

TOOELE CITY CORPORATION

ORDINANCE 2013-17

AN ORDINANCE OF TOOELE CITY AMENDING AND ENACTING DEFINITIONS RELATED TO TOBACCO SPECIALTY STORES AND TOBACCO PRODUCTS.

WHEREAS, on January 18, 2012, the Tooele City Council approved Ordinance 2011-19, effective immediately upon passage, which enacted the following definition of the term “tobacco specialty store”, as well as imposed land use regulations upon tobacco specialty stores:

Tobacco Specialty Store – An establishment providing retail sales and services which exclusively or primarily involve the sale of tobacco or tobacco-related products.

and,

WHEREAS, the recitals and findings of Ordinance 2011-19 are incorporated herein by this reference; and,

WHEREAS, subsequent to the enactment of Ordinance 2011-19, House Bill 95 of the 2012 General Session of the Utah Legislature (hereinafter “HB 95”) enacted U.C.A. §10-8-41.6, effective May 8, 2012, containing definitions of the terms “retail tobacco specialty business” and “tobacco product”; and,

WHEREAS, U.C.A. §10-8-41.6 provides that an establishment is a retail tobacco specialty business if, among other things, more than 35% of its gross annual receipts are from the sale of tobacco products, whereas T.C.C. §7-1-5(177) provides that an establishment is a tobacco specialty store if it primarily sells tobacco products, the word “primarily” being defined by the dictionary as being more than 50%; and,

WHEREAS, U.C.A. §10-8-41.6 requires that an establishment falling within the definition of retail tobacco specialty business be licensed as such by the licensing municipality, and further provides that

Nothing in this section . . . prohibits a municipality from adopting more restrictive requirements on a tobacco specialty business than provided for in this section.

By implication, U.C.A. §10-8-41.6 would appear to preempt a municipality from enacting less restrictive requirements on a tobacco specialty business; and,

WHEREAS, to harmonize the City and State definitions, to prevent businesses from believing that they can maintain an inventory, floor space, display area, or gross sales of up to 50% tobacco products when the governing State law requirements are triggered at the 35% gross receipts threshold, the City Administration recommends that the City definition of the term “tobacco specialty store” be amended to mirror and

include the State definition of the term “retail tobacco specialty business”, and further that the City Council enact a definition of the terms “tobacco product” and “tobacco-related product” that mirrors the State definition of the term “tobacco product”; and,

WHEREAS, the City Administration recommends further that the component parts and ingredients of electronic cigarettes, in addition to electronic cigarettes themselves, be included in the City definition of the terms “tobacco product” and “tobacco-related product”; and,

WHEREAS, to expedite the harmonization referenced above, and to minimize the potential for confusion and conflict, the City has published on September 19, 2013, a Notice of Pending Ordinance, effective September 20, 2013, on the Utah Public Notice Website, by electronic delivery through the Website to the Tooele *Transcript-Bulletin*, and by posting at City Hall, giving notice that Tooele City has formally initiated proceedings to amend the Tooele City Code definitions of the terms “tobacco specialty store”, “tobacco product”, and “tobacco-related product” (see Notice of Pending Ordinance attached as Exhibit A); and,

WHEREAS, by authority of Utah Constitution Article XI Section 5, Tooele City has framed and adopted a charter “for its own government,” which Section 5 grants to municipalities like Tooele City

the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred. . . .¹

WHEREAS, the Utah Code (U.C.A. §10-1-107) grants expansive, not limited, powers to municipalities:

The provisions of this act [the Utah Municipal Code] or any other act . . . shall be considered as an alternative or additional power and not as a limitation on any other power granted to or possessed by municipalities.

WHEREAS, the Utah Code provides that municipal governing bodies (e.g., the Tooele City Council) “shall exercise its legislative powers through ordinances” (U.C.A. §10-3-701), which legislative powers enable the City Council to

pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law.

WHEREAS, the City Council finds that the present Ordinance is in the best interest of the public health, safety, and welfare (*reference* U.C.A. §10-8-41.6(2)); and,

¹ At the present time, Tooele is the only chartered city in the State of Utah.

WHEREAS, Utah courts have held that the exercise of legislative powers in the enactment of ordinances by municipal legislative bodies furthering the health, safety, or welfare of the municipality is governed by the reasonably debatable standard; a decision that is reasonably debatable will not be held to be arbitrary or capricious; a legislative decision will be upheld if it is reasonably debatable that the decision, and the evidence supporting it, is in the interest of the general welfare (see: *Petersen v. Riverton City*, 210 UT 58, 243 P.3d 1261 (Utah 2010); *Bradley v. Payson City*, 203 UT 216, 70 P.3d 47 (Utah 2003); *Marshall v. Salt Lake City*, 105 UT 111, 141 P.2d 704 (Utah 1943)); and,

WHEREAS, the City Administration, through the City Recorder's Office, will prepare administratively policies for the issuance of business licenses and for the verification of gross receipts as relevant to this Ordinance; and,

WHEREAS, this Ordinance, together with the Notice of Pending Ordinance, were discussed by the City Council during its public work session of October 2, 2013 (see City Council agenda and minutes attached as Exhibit B); and,

WHEREAS, the Planning Commission convened a public hearing, as required by U.C.A. §10-9a-205 for land use ordinances and by T.C.C. §7-1A-6 for revisions to the City zoning ordinance, on October 23, 2013, and voted to recommend approval of this ordinance to the City Council (see the Planning Commission minutes attached as Exhibit C); and,

WHEREAS, the City Council convened a public hearing, as required by T.C.C. §7-1A-6 for revisions to the City zoning ordinance, on November 6, 2012 (see the City Council minutes attached as Exhibit E):

NOW, THEREFORE, BE IT ORDAINED BY THE TOOELE CITY COUNCIL that:

1. the Tooele City Code definitions of the terms "tobacco specialty store", "tobacco product", and "tobacco-related product" are hereby amended as shown in Exhibit E; and,
2. this Ordinance shall be retroactive to 12:01 a.m. on September 20, 2013, pursuant to the published Notice of Pending Ordinance and the pending ordinance rule codified in U.C.A. §10-9a-509; and,
3. the City Recorder's Office is hereby directed to develop an administrative procedure for the reporting of total annual gross receipts from the sale of tobacco products by tobacco product sellers in Tooele City.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this 5th day of February, 2014.

TOOELE CITY COUNCIL

(For)

(Against)

[Handwritten signature]

ABSTAINING: _____

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

[Handwritten signature]

ATTEST:

[Handwritten signature]

Michelle Pitt, City Recorder

SEAL

Tooele City

Approved as to Form:

[Handwritten signature]
Roger Baker, City Attorney

Exhibit A

Notice of Pending Ordinance
September 20, 2013

September 20, 2013

TOOELE CITY CORPORATION
NOTICE OF PENDING ORDINANCE

The Supreme Court of Utah established the Pending Ordinance Rule in the case of *Western Land Equities, Inc., v. City of Logan*, 617 P.2d 388 (1980):

if a city or county has initiated proceedings to amend its zoning ordinances, a landowner who subsequently makes application for a permit is not entitled to rely on the original zoning classification.

Utah Code §10-9a-509(1)(a)(ii) codified the Pending Ordinance Rule.

Tooele City has invoked Utah's Pending Ordinance Rule by initiating proceedings to amend its land use ordinances relating to the definitions of the terms "tobacco specialty store", "retail tobacco specialty business", "tobacco product", and "tobacco-related product".

The Tooele City Council will discuss the pending ordinance during its advertized public work session meeting on October 2, 2013. Thereafter, the pending ordinance may be presented to the Tooele City Planning Commission for recommendation and to the City Council for enactment. In that event, both bodies will conduct public hearings.

In light of the pending ordinance, for a period not to exceed 6 months beginning on the date of this Notice, all commercial establishments seeking a business license as a retail store, convenience store, or similar establishment, and that sell tobacco products or tobacco-related products, shall be subject to the definitions contemplated by the pending ordinance.

Exhibit B

City Council Work Session Agenda and Minutes (October 2, 2013)

PUBLIC NOTICE

Notice is hereby given that the Tooele City Council & Tooele City Redevelopment Agency of Tooele City, Utah, will meet in a Work Session on Wednesday, October 2, 2013 at the hour of 5:00 P.M. The meeting will be held at the Tooele City Hall Large Conference Room located at 90 North Main Street, Tooele, Utah.

1. Open Meeting

2. Roll Call

3. Discussion:

- **DRAFT Ordinance 2013-17 An Ordinance of Tooele City Amending and Enacting Definitions Related to Tobacco Specialty Stores and Tobacco Products**
Presented by Roger Baker
- **Rocky Mountain Care Subdivision to Create One 4.55 Acre Lot Located at 85 East 2000 North**
Presented by Jim Bolser
- **Ordinance 2012-15 Amending the Tooele City Zoning Map for property Located Near 2000 North St and Berra Blvd from RR-5 to GC**
Presented by Jim Bolser
- **Ordinance 2013-13 Amending the Tooele City General Plan Land Use Map for Property Located Near 200 South 1200 West from Light Industrial Land Uses to General Commercial/Research and Development Land Uses**
Presented by Jim Bolser
- **Ordinance 2013-18 Amending the Tooele City Zoning Map for Property Located Near 200 South 1200 West from LI to RD**
Presented by Jim Bolser
- **Ordinance 2013-19 Amending the Tooele City Zoning Map for Property Located Near 145 East 1000 North from RR-1 to LI**
Presented by Jim Bolser
- **Cyrus Land Investment Rezone Request for 12 Acres Located on the Northeast Corner of Second Ave and Seventh St (Tooele Army Depot Street Names) Bordering the National Guard Complex from Open Space to Light Industrial**
Presented by Jim Bolser
- **Conditional Use Annual Inspections**
Presented by Jim Bolser

4. Motion to Close Meeting to Discuss:

- **Property Disposition**
- **Pending Litigation**

5. Adjourn

Michelle Y. Pitt
Tooele City Recorder/RDA Secretary

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 843-2110 prior to the meeting.

