

Approved June 16, 2020

MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY, MAY 19, 2020, IN THE DRAPER CITY COUNCIL CHAMBERS, 1020 EAST PIONEER ROAD, DRAPER, UTAH

PRESENT: Mayor Troy K. Walker, and Councilmembers Mike Green, Tasha Lowery, Fred Lowry, Cal Roberts, and Marsha Vawdrey

EXCUSED:

STAFF PRESENT: David Dobbins, City Manager; Mike Barker, City Attorney; Laura Oscarson, City Recorder; Scott Cooley, City Engineer; Hazel Dunsmore, Human Resource Director; John Eining, Police Chief; Russ Fox, Assistant City Manager; Rhett Ogden, Recreation Director; Christina Oliver, Director of Community Development; Clint Smith, Fire Chief; and Bob Wylie, Finance Director

This meeting was held electronically.

This meeting was held as an electronic meeting pursuant to Draper City Resolution #14-54. As restrictions take place across the State for limiting public gatherings, we want to make sure everyone interested in participating in City Council meetings can do so in a manner that they feel most comfortable. Individuals could participate by:

1. Listening through the Draper City Website: <https://www.draper.ut.us/95/Agendas-Minutes>
2. Emailing comments to public.comment@draper.ut.us by 5 p.m. on the day of the meeting. These will become part of the public record.
3. Requesting the Zoom Meeting ID from public.comment@draper.ut.us by noon, May 18, 2020, to be able to speak during the Public Hearing portions of the meeting.

Study Meeting

1.0 Land Use Training – Mike Barker

1.1 Mike Barker, City Attorney, explained that the training fulfilled their obligation to the Utah Risk Management Mutual Association (URMMA), as well as to talk about some of the initiatives taken by the legislature regarding land use. He said that they would cover two bills: HB 388 that included amendments to the Land Use Development Management Act (LUDMA) and HB 273 which talks about a city's obligation under the property rights of an ombudsman.

Regarding HB 388, Mr. Barker said that the legislature did cities a favor in the clarification they added to subdivision amendments. These clarifications entailed:

- (1) Definition of what a subdivision amendment was. He said that the code is now clear that a subdivision plat requires an amendment if it vacates all or a portion of the plat; alters the outside boundary; changes the number of lots; alters a public

right of way, easement, or public infrastructure; or alters the common areas on a plat. He said that this will provide staff with guidance as to when they need to go through a formal subdivision amendment.

- (2) Listing of the platting requirements for subdivision amendments. The law makes it clear that one only needs to file an amended plat for the portion of the subdivision that is being changed. If the boundary of a single plot were being changed, a developer could file an amended plat just for that particular portion of the overall plat. Mr. Barker said that there had been a problem in the past with linking an amendment to the original plat. To address this problem, one of the new requirements in HB 388 was that amended plats have a new name that is distinguishable from the original plat and that there be a reference to the original plat.
- (3) Clarification that the failure to record a plat within time limits established by the city is voidable by the land-use authority. Mr. Barker explained that the statute used to end after the word voidable, causing questions as to the entity that would be the one to void a plat. This also made clear that the transfer of the land under a void plat is also at the jurisdiction of the land-use authority.

HB 388 also provided definitions about the Planning Commission powers and duties. Mr. Barker said that these state-level changes were already reflected in Draper City Municipal Code (DCMC) and the City's practices. However, the revisions did make more explicit the powers and duties of Planning Commissions. These included:

- (1) The addition of the word "review" so that the code reads, "review and make recommendations in legislative matters. Mr. Barker felt that was fairly obvious in the first place, but this indicates that the Planning Commission has to go through some sort of review process when there are legislative matters such as text amendments, zoning changes, etc.
- (2) Clearly states the requirement of the Planning Commission to hold public hearings on legislative matters.
- (3) States once Planning Commission makes a recommendation what actions the legislative body, in Draper City's case the City Council, can take following the recommendation: adoption, modification, or rejection of the recommendation.
- (4) States that the failure of the Planning Commission to make a "timely" recommendation may be considered a negative recommendation. Mr. Barker said that before this addition, it was uncertain how the lack of a timely recommendation could be interpreted. However, he said from a legal point of view, he was uncertain what the distinction was for what constituted a timely versus un-timely recommendation.

The third area that HB 388 (LUDMA Revisions) addressed was the appeals process. Mr. Barker said that this made clear who else, besides the applicant and the City, could appeal a land-use decision. He explained that previously an “affected party” could appear, which allowed for the interpretation that anyone within the City limits could appeal. The legislature, therefore, limited who could appeal to the applicant, a board or officer of the governmental entity, or an adversely affected party (AAP). An adversely affected party was defined as:

Someone who owns real property adjoining the applicant’s property, or someone who will suffer damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

Mr. Barker gave the example of a zone change from RA1 to RA2. He said a neighbor would have an interest in that. The question has always been “Does the person a mile away have a vested interest in that change and have appeals rights?” This change states that the person who lives a mile away would have to show some kind of distinct injury that does not apply to the general community as a whole to establish appeals rights.

Councilmember Mike Green asked a question; however, the question was inaudible on the recording. In response to this question, Mr. Barker said that the argument could be made that air quality affects everyone in the community, so a resident would have to show some sort of special impact on an individual’s property above and beyond the general community.

Mr. Barker then addressed changes to HB 273 (Property Rights Ombudsman Amendment). He provided some context saying that there had been a problem with some cities going rogue and denying applications that should have been approved based on existing laws. Originally, the Property Rights Commission was proposing some pretty onerous sanctions against City Councils who did this. However, through the course of the summer and lots of negotiations the committee addressing this issue came to a compromise outlined as follows:

- (1) If a party receives an advisory opinion from the property rights ombudsman (PRO) and further litigates the same land-use dispute in court, the prevailing party may collect a city penalty of \$250 per day in addition to attorney’s fees that were currently addressed in the statute. Mr. Barker explained that the \$250 per day was calculated beginning either 30 days after the issue of the ombudsman’s opinion or when the lawsuit was filed, whichever was later, and continues for every day that lawsuit is pending until there was a final judgment from the lawsuit. Mr. Barker noted that he saw Mayor Walker shaking his head as (1) civil lawsuits never go quickly and that (2) if something goes to the property rights ombudsman that the City takes umbrage with and wants to litigate, they need to seriously consider the economic impact that could accrue in the attempt to try and get a decision from the court in opposition of the finding of the ombudsman. Mr. Barker explained that this was an attempt by the Property Rights Commission to ensure that cities were following the law before they could issue penalties to violators.
- (2) If the court rules on the same facts and circumstances as the PRO decision and finds that the opposing party knowingly and intentionally violated the law, then penalties can apply. Mr. Barker noted that “knowingly and intentionally” was a pretty high

standard in a court of law. This meant that a City Council would have had to know what the law was and decided to blatantly ignore it. Mr. Barker said that what this reflects was ongoing tension with the legislature and land use at the municipal level, where one or two cities make poor choices that get brought to the legislature, causing stricter guidelines on other cities who have been in accordance all along.

Mr. Barker said that the take-a-way was that (1) as a City and staff, Draper needed to incorporate the subdivision changes into Draper City Municipal Code and that (2) the City needed to ensure that their code was saying what they wanted it to say so that there were no temptations to try and work around the code which could lead to a legal dispute.

1.2 Mayor Walker said that it appeared that the state centralized more power in the property rights ombudsman's office. He asked if the legislature wanted the ombudsman to be the gatekeeper of these issues.

Mr. Barker said that the legislature has given the property rights ombudsman office more and more power over the years. This revision adds the element of civil penalty that creates a deterrent by either party to challenge the ombudsman's opinion which puts a lot of weight on the opinions that come out of the ombudsman's office.

Mayor Walker asked what was the process to select an ombudsman and put them into position. David Dobbins, City Manager, said that he thought that they were just appointed.

