

Town of Leeds

Agenda Town of Leeds Town Council Wednesday, April 24, 2019

PUBLIC NOTICE is hereby given that the Town of Leeds Town Council will hold a **PUBLIC MEETING** on Wednesday, April 24, 2019 at 7:00pm. The Town Council will meet in the Leeds Town Hall located at 218 N Main, Leeds, Utah.

NOTE: IF YOU WISH TO SPEAK DURING CITIZEN COMMENT, PLEASE SIGN IN WITH THE RECORDER.

Regular Meeting 7:00pm.

1. Call to Order/Roll Call
2. Pledge of Allegiance
3. Declaration of Abstentions or Conflicts
4. Consent Agenda:
 - a. Tonight's Agenda
 - b. Meeting minutes of April 10, 2019
5. Citizen Comments: No action may be taken on a matter raised under this agenda item. (Three minutes per person).
6. Announcements:
 - a. Sesquicentennial Celebration, Saturday, May 18
 - b. Declaration of Candidacy, June 3-6
7. Public Hearing: None
8. Action Items:
 - a. Discussion and possible action regarding Resolution 2019-02, Interlocal Agreement for Election
9. Discussion Items:
 - a. Short-Term Rentals
 - b. Fines and Forfeitures
10. Citizen Comments: No action may be taken on a matter raised under this agenda item. (Three minutes per person).
11. Staff Reports
12. Closed Meeting: A Closed Meeting may be held for any item identified under Utah Code section 52-4-205.
13. Adjournment

The Town of Leeds will make reasonable accommodations for persons needing assistance to participate in this public meeting. Persons requesting assistance are asked to call the Leeds Town Hall at 879-2447 at least 24 hours prior to the meeting.

The Town of Leeds is an equal opportunity provider and employer.

Certificate of Posting:

The undersigned Clerk/Recorder does hereby certify that the above notice was posted April 18, 2019 at these public places being at **Leeds Town Hall, Leeds Post Office**, the **Utah Public Meeting Notice website** <http://pmn.utah.gov>, and the **Town of Leeds website** www.leadstown.org.



Peggy Rosebush, Clerk/Recorder

Town of Leeds

Town Council Meeting for Wednesday, April 24, 2018

1. Call to Order:

Mayor Peterson called to order the regular meeting of the Leeds Town Council at 7 PM on Wednesday, April 24, 2019 at Leeds Town Hall, 218 N Main.

ROLL CALL:

	<u>Present</u>	<u>Absent</u>
MAYOR: WAYNE PETERSON	x	
COUNCILMEMBER: ALAN ROBERTS		x
COUNCILMEMBER: DANIELLE STIRLING	x	
COUNCILMEMBER: ELLIOTT SHELTMAN	x	
COUNCILMEMBER: NATE BLAKE	x	

Craig Hall, Town Attorney, joined the meeting via telephone.

2. Pledge of Allegiance by Councilmember Blake.

3. Declaration of Abstentions or Conflicts: None

Mayor Peterson said there will be one modification to the agenda. We were notified today by the County that there are some changes being made to the Interlocal Agreement being proposed for election. It is now the case that all of Washington County is going to vote-by-mail process and they are setting up an Interlocal Agreement with all of the entities within Washington County and they discovered some changes that they will be making. This is something that will be back, most likely, at our first meeting in May. Item 8a needs to be deleted from tonight's agenda.

4. Approval of Agenda:

Councilmember Blake moved to approve tonight's agenda with that deletion and meeting minutes of April 10, 2019. 2nd by Councilmember Stirling. Motion passed in a Roll Call Vote.

