

**February 27, 2020**

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, February 27, 2020, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

**Call to Order:**

There were present:

Mayor Rebecca L. Noah Casper  
Councilmember Michelle Ziel-Dingman  
Councilmember Shelly Smede  
Councilmember Thomas Hally  
Councilmember Jim Freeman  
Councilmember Jim Francis

Absent:

Councilmember John Radford

Also present:

All available Department Directors  
Randy Fife, City Attorney  
Kathy Hampton, City Clerk

**Pledge of Allegiance:**

Mayor Casper requested William Hale, senior at Idaho Falls High School, to lead those present in the Pledge of Allegiance.

**Public Comment:**

Mayor Casper requested any public comment not related to items currently listed on the agenda or not related to a pending matter. No one appeared.

**Consent Agenda:**

The Airport requested approval of Change Order, Airport PO #94507.

Municipal Services requested approval of IF-20-I, Purchase of Vehicle Replacements and Addition to the Fleet; IF-20-L, Purchase of Telehandlers for Public Works and Idaho Falls Power; IF-20-03, Purchase of Trailer Mounted Cable Puller for Idaho Falls Power; Purchase of Medium Voltage Pole Mounted Reclosers for Idaho Falls Power; minutes from the February 10, 2020 Council Work Session and Executive Session; and, February 13, 2020 Council Meeting; and, license applications, all carrying the required approvals.

It was moved by Councilmember Smede, seconded by Councilmember Dingman, to approve, accept, or receive all items on the Consent Agenda according to the recommendations presented. Roll call as follows: Aye – Councilmembers Francis, Dingman, Freeman, Hally, Smede. Nay – none. Motion carried.

**Regular Agenda:**

**Legal Services**

**Subject: Destruction of Certain Temporary Documents**

The Resolution would authorize the destruction of certain temporary records which have no intrinsic, historical, or other value. Prior to the destruction of temporary City records, Idaho Code § 50-907 and the City's record retention

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Resolution No. 2016-22 requires that the destruction be ordered by the Council. This resolution meets the requirement to order the destruction of the records specifically listed in the resolution.

Councilmember Hally reiterated Idaho code allows for the destruction of certain records and various departments have submitted items to be destroyed. Councilmember Francis questioned if records are kept in digital format. Mr. Fife stated if there are multiple copies only one copy is needed, which can be a digital record. To the response of Mayor Casper, Mr. Fife reiterated State requirements require records of intrinsic, historical, or showing great purpose in continuance of government be kept permanently. He stated semi-permanent, temporary, or phemora records are not required to be kept. He noted the Idaho Historical Society will keep historical records.

It was moved by Councilmember Hally, seconded by Councilmember Freeman, to approve the resolution to destroy certain temporary records pursuant to Idaho Code § 50-907 and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Smede, Hally, Dingman, Freeman, Francis. Nay – none. Motion carried.

RESOLUTION NO. 2020-05

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR THE CLASSIFICATION AND DESTRUCTION OF CERTAIN TEMPORARY PUBLIC RECORDS PURSUANT TO IDAHO CODE § 50-907; PROVIDING THIS RESOLUTION TO BE EFFECTIVE UPON ITS PASSAGE AND APPROVAL AND PUBLICATION ACCORDING TO LAW.

**Community Development Services**

**Subject: Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Linden Trails Addition, Division No. 4**

For consideration is the Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards for Linden Trails Addition Division No. 4. The Planning and Zoning Commission considered this item at its January 7, 2020 and recommended the Council act on the plat consistent with their vote on the Planned Unit Development for the same area. The Council approved the PUD on February 13, 2020 and therefore the plat should also be approved. Staff recommends approval of the plat.

Director Cramer clarified there was an error noted in the Reasoned Statement of Relevant Criteria and Standards – it was called a public hearing when it was actually a meeting.

It was moved by Councilmember Francis, seconded by Councilmember Dingman, to approve the Development Agreement for Linden Trails Addition Division No. 4, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Francis, Dingman, Smede, Freeman. Nay – none. Motion carried.

It was moved by Councilmember Francis, seconded by Councilmember Freeman, to accept the Final Plat for Linden Trails Addition Division No. 4, and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows: Aye – Councilmembers Freeman, Smede, Francis, Dingman, Hally. Nay – none. Motion carried.