**Tooele City Council and
Tooele City Redevelopment Agency
Work Session Meeting Minutes**

Date: Wednesday, October 2, 2013
Time: 5:00 p.m.
Place: Tooele City Hall, Large Conference Room
90 North Main St. Tooele, UT

City Council Members Present:

Dave McCall, Chair
Steve Pruden
Scott Wardle
Brad Pratt
Debbie Winn

City Employees Present:

Mayor Patrick Dunlavy
Roger Baker, City Attorney
Glen Caldwell, Finance Director
Jim Bolser, Community Development and Public Works Director
Paul Hansen, City Engineer
Michelle Pitt, City Recorder
Rachelle Custer, City Planner

Minutes prepared by Michelle Pitt

1. **Open Meeting**

Chairman McCall called the meeting to order at 5:05 p.m.

2. **Roll Call**

Dave McCall, Present
Scott Wardle, Present
Steve Pruden, Present
Brad Pratt, Present
Debbie Winn, Present

3. **Discussion:**

**- Draft Ordinance 2013-17 An Ordinance of Tooele City Amending and Enacting
Definitions Related to Tobacco Specialty Stores and Tobacco Products**

Presented by Roger Baker

In 2012 the City Council enacted a regulation for tobacco specialty stores. Six months later a state statute was enacted providing that if more than 35% of stores' gross annual receipts were from the sale of tobacco products, it would be designated as a tobacco specialty store. Roger recommended adopting this ordinance which would comply with state statute. The city can adopt a more stringent or strict ordinance, but not a more liberal or broader ordinance. This ordinance includes tobacco products and tobacco-related products, including e-cigarettes and the component parts of e-cigarettes, such as, nicotine oils and electronic cigarette parts. This ordinance will go before the Planning Commission for review and then come back before the City Council for consideration on November 6th. The city has a local situation where a tobacco specialty store was closed because it conducted illegal business, i.e., selling illegal drugs. This store reopened as a convenience store, but seems to be operating as a tobacco specialty store.

- **Rocky Mountain Care Subdivision to Create One 4.55 Acre Lot Located at 85 East 2000 North**
- **Ordinance 2012-15 Amending the Tooele City Zoning Map for Property Located Near 2000 North St and Berra Blvd from RR-5 to GC**

Presented by Jim Bolser

Since these two items regard the same thing, Jim presented them together. In January of this year, there were a few issues that the developers needed to take care of, namely the dedication of the existing roadway into the west side of the hospital. Those issues have been addressed and this development is ready to move forward. A public hearing has already taken place. This ordinance will complete this item, which was brought before the Council about 10 months ago.

- **Ordinance 2013-13 Amending the Tooele City General Plan Land Use Map for Property Located Near 200 South 1200 West from Light Industrial Land Uses to General Commercial/Research and Development Land Uses**
- **Ordinance 2013-18 Amending the Tooele City Zoning Map for Property Located Near 200 South 1200 West from LI to RD**

Presented by Jim Bolser

Since these two items regard the same thing, Jim presented them together. Jim passed out maps that depicted the area discussed. Things are underway for the educational corridor associated with the USU expansion. The city felt it was time to proceed with this rezone and reassignment on the General Plan Land Use Map. This ordinance formally zones the publicly owned land in this area as research and development.

- **Ordinance 2013-19 Amending the Tooele City Zoning Map for Property Located Near 145 East 1000 North from RR-1 to LI**

Presented by Jim Bolser

Exhibit C

Planning Commission Minutes
(October 23, 2013)

TOOELE CITY PLANNING COMMISSION MINUTES
October 23, 2013

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

Commission Members Present:

Matt Robinson, Chair
Chris Sloan
Shauna Bevan
Tom Poyner
Ray Smart
Melanie Hammer

Commission Member Excused:

John Curwen
Phil Montano
Steve Dale

City Employees Present:

Rachelle Custer, City Planner
Roger Baker, City Attorney
Jim Bolser, Public Works and Community Development Director
Paul Hansen, City Engineer
Councilwoman Winn
Councilman Pratt

Minutes prepared by Elisa Jenkins

Chairman Robinson called the meeting to order at 7:00 p.m.

1. **Pledge of Allegiance**

The Pledge of Allegiance was led by Commissioner Smart.

2. **Roll Call**

Matt Robinson, Present
John Curwen, Excused
Phil Montano, Excused
Chris Sloan, Present
Steve Dale, Excused
Melanie Hammer, Present
Tom Poyner, Present
Ray Smart, Present

Shauna Bevan, Present

3. **Public Hearing and Motion on a conditional use permit for increasing height and replacing poles on an existing 138 kV transmission line along the southeast edge of Tooele City.**

Presented by Ms. Custer

Ms. Custer explained that Rocky Mountain Power has requested a conditional use permit to allow for a conductor upgrade on an existing line along the southeast edge of Tooele City. Some of the poles will be raised, some of them will be fitted with x-braces, some will need bayonets and some will be replaced. The conductor will be replaced along the entire line. There is an existing easement. This line was constructed in 1963 and there is not a conditional use permit on file from the initial construction. The City has asked Rocky Mountain Power for a conditional use permit to be in place because of the increase in height, and replacement of some of the poles. She stated that letters were sent out to the list of residents provided by Rocky Mountain Power to those being affected by this project and informing them of this meeting and Rocky Mountain Power's desire to upgrade this line.

Mickey Beaver, with Rocky Mountain Power addressed the Commission. Mr. Beaver is the Customer Community Manger for the Tooele Area and the Economic Development Manager for three states which include Wyoming, Utah and Idaho. He stated that this power line which consists of approximately 100 structures and is approximately 13 miles long has been in place since 1963. He said that in the last few years they have experienced an unacceptable number of outages which have affected residents in this area. The conductor size will go up and will be stronger to enhance the power line to effectively carry more load as they go forward into the future. This upgrade is a reliability issue and a safety issue to ensure better consistency of delivery of electricity and serve the growing needs of Tooele Valley along this corridor. Because the new conductor is a little heavier and it has a tendency to hang lower, it will require Rocky Mountain Power to install bayonets to allow the proper clearance between the ground and the conductor and to comply with clearance and safety codes. They are raising the height of a few poles to create clearances. They are also installing x-frame bracing on some of the structures which will stabilize the structures for safety purposes and ensure continued reliability. The easement has been in possession of Rocky Mountain Power for a long time and this upgrade is intended for reliability, growth and development. He asked if the Commission had any questions.

Commissioner Sloan noted that two outages will be required to complete the project and asked how it will affect the residents.

Mr. Beaver referred this question to Scott Burton, Transmission Engineer with Rocky Mountain Power.

Mr. Burton stated that the outages will not affect Tooele City; they will be between the Pine Canyon Sub and the Jensen Sub. There will not be any outages in Tooele City during construction.

Mr. Beaver said that he appreciates the opportunity to be at the meeting and thanked Ms. Custer for helping them through the conditional use permit process.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address the Commission.

Howard Yerke, 197 Val Vista addressed the Commission. Mr. Yerke asked if Rocky Mountain Power plans on changing the KVA rating on this line.

Mr. Beaver said no.

Mr. Yerke noted that since the lines will be hanging down he asked if they have they been engineered to allow proper clearance from the existing houses for safety.

Mr. Beaver said that issue has been taken into consideration and that is why some poles are being raised.

Paul Johnson, of Tooele addressed the Commission. He indicated that he owns property where this power line goes through. He asked what is being done with poles 89 and 90 which will affect his property.

Mr. Beaver said that on poles 89 and 90 Rocky Mountain Power will be installing bayonets to raise the conductor to meet acceptable clearance standards.

Myron Bateman, 630 Kingston, addressed the Commission. Mr. Bateman indicated that he has two pieces of property close to these lines which are near pole 91 and 93. He stated that these lines buzz especially in the summer and asked with more electricity running through them if they will be louder. He is also concerned about how the poles will look when they add height to them and if it will deteriorate his view.

Mr. Beaver said on structure 91 they are installing an x- brace, and on structure 93 they are removing the pole and installing a new structure. He said that a lot of the time the noise that comes off power lines is due to the vibration of the hardware. Rocky Mountain Power will be tightening all of the hardware on the entire line as they go through this construction which should help reduce the noise and they are raising some of the conductors which should also help.

Mr. Bateman asked if the number of lines will stay the same.

Mr. Beaver said yes

Chairman Robinson closed the public hearing at 7:14 p.m.

Commissioner Sloan moved to approve the conditional use permit request by Rocky Mountain Power for the Tooele –Jensen switch rack 138kV transmission line conductor replacement, application number 2130526, based on the findings listed in the staff report dated October 23, 2013, with the following conditions:

- 1. That all requirements of the Tooele City Engineering and Public Works Divisions are satisfied throughout the development of the site and the construction of all structures on the site, including permitting.**
- 2. That all requirements of the Tooele City Building Division are satisfied throughout the development of the site and the construction of all structures on the site, including permitting.**

Commissioner Poyner seconded the motion. The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”.

- 4. Public Hearing and Motion on a conditional use permit for an automobile salvage yard to be located at 150 S Feldspar by Green Box Recycling, LLC.**

Presented by Rachelle Custer

Ms. Custer said that Green Box recycling is currently located at Ninigret Industrial Depot and they do recycling of various items. They are requesting a conditional use permit to expand into an automobile salvage yard at 150 South Feldspar; they will be able to recycle all of the products including the fluid coming out of the automobiles. They will be selling some of the vehicles they fix, but the conditional use permit is only needed for the auto salvage part of the business. They will have to abide by all EPA standards as far as the fluids are concerned, Tooele City does not regulate that part of the business. They will also need to have an automobile dealer’s license for any auto sales. Tooele City Code does require a screened fencing with berming be installed around the salvage yard.

Commissioner Bevan said the drawing does not show a fence across the back where the hill is. She asked if it needs to be entirely fenced across the back.

Ms. Custer said the way the code reads it says “screened fencing, wall or berm”. If the berm is as tall as any of the material stored on the other side, the berm is sufficient.

Commissioner Sloan noted that the code reads “The salvage yard shall be fenced with a view-obscuring fence, hedge, or landscaped berm at a height at least equal to the height of the materials stored within ...” which he said could be a varying height.