ROLL CALL VOTE:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
MAYOR: WAYNE PETERSON	x			
COUNCILMEMBER: ALAN ROBERTS				x
COUNCILMEMBER: DANIELLE STIRLING	x			
COUNCILMEMBER: ELLIOTT SHELTMAN	x			
COUNCILMEMBER: NATE BLAKE	x			

5. Citizen Comments:

Angela Rohr said at the last few meetings, the discussions on fines and forfeitures, it has become apparent that they seem to be draconian and I was wondering what some of the other towns are doing. I looked up Washington City code. They have criminal offenses and misdemeanors, but they also have civil and the civil does not carry any jail time. And they also have infractions. With the infractions, they are not classified as an offense. That designated as an infraction is not designated as a misdemeanor and no penalty is specified. It is an infraction. An infraction can have a fine set at different levels. What is going to be called a crime? You have been looking at criminal only. Therefore, I am going to guess that leaving your trash can out for 48 hours is a crime. And if you are gone for a week, and your neighbors do not happen to recognize it, this could be a very rich town with some very poor occupants.

Mayor Peterson said we will be discussing this later and we will work this into the discussion. Our attorney is on the telephone and we will be able to address some of the things raised here.

6. Announcements:

a. 150th Sesquicentennial Celebration

Mayor Peterson said the Sesquicentennial celebration is fast approaching. It will be on Saturday, May 18th. It will begin with a fun run prior to breakfast at 8 AM. It will end with fireworks at 10 PM in the park. There will be a lot of activities during the day. Please encourage everyone, as this will be a once in 150 years opportunity to celebrate a sesquicentennial.

b. Declaration of Candidacy

Mayor Peterson said State regulations require that we announce, and we will be posting at the Post Office and Town Hall, the candidacy declaration period which is June 3-6, 2019. It is only a week and during that time anyone who is interested will need to submit their application. The packets will be available in advance of that and people can even come in at this point and get the Declaration of Candidacy packet if they are so interested.

7. Public Hearing: None

8. Action Items: None

9. Discussion Items:

a. Short-Term Rentals

Mayor Peterson said at the previous meeting we had a draft of some language from Virgin which was proposed regarding short-term rentals. We agreed to read over this, and I said I would consolidate any comments. You have in front of you, a red line copy showing the changes that have been suggested. This is a starting point for this evening's discussion. There was some disagreement at previous Town Council meetings whether we should be going forward at all with this or whether we should be moving towards a stand-alone ordinance related to short-term rentals. The general view of Council, although certainly not unanimous, was that this would be a good starting point. This is what we have in front of us at this point. It is something that I think does cover many of the items, in fact, I think all the items that we spoke of

over time regarding, if we were to do this, what would we want to see included. I think it is quite thorough, but I am very much interested in Council's thoughts on this. This is a discussion item tonight, but if we reach a decision to move it forward as an action item that could be one outcome of this evening or alternatively, we could decide we are not going to change anything and that could be another. At this point, is there anyone from Council who would like to share some views?

Councilmember Stirling said in reading this particular ordinance that was based off of the Town of Virgin, it seems to have been successful and I agree with all of the redlines. I think everything that we discussed at the last meeting were taken into account with the fact that there are only 4 individuals in 2 rooms in each residence. I am very happy about taking out the parts that do not apply and putting in the parts that do.

Councilmember Blake said he read the draft and he talked with many people. I have actually looked at Air B&Bs in different communities. Air B&Bs are good for the community. They bring in money and they bring in tax revenue. They help the stores and cafes. Without over doing it and turning our Town into a vacation rental town, I do not see any issues in this draft.

