

Minutes of the Hurricane City Council special online meeting held on April 17, 2024, in the Council Chambers at 147 North 870 West, Hurricane, Utah at 4 p.m.

Members Present: Mayor Nanette Billings and **Council Members:** David Hirschi (online), Kevin Thomas (online), Clark Fawcett, Drew Ellerman, and Joseph Prete.

Also Present: City Manager Kaden DeMille (online), City Attorney Dayton Hall (online), Power Superintendent Scott Hughes, Public Works Director Mike Vercimak, City Planner Gary Cupp, City Engineer Arthur LeBaron, Planning Assistant Fred Resch III, and City Recorder Cindy Beteag.

AGENDA

4:00 p.m. - Call to Order –

Mayor Billings welcomed everyone and called the meeting to order.

Prayer & Pledge led by Joseph Prete

Public Forum:

Kelby Iverson addressed item number three regarding the historic livestock trail on 1100 West. He expressed appreciation for Dayton Hall's efforts in researching the matter and raised additional points for consideration. First, he suggested referring to state law in the resolution and questioned if it pertained to the definition of continuous use. Second, he highlighted the importance of addressing traffic control in the future. He emphasized the significance of the resolution for his family, detailing their longstanding tradition of using the trail for cattle transportation. Mr. Iverson underscored the necessity of preserving this tradition due to the impracticality of alternative methods. He expressed support for the resolution but stressed the need for long-term protection, particularly concerning potential developments like stoplights. Mr. Iverson provided further context regarding the current process of cattle transportation. He estimated the length of the trail to be approximately three and a half miles, which may extend further as neighboring properties develop. He mentioned concerns about fencing requirements along the route and acknowledged the need for better enforcement of city ordinances in this regard.

Mr. Iverson shared insights into ongoing discussions about property acquisition along 1100 West. He expressed his unique position as the property owner on both sides of the road. He has been cautious in selling his property until all pertinent issues are addressed. Specifically, the easement on the east side of the road, where the power is currently located. It is his understanding that once the power line is relocated to the west side, all easements on the east side, including deeded ones, would be abandoned. He referenced a text message from the Mayor stating all easements outside the prescriptive easement fence line to fence line would be abandoned. Mayor Billings clarified the easement on the east side of the road is a deeded easement and wouldn't be abandoned. It is needed for utilities.

Patty Nation commented she looks forward to when the cattle are moved. She always goes out and watches.

NEW BUSINESS

1. Consideration and possible approval of a professional services contract for the Storm Drain Master Plan - Arthur LeBaron

Mayor Billings read the staff summary submitted by Arthur LeBaron. “Hurricane City has budgeted funds to develop a new Storm Drain Masterplan. The project was advertised and the City received 3 statements of qualifications, from which JUB Engineers was selected. I have worked with JUB to develop a workplan and associated fee to complete the work for \$225,000. I have discussed this with Kaden and Paige and we are in a good position financially to fund this project, since it will straddle two budget years. The project will include responding to the State of Utah's recent mandate of Hurricane City's status as an MS4 community. I have submitted the contract to Dayton for his review and comment. The proposed scope and fee have been successfully negotiated. If this contract is approved, we will have the masterplan ready for approval in April, 2025.”

Arthur LeBaron stated JUB Engineers is here to answer any questions. Dayton Hall did have a chance to review the document and he submitted redlines to the contract. All his recommendations have been made.

Joseph Prete motioned to approve the professional services contract for the Storm Drain Master Plan to JUB Engineers in the amount of \$225,000. Seconded by Clark Fawcett. Motion carried unanimously by a roll call vote.

2. Consideration and possible approval of Resolution 2024-19 Authorizing a tax certificate and agreement for UAMPS Steel Solar 1A - Scott Hughes

Mayor Billings read the staff summary submitted by Scott Hughes. “The IRS Code and US Treasury Regulations allow for tax-exempt bonds to be issued to finance prepayments for energy and/or fuel used for the generation of energy. This resolution would authorize Hurricane City, in conjunction with UAMPS and other participating members, to assign a portion of our Steel Solar 1A Power Purchase Agreement into a prepay agreement with J. Aron and SEA (Southeast Energy Authority). It also authorizes Scott Hughes or Brian Anderson “to execute and deliver the Tax Certificate and Agreement” to UAMPS, and “to approve such changes to the Tax Certificate and Agreement as are necessary to complete the form thereof, together with any minor or non-substantive changes”. The result of the designed transaction is a substantial discount on the price of the energy. Hurricane City, together with the other participants, will have the ability to assign other fuel or energy projects into the prepay agreement for the next thirty years and receive some level of discount (depending on the current market conditions), or terminate the agreement if the discount is not satisfactory.”

Scott Hughes explained this is the same agreement the Council approved a few months ago for the Payson Prepaid Gas project. So far nothing has been done with that one, so he doesn't have results to report back to the Council.

Joseph Prete raised two key questions regarding the proposed arrangement. He inquired about the legitimacy of the arrangement and its potential legal implications, expressing concern about using a city benefit in partnership with a private party. Additionally, he sought clarification on the process for terminating the arrangement if necessary. Scott Hughes explained that similar arrangements are common and outlined the protective measures in place through agreements with the involved parties. He emphasized the city's commitment to using the energy produced for its customers and highlighted the legal obligations of both parties involved in the deal. He explained that, according to the information provided, it is possible to terminate the arrangement at any time, despite it being a 30-year contract. He elaborated on the flexibility of the agreement, indicating that the city can both contribute energy to and withdraw energy from the program as needed. Additionally, he detailed the periodic reassessment of the arrangement, typically every five to ten years, where the terms are reevaluated based on market conditions. If the potential savings are lower during reassessment, the city can opt out of the program. Conversely, if the savings remain consistent or increase, the city can continue participating, with adjustments made to the percentage discount accordingly.