Ms. Custer said that it cannot be higher than 8 ft.

Commissioner Sloan said that there is not a minimum. He asked if they should stipulate a certain height to take the guess work out.

Mr. Baker said that is within the Commission's discretion to address as a mitigated condition.

Commissioner Poyner said that he understands that the applicant will have to get a permit from the state to sell vehicles and there is usually a limit on how many vehicles they can sell per year. He asked if there is a limit on how many vehicles they are allowed to sell and what that limit is.

Ms. Custer said that would be regulated by their dealer's license, Tooele City would not regulate that. The Utah State Tax Commission will follow the vehicles that they sell.

Commissioner Hammer asked if the display area is inside the fence (the scallop area on the drawing).

Ms. Custer said that the scallop area is intended for the fence to go around the display area. The only thing that needs to be screened is the salvage area.

Commissioner Hammer asked if the scallop area is a slatted privacy fence.

Ms. Custer said that it is an existing fence.

The applicant said that it is an existing 8 ft. fence.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue.

Peter Carroon, with Ninigret Industrial Depot addressed the Commission. He said that Green Box have been great owners within the depot. They had some concerns with fencing, environmental waste, and shredding (which they won't be doing). He has spoken with the applicant about these issues and wanted to make sure that some of these concerns would be handled and he is satisfied. He appreciates their efforts in expanding and the depot supports their efforts.

Chairman Robinson closed the public hearing at 7:21 p.m.

Commissioner Sloan asked the applicant if a minimum fence height was required if it would cause any concern on their end.

The applicant said that the fence is already in place.

Commissioner Bevan moved to approve the conditional use permit request by Gary Applegate for an automobile salvage yard on approximately 1.9 acres at 150 S Feldspar with the following conditions from staff:

1. That all requirements of the Tooele City Engineering and Public Works Divisions are satisfied throughout the development of the site and the construction of all structures on the site, including permitting
2. That all requirements of the Tooele City Building Division are satisfied throughout the development of the site and the construction of all structures on the site, including permitting.
3. That all requirements of the State of Utah be followed for vehicle dismantling and fluid containment.

Commissioner Smart seconded the motion.

Commissioner Sloan made an amendment to the motion to include a minimum of a 6 ft. fence or a maximum of an 8 ft. fence be installed around the salvage yard.

Commissioner Bevan and Commissioner Smart agreed to the amendment.

The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”.

5. **Public Hearing and Recommendation Ordinance 2013-19 Amending Tooele City Zoning map for property located near 145 East 1000 North.**

Presented by Rachelle Custer

Ms. Custer explained that this property is currently owned by Tooele City for a future fire station. In 1997 there was a re-zone done on a portion of the property from LI to RR-1. They are requesting that the zoning district be changed back to LI. The owner that requested the RR-1 zone was intending to put four, one acre residential lots on this property, which they are no longer going to do and now Tooele City has acquired the property. The majority of property to the north is zoned LI. She said the LI is more conducive to the use for this lot. They are asking for a favorable recommendation to City Council to change this lot from RR-1 to LI.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:25 p.m.

Chairman Robinson moved to make a positive recommendation to the City Council on Ordinance 2013-19 for a rezone request by Tooele City changing the zoning district of approximately 3 acres located near 145 East 1000 North from RR-1 Rural Residential 1 acre lots to LI Light Industrial, based on the finding listed in the Staff Report dated October 23, 2013. Commissioner Hammer seconded the motion. The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”.

6. **Public Hearing and Recommendation Ordinance 2013-13 Amending Tooele City General Plan Land Use map for property located near 200 South 1200 West.**

Presented by Rachelle Custer

Ms. Custer stated that this is currently the Tooele City Commercial Park as well as property owned by Utah State University. The first request is for a general plan amendment to change the land use to a GC land use which incorporates the RD zoning district. The next agenda item requests a re-zone on the property. The RD zoning district is more compatible with the education corridor which is being developed in this area by the Utah State University Campus. Currently the General Plan Land use is LI, which is not as conducive to the educational corridor as the research and development zone. In order to re-zone to the RD zone they need to change the General Plan Land Use to General Commercial. Utah State University has been notified of the desire to change the property.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:28 p.m.

Commissioner Poyner moved to make a positive recommendation to the City Council on Ordinance 2013-13 for the general plan map amendment request by Tooele City changing the land use designation of approximately 270 acres located near 200 South and 1200 West from LI to GC based on the finding listed in the staff report dated October 23, 2013.

Commissioner Bevan seconded the motion. The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”.

7. **Public Hearing and Recommendation Ordinance 2013-18 Amending Tooele City Zoning map for property located near 200 South 1200 West.**

Ms. Custer said that for the actual re-zone they have omitted all the property not owned by Tooele City or Utah State University. The general plan was for the entire area. The re-zone from LI to RD is only for property owned by Tooele City and Utah State University. Utah State University has been notified.

Commissioner Sloan asked if the property owners surrounding the area have been notified.

Ms. Custer said only by the public notice for the ordinance, not individually.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:30 p.m.

Commissioner Sloan moved to forward a positive recommendation to City Council on Ordinance 2013-18 for the rezone request by Tooele City changing the zoning district of approximately 270 acres located near 200 South and 1200 West from LI to RD based on the finding listed in the staff report dated October 23, 2013. Commissioner Smart seconded the motion. The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”.

8. Public Hearing and Recommendation Ordinance 2013-17 Amending and Enacting definitions related to Tobacco Specialty Stores and Tobacco Products.

Presented by Roger Baker

Mr. Baker said that in January of 2012 the City Council, ahead of the State Legislature, enacted a zoning ordinance restricting the locations of tobacco specialty stores. A tobacco specialty store is defined in the City Code as a store that sells primarily tobacco and tobacco related products. The word primarily is not defined in the ordinance. In the dictionary primarily means more than 50%. A few months after the City Council enacted the ordinance the State Legislature passed House Bill 95 that provides for municipal regulation of tobacco specialty stores. Their definition of tobacco specialty store is any store whose gross receipts from the sale of tobacco products exceed 35%, and whose gross receipts from the sale of other items, not including gasoline, are less than 45%. In other words if more than 35% of their sales are from tobacco and less than 45% is from food and merchandise and it is not a pharmacy it is a tobacco specialty store. Both the City law and State law require a minimum distance from certain public uses. There is nothing in the state statute that prohibits cities from enacting ordinances that are more restrictive – the state statute allows this. The City’s distance is greater, Tooele City requires a minimum distance of 1,500 ft. and the state requires a minimum distance of 1,000 ft. Tooele City’s Ordinance is more lenient on the definition of a tobacco specialty store, it says a tobacco specialty store primarily sells tobacco or tobacco related products. This creates some ambiguity with the word primarily. Does that mean more than 50% of their inventory is tobacco products, 50% of their gross annual receipts, or 50% of their floor space, 50% of their floor area, this is not defined. It is staff’s recommendation to follow the state standard that is very measurable. They have to submit proof of their gross receipts and show which percentages are attributable to tobacco and which percentage are attributable to everything else except gasoline. An additional recommendation staff would like to make is to define what tobacco products are. Tooele City does not currently define what a tobacco product is. They are recommending adopting the state definition of a tobacco product which includes items that the federal government defines as tobacco products. They are asking one small step further, e-cigarettes are included in the definition, but he is asking to also include the component parts of e-cigarettes. They need to give guidelines to businesses about whether the sales of component parts are permitted outside of tobacco specialty stores. They are asking that they not be permitted unless they are sold in a tobacco specialty store. There is also a procedural step in this ordinance that is not done very often which is a notice of pending ordinance. He said that when the City Council feels that

something it is important enough to take immediate action, and it is a zoning ordinance that comes to the Planning Commission first, the City Council can make an announcement that they are considering this ordinance. The City published notice that this ordinance is pending and is effective September 20, 2013. They are asking that the ordinance be made retroactive to the date the ordinance was published on the state website. He said that within hours of the City publishing the notice they got a business license application from a tobacco specialty store that the city closed down that changed their name to be a convenience store. They are waiting to see what kind of a convenience store they are going to be. If the City hadn't published the notice of pending ordinance, the store might have been grandfathered under the old ordinance. The notice of pending ordinance is a legal doctrine that was created by the Utah courts in the 1980's. It is important that municipal government have the ability to protect the public health by not having people rush to license under existing permissive non existing regulations while cities are deliberating.

Commissioner Smart asked if this tightens up the "cat and mouse game" with Spice and how it is defined.

Mr. Baker said that Spice is not considered a tobacco product. It is a controlled substance. A controlled substance is a drug listed in the state code as a drug that is controlled. You can sell morphine from a pharmacy but it is illegal for everyone else to sell it. The drugs known as Spice are known as boutique or designer drugs because they are designed to stay ahead of regulated controlled substances. To try and stay ahead of the "cat and mouse game", the State of Utah enacted a statute which states if the chemical structure is sustainably similar to the drug that is listed than the similar drug even though it is not listed is also a controlled substance. They are also called analogs and homologs. It depends on looking at the molecular structure of a particular drug and seeing how different it is. These drugs are frequently called by the media as synthetic marijuana, which they are not. They were developed by chemists to help manage pain in the same way marijuana manages pain by attaching to the same brain receptors. It is very dangerous in the way it attaches to the receptors. They believe that there are not any stores in Tooele selling spice right now.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:44 p.m.

Commissioner Sloan moved to make a positive recommendation to the City Council on Ordinance 2013-17 an Ordinance of Tooele City amending and enacting definitions related to tobacco specialty stores and tobacco products. Commissioner Poyner seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

9. **Motion to amend the Tooele City Planning Commission bylaws and Rules of Procedure.**

Presented by Mr. Bolser

Mr. Bolser said that it is his hope and intent for the Commission to have a discussion on the Planning Commission bylaws and rules of procedure. He noted that on the edited version of the bylaws on page 2, section E, numbers 2, 4, 5 begins with the phrase “A Planning Commission” when it should begin with “A Planning Commissioner”. He also said on the next page section J, it should say members may not vote by proxy. He noted that staff went through the bylaws during a training meeting with the Commission a few weeks ago. The changes being proposed by staff are shown in red and blue and the changes proposed by members of the Commission are noted in green.