Councilmember Sheltman said I am the one who thinks this is a bad idea. I think it will be a lot of work for no revenue coming in on it. We would need to keep up with the laws and the ordinances. These are a hotel. This is why they charge hotel tax. The people who moved here did not expect to live next door to a hotel. If you move next door to a hotel or golf course, do not complain about the noise and traffic. But we did not move to a place where we have hotels. It is not the same as moving into something that already exists. I am going to go back to the original problem that I have with this, or the main problem, which is enforcement. We do not have any. You will not get this enforced by the Town. It is not physically possible. This is going to get out of control quite easily. This Town has had a lot of different people sitting up here who have had a difficult time keeping up with the ordinances let alone enforcing them. We do not enforce them. You have people living in trailers on properties on Main Street, like it is their residence, and we are not enforcing the law against it. You have multiple units around here that the Town is aware of and we do not fix it. We will not fix this. You will have to call the Sheriff's Department and you are going to get caught up with your neighbor, whether they are there or not. The ordinances for other locations who are doing this are quite strict and it is easy to enforce them because complete entities that, through the money they are making off this, take care of the problems. If you look at Palm Springs, they have about 10 things a night. And they have to keep track of all the complaints and the enforcement people have to be there within about 10 minutes. It will not happen here. I do have a question about the draft. This is a 2-1/2-year-old draft and it is more like a resolution with all the 'Whereas's'. I do not think this is necessary for what we are doing. About 2 months ago, Virgin put an ordinance in place called Chapter 30 – Short-Term Rentals (STR) and Residential Hosting Facilities. If we are going to do this, I think we would be better off to look at this as opposed to what we are looking at now. It is much more complete, and it is a total of about 12 pages. I think it is much more complete. I still do not think it has everything that is necessary, for instance how many rooms you can rent, the size of the rooms, safety issues, like smoke detectors and carbon monoxide detectors, and if they have to be hard wired. Safety measures that you have to follow if you have a pool. You have to have signs posted and you have to have devices around that you can use to pull someone out of a pool in case they fall in and they cannot swim. Who is going to enforce this? We have septic tanks here. Who is going to enforce it? Do we make them clean it out every year? We have been told that you can have problems with them if you do not maintain them. We do not know who has been using them and I am sure they are not going to follow the rules about septic tanks like we do. What do they care? They are only here for 2 days. Do we require they have to be checked out and certified every year? I do not think this is complete at all. It is far from complete.

If we are going to do this, it will be more like a 13 to 15-page ordeal. But, again, we are not enforcing laws on people living here illegally right now. There is no reason to think this will make it any better. There are no restraints on how many licenses you will allow. There is no enforcement angle at all. Right now, per our laws, the Mayor is the ordinance enforcer. Does this mean whoever is Mayor is called at midnight if there is a problem? And then respond within 10 minutes. Will there be someone on the Council to replace the Mayor when he is on vacation? I do not know. The enforcement is the issue. You should not have to call the Sherriff's Department and then stand there answering questions when you do not know all the answers. You only know you have a problem next door. I do not think the people who live here should be forced to go to neighbors, if the neighbor is ever there. The Virgin ordinance says you just have to be a resident. It does not say you have to be on the property. Should you be put in that position? I do not think so. I called the Sherriff when one of my neighbors was shooting off commercial grade fireworks during fire season. They showed up 3 hours later. The fireworks were long gone. The Sherriff said they can go talk to them and I said I want you to cite them. Maybe that is what it will take for them to understand what they were doing. The Sherriff actually argued with me because he did not want to cite them. The Sherriff said you will have to sign a piece of paper and put your name on it. When most people hear this, they will not want to do it. I said I would be happy to do it. This guy could have burned down my whole neighborhood. Of course, I will sign a piece of paper. But this is what you get when you call the Sherriff. This is a hotel. Let's call it what it is. It is a short-term hotel that happens to be in a house. This short-term rental is just a game plan that we are doing here. There are places who made them illegal for just that reason. What it does is keep property prices and rental prices artificially high because it takes away the amount of buildings people can actually live in. So, for all these reasons, and a bunch more that I stated before, I do not think this is a good idea. However, if we are going to do it, it needs to be done really well. Maybe before we do this, and I have already asked the attorney about this, we need to decide how to pay for enforcement. We were told we cannot cover all of the costs. How are we going to pay for it? I do not know if anyone in Town cares about this. They usually care about it after it happens and then have to deal with it. After the fact, I think it will create a lot of problems. I think we need to talk about this before we move too far ahead. Enforcement is the question.

Mayor Peterson said, Craig, I think there was a question or two in there with respect to enforcement and the ability to recover costs. Is there anything you feel is appropriate to share at this time?