Mr. Hughes displayed a flowchart to aid in understanding the complex arrangement being discussed. He acknowledged that the flowchart might not be entirely clear but attempted to simplify the process as much as possible. He explained SEA will acquire bonds for the program, but they do not qualify for tax-exempt bonds as a municipality. The bonds are then prepaid to a designated entity, and the energy eventually returns to the city through this process. He clarified that the city is also signing a contract with Twin Eagle to purchase gas, which will be assigned to J Aron & Co. through a limited assignment agreement. This agreement allows the city to withdraw if any issues arise. He expressed trust in UAMPS and emphasized that the city's contracts with J Aron and SEA are the main points of interaction with the involved companies, providing reassurance regarding the arrangement. Mayor Billings mentioned Washington City did pass this same resolution.

Drew Ellerman motioned to approve Resolution 2024-19. Seconded by Kevin Thomas. Motion carried with David Hirschi, Kevin Thomas, Drew Ellerman and Joseph Prete voted aye. Clark Fawcett voted nay as he would like to understand the process more.

3. Consideration and possible approval of Resolution 2024-21 Designating 1100 West as a historic livestock trail extending south from Frog Hollow Wash to the City limits

Mayor Billings read the proposed resolution. She stated Kelby Iverson wanted it to refer to State law regarding continuous use and he wanted traffic control to be addressed. Dayton Hall explained there is an act in the State Code but it only applies to trails crossing private land so it wouldn't apply to a City road, which is why the State Code is not referenced in the resolution. The City code states that before livestock is moved you are to notify the police department. He

believes the traffic considerations could be addressed when that happens. He commented they could reference city code in the resolution if the Council liked that better.

Mayor Billings read the staff summary written by Dayton Hall. “Mayor Billings and City staff have continued to work with Kelby Iverson to meet his terms and conditions to sell property to the City along the 1100 West corridor. One of Mr. Iverson’s conditions is that the City designate by resolution 1100 West between his property and his open range on the south end of the City as a historic livestock trail. Mr. Iverson and his family have historically driven cattle between their corrals near the Equestrian Park and the BLM range land south of the City. The Hurricane City Ordinances currently regulate driving herds of livestock on City streets as follows:

Sec. 7-1-7. - Driving animals on streets.

- Permission required. Every person, prior to driving any herd of sheep or band of horses, cattle or other animals upon any public street or highway, shall be required to notify the Police Department.
- Designated streets. No person shall drive livestock through the City upon streets not designated for that purpose, except upon permission and according to the direction of the Chief of Police.

The proposed resolution requested by Mr. Iverson would designate this section of 1100 West as a street where livestock could be driven upon notification to the Police Department.

Recommendation: The City Attorney and City Engineer have no objection to designating the route consistent with historical uses. It is recommended that a motion approving the resolution state that the execution of the resolution is contingent on Mr. Iverson executing the currently drafted purchase contract for the property along 1100 West.”

Mayor Billings suggested adding a section 3 to the Resolution quoting Hurricane City Code 7-1-7 which states, “Every person, prior to driving any herd of sheep or ban of horses, cattle, or other animals upon any public street or highway, shall be required to notify the Police Department.”

Mr. Iverson asked if the City could give him a prescriptive easements on city roads. Councilman Ellerman explained prescriptive easements can only be awarded by a judge. He is comfortable with putting they need to notify the police department.

Mr. Iverson expressed concerns about the long-term protection of allowing cattle on this road particularly in light of potential future developments such as the installation of new stoplights along the corridor. He questioned whether the resolution under consideration provided sufficient safeguards to address these concerns. He raised questions regarding a prescriptive easement over a half-mile stretch of their property that the City uses as a road. Dayton Hall expressed his intention to keep the resolution simple and straightforward. He referred to the city code, which designates a specific route for driving livestock, allowing for notification to the police department beforehand. He highlighted that the resolution simply designates this route for livestock, without delving into unnecessary complexities. All parties agreed to put language in the resolution stating that they will notify the police department prior to the cattle drive but

not reference the City code. Then if the code changes in the future this resolution stays in effect. Councilman Prete recommending adding “a portion of 1100 West” in every recital to avoid any confusion with including all of 1100 West. Council agreed to add section 3 to the resolution stating, “notification to the Police Chief is required”.

David Hirschi motioned to approve Resolution 2024-21 Designating 1100 West as a historic livestock trail extending south from Frog Hollow Wash to the City limits subject to adding “a portion of 1100 West” to all the recitals and adding a section 3 stating that notification to the Police Chief is required. Seconded by Drew Ellerman. Motion carried with David Hirschi, Clark Fawcett, and Drew Ellerman voting aye. Kevin Thomas and Joseph Prete voted nay.

Mayor Billings sought direction from the council regarding several inquiries from Andrea Kaaz. Ms. Kaaz has been working with Dayton Hall on a resolution for smart pet adoption. She would like to add cats to the resolution in addition to dogs. Additionally, she is proposing making it a proclamation instead of resolution that is adopted on annually basis aligning with National Pet Adoption Day. Council would prefer it as a resolution as opposed to a proclamation. They do not want to reapprove it each year but agreed to change the language to household pets rather than just dogs.

4. Closed Meeting held pursuant to Utah Code section 52-4-205, upon request

Joseph Prete motioned to go into closed session to discuss the purchase of real property and pending litigation. Seconded by Clark Fawcett. Motion carried unanimously.

Adjournment: Joseph Prete motioned to go out of a closed meeting and adjourn the meeting at 5:45 p.m. Seconded by Clark Fawcett. Motion carried unanimously.