

**Sunset City Corporation
City Council Minutes
January 10, 2012
Page 1 of 6**

Minutes of a special meeting held January 10, 2012 at Sunset City Hall, 200 West 1300 North, Sunset, Utah; Mayor Bangerter presiding.

Mayor and Council Present:

Chad Bangerter	Mayor
Brent Andrews	Council Member
Ricky Carlson	Council Member
Ryan Furniss	Council Member
Jake Peterson	Council Member
Kevin Snow	Council Member

City Employees Present:

Susan R. Hale	Recorder
Linda Youngdell	Treasurer/Office Manager
Ken Eborn	Police Chief
Bruce Arbogast	Police Sergeant
Felshaw King	City Attorney

Others Present:

Pam Furniss	Scott Stevenson
-------------	-----------------

The meeting was called to order at 6:30 p.m. by Mayor Bangerter.

SPECIAL SESSION:

- 1. Discussion and approval of Resolution 2012-01 appointing a member to the Board of Trustees of the North Davis Sewer District:**
- 2. Discussion and approval of Resolution 2012-02 appointing a member to the Administrative Control Board of the Wasatch Integrated Waste Management District:**
- 3. Discussion and approval of Resolution 2012-03 appointing a member to the Davis County Mosquito Abatement District Board:**

The three items were discussed concurrently.

Mayor Bangerter said he was disappointed and concerned after the last Council meeting. He has looked into matters further and believes the Council assignments were done improperly and possibly illegally. Some assignments were not made by Mayor Bangerter and Sunset City Code states the assignments are to be made by the Mayor with the advice and consent of the Council. Secondly, there were no vacancies on the Mosquito Abatement Board or the Wasatch Integrated Board. With no vacancies, people could not be assigned to the Boards. He asked City Attorney King to research the issue and give them his opinion.

City Attorney King said he is not here to take sides, but to give his opinion. He has not had time to review each of the appointments, so he will give his general advice as it pertains to the issues. If they have questions, he may be able to answer them or he may have to tell them he will research the issue and advise them later. In preparing his remarks, he has reviewed the pertinent statutes and has also talked to the legal counsel for the Special Districts for the

State of Utah and to David Church, an Attorney for the League of Cities and Towns and they were all in agreement. It is his opinion the Mayor has the power of appointment subject to the advice and consent of the Council. The Council does not have the power of appointment. If the Council rejects one of the Mayors recommendations, then it goes back to the Mayor to make another recommendation for the approval of the Council. The Council does not have the authority to make its own recommendations or select its own appointments. That is the process in statutes and, as Council Member Furniss furnished information to him, historically in the City's form of government, the Chief Executive Officer makes the appointments subject to the advice and consent of the legislative body. Secondly, with respect to appointments to boards, most of the boards are governed under the local district laws and those laws provide that an appointment is for a four-year term. A person who is appointed by the Mayor and approved by the Council serves a four-year term unless the person dies, resigns, becomes ineligible due to moving out of the district or commits an act that provides cause for removal such as committing a felony, a misdemeanor with moral turpitude or something of that nature. There have been cases that have held, where a new City Administration comes on board, they don't have the right to remove a person who has been serving on one of the boards for a local district. If the appointment to a board is contingent upon the person being a member of the governing body and the person is not re-elected to the governing body, then the appointing authority can ask for a mid-term replacement.