Craig Hall said I think Elliott is absolutely correct, enforcement is the key. And the enforcement needs to have a penalty side whether we do it with civil fine methodology or if we do it with criminal methodology. Generally speaking, on the criminal side the Town cannot recoup costs. On the civil side, you can recoup some of the costs along with the civil penalties that may be assessed. Civil penalties are based on violations on a per day basis - \$25, \$50 on a per day basis plus costs. I was at a hearing yesterday where civil costs and out of pocket expenses and personnel expenses were actually recovered. Using this model, some of the out of pocket expenses, if Council chooses the civil fine model, can be recovered if you can recover them from an owner who may or may not have any assets or a poor or not a very good attitude regarding payment of the civil fine. Then it becomes a civil action that is somewhat long and often not very productive.

Councilmember Sheltman said just to be clear on this, can we recoup the costs for someone who is on call to deal with this stuff every day or some group of people?

Craig Hall said probably not.

Councilmember Sheltman said when he says enforcement this is what I am talking about. I do not mean after the fact, like fines and penalties. I mean when a neighbor is doing something or if there is a situation not within the law that we set-up here, that they have immediate response and an immediate conclusion. These usually have 10 minutes to respond because they want to catch the people in the act. We would not be able to recoup that cost.

Craig Hall said the on-call expenses probably not. This is an embedded cost of the ordinance that you are considering.

Councilmember Sheltman said so we could not pass this on in a charge for a yearly license?

Craig Hall said yes you can if we have a business license fee study where we can justify the business license application in the amount that we charge, we can recover some of the costs from the license fee. But the cost for an enforcement action against a particular individual, I think we would have a good shot in recovering those costs. I think in a business license fee scenario, you can recover some of the costs in preparing to enforce the ordinance as you decide.

Councilmember Sheltman said my question then would be what is our plan to do that and where will we get the money we cannot recoup? This creates problems. We have had 2 in Town on the other side of the freeway that I am aware of and one of them packed the place. There were 26 some odd people there doing drag races up and down the street in their ATVs. It created nothing but havoc. The place could hold a total of 36 people. It was a house that went into foreclosure and the gentleman who bought it had it set-up so there could be 36 people there. And the one on my street that started this whole thing has bunk beds and will hold 20 some odd people. If you look at the ones right now that are listed, most of them are for 20 to 30 people. So the question is what do we allow? And if someone calls and says I think there are more people there than there are supposed to be, the Sherriff will not go in for this.

Craig Hall said I think you are probably right. If the Town adopts a civil enforcement model, the Sherriff will not go in. This is why other cities have code enforcement officers. They have the ability to do this using the civil model.

Councilmember Sheltman said he wants to remind everyone that we do not have a cop. We do not have a police officer here. We do not have local enforcement. And one other thing that we talked about is what it brings into the local economy. It will bring absolutely nothing to ours. We have a sandwich shop, a restaurant, that may or may not be here in a few months, and a grocery store where someone may buy a coke or some chips. This will not float this thing. It does not bring in anything. What they talk about having in Virgin is actual areas where you have these things. There are designated areas. Our attorney said this is being done in other towns like Santa Clara and St George.

Craig Hall said especially Santa Clara.

Councilmember Sheltman said that's why it is not affecting anyone. These things did not exist 10 years ago. Again, it is like what are we willing to allow in the Town and what does a short-term rental bring to the community? Does it add to the sense of the community and the trust you get in a community where everyone knows each other? You can rent your house out for whatever amount you want. It just has to be for more than 30 days. Why do that when I can do a short-term rental and have people come in and pay me big bucks for 2 or 3 days and then use it when I want to? It is actually kind of selfish if you want to look at it that way. And you are screwing over your neighbors. The 2 we have had experience with have

not worked out well at all. As far as allowing it, I have my same questions that I had before. How are we going to enforce it and how will we cover the cost? Or can we cover the cost? And will there be extra costs that we will need to tack-on somewhere else? We will not have enough of them to bring in enough to cover the cost. San Diego has several thousand of these things and the people there do not like them either. We do not have to do this. We can easily look at it and say I do not think it is a good idea for our small, sleepy community. I think having one of these things next to my house is disgraceful. My stance is we should not do it because we will not be able to come up with an enforcement that works. But if we are going to do it, I suggest that we look more to Chapter 30.