Mr. Barker said that there is the property rights ombudsman and then there are some staff attorneys who support that position. He confirmed that he thought it was an executive appointment.

Councilmember Tasha Lowery asked if this legislation resulted from a specific case. She said she remembered it was in Southern Utah and asked Mayor Walker if he knew what she was talking about. Mayor Walker asked if it was the land dispute case along the river about water rights.

Councilmember Mike Green cited the Pleasant Grove lawsuit where the judge ordered that attorney's fees were paid and the Alpine City lawsuit.

1.3 Mr. Dobbins said that over the past year administrative matters have been dealt with as close to the staff level as possible and legislative matters have been directed to the Council. However, the staff has continued to do site plans with the Planning Commission. He noted that there was a gentleman who wanted to appeal a cell tower. He explained further that although they hold public hearings for these types of issues, that if a site plan meets the City's code the City has no legal option but to approve it. Therefore, a situation is created where the City invites the public to offer an opinion, which raises all sorts of issues. The City then says, thank you for coming, but we are approving it anyways because it meets the code. In light of this, Mr. Dobbins expressed that he would like to look at doing site plans administratively without holding a public hearing. He said that Draper has a long history of holding public hearings for site plans. The downside is that when a neighbor

who does not like a project and takes the time to come to a public hearing, they get frustrated when there are no options to stop matters.

Councilmember Fred Lowry wanted to restate Mr. Dobbins's point: what was the point of having a public hearing on an item that the public opinion cannot be considered when it's approved or denied.

Mr. Dobbins said that there was a difference between a legislative matter like a zone change that should have the public's input and the Council has the authority to say yes or no versus a site plan where there is a checklist. If the applicant meets the checklist staff does not have the legal option to say no. Because of this, Mr. Dobbins suggested that the City go through and identify items that they currently hold a public hearing on but the decision is code-based as opposed to legislatively based and consider if they should be holding those public hearings.

Councilmember Tasha Lowery said that the problem with saying come in and tell us how you feel about an item is that it communicates to the public that if they come to the Council to voice how they feel that the Council can change the decision when the Council doesn't have that power which is misleading and frustrating.

Councilmember Fred Lowry said that he agreed. He said that one of the biggest frustrations when he served on the Planning Commission, was when they were looking at an administrative item that had a public hearing. Because they were obligated by law to make a certain decision, you could not consider public opinion. He said he thought that removing the public hearing on these matters could remove a lot of frustration for citizens and those serving on the City Council and Planning Commission.

Councilmember Mike Green voiced that he thought that the day the City decided to stop hearing preliminary plats was the best action the Council had done during his period of service. He said that the Council should not be hearing administrative actions because they are the executive power and require three votes for an action to be taken, a working of government that the public does not quite understand. He said that anything the Council could do to push administrative tasks to staff he supported.

Councilmember Tasha Lowery said that if there was another avenue for the public to voice concerns, she felt it was the Council's responsibility to point residents in that direction.

1.4 Councilmember Fred Lowry asked if there had ever been any administrative actions that were not passed.

Russell Fox, Assistant City Manager, said no and continued that one thing to keep in mind if the City moved towards only staff seeing administrative items was that there were some specific deviations in the code that were granted to the Planning Commission. He said in those instances the City would either need to eliminate those deviations in the code or grant them to staff. He added that there was no requirement in the state code that site plans needed to be reviewed by the Planning Commission.

Councilmember Fred Lowry said that he appreciated Mr. Fox's point that there were times where there was administrative action that requested deviations.

- 1.5 Mr. Dobbins said that site plans could be separated such that if a site plan meets the code it is administrative, and if site plans have deviations the City could hold a public hearing so that the public could weigh-in, as that is legislative. He believed this would help alleviate some of the residents' frustrations. However, he noted it would place a burden on staff to make sure that they were familiar with Draper City Municipal Code and that it reflects what the City Council wants.

Councilmember Mike Green said that he wanted to make sure that there was an appeal right so that anyone who submitted a site plan that was denied by staff had a basis for appeal because the applicant has a greater right at stake than the public when it comes to property.

Mr. Barker said that Councilmember Green's point goes back to the change made by the state legislature on an affected party: that someone right next to a project has a greater stake than someone who lives further away.

Councilmember Fred Lowry clarified that if there was a deviation on an administrative item that it became a legislative action that the Council could consider public opinion.

Mr. Barker said no because typically the City would still have standards for the deviation. What the Council would be offering was not a yes or no vote, but some discretion and interpretation.

Mr. Fox said that there were some criteria about modifications to architecture that the Planning Commission can look at as there is a list of ten or so items that are considered tradeoffs. He said that this was one of the reasons why an item appearing before the Council later on the agenda was an item about use permits.

- 1.6 Councilmember Marsha Vawdrey said that the one downside she saw to placing all administrative actions on staff was that it separated staff and the Council a little further making it more challenging for the Council to know what was going on with development in the City. She also added that although the Council had not ever denied an action, there were instances of no votes.

- 1.7 Councilmember Fred Lowry asked what happened in the instances where there was no vote. Councilmember Marsha Vawdrey said that ultimately it did not do anything it was just that members of the Council voted no on the item.

Councilmember Mike Green said that this just created more chaos as residents used this as further evidence that the action ultimately should not have passed.

Councilmember Tasha Lowery said that some members of the Council voting no would give residents the impression that any member of the Council could vote no.

Councilmember Fred Lowry said that he appreciated that Mr. Dobbins brought up the issue because he felt that it was fairer to the public to ensure that they are making public comment on items that their opinion can impact.

2.0 Introduction of Seasonal Fuels Crew – Chief Clint Smith

2.1 Clint Smith, Fire Chief, introduced the seasonal fuels mitigation program. He explained that a little over a year ago the Fire Department had a discussion with the Council about an outdoor recreation grant that the City had applied for and was granted amounting to \$120,000 with a 50% match by the City. The grant was originally submitted to focus on the City's open space area and the construction of the Fango Trail. Chief Smith said that this was an opportunity to maximize the money coming in from the trails' foundation for trail construction and development in the area while allowing the City to capitalize on state funding to secure some equipment and seasonal help to assist with fuel mitigation in the open space area.

Chief Smith said that the department had spent much of the last year putting this program together. He said that much of the work on the Fango Trail was completed last season during which time the Fire Department was able to acquire the equipment funded by the grant and focus on signage that would assist the department with search and rescue operations. He explained that the last step would be to put in place a seasonal fuels crew that would be used to maintain fire breaks in the open space areas. He wanted to make sure that the Council was aware of the program in case they saw crews out and about. He wanted to make sure the Council knew what these folks were doing.

Chief Smith highlighted a recent project in the Cranberry Hills neighborhood where the crew was able to help an elderly couple clean up debris from their yard. The four individuals on the crew have also completed their red card certification, a training necessary for anyone who works with urban interfacing fires. They will also receive formal training on saw usage. He also noted that the crew would work closely with the Parks and Recreation Department to identify trails that are most in need of mitigation.

Clint Smith then displayed some images to show the accomplished work that he described. This included images of trailers the Fire Department had acquired as well as the chain saws, blowers, weed whackers, etc. that they got through the grant. The Council also saw an image of the crew being trained by a full-time staff member of the department who has the greatest wildland fire experience.

Chief Smith noted that the City had experienced a dry spring following a good winter which has caused an environment with a lot of new growth that was drying out quickly that needed to be managed to prevent fires, particularly at the urban-wildland interface.

Clint Smith said that the department has emphasized extensive training with the seasoned crew in the hopes that during the peak fire season they will be able to augment the deployment of full-time staff with seasonal members, reducing the number of full-time individuals from four to three that they need to send out the door. He also noted that it helps to cultivate training and skills in individuals who ultimately want full-time employment in the fire service.