Commissioner Hammer referred to section J or page 3. It was changed to say that a minimum of four commissioner’s need to vote in an affirmative way regardless of how many are present at the meeting in order for a motion to pass.

Mr. Bolser said that the original section said of the majority that is present, which has been proposed to change.

Commissioner Hammer feels like if only four Commission members are at the meeting and they vote on something they should be able to pass something with the majority of who is at the meeting. She feels that is good enough and the majority of the quorum should be sufficient.

Mr. Baker said that a quorum of elected officials under state law, such as the Council is 3 out of 5 but for something to pass must have at least 3 votes.

Commissioner Hammer noted in Section 3, Letter C, C1 was replaced with motion shall, to motion should. She thought they were changing them both to shall.

Mr. Bolser said that the clause ought to read “should include conditions of approval”. The Commission won’t always have conditions of approval, some decisions might simply be yes or no therefore the word “shall” would dictate the Commission having to put conditions on a decision that may not need or warrant conditions.

Commissioner Sloan referred to page 2, section C which talks about meeting attendance. He used the example of when Commissioner Poyner attended a meeting a few weeks ago as a member of the audience instead as a Commission member, and asked if this section would preclude him from doing that.

Mr. Bolser said that it would add that intent, members are appointed to serve on the Commission and if they’re present they should serve in the capacity of a Commission member.

Commissioner Sloan referred to section E, 2 which states: “A Planning Commissioner may not appear before the Commission through his/her employment as an advocate or agent for an applicant”. He said that has not happened before but could see it happen, what if he as a Realtor

or as a developer has a project that he wishes to advocate for and he could disqualify himself through conflict of interest. Does that preclude him from doing that?

Mr. Baker said that he would have to ask someone else to present the item to the Commission. He indicated that you cannot wear “two hats”.

Commissioner Sloan also referred to section J which states: “If a motion does not receive sufficient votes to pass, the motion fails and may not be renewed by the author.” He asked if the motion may be renewed by the author in the event that it fails, where maybe in the next meeting the motion would change in somebody’s eyes that did vote against it. It doesn’t allow the Commission to reconsider a motion that fails.

Mr. Bolser said the Commission can reconsider a motion that fails but the original author cannot be the one to offer the same motion.

Mr. Baker said this is designed to prevent potential misuse of a Commissioner who disrupts the meeting by repeating a motion that has failed.

Chairman Robinson feels like the sentence that Commissioner Sloan just read should be in the motion section of the bylaws.

Chairman Robinson referred to section E, number 5 under Conflict of Interest where it reads: “A Planning Commission shall comply with the Utah Municipal Officers’ and Employees’ Ethics Act”. He feels that is already addressed under Ethics and should be taken out in this section.

Mr. Baker said there is a slight difference. The first reference establishes the code as the Code of Ethics and the second section says that they shall comply with the Code of Ethics.

Chairman Robinson asked if they can put comply and utilize under rights and duties of members?

Mr. Bolser said that in number 2, A he will add the verbage “and comply with”.

The Commission reviewed which changes they wanted to make with Mr. Bolser and he will make the changes to the bylaws.

Chairman Robinson moved to amend the Tooele City Planning Commissioner Bylaws and Rules of Procedure with the changes made and given to Mr. Bolser at this meeting.

Commissioner Poyner seconded the motion. The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”.

The Planning Commission thanked staff for their work on this item.

10. **Review and Approval of Planning Commission minutes for meeting held October 9, 2013.**

Chairman Robinson moved to approve the minutes for the meeting held October 9, 2013 as presented. Commissioner Sloan seconded the motion. The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”.

11. **Adjourn**

Commissioner Bevan moved to adjourn the meeting. The vote was as follows: Commissioner Sloan, “Aye”, Commissioner Bevan, “Aye”, Commissioner Poyner, “Aye”, Commissioner Smart, “Aye”, Commissioner Hammer, “Aye”, and Chairman Robinson, “Aye”. The meeting adjourned at 8:02 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this 13th day of November 2013

Chairman Matt Robinson

Exhibit D

Amendments to T.C.C. 7-1-5

(17269) Subdivision Plat - The final map or drawing, described in this Code, of a plan of subdivision to be presented to the City for approval and when approved, may be submitted to the Utah County Recorder for filing.

(1736) Subsequent Developer - A Developer whose development is not derived from the Prior Developer's development, and whose development benefits from Eligible Public Improvements constructed by the Prior Developer.

(174+) Telecommunications Site/Facility - A facility used for the transmission or reception of electromagnetic or electro-optic information, which is placed on a structure. This use does not include radio frequency equipment which have an effective radiated power of 100 watts or less. This use is not required to be located on a building lot, or comply with the minimum lot size requirement for the district in which it is located.

(1752) Temporary - Not to exceed a period of 1 year.

(1763) Temporary Construction or Sales Office - A facility temporarily used for a period, not to exceed 12 months, as a construction or sales office.

(1774) Temporary Use - Fireworks stands, Christmas tree sale lots, and similar activities which are open to the public and scheduled to occur over a period not to exceed 40 days in any calendar year and including uses incidental to construction.

(1785) Theater, Indoor - A facility for showing motion pictures, video, or staging theatrical performances to an audience, inside an enclosed structure.

(1796) Theater, Outdoor - A facility for outdoor performances where the audience views the production from automobiles or while seated outside.

(180) Tobacco Product or Tobacco-related Product - Inclusive of the following:

(a) any cigar, cigarette, or electronic cigarette as defined in U.C.A. §76-10-101, including the component parts of and ingredients to electronic cigarettes;

(b) a tobacco product as defined in U.C.A. §59-14-102, including:

(1) chewing tobacco; and

(2) any substitute for a tobacco product, including flavoring or additives to tobacco; and,

(c) tobacco paraphernalia as defined in U.C.A. §76-10-104.1.

(18177) Tobacco Specialty Store or Retail Tobacco Specialty Business - An establishment in which:

(a) the sale of tobacco products accounts for more than 35% of the total annual gross receipts for the establishment;

(b) food and beverage products, excluding gasoline sales, is less than 15% of the total annual gross receipts for the establishment; and

(c) the establishment is not licensed as a pharmacy under U.C.A. Title 58, Chapter 17b, Pharmacy Practice Act, providing retail sales and services which exclusively or primarily involve the sale of tobacco or tobacco-related products.

(18274) Use - The purpose or purposes for which land or a building is occupied, maintained, arranged, designed, or intended.

(18379) Utilities, Private - Includes power, telephone, natural gas, cable television and private water supply service.

(1846) Utility Company, Public - Any company, or municipal department, duly authorized to furnish under public regulation, electricity, gas, steam, telephone, transportation, water, or sewer service.

(1854) Utility Service Facility (major) - Any electric transmission lines (greater than 115,000 volts), power plants, or substations of electric utilities; gas regulator stations, transmission and gathering pipelines, and storage areas of utilities providing natural gas or petroleum derivatives; and their appurtenant facilities

(1862) Utility Service Facility (minor) - Any electrical distribution lines, natural gas distribution lines, cable television lines, telegraph and telephone lines, and gathering lines, or other minor service facilities. No buildings are allowed and the use is limited to the following sizes: (i) gas lines less than 12 inches; and (ii) electric lines of less than 115,000 volts.

(1873) Veterinary Clinic/Animal Hospital - A facility for the diagnosis, treatment, hospitalization, and boarding of animals, which does not include outdoor holding facilities.

(1884) Warehouse - A building used primarily for the inside storage of nonhazardous goods and materials and including accessory office facilities.

(1895) Zoning District - A mapped area to which a uniform set of regulations applies, and which are designed to implement the goals and policies of the Tooele City General Plan.

(Ord. 2012-17, 09-05-12); (Ord. 2009-05, 02-28-09); (Ord. 2008-11, 11-05-08); (Ord. 2005-06, 05-18-2005); (Ord. 2002-21, 09-18-2002); (Ord 98-33B, 10-07-98); (Ord. 97-21, 06-04-97); -(Ord. 95-18, 10-06-95); -(Ord. 94-26, 05-12-94); (Ord. 94-09, 03-02-94); (Ord. 92-26, 12-10-92).

7-1-6. Enforcement.

(1) (a) Tooele City or any owner of real estate within the city in which violations of this Title occur or are about to occur may, in addition to other remedies provided by law, institute:

(i) injunctions, mandamus, abatement, or any other appropriate actions; or

(ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

(b) Tooele City need only establish the violation to obtain the injunction.

(2) (a) Tooele City may enforce this Title by

February 6, 2014

Tobacco Retail Business Name
Address

Dear Tobacco Product Retailer:

Effective May 8, 2012, The State of Utah requires Tooele City to license a business as a "retail tobacco specialty business" if (1) more than 35% of its gross annual receipts are from the sale of tobacco products and (2) less than 45% of its total annual gross receipts are from the sale of food and beverage products. On February 5, 2014, the Tooele City Council enacted a city ordinance mirroring the state law reporting requirement.

The term "tobacco-product" includes the following:

- cigar
- cigarette
- electronic cigarette
- component parts or ingredients of electronic cigarettes
- chewing tobacco
- snuff
- any product containing tobacco
- tobacco paraphernalia (including pipes, rolling paper, hookas, clips, bong, etc.)

For purposes of implementing state and city law regarding the sale of tobacco products, your business is required to report to Tooele City, on the enclosed form, the percentages of your gross annual receipts attributable to tobacco products and to food and beverage products. Report your gross receipts for all of calendar year 2013 or for the portion of calendar 2013 that your business was open.

Please return the completed form to the Tooele City Recorder's Office no later than April 1, 2014. Failure to return the completed form may be grounds for business license revocation. Tooele City reserves the right to use any legal means to verify the accuracy of your gross receipts reporting.

Sincerely,

Michelle Pitt
Tooele City Recorder

Tooele City Corporation

Report: Tobacco Product Retailer Gross Annual Receipts

Business Name: _____

Business License No. _____

Provide information for the calendar year ending **December 31, 2013**.

