City's use and enjoyment of the easement property or City's remaining property, and

(b) not cause any unreasonable damage to the easement property or the remaining property of City. In the event of such damage, Heaton shall, at its expense, be required to promptly repair or restore the easement property or remaining property of City to its condition prior to such damage.

4. The Parties acknowledge and agree that future development on either the City Property or Heaton property may require relocation or enhancement of the easement granted hereby and the Parties agree to negotiate in good faith such relocation or enhancement, provided that all costs and expenses associated with such relocation or enhancement shall be paid by the party requesting the same.

4. Heaton agrees to indemnify, defend and hold harmless the City, its officers, employees and agents from and against any and all claims, demands or causes of action which may be asserted against City as a result of or which is in any way connected to Heaton's use of the easement granted hereby.

5. Failure by either Party to comply with any obligation or term contained herein shall be deemed to be a breach of the terms of this agreement and shall constitute a default under the terms hereof. In the event of such default by either Party, the Party not in default shall have the right to terminate the grant of easement agreement by sending thirty (30) days written notice to the Party in default of such election to terminate or pursue any other remedy that may be available at law or equity to enforce compliance with the terms of this agreement.

6. This agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the Parties.

7. This agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, all prior negotiations, correspondence or understandings having been merged herein.

8. This agreement shall not be modified except in writing signed by both Parties hereto.

9. This agreement shall be construed under the laws of the State of Utah.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement Agreement on the date first above written.

CITY OF HURRICANE

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

KENNETH W. HEATON FAMILY
LIMITED PARTNERSHIP III

Kenneth W. Heaton, General Partner

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

On the ___ day of _____, 202____, personally appeared before me Kenneth W. Heaton, General Partner of Kenneth W. Heaton Family Limited Partnership, who being duly sworn, did say that he executed the within and foregoing instrument for the reasons stated therein.

NOTARY PUBLIC

ANNEXATION CHECKLIST (Landowner Initiated Petition)

DATE

Notice of Intent to File a Petition for Annexation - A

landowner/applicant who intends to file a Petition for Annexation, first must file a Notice of Intent to file a Petition for Annexation with the City Recorder. Applicant then must send the notice to each affected entity (the county, special service districts, the school district, and municipalities within ½ mile). (UCA 10-2-403(2)(a))

- With an accurate map of the proposed area to be annexed

Check map in Annexation Policy Plan

County mails **Notice of Proposed Annexation** to each property owner in the area proposed to be annexed and each property owner located within 300 feet of the area to be annexed. Verify that County has used the specific language required by statute and followed the detailed statutory notice requirements. (UCA 10-2-403(2)(b))

County sends a copy of the Notice of Proposed Annexation and a **Certificate** to the City verifying the Notice of Proposed Annexation was mailed. (UCA 10-2-403(2)(b)(i)(B))

After City receives the Notice of Proposed Annexation and the Certificate, City must, upon request, give the applicant a **Petition for Annexation** for annexation of the property proposed in the Notice of Intent to File a Petition for Annexation, and any related documents. (UCA 10-2-403(2)(c))

Applicant submits Petition for Annexation:

PETITION REQUIREMENTS:

- a. File a completed Petition for Annexation with the City Recorder
- b. Payment of fees (not in code)
- c. Signatures of the owners of the private property located in the area proposed to be annexed (it must be signed by an applicant who owns a majority of the land acreage within the proposed annexation and must be more than 1/3 of the private property value). Owner signatures must match the record owners shown on the title report.
- d. A current title report showing that the signatures on the Petition are the current owners of the property. (not in code)
- e. A recordable plat (MYLAR), with a valid property description prepared by a licensed surveyor, of the proposed area to be annexed.
- f. A copy of the Notice of Intent to File a Petition for Annexation sent to affected entities, and a list of the affected entities who received notice.
- g. Designate up to 5 signers on the **Annexation Petitioners'– Sponsors' Contact Sheet**; -include their names, addresses, emails, and phone numbers. Designate one of the Sponsors as the contact person with the City for the proposed annexation. (UCA 10-2-403(3)(f)).
- h. Also submit the **Petitioner's Questionnaire, Annexation Plat Review Form** approved by City Surveyor, and **Annexation Plat Contact Information Sheet**. (not in code)
- i. Proof that the applicant has submitted a copy of the Petition for Annexation with the clerk of the county where the proposed annexation property is located. (UCA 10-2-403(3)-(7))