Mayor Peterson said just to be fair to other Councilmembers who made comments, it does say under Subsection D the number of bedrooms is maximum 2 and the applicable overnight and day time occupancy limits a maximum of 4 persons. I think this clearly addresses some of the things you were speaking of about situations we do have in Town with 20+ people.

Councilmember Sheltman asked how will you know unless someone has transparent walls.

Mayor Peterson said one of the ways that has been made most evident by the rentals that you have referred to, where there has been an overabundance of people, is the number of cars. It is a little hard to imagine that 4 people would have 8 or more cars. This is certainly one area where you would have a very good sense. One of the things that the Town's home business occupation ordinance does say is that as a home business operator you are subject to inspection with 48 hours advance notice. With respect to this kind of rental, you would need to be very prompt in making notice as soon as you see that something seems ready to take place or starting to take place. We could do it in advance of a weekend before anyone is there and have the right to go in and inspect it on a weekend in order to determine whether or not the occupancy limit is being violated or not. One other thing I would like to respond to is the claim that we do not enforce, and you named one specific one and I would rather not get into public discussion of each individual one, but I can tell you that there is actually enforcement action underway with respect to at least one the of things you said was being totally ignored. But, here again in a public setting, I do not think it is appropriate to start trying to prosecute a code enforcement type thing and I will ask our attorney if he agrees with this.

Craig Hall said he does not think it is good form.

Councilmember Sheltman asked who will go do the inspection? And what position would they be to the Town? Would it be a paid job? Or would it be the Mayor or a Councilmember? In Palm Springs, all bedrooms must meet 120 Square Feet, they must have a built in closet, they must have an egress window or door, smoke alarms and carbon monoxide detectors to be hard-wired, they must have fire extinguishers and they have to be rated and they cannot be older than 6 years. Someone has to check all of this. The address has to be easily visible from the street and you have to fill-out a form on your pool stating that you understand the pool regulations because you are a hotel. You have to have pool signs and rescue poles and side gates have to be self-closing. In some places, you have to fill-out a contract summary stating what you have scheduled for the month. You fill this out on the internet on every person before you rent it out. How are we going to pay for this? And who is going to check it? Overtime, if we do not have something in place that works, it will fall apart. People will figure out they can do what they want. They are doing what they want now. Are we going to allow trailer park people to rent out their trailers? They are doing this right now. It's been 6 or 7 meetings now and I still do not have answers. I do not want the people in this Town to have to deal with this kind of stuff. I think if more people knew this is

going on, we would have more people here. I do not think it is a good idea for this Town unless we can take care of the problems.

Mayor Peterson said he appreciates you have done a lot of reading on this. It would be helpful if you could share this with Council in advance of meetings so that we could all read over it. Unfortunately, I do not know if you read the bottom of the first page where it says, "Whereas for the purpose of this section, mobile homes and RVs will not be allowed to be used as a short-term rental." Some of the things you are saying that are being ignored are addressed in the draft.

Councilmember Sheltman said he is not trying to create any controversy here. It is more addressed in Chapter 30 which was just put in place opposed to what we are looking at. Figure out enforcement and I might be in favor of it. I am not being argumentative here; I am just talking about what the direction I believe we should take. Again, I have asked about enforcement, but I do not see it here. I just see rules being put in place. The Town needs to do this, not the people. How is the Town going to do it and how will we pay for it?

Councilmember Stirling said in reading what other cities have come up with for specifications such as does the owner have to check-in each individual who comes, it says in this particular draft, 2 rooms, 4 people and the owner would have to purposely go and look and make sure. What one of the cities in the County said is that it has to be specifically said in all marketing that there are only 2 rooms available and 4 people total. But then, the way they force it if they get any violations called on, they immediately get fined. And if it is gross violations, they get fined and they immediately lose their license. If we come up with some type of fine where if they do have more people then we make it such a hefty fine that the individual will not allow that to ever happen again. Inevitably, if you make the fine high enough, you do not have to find money for the Town to enforce it. This is what has actually been documented in quite a few cities. I understand what Elliott is saying because I know you have done a ton of research. This may be disgraceful, but it is our environment and it is not going away. I think a lot of people realize that they can do things, whereas 10 years ago, they did not have the ability to make extra money. This environment now is going to need to reinvent the way to make individuals have that desire to do it. I think if we go ahead and create some type of enforcement where it is going back onto the owner then I do not think the problem will be as bad as you think.