Month	Gross Receipts	
	Tobacco Products	Food and Beverage Products
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Name and signature of business representative submitting this Report:

Printed Name

Signature

Date

TOOELE CITY CORPORATION

ORDINANCE 2013-17

AN ORDINANCE OF TOOELE CITY AMENDING AND ENACTING DEFINITIONS RELATED TO TOBACCO SPECIALTY STORES AND TOBACCO PRODUCTS.

WHEREAS, on January 18, 2012, the Tooele City Council approved Ordinance 2011-19, effective immediately upon passage, which enacted the following definition of the term "tobacco specialty store", as well as imposed land use regulations upon tobacco specialty stores:

Tobacco Specialty Store — An establishment providing retail sales and services which exclusively or primarily involve the sale of tobacco or tobacco-related products.

and,

WHEREAS, the recitals and findings of Ordinance 2011-19 are incorporated herein by this reference; and,

WHEREAS, subsequent to the enactment of Ordinance 2011-19, House Bill 95 of the 2012 General Session of the Utah Legislature (hereinafter "HB 95") enacted U.C.A. §10-8-41.6, effective May 8, 2012, containing definitions of the terms "retail tobacco specialty business" and "tobacco product"; and,

WHEREAS, U.C.A. §10-8-41.6 provides that an establishment is a retail tobacco specialty business if, among other things, more than 35% of its gross annual receipts are from the sale of tobacco products, whereas T.C.C. §7-1-5(177) provides that an establishment is a tobacco specialty store if it primarily sells tobacco products, the word "primarily" being defined by the dictionary as being more than 50%; and,

WHEREAS, U.C.A. §10-8-41.6 requires that an establishment falling within the definition of retail tobacco specialty business be licensed as such by the licensing municipality, and further provides that

Nothing in this section . . . prohibits a municipality from adopting more restrictive requirements on a tobacco specialty business than provided for in this section.

By implication, U.C.A. §10-8-41.6 would appear to preempt a municipality from enacting less restrictive requirements on a tobacco specialty business; and,

WHEREAS, to harmonize the City and State definitions, to prevent businesses from believing that they can maintain an inventory, floor space, display area, or gross sales of up to 50% tobacco products when the governing State law requirements are triggered at the 35% gross receipts threshold, the City Administration recommends that the City definition of the term "tobacco specialty store" be amended to mirror and

include the State definition of the term "retail tobacco specialty business", and further that the City Council enact a definition of the terms "tobacco product" and "tobacco-related product" that mirrors the State definition of the term "tobacco product"; and,

WHEREAS, the City Administration recommends further that the component parts and ingredients of electronic cigarettes, in addition to electronic cigarettes themselves, be included in the City definition of the terms "tobacco product" and "tobacco-related product"; and,

WHEREAS, to expedite the harmonization referenced above, and to minimize the potential for confusion and conflict, the City has published on September 19, 2013, a Notice of Pending Ordinance, effective September 20, 2013, on the Utah Public Notice Website, by electronic delivery through the Website to the Tooele Transcript- Bulletin, and by posting at City Hall, giving notice that Tooele City has formally initiated proceedings to amend the Tooele City Code definitions of the terms "tobacco specialty store", "tobacco product", and "tobacco-related product" (see Notice of Pending Ordinance attached as Exhibit A); and,

WHEREAS, by authority of Utah Constitution Article XI Section 5, Tooele City has framed and adopted a charter "for its own government," which Section 5 grants to municipalities like Tooele City

the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred. . . .1

WHEREAS, the Utah Code (U.C.A. §10-1-107) grants expansive, not limited, powers to municipalities:

The provisions of this act [the Utah Municipal Code] or any other act . . . shall be considered as an alternative or additional power and not as a limitation on any other power granted to or possessed by municipalities.

WHEREAS, the Utah Code provides that municipal governing bodies (e.g., the Tooele City Council) "shall exercise its legislative powers through ordinances" (U.C.A. §10-3-701), which legislative powers enable the City Council to pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law.

WHEREAS, the City Council finds that the present Ordinance is in the best interest of the public health, safety, and welfare (reference U.C.A. §10-8-41.6(2)); and,

1 At the present time, Tooele is the only chartered city in the State of Utah.

WHEREAS, Utah courts have held that the exercise of legislative powers in the enactment of ordinances by municipal legislative bodies furthering the health, safety, or welfare of the municipality is governed by the reasonably debatable standard; a decision that is reasonably debatable will not be held to be arbitrary or capricious; a legislative decision will be upheld if it is reasonably debatable that the decision, and the evidence supporting it, is in the interest of the general welfare (see: Petersen v. Riverton City, 210 UT 58, 243 P.3d 1261 (Utah 2010); Bradley v. Payson City, 203 UT 216, 70 P.3d 47 (Utah 2003); Marshall v. Salt Lake City, 105 UT 111, 141 P.2d 704 (Utah 1943)); and,

WHEREAS, the City Administration, through the City Recorder's Office, will prepare administratively policies for the issuance of business licenses and for the verification of gross receipts as relevant to this Ordinance; and,

WHEREAS, this Ordinance, together with the Notice of Pending Ordinance, were discussed by the City Council during its public work session of October 2, 2013 (see City Council agenda and minutes attached as Exhibit B); and,

WHEREAS, the Planning Commission convened a public hearing, as required by U.C.A. §10-9a-205 for land use ordinances and by T.C.C. §7-1A-6 for revisions to the City zoning ordinance, on October 23, 2013, and voted to recommend approval of this ordinance to the City Council (see the Planning Commission minutes attached as Exhibit C); and,

WHEREAS, the City Council convened a public hearing, as required by T.C.C. §7-1A-6 for revisions to the City zoning ordinance, on

November 6, 2012 (see the City Council minutes attached as Exhibit E):

NOW, THEREFORE, BE IT ORDAINED BY THE TOOEELE CITY COUNCIL that:

1. the Tooele City Code definitions of the terms "tobacco specialty store", "tobacco product", and "tobacco-related product" are hereby amended as shown in Exhibit E; and,
- 2 this Ordinance shall be retroactive to 12:01 a.m. on September 20, 2013, pursuant to the published Notice of Pending Ordinance and the pending ordinance rule codified in U.C.A. §10-9a-509; and,
- 3 the City Record's Office is hereby directed to develop an administrative procedure for the reporting of total annual gross receipts from the sale of tobacco products by tobacco product sellers in Tooele City.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City.

IN WITNES WHEREOF, this Ordinance is passed by the Tooele City Council this 5 day of , 2014.

TOOELE CITY COUNCIL

(Against)

AO.LZ (-6),

ABSTAINING:

MAYOR OF TOOEELE CITY

(APP:01,

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ATTEST:

(Disapproved)

-Michelle Pitt, City Reciprcler Art"A\

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Baker, City Attorney

Approved as to Form:

Exhibit A

Notice of Pending Ordinance

September 20, 2013

September 201 2013

TOOELE CITY CORPORATION

NOTICE OF PENDING ORDINANCE

The Supreme Court of Utah established the Pending Ordinance Rule in the case of Western Land Equities, Inc., v. City of Logan, 617 P.2d 388 (1980):

if a city or county has initiated proceedings to amend its zoning ordinances, a landowner who subsequently makes application for a permit is not entitled to rely on the original zoning classification.

Utah Code §10-9a-509(1)(a)(ii) codified the Pending Ordinance Rule

Tooele City has invoked Utah's Pending Ordinance Rule by initiating proceedings to amend its land use ordinances relating to the definitions of the terms "tobacco specialty store", "retail tobacco specialty business", "tobacco product", and "tobacco-related product".

The Tooele City Council will discuss the pending ordinance during its advertized public work session meeting on October 2, 2013.

Thereafter, the pending ordinance may be presented to the Tooele City Planning Commission for recommendation and to the City Council for enactment. In that event, both bodies will conduct public hearings.

In light of the pending ordinance, for a period not to exceed 6 months beginning on the date of this Notice, all commercial establishments seeking a business license as a retail store, convenience store, or similar establishment, and that sell tobacco products or tobacco-related products, shall be subject to the definitions contemplated by the pending ordinance.

Exhibit B

City Council Work Session Agenda

and Minutes

(October 2, 2013)

PUBLIC NOTICE

Notic:e is hereby given that the Tooele City Council & Tooele City Redevelopment Agency of Tooele City, Utah, will meet in a Work Session on Wednesday, October 2, 2013 at the hour of 5:00 P.M. The meeting will be held at the Tooele City Hall Large Conference Room located at 90 North Main Street, Tooele, Utah.

1. Open Meeting

2. Roll Call

3. Discussion:

DRAFT Ordinance 2013-17 An Ordinance of Tooele City Amending and Enacting Definitions Related to Tobacco Specialty Stores and Tobacco Products

Presented by Roger Baker

- Rocky Mountain Care Subdivision to Create One 4.55 Acre Lot Located at 85 East 2000

North

Presented by Jim Bolser

- Ordinance 2012-15 Amending the Tooele City Zoning Map for property Located Near

2000 North St and Berra Blvd from RR-5 to GC

Presented by Jim Bolser

Ordinance 2013-13 Amending the Tooele City General Plan Land Use Map for Property Located Near 200 South 1200 West from Light Industrial Land Uses to General Commercial/Research and Development Land Uses

Presented by Jim Bolser

- Ordinance 2013-18 Amending the Tooele City Zoning Map for Property Located Near 200 South 1200 West from LI to RD

Presented by Jim Bolser

- Ordinance 2013-19 Amending the Tooele City Zoning Map for Property Located Near 145 East 1000 North from RR-1 to LI

Presented by Jim Bolser

Cyrus Land Investment Rezone Request for 12 Acres Located on the Northeast Corner of Second Ave and Seventh St (Tooele Army Depot Street Names) Bordering the National Guard Complex from Open Space to Light Industrial

Presented by Jim Bolser Conditional Use Annual Inspections

Presented by Jim Bolser

4. Motion to Close Meeting to Discuss: - Property Disposition

- Pending Litigation

5. Adjourn

Michelle Y. Pitt

Tooele City Recorder/RDA Secretary

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 843-2110 prior to the meeting.