The City Council accepts or denies the completed Petition for Annexation, by City Council resolution, within 14 days of receiving it. Finding for the denial or acceptance may be stated. If the City Council fails to act within 14 days, the Petition is deemed accepted. (UCA 10-2-405(1)(a))

- If the Petition for Annexation is denied, the City will mail written **Notice of Denial of the Petition for Annexation** to the List of Sponsors, the county clerk, within 5 days. (UCA 10-2-405(1)(b))

Determine whether or not the petition meets all requirements of UCA 10-2-403(3) & (4). (Work with the City Attorney to make this determination. (UCA 10-2-405(2)).

- If the City Council accepts the Petition, or if the Petition is deemed accepted, the City Recorder has 30 days to obtain from the county the records it needs to determine whether or not the Petition meets all requirements in UCA 10-2-403(3) and (4).

If the Petition does not meet all requirements, the City Recorder gives written notice of rejection of the Petition stating the reasons for the rejection. Notice should be given to the municipal legislative body, the contact Sponsor, and the county legislative body. (UCA 10-2-405(2)(c)(ii))

- The Petition Sponsors may modify the Petition to correct the deficiencies and then refile it with the City Recorder, and the refiled Petition is treated as a newly filed Petition. (UCA 10-2-405(3))

If the Petition meets all of the requirements of UCA 10-2-403(3) & (4), the City Recorder must certify the Petition, and mail written **Notice of Certification of Petition for Annexation** to the City Council, the Petition Sponsors, and the county legislative body.

Within 10 days after the City Council receives Notice of Certification of Petition for Annexation, the City Council (via City Recorder) must:

1. post one notice, and at least one notice per 2,000 population within the combined area and the owners of real property located within the combined area, up to 10 notices or by mailing to each residence within, and to each owner of real property located within the combined area.
2. post on the Utah Public Notice Website for 3 weeks, beginning no later than 10 days after the legislative body receives the notice of certification.
3. mail notice to each affected entity within 20 days after the legislative body receives the notice of certification .
4. Post on the City's website for 3 weeks beginning no later than 10 days after the day on which the municipal legislative body receives the notice of certification. (UCA 10-2-406(1))

There are strict, detailed requirements for the language in the notice, see UCA 10-2-406(2).

Within 30 days of receipt of the notice of certification by the legislative body, Protests to the Notice of Annexation can be filed by the county, rural real property owners, or other affected entities, but there is not a procedure for any city resident to protest. A protest must be in writing, with grounds, filed with the county clerk, with a copy to the annexing city. (UCA 10-2-407)

If not protested, the City Council may approve the annexation after a public hearing with at least 7 days' notice on the following:

1. post one notice, and at least one notice per 2,000 population within the combined area and the owners of real property located within the combined area, up to 10 notices
2. post on the Utah Public Notice Website for 7 days before the day of the public hearing
3. Post on the City's website for 7 days before the day of the public hearing (UCA 10-2-407(7) Approval shall be by adoption of an **Ordinance Annexing Territory**. (UCA 10-2-407(3)(b)(ii))

If a timely protest to the Annexation Petition is filed by an affected entity, a protest process must be followed. This will require possible action by a boundary commission by hearing. (UCA 10-2-407 & 409)

Within 60 days after annexation by ordinance, send a **Notice of Impending Boundary Action** and approved final plat to the Lt. Governor's Office. (UCA 10-2-425(1)(a))

Lt. Governor will issue a **Certificate of Annexation or Boundary Adjustment**. Upon receipt of this Certificate, submit to County Recorder the original Certificate issued by the Lt. Governor's Office, original Notice of Impending Annexation or Boundary Adjustment, original approved final plat, and a certified copy of the ordinance. (UCA 10-2-425(1)(b))

Send, to all affected entities and special districts, notice of annexation or boundary adjustment. (UCA 10-2-425(1)(c)(i))

Send to the Department of Health a certified copy of ordinance approving the annexation and a copy of the approved final plat. (UCA 10-2-425(1)(c)(ii))

Annexation is complete.