Mayor Peterson asked if there are any further comments from Council.

Mayor Peterson said the direction I see we could go is trying to get copies of the Chapter 30 circulated among Council or we could decide we do not want to move forward. This is not a vote this evening, but I guess it is a polling of the Council to determine what we should or should not be doing as we move forward. I think it has been clear from Elliott that he thinks we should not move forward at all. Is that accurate?

Councilmember Sheltman said if we cannot come up with a way to do it without involving the Town's people to do the enforcement, it would probably be easier to outlaw it because that would be easier to enforce. This way, you would be able to tell the Sherriff it is illegal. I just found Chapter 30 today. It is on their website.

Mayor Peterson asked Councilmembers Stirling and Blake what direction they want to go in. Do you want to have another discussion after circulating Chapter 30? Would you want to submit how you think it

should read? We could consolidate the comments and come up with a starting point document for us to discuss again at our next meeting which would be on May 8.

Councilmembers Blake and Stirling said they are in agreement.

Mayor Peterson said he agrees as well. I would certainly accept if people say we should start with Chapter 30 and edit from that. This is certainly a reasonable approach. Or if there are things from Chapter 30 that they think we should bring into the draft we are currently looking at would also work. I will look to circulate tomorrow, with our Clerk, Chapter 30 with everyone on Council and with that be able to have that in a couple of weeks, with the hope of having a new starting point to discuss again.

b. Fines and Forfeitures

Mayor Peterson said we have our attorney with us this evening. There was a question at our last meeting, and, Craig, I understand you did not have a chance to connect with Councilmember Stirling about this. Could you summarize what a civil approach would look like compared to the 3 pages we have here and one thing that I would lead off with is the public comment about Washington having infractions. Indeed, Section C of the Penalties for Violations says any person convicted for an infraction of a violation of an ordinance of the Town is punishable by not more than \$750 and that does not involve a misdemeanor charge or any kind of criminal. It is an infraction that is in this proposed ordinance. Craig, please start by addressing the civil question.

Craig Hall said I need to make a correction on what you just said. An infraction is a criminal charge. There is just no jail time possible. It is the lesser of all criminal penalties. There are infractions, Class C misdemeanors, Class B and then Class A. Cities generally do not deal with Class A misdemeanors. There are a couple of exceptions, but generally they are either Bs or Cs. A speeding ticket in a lot of communities is a Class B misdemeanor. People do not realize that, but it is. The civil model is for generally city code offenses like the ones that Elliott just mentioned such as living in an auxiliary or RV trailer on a lot where there is already a home or residence. We have had some experience recently with improper storage units. We have had problems in other cities regarding rubbish or trash or weeds in excess of certain height limitations. These things are best enforced with civil fines such as \$25 or \$50 per day as a fine, or whatever appropriate amount the Council decides by policy. And you can put different offenses in different categories for different daily fines. In my experience, most recently in 2 cities, the civil fine model worked much better than a criminal model. People who have trash, the goal is to get rid of the trash, not to fine someone or put them in jail. The goal is to clean-up the mess. Clean-up the violation. Civil fines have that sort of encouragement to do so. There is no jail time possible and there are various means to collect the assessment. You also have some latitude based on compliance. We had an experience recently where a property had 30, 40 or 50 vehicles on it. We made an indication through my nasty gram, my demand letter, to the owner in Texas. We asked him to remove the vehicles within a period of time. He mostly complied in that time limit. We got almost 95% compliance. This type of dealing with the citizens is much more palatable than coming out, like your experience, Elliott, with the fireworks, where the Sherriff comes out and he asks you to sign the citation and we criminally fine our neighbors for whatever condition it is. I am an advocate of the civil model. It works better and a lot of it can be done with simple notices and pictures. Send a letter with a picture to the property owner and the resident, if it happens to be a rental. You say we have noticed this violation and we ask you to clean it up within 10 or 15 days or whatever is appropriate. If not, a civil fine of \$25 a day will start and will be assessed until the situation is remedied. I find this to be more palatable to the offending property owner.