/416K City Attorney's Office

Tooele City

Est 1853 Roger Boker, City Attorney

Tooele City Council and

Tooele City Redevelopment Agency

Work Session Meeting Minutes

Date: Wednesday, October 2, 2013

Time: 5:00 p.m.

Place: Tooele City Hall, Large Conference Room 90 North Main St Tooele, UT

City Council Members Present:

Dave McCall, Chair

Steve Pruden Scott Wardle Brad Pratt

Debbie Winn

City Employees Present: Mayor Patrick Dunlavy Roger Baker, City Attorney Glen Caldwell, Finance Director

Jim Bolser, Community Development and Public Works Director

Paul Hansen, City Engineer Michelle Pitt, City Recorder Rachelle Custer, City Planner

Minutes prepared by Michelle Pitt

1. Open Meeting

Chairman McCall called the meeting to order at 5:05 p.m.

2. Roll Call

Dave McCall, Present Scott Wardle, Present Steve Pruden, Present Brad Pratt, Present

Debbie Winn, Present

3. Discussion:

- Draft Ordinance 2013-17 An Ordinance of Tooele City Amending and Enacting Definitions Related to Tobacco Specialty Stores and Tobacco Products

Presented by Roger Baker

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_Tooele_City _October 2, 2013

90 North Main Street | Tooele, Utah 84074

Ph: 435-843-2120 | Fax: 435-843-2129 www.tooelecite.org

In 2012 the City Council enacted a regulation for tobacco specialty stores. Six months later a state statute was enacted providing that if more than 35% of stores' gross annual receipts were from the sale of tobacco products, it would be designated as a tobacco specialty store. Roger recommended adopting this ordinance which would comply with state statute. The city can adopt a more stringent or strict ordinance, but not a more liberal or broader ordinance. This ordinance includes tobacco products and tobacco-related products, including e-cigarettes and the component parts of e-cigarettes, such as, nicotine oils and electronic cigarette parts. This ordinance will go before the Planning Commission for review and then come back before the City Council for consideration on November 6th. The city has a local situation where a tobacco specialty store was closed because it conducted illegal business, i.e., selling illegal drugs. This store reopened as a convenience store, but seems to be operating as a tobacco specialty store.

Rocky Mountain Care Subdivision to Create One 4.55 Acre Lot Located at 85 East 2000 North

Ordinance 2012-15 Amending the Tooele City Zoning Map for Property Located Near 2000 North St and Berra Blvd from RR-5 to GC

Presented by Jim Bolser

Since these two items regard the same thing, Jim presented them together. In January of this year, there were a few issues that the developers needed to take care of, namely the dedication of the existing roadway into the west side of the hospital. Those issues have been addressed and this development is ready to move forward. A public hearing has already taken place. This ordinance will complete this item, which was brought before the Council about 10 months ago.

Ordinance 2013-13 Amending the Tooele City General Plan Land Use Map for Property Located Near 200 South 1200 West from

Light Industrial Land Uses to General Commercial/Research and Development Land Uses
Ordinance 2013-18 Amending the Tooele City Zoning Map for Property Located Near 200 South 1200 West from LI to RD
Presented by Jim Bolser

Since these two items regard the same thing, Jim presented them together. Jim passed out maps that depicted the area discussed. Things are underway for the educational corridor associated with the USU expansion. The city felt it was time to proceed with this rezone and reassignment on the General Plan Land Use Map. This ordinance formally zones the publicly owned land in this area as research and development.

Ordinance 2013-19 Amending the Tooele City Zoning Map for Property Located Near 145 East 1000 North from RR-1 to LI
Presented by Jim Bolser

Page 12 Tooele City Council October 2, 2013
Exhibit C

Planning Commission Minutes
(October 23, 2013)

TooeleCityN.

Community Development Department

TOOELE CITY PLANNING COMMISSION MINUTES

October 23, 2013

Place: Tooele City Hall Council Chambers 90 North Main Street, Tooele Utah

Commission Members Present: Matt Robinson, Chair

Chris Sloan

Shauna Bevan

Tom Poyner

Ray Smart

Melanie Hammer

Commission Member Excused:

John Curwen Phil Montano Steve Dale

City Employees Present: Rachele Custer, City Planner Roger Baker, City Attorney

Jim Bolser, Public Works and Community Development Director

Paul Hansen, City Engineer Councilwoman Winn

Councilman Pratt

Minutes prepared by Elsa Jenkins

Chairman Robinson called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Smart.

2. Roll Call

Matt Robinson, Present John Curwen, Excused Phil Montano, Excused Chris Sloan, Present

Steve Dale, Excused Melanie Hammer, Present Tom Poyner, Present Ray Smart, Present

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Shauna Bevan, Present

3. Public Hearing and Motion on a conditional use permit for increasing height and replacing poles on an existing 138 kV transmission line along the southeast edge of Tooele City.

Presented by Ms. Custer

Ms. Custer explained the Rocky Mountain has requested a conditional use permit to allow for a conductor upgrade on an existing line along the southeast edge of Tooele City. Some of the poles will be raised, some of them will be fitted with x-braces, some will need bayonets and some will be replaced. The majority of the poles will have the conductor replaced. There is an existing easement. This line was constructed in 1963 and there is not a conditional use permit on file from the initial construction. The City has asked Rocky Mountain Power for a conditional use permit to be in place because of the increase in height, and replacement of some of the poles. She stated that letters were sent out to the residents being affected by this project and informing them of this meeting and Rocky Mountain Power's desire to upgrade this line.

Mickey Beaver, with Rocky Mountain Power addressed the Commission. Mr. Beaver is the Customary Community Manager for the Tooele Area and the Economic Development Manager for the three states which includes Wyoming, Utah and Idaho. He stated that this power line which consists of approximately 100 structures and is approximately 13 miles long has been in place since 1963. He said that in the last few years they have experienced an unacceptable number of outages which have affected residents in this area. The conductor size will go up and will be stronger to enhance the power line to effectively carry more load as they go forward into the future. This upgrade is a reliability issue and safety issue to ensure better consistency of delivery of electricity and serve the growing needs of Tooele Valley along this corridor. Because the new conductor it is a little heavier and it has a tendency to hang lower, it will require Rocky Mountain Power to install bayonets to allow the proper clearance between the ground and the conductor and to comply with clearance and safety codes. They are raising the height of a few poles to create clearances. They are also installing x-frame bracing on some of the structures which will stabilize the structures for safety purposes and ensure continued reliability. The easement has been in possession of Rocky Mountain Power for a long time and this upgrade is intended for reliability, growth and development. He asked if the Commission had any questions.

Commissioner Sloan noted that two outages will be required to complete the project and asked how it will affect the residents.

Mr. Beaver referred this question to Scott Burton, Transmission Engineer with Rocky Mountain Power.

Mr. Burton stated that the outages will not affect Tooele City, they will be between the Pine Canyon Sub to the Jensen Sub. There will

not be any outages in Tooele City during construction.

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Mr. Beaver said that he appreciates the opportunity to be at the meeting and thanked Ms. Custer for helping them through the conditional use permit process.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address the Commission.

Howard Yerke, 197 Val Vista addressed the Commission. Mr. Yerke asked if Rocky Mountain Power plans on changing the KVA rating on this line.

Mr. Beaver said no.

Mr. Yerke noted that since the lines will be hanging down he asked if they have they been engineered to allow proper clearance from the existing houses for safety.

Mr. Beaver said that issue has been taken into consideration and that is why some poles are being raised.

Paul Johnson, of Tooele addressed the Commission. He indicated that he owns property where this power line goes through. He asked what is being done with poles 89 and 90 which will affect his property.

Mr. Beaver said that on both of those poles Rocky Mountain Power will be installing bayonets to raise the conductor to meet acceptable clearance standards.

Myrom Bateman, 630 Kingston, addressed the Commission. Mr. Bateman indicated that he has two pieces of property closes to these lines which are near pole 91 and 93. He stated that these lines buzz especially in the summer and asked with more electricity running through them if they will be louder. He is also concerned about how the poles will look when they add height to them and if it will deteriorate his view.

Mr. Beaver said on structure 91 they are installing an x- brace, and on structure 93 they are removing the pole and installing a new structure. He said that a lot of the time the noise that comes off power lines is due to the vibration of the hardware. Rocky Mountain Power will be tightening all of the hardware on the entire line as they go through this construction which should help reduce the noise and they are raising some of the conductors which should also help.

Mr. Bateman asked if the number of lines will stay the same. Mr. Beaver said yes

Chairman Robinson closed the public hearing at 7:14 p.m.

Commissioner Sloan moved to approve the conditional use permit request by Rocky Mountain Power for the Tooele —Jensen switch rack 138kV transmission line conductor

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replacement, application number 2130526, based on the findings listed in the staff report dated October 23, 2013, with the following conditions:

1. That all requirements of the Tooele City Engineering and Public Works Divisions are satisfied throughout the development of the site and the construction of all structures on the site, including permitting.
2. That all requirements of the Tooele City Building Division are satisfied throughout the development of the site and the construction of all structures on the site, including permitting.

Commissioner Poyner seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

4. Public Hearing and Motion on a conditional use permit for an automobile salvage yard to be located at 150 S Feldspar by Green Box Recycling, LLC.

Presented by Rachelle Custer

Ms. Custer said that Green Box recycling is currently located at Ninigret Industrial Depot and they do recycling of various items.

They are requesting a conditional use permit to expand into an automobile salvage yard at 150 South Feldspar; they will be able to recycle all of the products including the fluid coming out of the automobiles. They will be selling some of the vehicles they fix, but the conditional use permit is only needed for the auto salvage part of the business. They will have to abide by all EPA standards as far as the fluids are concerned, Tooele City does not regulate that part of the business. They will also need to have an automobile dealer's license for any auto sales. Tooele City Code does require a screened fencing with berming be installed around the salvage yard.

Commissioner Bevan said the drawing does not show a fence across the back where the hill is. She asked if it needs to be entirely fenced across the back.