Council Member Andrews asked if it would be a conflict of interest if a person is on a board and their place of employment took an action against that board. Attorney King said that could be considered a conflict of interest or cause for removal from the board. Council Member Furniss asked if a known conflict of interest has to be in writing under State law. Attorney King said there are statutory provisions that outline what kind of misconduct would be grounds. Council Member Furniss asked Attorney King if he was aware of section 6 of State Code 17B-1-304 that reads, "Notwithstanding any other provision of this section, if the appointing authority appoints one of its own members, it need not comply with the provisions of this section." Attorney King said he was and he believes that refers to the notice provisions to give people an opportunity to apply for the appointment. He does not believe it contradicts anything he stated. Council Member Furniss asked if a Mayor calling for a vote is not appointment. Attorney King believes if an appointment was done inappropriately a vote would not validate it. Council Member Snow said the resolution says the governing body is the Council, not the Mayor. Attorney King said the Mayor is part of the Council. Council Member Snow said the resolutions state removal, but do not say what the removal has to be and they also say the new resolutions, no matter what the conflict is, supersede the old resolutions. Attorney King replied they cannot adopt a resolution that is in conflict with State law, so these resolutions cannot alter the requirements of State law that state a four-year term.

There was discussion about the Board terms at the Mosquito Abatement District and Mayor Bangerter read the section in the District's by-laws that say Board members serve four year terms. A Council's right to appoint for a lesser term was discussed and it was pointed out that it cannot override State law.

Sunset City Corporation
City Council Minutes
January 10, 2012
Page 3 of 6

Mayor Bangerter said he talked with LeGrand Bitter, who is the Executive Director for the Utah Association of Special Districts, and Mr. Bitter told him if the board appointments are not made legally it jeopardizes bond issues for the districts. That is why Mayor Bangerter wants to make sure the board appointments are done correctly.

Council Member Furniss said Syracuse City just went through this same issue. The Mayor appointed herself to the North Davis Sewer District Board and the Council voted no. The Mayor kept making other suggestions until the Council got the one they wanted. He told Mayor Bangerter that is what will happen here as well. There has to be three votes in favor of an assignment and that number of votes was given at the last Council meeting. He told Attorney King, as much as he appreciates his legal counsel, he is not sure he is willing to accept it. He believes when the Mayor calls for a motion and a vote, he has consented and is appointing. Council Member Carlson pointed out the Mayor called for a motion to table the meeting, but Council Member Furniss went ahead and made the motion to make the assignments. Attorney King said he does not understand what Council Member Furniss does not agree with regarding his advice. He talked with David Church and the attorney for the Districts and they were all in agreement with the advice he gave at the beginning of the meeting. On Council Member Furniss' belief that by calling for the motion, the Mayor had waived his right to make the appointments subject to their review, he does not know if they will find any legal authority to answer that. Council Member Furniss argued with Attorney King that he is paid to give them legal advice and he wants his opinion tonight. If the Mayor comes back meeting after meeting with his recommendation and the Council keeps voting no, it could go on for years. He asked Attorney King if it was not ultimately the Council's decision. Attorney King said no, the Mayor has the right to make the recommendation for appointments with the advice and consent of the Council. If the Council does not give their consent, then there is a stalemate and the Mayor has to submit another nominee. He does not believe the Mayor can keep submitting the same name; he would have to submit a different name each time until there was a consensus of the Council. Council Member Furniss did not like that Attorney King is giving them legal opinion without having first listened to the meeting minutes of last week. There was more discussion on whether or not the motion was proper and/or illegal. Attorney King stated his understanding of what transpired at the meeting held on January 3, 2012 as being the Mayor's appointments were rejected, a Council Member made a motion for certain appointments, the motion was seconded and Mayor Bangerter called for a vote on the motion. He then asked Council Member Furniss if his question was if the Mayor had waived his right to appointment and answered that he did not because it was an improper motion since the Council does not have the power of appointment. The Council's only roll in the appointment process is to accept or reject the Mayor's recommendations for appointment. The point was argued further by Council Members Furniss and Snow.

Council Member Carlson clarified the issue Council Member Andrews brought up at the beginning of the meeting regarding conflict of interest. The conflict Council Member Andrews referred to is the Davis Salt Lake Spray Authority lawsuit with R&O and Access Architects. Council Member Carlson sits on the Mosquito Abatement District Board and represents the Davis County cities on the Aerial Spray Authority Board. When the Davis Mosquito Abatement Board talks about the issue, they go into a closed session and he

excuses himself from the discussion because the architect brought into the lawsuit the firm he used to work for. Because there was a conflict of interest he recused himself and took a leave of absence from the Aerial Spray Authority Board until the lawsuit could be resolved.