Councilmember Blake said he agrees.

Mayor Peterson said he is a little confused. One of your colleagues drafted this initially saying this was an arrow in our quiver, I think this was one of the terms used for it, in order to have criminal as one of our options. Now I think I am hearing you say you do not think criminal is necessary or useful.

Craig Hall said I think both should be imposed, but I think the Town should utilize, at its discretion, the civil fine model before it has to revert to a criminal type model, but there are exceptions. I think both are necessary, but the Town, at its discretion, can choose which model it wants to use as long as we are consistent with the use of the models. We just cannot say we hate someone and then cite them criminally when it is only a weed issue. The Town Council will just give them a notice and tell them to clean it up. We do have to use good judgment and consistency depending on the events.

Mayor Peterson said I believe with our previous attorney there was one issue where our existing ordinance says you are subject to civil and/or criminal penalties. The challenge with this is that from a criminal standpoint the courts did not look kindly on language that says this could be civil or this could be criminal. They wanted clear direction as to whether or not it was civil or it was criminal. Do you share this view?

Craig Hall said he has had this discussion with our prosecutor. I think both can be imposed. The criminal model should only be used in most serious offenses. And, if need be, we can identify those specifically that they are Class B or C misdemeanors or infractions. We can segregate, saying these are criminal and these others will be adjudicated using the civil model. I do not share the same concern. If we chose to do the civil model, it will never get to the Justice Court. If we use the criminal model, when it gets to the Justice Court, we say we cited them under Section A, B or C or Chapter 30. I do not share those same concerns.

Mayor Peterson asked if there any other questions or comments from Council.

Councilmember Stirling said she agrees with what Craig Hall said.

Councilmember Blake said he is happy with everything.

Councilmember Sheltman said he does not see where it will be beneficial for the Town to take the harshest actions and I do not think anyone in Town will put up with someone going to jail for garbage cans or weeds.

Mayor Peterson said I do believe if you were to try to go that route, at our last meeting there was talk about rogue councils and what could happen, you would need to have a prosecutor who would be willing to go along with it and you would need to have a judge who would be willing to go along with it. We are not usurping people's rights to trial when that is being done. It certainly is not my choice and not my precedent that I have tried to set, that you go for a penalty at all, you try to go for compliance. The other question that I have for our attorney is you mentioned civil fines; can they be added to property tax bills? Currently we are able to, through an arrangement with the Solid Waste District, assess people's past due trash collection bills through the County Tax Assessor's office onto their tax bill, and if they do not pay it there, they are delinquent with their taxes which has fairly significant ramifications for them. Is this type of thing possible with civil penalties?

Craig Hall said the answer is yes.

Councilmember Sheltman asked if the 3-page draft has been posted at the Post Office.

Mayor Peterson said this has been posted at the Post Office for several weeks now. And it has also been available on the website.

Mayor Peterson asked if there is anything further from Council. Do we want to instruct our attorney to please update the Fines & Forfeitures to include a civil process as well and then take it up as one combined item because it does seem it is a combined approach that would be preferred by Council?

Councilmember Blake said yes.

Councilmember Stirling said yes, but she has one question. How do you know exactly what is civil and what is criminal and who gets to decide this?

Craig Hall said this is a 2-part question. First of all, we will identify in the ordinance which is which. We have mentioned garbage cans left out on the street. This is civil. I would never even suggest to the prosecutor that we issue a criminal ticket for a garbage can or anything else of this type of nature. Who decides is an enforcement discussion, and I think under the form of government that you have, the acting administrator is the Mayor.