She said the way the code reads it says "screened fencing, wall or berm". If the berm is as tall as any of the material stored on the other side, the berm is sufficient.

Commissioner Sloan noted that the code reads "The salvage yard shall be fenced with a view- obscuring fence, hedge, or landscaped berm at a height at least equal to the height of the materials stored within ..." which he said could be a varying height.

Ms. Custer said that it cannot be higher than 8 ft.

Commissioner Sloan said that there is not a minimum. He asked if they should stipulate a certain height to take the guess work out.

Mr. Baker said that is within the Commission's discretion to address as a mitigated condition.

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Commissioner Poyner said that he understands that the applicant will have to get a permit from the state to sell vehicles and there is usually a limit on how many vehicles they can sell per year. He asked if there is a limit on how many vehicles they are allowed to sell and what that limit is.

Ms. Custer said that would be regulated by their dealer's license, Tooele City would not regulate that. The Utah State Tax Commission will follow the vehicles that they sell.

Commissioner Hammer asked if the display area is inside the fence (the scallop area on the drawing).

Ms. Custer said that the scallop area is intended for the fence to go around the display area. The only thing that needs to be screened is the salvage area.

Commissioner Hammer asked if the scallop area is a slatted privacy fence. Ms. Custer said that it is an existing fence.

The applicant said that it is an existing 8 ft. fence.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue.

Peter Cartoon, with Ninigret Industrial Depot addressed the Commission. He said that Green Box have been great owners within the depot. They had some concerns with fencing, environmental waste, and shredding (which they won't be doing). He has spoken with the applicant about these issues and wanted to make sure that some of these concerns would be handled and he is satisfied. He appreciates their efforts in expanding and the depot supports their efforts.

Chairman Robinson closed the public hearing at 7:21 p.m.

Commissioner Sloan asked the applicant if a minimum fence height was required if it would cause any concern on their end.

The applicant said that the fence is already in place.

Commissioner Bevan moved to approve the conditional use permit request by Gary Applegate for an automobile salvage yard on approximately 1.9 acres at 150 S Feldspar with the following conditions from staff:

1. That all requirements of the Tooele City Engineering and Public Works Divisions are satisfied throughout the development of the site and the construction of all structures on the site, including permitting

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2. That all requirements of the Tooele City Building Division are satisfied throughout the development of the site and the construction of all structures on the site, including permitting.

3. That all requirements of the State of Utah be followed for vehicle dismantling and fluid containment.

Commissioner Smart seconded the motion.

Commissioner Sloan made an amendment to the motion to include a minimum of a 6 ft. fence or a maximum of an 8 ft. fence be installed around the salvage yard.

Commissioner Bevan and Commissioner Smart agreed to the amendment.

The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

5. Public Hearing and Recommendation Ordinance 2013-19 Amending Tooele City Zoning map for property located near 145 East 1000 North.

Presented by Rachelle Custer

Ms. Custer explained that this property is currently owned by Tooele City for a future fire station. In 1997 there was a re-zone done on a portion of the property from LI to RR-1. They are requesting that the zoning district be changed back to LI. The owner that requested the RR-1 zone was intending to put four, one acre residential lots on this property, which they are no longer going to do and now Tooele City has acquired the property. The majority of property to the north is zoned LI. She said the LI is more conducive to the usage for this lot. They are asking for a favorable recommendation to City Council to change this lot from RR-1 to LI.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:25 p.m.

Chairman Robinson moved to make a positive recommendation to the City Council on Ordinance 2013-19 for a rezone request by Tooele City changing the zoning district of approximately 3 acres located near 145 East 1000 North from RR-1 Rural Residential 1 acre lots to LI Light Industrial, based on the finding listed in the Staff Report dated October 23, 2013. Commissioner Hammer seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

6. Public Hearing and Recommendation Ordinance 2013-13 Amending Tooele City General Plan Land Use map for property located near 200 South 1200 West.

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Presented by Rachelle Custer

Ms. Custer stated that this is currently the Tooele City Commercial Park as well as property owned by Utah State University. The first request is for a general plan amendment to change the land use to a GC land use which incorporates the RD zoning district. The next agenda item requests a re-zone on the property. The RD zoning district is more compatible with the education corridor which is being developed in this area by the Utah State University Campus. Currently the General Plan Land use is LI, which staff feels, is not as conducive to the educational corridor as the research and development zone. In order to re-zone to the RD zone they need to change the General Plan Land Use to General Commercial. Utah State University has been notified of the desire to change the property.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:28 p.m.

Commissioner Poyner moved to make a positive recommendation to the City Council on Ordinance 2013-13 for the general plan map amendment request by Tooele City changing the land use designation of approximately 270 acres located near 200 South and 1200 West from LI to GC based on the finding listed in the staff report dated October 23, 2013. Commissioner Bevan seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

7. Public Hearing and Recommendation Ordinance 2013-18 Amending Tooele City Zoning map for property located near 200 South 1200 West.

Ms. Custer said that for the actual re-zone they have omitted all the property not owned by Tooele City or Utah State University. The general plan was for the entire area. The re-zone from LI to RD is only for property owned by Tooele City and Utah State University. Utah State University has been notified.

Commissioner Sloan asked if the property owners surrounding the area have been notified. Ms. Custer said only by the public notice for the ordinance, not individually.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:30 p.m.

Commissioner Sloan moved to forward a positive recommendation to City Council on Ordinance 2013-18 for the rezone request by Tooele City changing the zoning district of

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approximately 270 acres located near 200 South and 1200 West from LI to RD based on the finding listed in the staff report dated October 23, 2013. Commissioner Smart seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

8. Public Hearing and Recommendation Ordinance 2013-17 Amending and Enacting definitions related to Tobacco Specialty Stores and Tobacco Products.

Presented by Roger Baker

Mr. Baker said that in January of 2012 the City Council, ahead of state legislature, enacted a zoning ordinance restricting the locations of tobacco specialty stores. A tobacco specialty store is defined as a store that sells primarily tobacco and tobacco related products. The word primarily is not defined in the ordinance. In the dictionary primarily means more than 50%. A few months after the City Council enacted the ordinance the State Legislature passed House Bill 95 that provides for municipal regulation of tobacco specialty stores. Their definition of tobacco specialty store is any store whose gross receipts from the sale of tobacco products exceed 35%, and whose gross receipts from the sale of other items, not including gasoline, are less than 45%. In other words if more than 35% of their sales are from tobacco and less than 45% is from food and merchandise and it is not a pharmacy it is a tobacco specialty store. Both the City law and State law require a minimum distance from certain public uses. There is nothing in the state statute that prohibits cities from enacting ordinances that are more restrictive. The City's distance is greater, Tooele City requires a minimum distance of 1,500 ft. and the state requires a minimum distance of 1,000 ft. Tooele City's Ordinance is more lenient on the definition of a tobacco specialty store, it says a tobacco specialty store primarily sells tobacco or tobacco related products. This creates some ambiguity with the word primarily. Does that mean more than 50% of their inventory is tobacco products, 50% of their gross annual receipts, or 50% of their floor space, this is not defined, It is staffs recommendation to follow the state standard that is very measurable. They have to submit proof of their gross receipts and show which percentages are attributable to tobacco and which percentage are attributable to everything else except gasoline. An additional recommendation staff would like to make is to define what tobacco products are. Tooele City does not currently define what a tobacco product is. They are recommending adopting the state definition of a tobacco product which includes items that the federal government defines as tobacco products. They are asking one small step further, e-cigarettes are included in the definition, but he is asking to also include the component parts of e-cigarettes. They need to give guidelines to businesses about whether the sales of component parts are permitted outside of tobacco specialty stores. They are asking that they not be permitted unless they are sold in a tobacco specialty store. There is also a procedural step in this ordinance that is not done very often which is a notice of pending ordinance. He said that when the City Council feels that something it is important enough to take immediate action, and it is a zoning ordinance that comes to the Planning Commission first, the City Council can make an announcement that they are considering this ordinance. The City published notice that this ordinance is pending and is effective September 20, 2013. They are asking that the ordinance be made retroactive to the date the ordinance was published on the state website. He said that within hours of the City

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publishing the notice they got a business license application from a tobacco specialty store that the city closed down that changed their name to be a convenience store. They are waiting to see what kind of a convenience store they are going to be. If they hadn't handed published the notice of pending ordinance they might have been grandfathered under the old ordinance. The notice of pending ordinance is a document that was created by the Utah courts in the 1980's. It is important that municipal government have the ability to protect the public health by not having people rush to license under existing permissive non existing regulations while cities are deliberating.

Commissioner Smart asked if this tightens up the "cat and mouse game" with Spice and how it is defined.

Mr. Baker said that Spice is not considered a tobacco product. It is a controlled substance. A controlled substance is a drug listed in the state code as a drug that is controlled. You can sell morphine from a pharmacy but it is illegal for everyone else to sell it. The drug known as Spice is known as boutique or designer drugs because they are designed to stay ahead of regulated controlled substances. To try and stay ahead of the "cat and mouse game", the State of Utah enacted a statute which states if the chemical structure is sustainably similar to the drug that is listed than the similar drug even though it is not listed is also a controlled substance. It depends on looking at the molecular structure of a particular drug and seeing how different it is. These drugs are frequently called by the media as synthetic marijuana, which they are not. They were developed by chemists to help manage pain in the same way marijuana manages pain by attaching to the same brain receptors. It is very dangerous in the way it attaches to the receptors. They believe that there are not any stores in Tooele selling spice right now.

Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Chairman Robinson closed the public hearing at 7:44 p.m.

Commissioner Sloan moved to make a positive recommendation on Ordinance 2013-17 an Ordinance of Tooele City amending and enacting definitions related to tobacco specialty stores and tobacco products. Commissioner Poyner seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

9. Motion to amend the Tooele City Planning Commission bylaws and Rules of Procedure.

Presented by Mr. Bolser

Mr. Bolser said that it is his hope and intent for the Commission to have a discussion on the Planning Commission bylaws and rules of procedure. He noted that on the edited version of the bylaws on page 2, section E, numbers 2, 4, 5 begin with the phrase a Planning Commission it

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should be a Planning Commissioner. He also said on the next page section J, it should say members may not vote by proxy. He noted that staff went through the bylaws during a training meeting with the Commission a few weeks ago and the changes the Commission made are noted in green.