Mayor Bangerter called for a motion to adjourn. Council Member Snow said he thought they were here tonight to pass the resolutions. Mayor Bangerter told him they shouldn't be passed because they weren't properly done. This issue was discussed further. Mayor Bangerter said he would meet with them all again to see how they can make it work for all of them and have new assignments ready by the next meeting. He could not find it in the North Davis Sewer District Board by-laws, but in both the Wasatch Integrated and Mosquito Abatement Boards it states until another member is appointed, the vacated member can continue to stay on the Board. Council Member Furniss pointed out this meeting was called because there is business underway at the Boards, such as appointing a new Vice Chair, health insurance deductibles, etc. and without the resolution he would not be a part of the North Davis Sewer District Board. Attorney King believes, unless he was disqualified for some reason, he would be a continuing member until a replacement is appointed. Mayor Bangerter has no problem if the Council would approve to allow Council Member Furniss to remain as a voting member of the Board until the next meeting. Council Member Furniss said in order for him to vote on those important issues, he has to have a resolution in hand. This issue was also argued further and again Mayor Bangerter called for a motion to adjourn. Council Member Furniss said when he was first appointed to the Board, he was not able to vote until he had the resolution. He could participate in the discussion, but he could not vote. If the other Board members want to appoint him to be the Vice Chair, but he's not a sworn member, they can't. Even if it is not him, he would like to vote on who the Chair is and also the insurance and bonding issues. Attorney King quoted State Code 17B-1-303(2)(c) If a member of a board of trustees no longer meets the qualifications of Subsection 17B-1-302(1): (i) the member's position is considered vacant, subject to Subsection (2)(c)(ii); and (ii) the member may continue to serve until a successor is duly elected or appointed and qualified.

Council Member Furniss made a motion to take a recess. Council Member Snow seconded the motion. The motion passed 4-1 with Council Member Carlson voting no.

When the meeting restarted, Mayor Bangerter asked if there was anything from the recess that needed to be discussed and, if not, if he could have a motion to adjourn and he would bring back new assignments at the next meeting.

Council Member Furniss made a motion to approve Resolution 2012-01. Council Member Snow seconded the motion. Mayor Bangerter read the resolution appointing Council Member Furniss to the Board of Trustees of the North Davis Sewer District. He is still concerned that he did not make the assignment, but will honor the motion while stating he does not believe the appointment was done properly. He wishes the Council would take the motion back and adjourn until next week because he feels they could have something settled by then. Council Member Carlson encouraged Council Member Furniss to take back the motion as well because he can still participate on the Board and he feels they are getting into some shady ground if they proceed. Council Member Andrews suggested they vote on the

Sunset City Corporation
City Council Minutes
January 10, 2012
Page 5 of 6

motion. He believes numbers 2 and 3 are moot because they are in violation of the State code regarding terms. Mayor Bangerter asked again if the Council would rescind the motion. Council Member Furniss said he made the motion and it was seconded. The motion passed 3-2 with Council Members Carlson and Peterson voting no.

Council Member Snow made a motion to approve Resolution 2012-02. Mayor Bangerter said this resolution appoints Council Member Snow to the Administrative Control Board of the Wasatch Integrated Waste Management District and he totally disagreed with this motion because it is obviously in violation of State code. Council Member Snow stated, after talking with Attorney King during the break, he does not think they are because he didn't state clearly why there has to be a removal. The only thing he said was the four year term, but once the new resolution is signed it will supersede any conflict with any other resolution. Mayor Bangerter clarified Attorney King advised that this would violate State law. Council Member Snow believes Attorney King was reading from Election and not Boards. Mayor Bangerter told Council Member Snow he gave him copies of the by-laws of the districts that clearly stated what a member could be removed for and that is what Attorney King had emphasized. Mayor Bangerter strongly advised Council Member Snow not to make this motion. Council Member Snow again made a motion to approve Resolution 2012-02. Council Member Furniss seconded the motion. Mayor Bangerter advised the Council not to vote on this issue because it has been presented by the City Attorney that it is not legal. By the Districts' standards, he cannot be put into that position. There has been a motion and a second, but although he advises the Council not to vote on this, they are welcome to do so. The motion did not pass 2-3 with Council Members Andrews, Carlson and Peterson voting no.