3.0 Council/Manager Reports

- 3.1 Councilmember Tasha Lowery noted that everyone on the City Council received an email today about the ongoing situation at Draper Elementary with the safe walking route. She asked Mr. Dobbins if he would like to speak to the situation.

Mr. Dobbins said that there had been a proposal by some neighbors south of Draper Elementary to install a path or walkway into their neighborhood so that their kids do not have to walk along Fort Street. The cost to install the pathway would be about \$100,000 and require property acquisition to build the trail. A little over a year ago when the property owner was approached they had been willing to consider selling the property, but there was some change that it would take them out of greenbelt status, so they would only sell the property if they were fully compensated for the loss of the greenbelt status. The property owner also required that a fence be installed to ensure that kids did not harass his livestock.

Councilmember Tasha Lowery clarified that the \$100,000 estimate for the project included the land, fence, and paving. After Mr. Dobbins said that was correct she asked if that would also include taking the landowner out of the tax bracket.

Mr. Dobbins explained that staff would need to pay to get an appraisal at a cost of \$3,000-\$5,000 to determine the value of the land. He said that land right now in Draper was going for upwards of a million dollars an acre. Following the appraisal, staff would have to determine if there was a loss of the greenbelt status and what that means for their taxes. If it took them out of greenbelt status and the property owners had to pay their full property taxes, that expense could be significant. The property owner said that they were not willing to go through that effort until the City said they were willing to do the work for the project.

Councilmember Cal Roberts asked the number of people this pathway would service. Mr. Dobbins said that he was not sure of the number of kids. Councilmember Lowery said that she thought that it was 20 to 30 kids. Mr. Dobbins said that the City did receive federal funding to improve Fort Street with a better sidewalk, but that project was two to five years away making this a stop-gap measure.

Councilmember Marsha Vawdrey clarified that there was a sidewalk along the new road.

Mr. Dobbins said that there was sidewalk along Fayview Lane and Carraway Lane that could allow kids to walk to the east of the school as opposed to the west on Fort Street.

Councilmember Tasha Lowery pointed out that adding the path would save kids from walking 12 house lengths.

Councilmember Marsha Vawdrey asked what kind of liability the City takes on in providing the requested path. Mr. Dobbins said the path would become City property and therefore the City's liability, but that they do not receive a lot of claims on pathways. However, experience shows that when the City installs pathways like this, residents expect them to be lit, plowed, etc.

Councilmember Fred Lowry asked if this was the City's responsibility. Mr. Dobbins said that the school district was willing to cooperate with the City if they installed the path, but would not be willing to help pay for it.

Councilmember Marsha Vawdrey said that the school district was concerned about the playground remaining safe and not being open to the public. The pathway, however, would create greater access to the playground at Draper Elementary.

Councilmember Cal Roberts asked if the right way to think about the project was that \$100,000 would shave off an eighth of a mile walk to school for 20 to 30 kids. Mr. Dobbins said that was correct and that there was an additional concern that kids had to cross several driveways and were close to the road.

Councilmember Fred Lowry felt as though the extra walk was not significant. He suggested that they just integrate it into the fitness program of the school. Councilmember Mike Green said in his day he walked uphill both ways in the snow. He felt that kids could walk around the corner.

Councilmember Tasha Lowery verified that the City had already spent quite a bit of money last year on the road access from Carraway Lane to the west to connect with Draper Elementary. Mr. Dobbins said that was correct. The City spent \$400,000 to \$500,000 on the road access and sidewalk.

Councilmember Tasha Lowery asked if the City also purchased the lot. Mr. Dobbins confirmed this and explained that they also paid for a portion of the construction of the road.

Councilmember Tasha Lowery stated that this meant that the City had already put in quite a bit of money to ensure the safety of the kids. Councilmember Mike Green agreed and felt that someone should write a happy email saying no.

Councilmember Tasha Lowery added that the email could state that the City was invested in the safety of the area to the extent that they purchased the property and put in a road to ensure fire and emergency access.

Councilmember Fred Lowry said that another concern from a liability standpoint was that by putting in the pathway there would be one more point of access to the property that could not be regulated.

Mr. Dobbins said that as Councilmember Vawdrey said that typically in the past the School District has not wanted access points to ensure that people cannot get into the playground or school property without going through the main entrance.

Councilmember Tasha Lowery said that neighbors had also requested more crossing guards and that a compromise might be to have the Traffic Committee look into that issue. She also suggested that instead of having a Councilmember respond to the email that it might be better to get a response from staff.

- 3.2 Councilmember Cal Roberts said that he had received an email from a resident about trees overhanging the road on 11800 South. He also received an email about the canal trail near Bellevue. A resident stated that although the trail was on an easement, property owners had encroached on the trail. He was not sure of the specifics but had pictures he could share with the staff.

Mr. Dobbins said that he thought he knew the area that Councilmember Roberts was talking about, but would appreciate the photos.

- 3.3 Councilmember Mike Green wanted to talk about the feasibility of having Traverse Ridge Road taken over by the state. He said that he knew that the Council had tried to do that three years ago but did not know the details because he was not on the Council. He wondered if that would help solve some of the Traverse Ridge Special Service District (TRSSD) issues. He said that it was essentially a state highway as people drive 55+ miles per hour and travel the road from Utah County to I-15.

Mayor Walker said that when the state house of representative was the speaker, UDOT was more than happy to take over the road and then hand the road right back to Draper City as soon as he wasn't the speaker because they didn't want to have to maintain it. However, Draper City could toll the road to cover the expenses for maintaining the road. He felt that was something that the City should explore.

Councilmember Mike Green said that he had talked with Charles Stormont, Director of Right of Way for the Utah Department of Transportation (UDOT), who said that there wouldn't be too much of an issue for the state to take over the road as long as there was a partnership with Draper City. Councilmember Green was uncertain if there were other issues.

Councilmember Tasha Lowery said that it made a lot of sense to her that Traverse Ridge Road be a state road. She said that at some point she heard a report from John Eining, Police Chief, that when they ticket the road they look at people's driver's licenses, and some 70% of the people they issue tickets to do not live in Draper City.

Mayor Walker said that it would be great if the state took over the road and maintained it, but in the past, UDOT did not want to except for when the speaker was going to force them to do it.

Councilmember Mike Green said that he wondered if times were a little different now and if Carlos Braceras, Utah Department of Transportation (UDOT) Executive Director, was in a different mood. Councilmember Green wanted to know if they could at least ask before starting to toll the road.

Councilmember Tasha Lowery said that the road should at least be tolled. Mayor Walker said that if Draper City tolled the road it would get some attention. Councilmember Cal Roberts suggested that they pursue the toll route and see what happens because it might provide some leverage.

** *Mayor Walker called for a five-minute break at 7:00 p.m. The Council reconvened at 7:05 p.m.*

Business Meeting

1.0 Call to Order: Mayor Troy K. Walker

2.0 Consent Items

a. Approval of April 21, 2020, City Council Meeting Minutes

b. Approval of Resolution #20-23, reappointing Amy Demik to the Draper Historic Preservation Commission.

2.1 Councilmember Tasha Lowery moved to approve the Consent Items. Councilmember Marsha Vawdrey seconded the motion.

2.2 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.

3.0 Public Hearing: Local Consent for an Off-Premises Beer Retailer Alcohol License for 7-Eleven Store #38765H (Administrative Action)

3.1 Christina Oliver, Director of Community Development, explained that what was before the Council was an alcoholic beverage license for an off-premise beer retailer for a 7-Eleven located at 507 West 12300 South. She said that Draper City Municipal Code (DCMC) limits the total of off-premises licenses to not exceed one per 1,000 residents of Draper City. The population of Draper was roughly 48,000 people and currently had eighteen (18) off-premise licenses. Approval of this license would make the total number nineteen (19). Ms. Oliver noted that the location did meet the pedestrian 300-foot limit as dictated by DCMC. Ms. Oliver asked if there were any questions. There was further discussion on the matter.