It was moved by Councilmember Francis, seconded by Councilmember Freeman, to approve the amended Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Linden Trails Addition Division No. 4, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Francis, Dingman, Smede, Freeman. Nay – none. Motion carried.

**Subject: Public Hearing – Ordinance Amending the Form-Based Code to allow Parklets**

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Because this is an amendment to a Zoning Code, public hearing notification is required. The hearing was originally scheduled for February 13, 2020 but because the documentation was not ready, it was tabled to the February 27, 2020 meeting. The documentation is now ready for consideration. The Planning and Zoning Commission reviewed this item at its December 3, 2019, meeting and recommended approval by unanimous vote. Staff recommends approval of the ordinance.

Mayor Casper opened the public hearing and ordered all items presented be entered into the record.

Director Cramer stated this amendment to the current Form Based Code only covers the downtown area. The amendment will add open-type spaces, referred to as Parklets. Director Cramer stated, per concern to address parking issues, a fee was approved to lease parking stalls. He indicated this will allow the City or a business to convert an adjacent parking stall into an open public space for a restaurant or, a place to sit. There are minimum and maximum requirements in terms of size as well as safety requirements and the types of uses allowed. Director Cramer noted Parklets are becoming more popular in downtown areas so this is a recommendation in the downtown plan. He also noted the only change to the Form Based Code is a single page to add Parklets. Councilmember Freeman questioned if the Parklets are temporary in nature and if they would be required to move for snow removal if necessary. Director Cramer stated this is not a requirement however, if an issue arose the City reserves the right to require it to be moved. He also stated the fee is \$1200 per year or \$100 per month. Mayor Casper questioned if this is considered to be a best practice for downtown and if there is expressed demand from downtown. Director Cramer stated there has been demand and interest and he expects at least one (1) Parklet during spring. He expects businesses to use them to create vibrancy. Councilmember Francis questioned the requirement of twenty-five (25) feet from an intersection and if Parklets are allowed in the curve cut-outs. Director Cramer stated the Parklets must be in an actual parking space. To the response of Councilmember Smede, Director Cramer stated the determined fee was a starting point. A lease agreement would be required which could possibly be shorter-term following some testing. Mayor Casper stated the fee could be based on space in the building. Director Cramer noted the \$100 per month fee for underground parking at the Broadway.

Mayor Casper requested any public comment. No one appeared. Mayor Casper closed the public hearing.

Councilmember Francis believes this is a good experiment with the Form Based Code.

It was moved by Councilmember Francis, seconded by Councilmember Freeman, to approve the Ordinance amending the Form Based Code to include Parklets as an allowed Open Space Type under a suspension of the rules requiring three complete and separate readings and request that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Dingman, Smede, Francis, Freeman, Hally. Nay – none. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3302

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING TITLE 10, CHAPTER 7 BY ADDING TO THE FORM BASED CODE REGULATIONS FOR PARKLETS IN THE DOWNTOWN AREA; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

**Subject: Appeal of Board of Adjustment Decision, 350 South Yellowstone**

For consideration is the appeal of a Board of Adjustment (BOA) Appeal Panel's decision regarding alleged code violations at 350 South Yellowstone. A violation notice was sent to the property owner regarding zoning code violations for outdoor storage of materials on November 25, 2019. The owner of the property appealed this interpretation of the code to the (BOA) on January 9, 2020. The BOA upheld the Zoning Administrator's code interpretation and determined the code violations were valid. The property owner is now appealing the BOA's Appeal Panel's decision to the City Council. The appeal is based on the record and no new facts will be presented.

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Mayor Casper clarified this item is not a public hearing. Director Cramer presented the following:

Slide 1 – Appeal Process 11-6-5(A) Appeal of Decisions of the Zoning Administrator

Director Cramer stated this code allows a request for the BOA to consider the decision of the Zoning Administrator. He also stated the Code Enforcement Division sent a letter to Mr. Russell noting code violations on the property, including accumulation of wood and tires. As Mr. Russell met with staff, Zoning Administrator Kerry Beutler determined the use on site, specifically the tires, was considered open storage. That use is not allowed in the zone where the property is located. Three (3) members of the BOA were selected as a panel who then makes a decision following the process. If the BOA decision is not satisfactory the appellant can appeal the BOA decision to the City Council. The BOA voted unanimously to uphold/affirm Mr. Beutler's decision. Director Cramer noted the City received the appeal in the required timeframe of 14 days.