Commissioner Hammer referred to section J or page 3. It was changed to say that a minimum of four commissioner's need to vote in an affirmative way regardless of how many are present at the meeting in order for a motion to pass.

Mr. Bolser said that the original section said of the majority that is present, which was changed.

Commissioner Hammer feels like if only four Commission members are at the meeting and they vote on something they should be able to pass something with the majority of who is at the meeting. She feels that is good enough and the majority of the quorum should be sufficient.

Mr. Baker said that a quorum of elected officials under state law, such as the Council is 3 out of 5 but for something to pass must have at least 3 votes.

Commissioner Hammer noted in Section 3, Letter C, CI was replaced with motion shall, to motion should. She thought they were changing them both to shall.

Mr. Bolser said that the work should include conditions of approval. The Commission won't always have conditions of approval some might be yes or no.

Commissioner Sloan referred to page 2, section C which talks about meeting attendance. He used the example of when Commissioner Poyner attended a meeting a few weeks ago as a member of the audience instead as a Commission member, and asked if this section would preclude him from doing that.

Mr. Bolser said that is the intent. He said that if members are here they should serve in the capacity of a Commission member.

Commissioner Sloan referred to section E, 2 which states: "A Planning Commissioner may not appear before the Commission through his/her employment as an advocate or agent for an applicant". He said that has not happened before but could see it happen, what if he as a Realtor or as a developer has a project that he wishes to advocate for and he could disqualify himself through conflict of interest. Does that preclude him from doing that?

Mr. Baker said that he would have to ask someone else to present the item to the Commission. He indicated that you cannot wear "two hats".

Commissioner Sloan also referred to section J which states: "If a motion does not receive sufficient votes to pass, the motion fails and may not be renewed by the author." He asked if the motion may be renewed by the author in the event that it fails, in the situation where maybe in

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the next meeting the motion would change it in somebody's eyes that did vote against it. It doesn't allow the Commission to reconsider a motion that fails.

Mr. Bolser said the Commission can reconsider a motion that fails but the original author cannot be the one to offer the motion to reconsider.

Mr. Baker said this is designed to prevent potential misuse of a Commissioner who disrupts the meeting by repeating a motion that has failed.

Chairman Robinson feels like the sentence that Commissioner Sloan just read should be in the motion section of the bylaws.

Chairman Robinson referred to section E, number 5 under Conflict of Interest where it reads: "A Planning Commission shall comply with the Utah Municipal Officers' and Employees' Ethics Act". He feels that is already addressed under Ethics and should be taken out in this section.

Mr. Baker said there is a slight difference. The first reference establishes the code as the Code of Ethics and the second session says that they shall comply with.

Chairman Robinson asked if they can put comply and utilize under rights and duties of members?

Mr. Bolser said that in number 2, A he will add the verbage "and comply with".

The Commission reviewed which changes they wanted to make with Mr. Bolser and he will make the changes to the bylaws.

Chairman Robinson moved to amend the Tooele City Planning Commissioner Bylaws and Rules of Procedure with the changes made and given to Mr. Bolser at this meeting. Commissioner Poyner seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

The Planning Commission thanked staff for their work on this item.

10. Review and Approval of Planning Commission minutes for meeting held October 9, 2013.

Motion by Chairman Robinson moved to approve the minutes for the meeting held October 9, 2013 as presented. Commissioner Sloan seconded the motion. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".

11. Ad'ourn

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Commissioner Bevan moved to adjourn the meeting. The vote was as follows: Commissioner Sloan, "Aye", Commissioner Bevan, "Aye", Commissioner Poyner, "Aye", Commissioner Smart, "Aye", Commissioner Hammer, "Aye", and Chairman Robinson, "Aye".
The meeting adjourned at 8:02 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this 13th day of November 2013

Chairman Matt Robinson

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Exhibit D

Amendments to T.C.C. 7-1-5

(172e1 Subdivision Plat - The final map or drawing, described in this Code, of a plan of subdivision to be presented to the City for approval and when approved, may be submitted to the Utah County Recorder for filing.

(173e.) Subsequent Developer - A Developer whose development is not derived from the Prior Developer's development, and whose development benefits from Eligible Public Improvements constructed by the Prior Developer.

(174+) Telecommunications Site/Facility - A facility used for the transmission or reception of electromagnetic or electro-optic information, which is placed on a structure. This use does not include radio frequency equipment which have an effective radiated power of 100 watts or less. this use is not required to be located on a building lot, or comply with the minimum lot size requirement for the district in which it is located.

(175) Temporary - Not to exceed a period of 1 year.

(176c-3) Temporary Construction or Sales Office - A facility temporarily used for a period, not to exceed 12 months, as a construction or sales office.

(1774) Temporary Use - Fireworks stands, Christmas tree sale lots, and similar activities which are open to the public and scheduled to occur over a period not to exceed 40 days in any calendar year and including uses incidental to construction.

(178-5) Theater, Indoor - A facility for showing motion pictures, video, or staging theatrical performances to an audience, inside an enclosed structure.

(17%) Theater, Outdoor - A facility for outdoor performances where the audience views the production from automobiles or while seated outside.

(180) Tobacco Product or Tobacco-related

Product - Inclusive of the following:

(a) any cigarette, or electronic cigarette as defined in C.C. & 76-10-101. including the component parts of and ingredients to electronic cigarettes;

(b) a tobacco product as defined in ILL& 5)-11-i 02. including:

(1) chewing tobacco; and

(2) any substitute for a tobacco product, including flavoring or additives to tobacco; and

(c) tobacco paraphernalia as defined in LEA. 76-0-104.1.

(181-7) Tobacco Specialty Store or Retail Tobacco Specialty Business - An establishment in

(a) the sale of tobacco products accounts for more than 35% of the total annual gross receipts for the establishment;

(b) food and beverage products, excluding gasoline sales, is less than or the total annual gross receipts for the establishment; and

(c) the establishment is not licensed as a pharmacy under I.C.A. Title 58, Chapter 17b.

(182f.) Use - The purpose or purposes for which land or a building is occupied, maintained, arranged, designed, or intended.

(1 Utilities, Private - Includes power, telephone, natural gas, cable television and private water supply service.

(18TS) Utility Company, Public - Any company, or municipal department, duly authorized to furnish under public regulation, electricity, gas, steam, telephone; transportation, water, or sewer service.

(185+) Utility Service Facility (major) - Any electric transmission lines (greater than 115,000 volts), power plants, or substations of electric utilities; gas regulator stations, transmission and gathering pipelines, and storage areas of utilities providing natural gas or petroleum derivatives; and their appurtenant facilities

(1869-) Utility Service Facility (minor) - Any electrical distribution lines, natural gas distribution lines, cable television lines, telegraph and telephone lines, and gathering lines, or other minor service facilities. No buildings are allowed and the use is limited to the following sizes: (i) gas lines less than 12 inches; and (ii) electric lines of less than 115,000 volts.

(1875) Veterinary Clinic/Animal Hospital - A facility for the diagnosis, treatment, hospitalization, and boarding of animals, which does not include outdoor holding facilities.

(1884) Warehouse - A building used primarily for the inside storage of nonhazardous goods and materials and including accessory office facilities.

(1895) Zoning District - A mapped area to which a uniform set of regulations applies, and which are designed to implement the goals and policies of the Tooele City General Plan.

(Ord. 2012-17, 09-05-12); (Ord. 2009-05, 02-28-09); (Ord. 2008-11, 11-05-08); (Ord. 2005-06, 05-18-2005); (Ord. 2002-21, 09-18-2002); (Ord. 98-33B, 10-07-98); (Ord. 97-21, 06-04-97); (Ord. 95-18, 10-06-95); (Ord. 94-26, 05-12-94); (Ord. 94-09, 03-02-94); (Ord. 92-26,

12-10-92).

7-1-6. Enforcement.

(1) (a) Tooele City or any owner of real estate within the city in which violations of this Title occur or are about to occur may, in addition to other remedies provided by law, institute:

- (i) injunctions, mandamus, abatement, or any other appropriate actions; or
- (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

(b) Tooele City need only establish the violation to obtain the injunction.

(2) (a) Tooele City may enforce this Title by

7-6.5 (May 6, 2013)

February 6, 2014

Tobacco Retail Business Name Address

Dear Tobacco Product Retailer:

Effective May 8, 2012, The State of Utah requires Tooele City to license a business as a "retail tobacco specialty business" if (1) more than 35% of its gross annual receipts are from the sale of tobacco products and (2) less than 45% of its total annual gross receipts are from the sale of food and beverage products. On February 5, 2014, the Tooele City Council enacted a city ordinance mirroring the state law reporting requirement.

The term "tobacco-product" includes the following:

- cigar
- cigarette
- electronic cigarette
- component pads or ingredients of electronic cigarettes
- chewing tobacco
- snuff
- any product containing tobacco
- tobacco paraphernalia (including pipes, rolling paper, hookas, clips, bong, etc.)

For purposes of implementing state and city law regarding the sale of tobacco products, your business is required to report to Tooele City, on the enclosed form, the percentages of your gross annual receipts attributable to tobacco products and to food and beverage products. Report your gross receipts for all of calendar year 2013 or for the portion of calendar 2013 that your business was open.

Please return the completed form to the Tooele City Recorder's Office no later than April 1, 2014. Failure to return the completed form may be grounds for business license revocation. Tooele City reserves the right to use any legal means to verify the accuracy of your gross receipts reporting.

Sincerely,

Michelle Pitt

Tooele City Recorder

Tooele City Corporation

Report: Tobacco Product Retailer Gross Annual Receipts

Business Name:

Business License No.

Provide information for the calendar year ending December 31, 2013.

Month	Gross Receipts	Tobacco Products	Food and Beverage Products
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January

February

March

April

May

June

July

August

September

October

November

December

Name and signature of business representative submitting this Report:

Printed Name

Signature

Date