3.2 **Mayor Walker opened the public hearing. No one requested to speak so Mayor Walker closed the public hearing.**

3.3 **Councilmember Mike Green moved to approve the Local Consent for an Off-Premise Beer Retailer for 7-Eleven. Councilmember Fred Lowry seconded the motion.**

3.4 **A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**

4.0 **Public Hearing: Resolution #20-27 (Legislative Action), a Resolution of the Draper City Council authorizing the filing of eminent domain actions to acquire real property for the purpose of widening and improving Lone Peak Parkway.**

4.1 Scott Cooley, City Engineer, explained that in the process of negotiating for the Lone Peak Business Center, the City had acquired all of the property except for two properties located along the Lone Peak Business Center on the east side of the project. He said that the property had some landscape features that were pretty important to the properties in question. Mr. Cooley said that the City's easement extends into the landscaped area of the property that the City had not acquired. Because of this, if the City were only to use the property that they had now for the right of way, without the acquisition of the additional property, they could only go partway into the landscaped area of the Business Center's property. However, the City's current design has a curb and gutter plus a curb-adjacent sidewalk that would spill over into the landscaped portion of the property. Mr. Cooley noted that the property owners feel as though this plan would be extremely impactful to their property and therefore have been unable to come to terms with the City's plan. Because of this, the property owner has requested that the City move back the landscaped portion of the property that the City would turn into curb and sidewalk for the project into an area of the property that is currently parking and re-do the landscaping that would be compromised. Also, on the east side of the project, there is a road owned by UDOT. The property owners would like the City to negotiate with UDOT for access to be able to relocate the parking that would be lost by moving the landscaping.

Mr. Cooley said that there were several questions as a result of the request. The staff was uncertain about the cost of the project. Also, the City did not know if UDOT was willing to negotiate. The City would have to acquire UDOT's property. He also noted that the project would probably not be able to happen during the current construction season because of the lack of design materials. He said it would be a significant design change because of complications with drainage and other aspects.

In a nutshell, the project had been designed and staff felt that it was adequate for the purpose it had been designed for and the City already owns a significant portion of the right of way for the park strip and green space area that the City would be taking over to put the road and sidewalk in. However, to get the project done this year, staff need a way to acquire the rest of the property. He said that the proper way to do that was outlined in Utah laws through eminent domain actions. He said that was what was before the Council tonight: the approval to start the eminent domain process. He said that it would not mean that staff

would stop trying to negotiate with the property owner, but that the eminent domain process would become a viable option for staff if negotiations with the property owner fail.

- 4.2 Councilmember Tasha Lowery asked if Mr. Cooley felt that it was the City's place to be negotiating with UDOT. Mr. Cooley said that it was his understanding that UDOT had surplused the property in question. He said he did not know why they had surplused the property, but that it had been his experience with UDOT that there was little chance that they would just give it to the City. He said that the staff had not pursued the UDOT option yet. He furthered that UDOT could not just give the City the property because of other laws. This was the challenge: managing the different timelines and regulations for projects like these while also trying to hold the best interest of impacted businesses in mind.

Mr. Dobbins said that staff is trying to confirm with UDOT what their position was and what the timing would be for the City to try and resolve things through the acquisition of the UDOT property. He clarified that even if the Council approved staff moving forward with the eminent domain action, they would still pursue the situation with UDOT to see if it were a viable option for resolution.

Councilmember Tasha Lowery said that she appreciated that staff was looking into the option with UDOT as she felt that this was a critical project given the level of traffic that builds up on Lone Peak Parkway. She also said that she can see how the project would have a direct benefit to the companies.

Mr. Dobbins said that the Council would hear from the business later in the meeting and that they support the improvements to the roadway, but that it was the impact on their development that they were trying to work with staff to mitigate. Mr. Dobbins said that staff was trying to figure out how to balance cost, timing, and possibilities.

Mr. Cooley displayed a map that showed the extent of the project. He explained that the roadway would extend from 11400 South past the canal and the Price Realty property. The project was broken into phases. The properties in question would fall into phase four of the project. If the issue could not be resolved this year construction of phase four of the project could not happen until 2021 leaving the traffic issues on Lone Peak Parkway remaining until the end of the construction season of 2021.

Councilmember Fred Lowry pointed out that it would delay resolving the traffic problem until the property issue was resolved and phase four of the project completed.

Mr. Cooley said that the negotiation process alone would take some time, but negotiating with a third party significantly complicated the process, let alone the time for design so that contractors can know the true scope of work on the project. He said that the failure to complete the project this year would have a significant impact on the contractor. Mr. Cooley emphasized that there was a lot that would be impacted by this decision and noted that the approval of this action would not cause staff to stop following up on negotiations, but provided them with the possibility to pursue eminent domain.

Councilmember Fred Lowry clarified that the purpose of negotiating with UDOT was because the land currently owned by them was where the City wanted to put the sidewalk. Mr. Cooley explained that there was a road that went around the property in question and connected with Karl Malone Toyota. This was the only access to the area and the business of the property owners. The property owners have told staff that the state is not interested in the road and that Karl Malone Toyota has limited deliveries so the business could expand their parking into that area with minimal impact on the road.

Councilmember Fred Lowry asked what had kept the business owner from negotiating with UDOT themselves. Mr. Cooley explained that UDOT will not negotiate with businesses as they will only negotiate with a public entity.

Councilmember Mike Green verified that all of the entities in the area were commercial and that there were no residents. Mr. Cooley confirmed that there were no residents that were affected, just Rocky Mountain Power and the Lone Peak Business Center.

4.3 Mayor Walker opened the public hearing.

4.4 Chris Hogle, attorney for the owner, explained that he had a presentation to make and that one of the members of the company, Kenneth Barber, was also on the line to address the Council.

Mayor Walker explained to Mr. Hogle that during the period of public comment members of the public were given three minutes each to speak and said that because he failed to explain that before the start of the public comment that they would start Mr. Hogle's time over.

Mr. Dobbins explained that the statement that Mr. Hogle wanted to make was a little different than a public hearing as they were property owners under the threat of condemnation.

In light of this, Mayor Walker asked if the Council wanted to grant more time to hear the statements of the property owner on the issue and asked if there was a motion to amend the rules to give more time.

4.5 Councilmember Tasha Lowery moved to give the speakers representing the owners five minutes to present their comments. Councilmember Marsha Vawdrey seconded the motion.

4.6 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.

4.7 Mr. Hogle said that he wanted to point out some errors in the proposed resolution, but that the primary reason why they were appearing before the Council was not to hold up the project but to put the brakes on phase four of the project so that it could be redesigned in a manner that makes the project less expensive for Draper City and results in a safer product.

He said that the resolution contained some problems that point towards why the City Council ought to put the brakes on the project. Mr. Hogle said that the first problem was that the Council had budgeted roughly \$5 million in funding, whereas the actual cost of the project if the City proceeds with its current approach, would be far greater. He said that the property owner had engaged Phil Cook, an appraiser who had testified in thousands of condemnation actions (both for the government and the landowner). According to Mr. Hogle, what Mr. Cook's preliminary assessment was that if the City proceeded with their current plan, then there would be a reduction of the fair market value of the remainder of the campus property by \$2 to \$5 million. Mr. Hogle said that what the City had proposed to the owner for compensation for this was only \$218,000. Mr. Hogle said that there was an obligation, as the recital indicated, to negotiate reasonably and with good faith. It was his opinion that the City had not completely acknowledged the impacts of the project on the property.