Slide 2 – Appeal Process 11-6-5-(D)(1) Decisions ... shall be final unless a written appeal is made ... within fourteen (14) days ...

Slide 3 – Aerial photo of property

Director Cramer stated this property is located west of S. Yellowstone, south of Cliff Street, and, north of Pancheri.

Slide 4 – Additional aerial photo of property

Director Cramer noted the photo is outdated. The use is very commercial in nature which allows a variety of commercial uses.

Slide 5 – Photo of site

Director Cramer noted this photo was taken in December 2019. The large amount of tires on the property is considered open storage.

Slide 6 – Additional photo of site

Slide 8 – Zoning Ordinance 11-7-1: Definitions, Storage Yard: The use of a site where equipment, inventory, supplies, vehicles or other similar items are stored outside. Storage Yards not an allowed use in the CC Zone.

Director Cramer stated it is staff's believe that storage is occurring.

Slide 7 – Additional photo of site

Director Cramer believes the use of site is considered open storage, not a display. He noted display is not defined in the zoning ordinance although display would be considered an auto sales lot as that is the nature of the use and is defined separately. To the response of Mayor Casper, Director Cramer stated the tires are located on the corner and wrap around to the backside of the property.

Mr. Bill Russell, appellant, appeared. Mr. Russell stated he knows the difference of storage and display. He believes communication is important although he expressed his dissatisfaction for staff not reaching out and seeing his type of business. Mr. Fife reminded those present that this is an appeal which should include a reference to the decision of the BOA, not an argument about what should have happened. He stated the facts are included in the packet. Mr. Russell stated his tires are on display, inside and outside of the store, as he is in the used tire business. He also stated he spends a large amount of time inspecting, cutting, repurposing, and, organizing the tires. He reiterated the tires are on display, they not being stored. He stated the pictures are not reflective of the current use. Mr. Russell stated he detests litigation although he will not back down if he feels he is unjustly treated. He also stated he will proceed with the legal process, including the Supreme Court if forced. Mr. Russell stated he has requested an inspector to his business. He also requested the vote be postponed until an inspector will meet with him. Mayor Casper reiterated the appeal needs to focus on why the decision was wrong. She clarified Mr. Russell believes the definition may have been misapplied/incorrect, the process was flawed due to no interaction, and, this was an unjust decision. Mr. Russell stated he performs tasks that wouldn't occur on storage items. He indicated this is his livelihood and is a big deal to him as he has been a businessman all his life. This would make success or fail of his business. He also intends to dig out the parking lot and make a basement for storage.

To the response of Councilmember Freeman, Mr. Russell stated he owns property. To the response of Councilmember Hally, Mr. Russell confirmed the nicer inventory is located inside and the less-expensive inventory is located outside. Mr. Russell also stated his business is open 24 hours/day. To the response of Councilmember Francis, Mr. Russell confirmed the property was modified since his first warning including removal of the wood, a 2' clearance, and, a fence. Councilmember Freeman questioned if the number of display of tires could be reduced. Mr. Russell stated all tires are different.