Mayor Bangerter asked, since they are doing all these motions, if there was a motion on Resolution 2012-03. Council Member Furniss made a motion to approve Resolution 2012-03. Council Member Snow seconded the motion. Mayor Bangerter once again pointed out the person currently serving on this board is only half way through his term and has not been removed by the District. He has a motion and a second, but once again advised the City Attorney has advised this is not proper to vote on this. The motion passed 3-2 with Council Members Carlson and Peterson voting no.

Mayor Bangerter asked Council Member Andrews if he understood that he just voted himself in as a member of the Mosquito Abatement Board. Council Member Andrews said he did not; he appointed a member. Mayor Bangerter does not believe a Council Member clearly understood and asked Attorney King if he could call for a new motion based on the full explanation of the resolution. Attorney King said he could call for a clarification of the vote. Mayor Bangerter clearly stated this vote is on Resolution 2012-03 appointing Council Member Andrews as a member of the Board of the Mosquito Abatement District for a term of one year. Recorder Hale interrupted and apologized, stating she just remembered Resolutions must be passed with a roll call vote.

Mayor Bangerter called for the roll call vote on Resolution 2012-03, explaining to Council Member Andrews this would place him on a Board that the City Attorney has made evident through State laws that it is not best to do so. Council Member Carlson – nay, Council

Sunset City Corporation
City Council Minutes
January 10, 2012
Page 6 of 6

Member Snow – yay, Council Member Peterson – nay, Council Member Furniss – yay, Council Member Andrews – for, but with clarification by legal. Mayor Bangerter said if he wants legal counsel now is the time because the Attorney is here. Council Member Andrews said he thinks they should be able to override State law and according to their legal they can't do that, so he wants to get more legal advice from somewhere else. He does not want to be forced to vote. Most Judges would ask if he was of a clear mind, if he was under any drugs or alcohol, if he was giving up his rights, if anyone has forced him to do this. Right now he is undecided and does not know how to vote so he wants more legal advice. Council Member Furniss said he could abstain. Council Member Andrews said that was like a negative vote. He knows the City Attorney's opinion is that it would violate State law, so he needs more legal advice from somewhere else. Again, Mayor Bangerter asked what his vote was. Council Member Andrews said abstain. Mayor Bangerter said it was a tie and asked if he was supposed to break it. He was advised he is allowed to break a tie vote. Mayor Bangerter voted nay. The motion did not pass with a vote of two to three.

Mayor Bangerter asked for a roll call vote on Resolution 2012-02 appointing Council Member Snow to the Wasatch Integrated Board. Council Member Carlson – nay, Council Member Snow – yay, Council Member Peterson – nay, Council Member Furniss – yay, Council Member Andrews – yay. The motion passed three to two.

Mayor Bangerter asked for the roll call vote on Resolution 2012-01 appointing Council Member Furniss to the North Davis Sewer District Board. Council Member Carlson – nay, Council Member Snow – yay, Council Member Peterson – nay, Council Member Furniss – yay, Council Member Andrews – yay. The motion passed three to two.

Council Member Furniss made a motion to adjourn. Council Member Andrews seconded the motion. The motion passed unanimously.

The meeting adjourned at 8:05 p.m.

These minutes have been read and approved at the regular City Council meeting held **January 17, 2012.**

Chad Bangerter, Mayor

Susan R. Hale, Recorder