Mr. Hogle said that he was going to let Kenneth Barber, a representative for the owner, talk about the loss of frontage and the parking stalls. Mr. Hogle wanted to address some safety issues. He said that these safety issues were being approached from the landowner's experience who had decades of development experience. He also noted that he and the owner had spoken with some civil engineers. Mr. Hogle said there were some significant slope issues. According to Mr. Hogle, the main entrance of the campus as proposed in the plan would have a slope as great as 9%. He said that if that happened, as drivers pulled into the campus they would bottom out. He furthered added that if the City tried to put in a compliant ADA crossing for the sidewalk, cars would bottom out as they were trying to negotiate the crossing which could be no more than 2%. He explained that if there was a 9% slope that had to be interrupted with a crosswalk, the driveway would have to be steeper on either side of the sidewalk.

Mr. Hogle said that the \$218,000 was just not a reasonable effort to negotiate. Also, he said the safety issues would affect the last recital in the resolution about the taking being for the public good. He said that with the safety issues they see, the newly widened parkway would be close to the pedestrians. Mr. Hogle claimed that their proposal would make the project less expensive for the City, safer, and a more attractive approach. He concluded that if the City continued to move forward with their plan that the owner would have no choice but to take an aggressive litigation effort. He said that he was available to answer questions.

Mayor Walker said that they do not typically do a question and answer format during public comment.

Kenneth Baber, a representative of the owner, explained that his business had been working with the City of Draper for a decade. He noted that his company owns nine buildings along Lone Peak Parkway. He said that his company has worked with Draper to bring in companies such as EMC, Dell, and Goldman Sachs. He explained that the reason why companies come to their campus is that it meets a specific need of theirs to have a collegiate, campus-like atmosphere that competes with the likes of Google. Mr. Baber stated that when they bought the project, the first building was in bankruptcy. He said that

the average rent was \$18.50. He said that they assembled the campus for \$65 million and then put in \$20 million for improvements. Currently, the project was valued at \$110 million. He said that if the campus did get put on condemnation proceedings (the owner would still be allowed to negotiate) it prevents the owners from any marketability and refinance because a property under condemnation is very hard to do any financial objectives with. Mr. Baber said that the most important thing was what they provided tenants: live, work, play. He said that the campus has everything from volleyball courts to gyms, to outdoor amphitheaters and offer free shuttle services to the tracks and Frontrunner. This provides international companies, headquarters amenities for their regional offices. He said that it is the main objective of the owners to maintain the campus feel that differentiates them from other office spaces. He said that the average parking space per thousand in most neighborhoods is five cars per thousand. Mr. Baber said that the EMC and Dell portion of the campus required 10 stalls per thousand, making the value of the parking stalls disproportionately high in the suburban campus. He said that the owners intend to work with this City as they see the need. He said that UDOT might finally have a dog in the fight as Lone Peak Parkway would become a collector road, taking traffic off of the off-ramps at 11300 and 12300. He said that their bottom line was that they have made proposals and solutions that they believe will save money for the City and expedite the construction process. They hope that these proposals will be heard. Mr. Barber said that he wanted to be a resource to help with negotiations. He noted that his company has had a lot of success working with entities like Rocky Mountain Power that they are hopeful for successful negotiations. He stated that they are not tied to purchasing the UDOT land, as they have had successful long-term leases with entities like Rocky Mountain Power, which could be a solution to reduce the cost for everyone. He emphasized that the potential for being under condemnation had a major financial ramification for the landowner.

Phil Cook, an appraiser, said that he was engaged to do an appraisal of the value impact of the project on the subject property. He said that condemning agencies are obligated to pay for the value of the land taken and any reduction in value to the remainder property. He said that there could be an offset for special benefits. He noted that he heard an earlier comment that this would be beneficial to the property, but specified that these benefits were general, not special, and could not, therefore, be an offset to the reduction in the value of the property. Mr. Cook noted that his preliminary work indicates that there would be an impact on the property, 2-5%, that still would amount to \$2 million to \$5 million given the value of the property.

4.10 Mayor Walker closed the public hearing.

4.11 Councilmember Mike Green said that according to the public comment the landowner has claimed to have sent City staff proposals. Councilmember Green asked for Mr. Cooley to explain those proposals and why they were not feasible. Councilmember Green said that he wanted to better understand where the point of conflict was and why negotiation would be difficult to accomplish.

Mr. Cooley said that part of the problem might be attributed to COVID-19. He explained that in early March, staff had tried to sit down with the landowner to go over different

options. Mr. Cooley noted that he had not seen a formal proposal, but rather similar verbal proposals to what the Council heard during the public comment. He said that there were no design alternatives, just rough layouts. He said that it was not that the solutions the landowner proposed were not possible it was just that it would take significantly more time to purchase additional land on the east of the property to replace their parking. He also explained that the City's current design would not impact their parking. Mr. Cooley did say that the current design would shorten the approaches into their property because of the widening of the road, but no parking would be eliminated. The landowner, however, was proposing that the City eliminate their parking to expand the landscaping area and then replace the parking that was eliminated by acquiring the property through UDOT. He said that because of COVID-19, the staff was not able to complete all of the acquisition before the start of the project. He said that if the City pursued the option proposed by the landowner, he did not see how the project could be completed this year.

Councilmember Mike Green said that if the Council approves this today, they will have an occupancy order from the court in 58 days or so that would allow construction to continue. This would result in the City needing to argue over damages later. He also asked if the City was going to try and negotiate in good faith.

Mr. Cooley anticipated that staff would continue with negotiations if it appeared those discussions would go anywhere. Staff would, however, file the eminent domain action soon and continue to negotiate. If the negotiations seemed promising Mr. Cooley and Mr. Dobbins would decide to pursue the compromise and delay the project. However, if the negotiations did not look favorable, they would continue with the eminent domain path.

Mr. Dobbins pulled up a satellite map of the subject property. He pointed out the campus and the landscaping that followed Lone Peak Parkway, noting that it was quite significant. Mr. Dobbins explained that the landowner has indicated that their tenants like the feel of the landscaping. He said that the City would be impacting the amount of landscaping. Because of this, what the landowner has requested is that the City take the impacted landscaping and push it back which would compromise parking. This parking would then be pushed off to Election Road, the piece of UDOT property. At the end of the day, the landowner would retain the same amount of landscaping and parking.

Councilmember Mike Green wanted to know what the urgency was of passing the action today if staff were still in the middle of negotiations and were intending to continue to negotiate. Mr. Cooley said that the contractor would need to start this phase by the end of July to complete the project this year. He said that if the contractor did not start the phase then, they would complete the other phases, and then there would be a gap that would push the project into the next season.

Councilmember Mike Green asked Mr. Barker when he anticipated filing the complaint and getting the order. Mr. Barker said that he believed that the statute still required they wait 30 days before filing the suit. Councilmember Mike Green said that he thought that the City needed to have good faith negotiations before they could file the suit.

Mr. Dobbins said that within 14 days staff would know UDOT's willingness to cooperate with the City. He said that if the answer were no or that it would take several months to work out something with UDOT that would give staff a better idea of scheduling and the options.

Councilmember Mike Green said that he wanted to be on the record that he thought that eminent domain was one of the most serious tools the City had and that he wanted to be very careful about when the City used it and how they did it. He said that he did not like the concept of the government taking in general. He said that it was his sense to wait to vote on the action to the next City Council meeting to see if staff could work something out. He said that if the applicant could hear him, he did not want them to take his comment as a sense of weakness. Rather, he wanted the applicant to come to the table with a meaningful plan that was not simply meant to delay the project.

Councilmember Cal Roberts said that he shared Councilmember Green's sentiments about the gravity of eminent domain actions. He asked what the impact on the project would be if the waited 14 days to vote on the item.

Mr. Cooley said that if the action were pushed back 14 days there was a chance that it would limit the possibility of finishing the project this year due to the calendar and the constraints of the construction season. He didn't want the Council to misunderstand; the project being pushed into 2021 was not a personal problem for him, but a question as to if the Council wanted to complete the project this year or were they okay with it being completed next year.