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Mr. Beutler appeared. To the response of Councilmember Freeman, Mr. Beutler stated options to bring this property into code would include moving the tires inside or construct an additional building for the tires. A fence would not be an option. To the response of Mayor Casper, Mr. Beutler reiterated the code does not provide a definition of display, although the code refers to display, similar to car lots, but not as a service-type business; the common Webster's dictionary would be used if the code does not define a definition; he is unsure if the CC Zone allows a Christmas tree lot although a Christmas tree lot could be defined as display and storage and is typically considered a temporary use; and, there was interaction with Mr. Russell from Code Enforcement staff and himself to discuss the site including visibility triangles, parking, and, outside storage. Mr. Beutler believes this interaction/conversations were educational at first. He reviewed the code enforcement process. Also to the response of Mayor Casper, Mr. Beutler stated there was an immediate need for safety and exploring what could changes could be done realizing some display makes sense although the primary use of the site is storage; the business across Yellowstone involving ATVs is zoned differently which is allowed due to non-conforming use; and, a rezone could potentially occur although a rezone could create a spot zone. Councilmember Hally indicated this is a unique inventory although he believes there is some order following the improvements. To the response of Councilmember Hally, Mr. Beutler stated the amount of display and storage was discussed as there is no requirement. He believes the inventory has taken over the entire property which is not allowed. He indicated Mr. Russell was not willing to reduce the outside inventory. Councilmember Dingman believes display may need defined. However, per the dictionary definition, she believes the BOA was accurate in their findings. She questioned Code Enforcement staff's definition of display. Mr. Beutler stated, as the Zoning Administrator, it is his responsibility for interpretation. Mr. Beutler reiterated Mr. Russell was unwilling to change the amount of display. Mr. Russell reappeared. He stated Mr. Beutler's comments are not accurate as he would remove or remodel if asked. Councilmember Francis questioned if removal of 40%-50% of the tires would satisfy the problem. Mr. Fife stated this is not about problem solving. The Council has a zoning designation for this property with designated uses. The Zoning Administrator is in charge of interpreting the code. Mr. Russell appealed because he believed the code was incorrect. The Council's decision should be based on the record and whether the Zoning Administrator and the BOA panel was incorrect. Councilmember Hally believes the focus is on semantics in the code and the interpretation of the semantics regarding storage and display. To the response of Councilmember Francis, Mr. Fife clarified the Council can reverse or affirm the BOA decision. To the response of Councilmember Dingman, Director Cramer clarified the decision was based on the definition and photos which staff believes is outside storage. He also confirmed Christmas tree lots are allowed as a temporary land use that happens for 30 days or less as long as a structure is not built and the required amount of parking is not removed. He noted were it not for the changes in the code two (2) years ago, the amount of storage would have diminished the required parking for the site. He also noted there is no operation of anything on the site other than the large amount of storage of inventory. Brief discussion followed regarding the timeframe of the pictures.

Councilmember Francis believes the decision is not a final business decision and is part of a continued dialogue for compliance. He also believes, based on the pictures, the line was crossed. Councilmember Smede believes the decision was correct. She also believes Mr. Russell is working toward compliance. Councilmember Freeman believes the inventory on this site should be stopped. Councilmember Dingman reiterated the definition of inventory, storage, and, display. She believes the BOA was accurate in storage and display. She concurs the line was crossed.

Councilmember Francis strongly encouraged dialogue and resolution as he believes this issue is resolvable. It was then moved by Councilmember Francis, seconded by Councilmember Freeman, to affirm the Board of Adjustment Appeal Panel's decision. Roll call as follows: Aye – Councilmembers Francis, Dingman, Freeman, Hally, Smede. Nay – none. Motion carried.

It was moved by Councilmember Francis, seconded by Councilmember Freeman, to accept the Board of Adjustments Reasoned Statement of Criteria for its decision and give authorization to be signed by the Mayor. Roll call as follows: Aye – Councilmembers Dingman, Francis, Smede, Hally, Freeman. Nay – none. Motion carried.

### **Announcements:**

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Mayor Casper announced City Club on February 28.

**Executive Session:**

It was then moved by Councilmember Freeman, seconded by Councilmember Smede, to move into Executive Session. The Executive Session has been called pursuant to the provisions of Idaho Code Section 74-206(1)(c) To acquire an interest in real property which is not owned by a public agency. The Executive Session will be held in the City Annex Conference Room. At the conclusion of the Executive Session the Council will not reconvene into Regular Council Meeting. Roll call as follows: Aye – Councilmembers Smede, Hally, Dingman, Freeman, Francis. Nay – none. Motion carried.

The City Council of the City of Idaho Falls met in Special Council Meeting (Executive Session), Thursday, February 27, 2020, in the City Annex Conference Room in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 9:00 p.m.

There were present:

Mayor Rebecca L. Noah Casper  
Councilmember Michelle Ziel-Dingman  
Councilmember Thomas Hally  
Councilmember Jim Freeman  
Councilmember Jim Francis  
Councilmember Shelly Smede

Also present:

Chris Fredericksen, Public Works Director  
Randy Fife, City Attorney

The Executive Session was called pursuant to the provisions of Idaho Code Section 74-206(1)(c) To acquire an interest in real property which is not owned by a public agency.

There being no further business, the Executive Session adjourned at 9:05 p.m.

s/ Kathy Hampton \_\_\_\_\_  
CITY CLERK

s/ Rebecca L. Noah Casper \_\_\_\_\_  
MAYOR