Councilmember Cal Roberts asked if the Council were to approve the measure if there were any other downsides apart from ideological ones. Mr. Cooley said that he did not see any additional downsides as it did not close any of the negotiation opportunities. He did say that he did not know if there would be any damages after the eminent domain action was filed.

Councilmember Cal Roberts also asked how the City calculated the \$218,000 number for compensation. He wanted to know why there was such a large discrepancy between what the city and the landowner were quoting.

Mr. Cooley said that the number arose from an official appraisal for the land. He said that the staff had accounted for the fact that the City already owns a significant piece of the property. He said he was unsure how much of that was considered on the landowner's side. Mr. Cooley explained that if the City uses only their existing right of way and used it all to widen the road, they will significantly impact the landscaping. He said that while he was not an attorney, he did not know if there would be any recourse for using their property to put in a road to resolve a problem. He said that he could empathize with their position.

Councilmember Cal Roberts asked if staff had been able to review the details behind the claim for the \$2 million to \$5 million decreases in property value. Councilmember Mike Green responded to Councilmember Roberts that the landowner was also saying that the

landscape creates a special value to the property. Because of this, the landowner claimed that the demolition would result in a decline in the property value that they were obligated to receive damages for. Councilmember Green also noted the claim in the public comment that there might not be a public use. Councilmember Green disagreed and said that any road is a public use and that he did not think that there would be any judge in town who would prevent the taking without the public use. He added that he did not fully agree with their demolition claim, but that the claim itself, as well as the litigation cost, needed to be considered by the Council. Councilmember Green explained that in these types of cases it was often an expert against an expert, so the main purpose of litigation was to drive the amount that the City would pay the applicant.

Councilmember Cal Roberts said the key question before the Council if they choose not to take the action was, were they comfortable with the project not being completed this year.

Councilmember Tasha Lowery asserted that an additional component to the project was that it was partially funded with money from Salt Lake County. Mr. Cooley said that the City received money from the legislature, but was unsure if it came from the County or from the State. Mr. Dobbins said that it was through the County.

Councilmember Tasha Lowery verified that they would continue to receive that money regardless of the time frame of the project. Mr. Cooley said that the timeline of the project would not jeopardize that funding.

Councilmember Tasha Lowery voiced that another concern she had as a result of the public comment was that the solution of the landowner seemingly expands the scope and sphere of the project from what City staff have proposed. Mr. Cooley said yes; by enlarging the scale of the project they have to acquire additional property that could increase the cost of the project. He explained that although the landowner says that their proposal would reduce the cost of the project, they were including the diminutive property value they felt entitled to in the City's current project cost, which has not been confirmed.

Councilmember Fred Lowry asserted that an important point about the property value was that currently, their property had the value it did because of landscaping that fell on City right of way. This would cause him to question the 2-5% diminishment in value because part of the value is on the property that the landowner does not own. He said that he was also hesitant about eminent domain. However, if a property owner was utilizing the City's right of way in your property value, you cannot expect to keep that value if the City needs to use that land. Councilmember Lowry also followed up on the safety issue mentioned in the public comment. He asked how much closer the sidewalk would be to pedestrians.

Mr. Cooley displayed a map with the edge of the City right of way and where the sidewalk would fall. He said that there was a possibility that a vehicle turning into the campus would have to stop twice at the sidewalk, but that this was not an uncommon situation and cited the roundabout at 1300 East. He said that all of the issues brought up by the landowner had been addressed by staff. While the solutions were not ideal, they did meet code and safety measures. All of the design guidelines would be met.

Councilmember Fred Lowry said that one of the best resolutions to the item might be to lease the UDOT property in the same way that Rocky Mountain Power currently leased to the property owner.

Mr. Barker wanted to make sure that the Council was clear about the timeframe. He said that the statute did not require 30 days after the vote, but rather 30 days after the notices were provided. The notice had to be mailed 14 days before the City Council Meeting, so depending on when the notice had been sent to the property owner, that determined when litigation could begin.

Councilmember Mike Green asked if the Council delayed 14 days to give the applicant another shot at providing a real solution if that would prejudice Mr. Barker's ability to start the litigation process. Mr. Barker said no. He said that while he did not have a tremendous amount of litigation experience regarding eminent domain, it was like other civil litigation that it got wrapped up quickly.

Councilmember Mike Green outlined that it was his experience that in cases like these there was the pre-filing of the complaint requirement, the filing of the complaint, then a good faith negotiation requirement after the answer has been filed and before the occupancy hearing. He said that what he did not want to do was not pass the resolution preventing Mr. Barker from filing the complaint and getting the occupancy order.

Councilmember Marsha Vawdrey noted that delaying the project would also impact the property owner as much as the City.

4.12 Councilmember Tasha Lowery moved to continue Resolution #20-27 to the June 2, 2020, City Council Meeting. Councilmember Mike Green seconded the motion.

4.13 Councilmember Tasha Lowery hoped that all parties would continue to work in good faith to come to a reasonable solution as it was a critical project.

4.14 Councilmember Fred Lowry said that if the parties could not resolve the problem that the City did not have an option but to move forward with the eminent domain presented today.

4.15 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.

5.0 Public Hearing: Ordinance #1438, City Initiated Use Tables Text Amendment (Legislative Action), a request by the City of Draper for approval of a Text Amendment for the purpose of amending the use tables in Draper City Municipal Code Title 9. The amendments will update the permitted, not permitted, and conditional uses within the use tables for all agricultural, residential, commercial, public facilities, manufacturing, and transit station district zones with the intent of reducing the number of listed conditional uses within the city. The changes would apply city wide, excepting Commercial Special Districts, those properties with

Development Agreements that specifically address these standards, and Master Planned Communities.

- 5.1 Jennifer Jastremsky, Planner, provided some background that in 2019 the General Session of the Utah State Legislature changed the State code regarding conditional use permits. It allowed a land-use authority to approve conditional use permits if reasonable conditions can be placed on the permit that mitigates any anticipated detrimental effects (HB 315). The mitigation of those effects does not have to be eliminated. This caused an extremely high threshold to deny a conditional use permit and forces the City to take a holistic view of the uses in the code and to determine if they are permitted, conditional, or not permitted. Because of this, the staff has gone through all of the use tables within the standard zones. Staff excluded commercial special districts as they were specific to individual properties and development and did not look at master plan communities. Ms. Jastremsky said that she could go through all of the changes, but the Council said they had read the packet and understood the proposed amendments.
- 5.2 **Mayor Walker opened the public hearing. No one requested to speak, so Mayor Walker closed the public hearing.**
- 5.3 **Councilmember Mike Green moved to approve Ordinance #1438, City Initiated Use Tables Text Amendment. Councilmember Fred Lowry seconded the motion.**
- 5.4 **A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**
- 6.0 **Public Hearing: Ordinance #1437, City Initiated 2020 Text Amendment (Legislative Action), on the request of Draper City for approval of a Text Amendment to various sections of Draper City Municipal Code Titles 9 and 17 in order to update code, make clarifications, and to propose common-sense standards.**
- 6.1 Jennifer Jastremsky, Planner, said that the proposed changes to the code were geared toward formalizing common-sense standards that the staff has discovered as they have implemented the code. She said that the staff is going to try and bring quarterly changes in smaller bunches so that the changes are a little easier to digest.

Ms. Jastremsky said that the first group of changes regarded home occupations. She said that they have proposed a new use: assembly and repair, limited. She said that this would allow for home occupations to allow for some sort of repair or assembly use out of the home on a small scale. Currently, the code only allows for like jewelry making or food production. She said that this would open up the types of homemaking products that can be produced in the home as a home-based business. This would be added to Draper City Municipal Code (DCMC) Section 9-34-050.

The next group of changes deals with the Major Freeway Arterial Frontage zone (MARF) that was just approved in the code. Ms. Jastremsky said there were a few areas that were not included in the new code that they wanted to make sure to address. These areas include

zone establishment. In that same chapter, DCMC 9-8-020, the staff wanted to make sure that the purpose of the zone was included. The MARF zone qualified for freeway frontage signs, allowing for some extra height and sign area. Staff wanted to ensure that it was within the text that the MARF qualified for different signage.

The third group of changes addressed the South Fork Estates residential district zone. It entailed a clarification that their public street lighting had to meet Draper City streetlight standards and comply with Rocky Mountain Power requirements.

The fourth group of changes (DCMC 9-10-075) addressed driveways. Ms. Jastremsky explained that one thing that the staff has responded to with recent developments was a lack of guest parking. She said that as the staff has reviewed this they determined that the problem was not that there wasn't enough guest parking, but that developments do not have driveways, so residents are using guest parking to be able to use their garage for storage. To eliminate that issue, the staff has reviewed the code to try and ensure that developments do have driveways that are deep enough to park on. To do this the code now outlines specific standards for different dwelling types. Single-family residential dwellings are required to be 20 feet in depth, excluding sidewalks. Regarding multi-family dwellings with garages, the code (DCMC 9-25-060) now states that tandem parking can count towards resident parking but cannot count towards guest parking. To address multi-family developments, the code (DCMC 9-32-030) now requires a minimum set back of 20 feet for dwellings with a garage. Residences with garages have to have either a 20-foot driveway or an alley to accommodate residential parking. All alleyways must be a minimum of 26 feet wide so that there is not a conflict between zoning and fire code.

The fifth group of changes addressed temporary signage for special events. The changes to the code (DCMC 9-26-080) tightened up where and how long signs could be posted. The posting period was reduced to 21 days and the number of signs per event was reduced to 35. Also, there was a distance requirement of 70 yards between signs. The code also limited the number of times that signs could be posted for the same event and specified areas of Draper City property where the posting of signs would not be permissible.

The last change addressed the subdivision code (DCMC 17-5-020). Currently, the code requires that all subdivisions have the minimum building setbacks on subdivision plats. The staff has proposed to eliminate that requirement. This would ensure that people who are buying or developing properties have to refer to the zoning code for the minimum setbacks as opposed to the subdivision plat.

The Planning Commission recommended approval on the item.

- 6.2 Councilmember Fred Lowry asked about the multifamily parking. He wanted to know what the requirements were before. Ms. Jastremsky said that previously the code did not require driveways for multifamily parking. The code required two parking spaces per unit, plus one guest parking space per four units. The code now says that if you have a garage, you also have to have a driveway.

6.3 Councilmember Fred Lowry also asked about how the freeway signs were changed. Ms. Jastremsky explained that the code was not changing what types of signs were allowed on the freeway, but rather clarifying that the MARF zone was eligible for freeway frontage signs.

Russ Fox, Assistant City Manager, said that the MARF zone was still quite close to the freeway.

6.4 Mayor Walker opened the public hearing. No one requested to speak so Mayor Walker closed the public hearing.

6.5 Councilmember Tasha Lowery moved to approve Ordinance #1438, City Initiated Use Tables Text Amendment. Councilmember Marsha Vawdrey seconded the motion.

6.6 Councilmember Tasha Lowery thanked the staff for cleaning up the code. She said that a lot of the changes had been long-awaited.

Councilmember Marsha Vawdrey wanted to recognize Councilmember Summerhays.

6.7 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.

7.0 Action Item: Resolution #20-25 (Legislative Action), adopting the Tentative Budget for Fiscal Year Ending June 30, 2021, and setting the public hearing for June 2, 2020, to take public comment on the Tentative Budget.

7.1 Bob Wylie, Finance Director, said that the item he was presenting to the Council was the fiscal year (FY) 2021 budget. The budget would begin on July 1, 2020, and run through June 30, 2021. He explained that as required by the state of Utah the budget presented to the Council was a balanced budget within the funds. He noted that the overall budget for the City was just over \$107 million, including all capital projects and operational expenses. He said that while the entire budget document was over 100 pages long, there were three aspects that he wanted to highlight to the Council.

Mr. Wylie, Finance Director, first showed the personnel and full-time equivalent employees. Mr. Wylie stated that there were no new requests for employees. The total overall staffing for the next year is requested at 271 full-time equivalent employees.

Next, Mr. Wylie, Finance Director, reviewed the operational component of the budget (revenues and expenditures). He spoke to the revenue wheel, noting that staff had adjusted based on the possible economic impacts of COVID-19. Because of this, the staff reduced the original tentative budget by \$2,795,000. Taxes make up about 70% of revenue for the General Fund. On the expenditure side, personnel services represent about 61% of all the operational expenditures. A review of the overview page of the General Fund shows that there was a \$3 million reduction in the FY2021 budget from the FY2020 budget.

The last component of the budget that Mr. Wylie, Finance Director, addressed was the City's proposed capital projects. He explained that on page 77 of the budget document staff had listed all of the currently approved capital projects. He said that there were no new capital projects proposed in the tentative budget. Overall, there was \$30 million in approved capital projects. He noted that regarding capital equipment replacements, the City had budgeted for the replacement of vehicles.

Finally, Mr. Wylie, Finance Director, provided an overview of the Enterprise Funds (water, stormwater, solid waste & ambulance fund). For the three funds that entail charging customers, the City did not implement any new rates. He noted that the staff had not yet received the County tax rate but budgeted with the current rate. The City would need to adopt the new certified tax rate at the last meeting in June.

The budget would be available online and through the public recorder for residents to review before the public hearing on June 2, 2020.

- 7.2 Councilmember Cal Roberts asked if Bob Wylie, Finance Director, could talk through some of the cash areas the City could tap into if the sales tax ended up being lower than estimated.

Bob Wylie, Finance Director, said that the \$2.7 million reductions in budget primarily came from a reduction in sales tax. He said that the City was using an appropriation of a fund balance. If the sales tax were reduced even further than estimated, the City would be able to look at capital improvement projects that were funded by the General Fund but were not started yet, as other sources of funding to be appropriated. He said that there was other additional General Fund money that could be used.

Councilmember Cal Roberts said it seemed safe to say that Draper residents could rest easy and know that Draper City was in a safe financial situation despite uncertain times. He thanked Mr. Wylie, stating that financial guys often do not get a lot of praise. He felt that they did a phenomenal job managing the budget and that he was appreciative of their work.

- 7.3 Councilmember Tasha Lowery verified that the City cut \$2 million from the budget. Bob Wylie, Finance Director, said that the budget was reduced from initial requests from department heads back in March to accommodate the estimated reduction in sales tax revenue. This amounted to a \$2.7 million reduction, as well as a reduction of operating cost expenses in the payroll and travel.

Councilmember Tasha Lowery asked about the money that the City was expected to receive from the County that was thought to make up some of the loss of sales and gas tax revenue.

Mr. Dobbins said that the staff is still working through the details of acquiring the \$1.4 million that is Draper's share. However, the staff is trying to understand what conditions come with the money and what they can use it for. Mr. Dobbins said the use of the money seemed pretty restrictive. He also did not know yet when the money would be available.

7.4 **Councilmember Mike Green moved to approve Resolution #20-25, adopting the Tentative Budget for Fiscal Year ending June 30, 2021 and set the Public Hearing for June 2, 2020. Councilmember Marsha Vawdrey seconded the motion.**

7.5 Councilmember Cal Roberts wanted to recognize staff and the hard work that they offer to the City.

7.6 **A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**

7.7 Councilmember Fred Lowry noted that his last name does not have an 'e' in it as included in the report. He said that one way to remember that was that he presented less than Councilmember Tasha Lowery, so his name had one less letter in it.

8.0 **Action Item: Ordinance #1421, amending Title 14-5 of the Draper City Municipal Code regarding the City's traffic regulations.**

8.1 Scott Cooley, City Engineer, said that the staff has looked at Draper City's parking code and wanted to make some changes. He said that the code was amended to address some parking problems. A particular problem the City has faced were parking problems near intersections as opposed to in a designated parking area. Therefore, the code (DCMC 14-5-010) prohibits parking:

- (1) In front of or within five feet of a public or private driveway;
- (2) Within an intersection or within 30 feet of any intersection;
- (3) Upon a highway in such a manner that parking or stopping leaves less than 12 feet of unobstructed street width for free movement of vehicular traffic;
- (4) Within a marked traffic lane;
- (5) On any highway or alley where the width of the highway or alley is less than twenty feet; or
- (6) In a marked shoulder or bike lane or designated parking area if any portion of the vehicle protrudes over or upon a solid white edge line of a traffic lane.

He said that most of the traffic issues the City has encountered fall into one of these categories. These additions to the code would allow parking enforcement. He said that it is challenging for police to enforce something that, although logical, is not in the code.

Also, the staff has clarified winter parking requirements. The code now says that no one can leave a vehicle on a trail or street when there is snow present from November 1 to April 30. These vehicles could be removed at the owner's expense. This is a change from current parking that only states that people cannot park overnight.

Lastly, the code (DCMC 14-5-060) had an amendment to hazardous parking, preventing a person from parking in such a manner as to interfere with the free flow of traffic.

Mr. Cooley, City Engineer, said that staff would rely upon these additions for enforcement and clean up some problem areas throughout the City.

8.2 Councilmember Mike Green moved to approve Ordinance #1421, amending Title 14-5 of the Draper City Municipal Code. Councilmember Cal Roberts seconded the motion.

8.3 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.

9.0 Recess to a Municipal Building Authority Meeting.

9.1 Councilmember Mike Green moved to recess to a Municipal Building Authority Meeting. Councilmember Marsha Vawdrey seconded the motion.

9.2 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.

10.0 Council/Manager Reports, continued from Study Meeting

10.1 Councilmember Fred Lowry said that he recognized that the item he was bringing up was a little sensitive or controversial. However, he was concerned about the increased usage of Draper City trails and the parking issue that has emerged at the trailheads. He said that in cases like at Coyote Hollow where there was no on-street parking if there were any opportunities to provide on-street parking on at least one side of the street.

Councilmember Mike Green said that he was not going to touch the issue as the Council had made a deal with those neighbors. Trail users could park at Andy Ballard.

Councilmember Fred Lowry wanted to better understand what had happened that allowed those residents to control public streets, whereas other residents throughout the rest of the City do not have a say on their public streets.

Councilmember Tasha Lowery said that the streets under discussion were built very narrow so when on-street parking is allowed on the streets, they become almost impassable. She noted that at one point there was an emergency where the emergency providers could not get through because of parking.

Councilmember Mike Green said that the streets were only 22 feet wide. For people to be able to park on both sides the streets have to be 26 feet wide to allow for an 8-foot lane for an emergency vehicle to be able to move through.

Councilmember Fred Lowry said that he was not asking about both sides, but one side of the street. He said he knew that it was a sensitive issue, but that he had a lot of residents approach him about the issue.

Councilmember Mike Green said that the neighbors did not want the City to expand Coyote Hollow at all. He said that the City probably could have put 90 parking spaces where the lot was located, but that within the budget they put 41 spaces. It was his understanding that by putting 41 parking spaces and eliminating the cul-de-sac, by establishing it as a fire break, preventing a guy from waking up and having people in his yard. Councilmember Fred Lowry said that he had heard about that, but that a resident knows about a cul-de-sac when they build their house. Councilmember Mike Green told Councilmember Lowry that he did not sit through the public meetings; Coyote Hollow was the third or fourth worst issue.

Mr. Cooley said that the Traffic Committee discussed these issues a fair amount. Their general approach was that when problems like these became significant enough that the residents themselves were willing to limit their on-street parking that the City considers that in determining that a significant parking problem exists. He said that limiting parking on a street is problematic for residents who have visitors.

Councilmember Fred Lowry said that parking was only limited to trail use, not to residents. He noted that people could still park on both sides of the street as long as they were not using the trailhead.

John Eining, Police Chief, said that he thought that all parking was restricted to one side of the street. Councilmember Fred Lowry said that was correct, but that on the side of the street that people can park on people cannot park there for trail use.

Councilmember Tasha Lowery asserted that Coyote Hollow was never intended to be a major trail. The City has different tiers of trailheads and Coyote Hollow was supposed to be a minor trailhead. She said that they have moved it up to be a medium size trailhead, but that it was designed to be a minor trailhead. It was not supposed to have a massive, negative impact on residents. She said that just because the usage has changed does not mean that they should change the designation of the trailhead as it was set based on what was appropriate for the neighborhood. Councilmember Fred Lowry said that the trailhead was not set up to be a private trailhead for the people who live in that area.

Councilmember Mike Green said that he felt that the City should be charging a fee and that they should implement a pass on mountain bikes. He said that he would be a lot more aggressive in limiting the number of people in that area. He said that the trail was a public good, so an individual is not motivated to bear the cost of the use. However, if it became tolled, the individual would be investing in their use. He cited Garrett Hardin's tragedy of the commons. Councilmember Green said that until the trail was turned into a tolled trail, there would be congestion. In his mind, the only way to eliminate congestion was to force people to pay the cost of usage. To reduce the usage, he said the best way to do that was to put a restriction that mountain bikers could not park at the trailhead. He said that he felt as though they struck a good compromise with the neighborhood and that he did not want to revisit the issue again. Councilmember Tasha Lowery agreed and added that there was ample parking at the Ballard Equestrian Arena.

Councilmember Fred Lowry said that he still thought that it was wrong that the City limit the use of public streets. Councilmember Tasha Lowery suggested that Councilmember Fred Lowry could approach the LDS Temple to see if they would open their parking during this time of special need with the pandemic.

- 10.2 Rhett Ogden, Parks and Recreation Director, wanted to ask the Council's thoughts on closing Upper Canyon Road given that it appears that there will be a rough fire year and that the last three fires in Draper have resulted from use on that road. He explained that internally staff has discussed closing the road to use beginning in June at Orson Smith to Peak View to eliminate use during the fire season. He felt the fire danger was something to consider.

Mayor Walker said that he felt that the Council should consider it because on heavy use days there were vehicles parked on the sides of the dirt road up to the Orson Smith trailhead. He said that if there was a wildland fire it would be difficult to get City vehicles up the road. He said that he felt there was a real fire danger as it was the driest April in recorded history in Utah.

Rhett Ogden, Parks and Recreation Director, said that it would cause some issues for those wishing to climb Lone Peak, resulting in increased parking in the new developments on top of SunCrest. However, he still felt that it was the right decision to be safe.

The Council supported the decision.

- 10.3 Mayor Walker wanted to make the Council aware that staff would be announcing tomorrow the four cities that would be participating in the first responders' fireworks show. It would be a 15-minute show on May 30th in which all four cities would be synchronized to music on i-heart radio. Draper City's launch site would be Draper Park. It would need to be blocked off to prevent residents from wandering into the launch area.

Mayor Walker also provided an update on the testing program. He said that the City had already sold out the 1,000 tests they purchased. It only took about 48 hours. He wanted to know if the Council was interested in doing another day of testing. He said that it seemed as though there was a big demand. Councilmember Fred Lowry said that he thought there would be a demand for more.

Councilmember Cal Roberts asked what would happen if the City were sitting on inventory that they could not move. He asked if the City would just eat the cost.

Mayor Walker said that the City could use some of the federal money they would receive to pay for the tests. He felt that the City should decide on a way to offer up some tests to people who could not otherwise afford to take them.

Councilmember Cal Roberts said that he liked that idea as it was his impression that there were a lot of people who wanted tests but still found it to be out of their price range.

11.0 Adjournment

11.1 Councilmember Mike Green moved to adjourn the meeting.

11.2 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.

11.3 The meeting adjourned at 9:05 p.m.