Councilmember Stirling said at the last meeting, we had a gentleman, Darryl Lewis, to ask about this and he said with these fines and penalties he would like to know the process, who decides and, if there is an ongoing violation, and who is responsible. He said we are innocent until proven guilty so at that point is it basically for civil and they would continue to have that fine until they went to court if they did not comply.

Craig Hall said on the civil model you do not go to court. The basic process, and I will try to make this as simple as possible, is if there is a violation, we send a nice letter saying please clean it up. If they refuse then we issue a notice of violation and we give them a period of time appropriate to clean it up. If it is not cleaned up within that period of time, the civil fine will then start to accrue. At that point, the Town has the option under several ordinances to make the decision to go in and cut down the weeds. The Town has the right to go in upon notice and cut the weeds down and assess to the property the cost of cutting the weeds down. The Town would give notice via certified letter saying we have a bill from a subcontractor who cut the weeds down. You have x-number of days to pay the bill. If you do not pay, we will certify it so the County Treasurer can issue a lien against the property and assess it to the property taxes. This is how it would work, and it is mostly form work. I have forms that have been developed over the past few years that we can generate and give proper notice to people.

Councilmember Stirling said for this particular penalty for a violation of an ordinance, it will go into the actual process to explain A, B, C or D of what exactly happens before and after this is done?

Craig Hall said the notice will say this is the process if you do not do "x" and if you do "y" this is going to happen.

Councilmember Stirling asked when does the criminal part come in and who decides this? Would it be the Mayor as well?

Craig Hall said the Mayor on referral to the City Prosecutor.

Councilmember Stirling asked if something in the ordinance would spell out exactly what is criminal or would it be under the determination of the Mayor is.

Craig Hall said the more serious offenses need to be identified in the ordinance.

Councilmember Stirling said because we have had this problem in the past and we have had it for quite some time, we have a chicken ordinance or a non-availability of chicken ordinance, so if that civil action went through, and individuals did not have the opportunity to get rid of their chickens, would that be a criminal offense if they did not get rid of their chickens?

Craig Hall said he would not charge someone criminally for having chickens.

Mayor Peterson said there was previous indication that civil is a lot more expensive than criminal to enforce, but then I also believe I heard that with civil you can recover the enforcement cost. Is this in addition to the daily fines?

Craig Hall said generally the answer is yes.

Mayor Peterson said I would think that would be a good thing to include as you put something together. It seems to me that an individual who decides to see just how hard they can fight it would be well advised that it would be in the Town's benefit to understand that if they ultimately do not prevail, they will be paying the expenses. Do others agree that we should try to recover any costs we have?

Councilmembers said yes.

Mayor Peterson asked if there is anything further. Do we want to instruct Craig to come up with comprehensive civil/criminal language that can be used as a starting point at a future meeting? I am assuming this may not be ready for May 8th, but perhaps it can be ready for the second meeting in May or the first one in June?

Councilmember Stirling said she has one more question. What is the method for self defense for the individual who has this violation? If they feel it is not a violation, how do they fight it if they feel they are in compliance?

Craig Hall said the ordinances that I have drafted in the past provide for the ability to appeal the notice of violation to a hearing officer that the Town would provide. They can have a hearing on the facts where the Town would come in and say they found 7,000 chickens and the person says they are not my chickens and then the hearing officer would make a decision. Most cities have this process and I would write it into the ordinance.

Mayor Peterson asked if there was anything further from Council?

Mayor Peterson said, Craig, once you have something available, I will look to circulate it and get it on the following meeting's agenda.

Craig Hall said he will do his best for May 8th. I may be able to attend the meeting on the 8th. I will shoot for having it out in the next few days.

10. Citizen Comments:

Darryl Lewis said he is becoming amazingly confused over the steps of the discussions regarding short-term rentals and fines and forfeitures. We have been discussing a draft for probably 3 months. I am quoting the definition of the draft and I am reading it directly – “Ordinance adopting uniform and standard criminal penalties for violations of Town ordinances.” I just heard Craig say he would not want to be the prosecutor for chickens. We have zoning in this Town that specifically prohibits chickens. I can only assume that Craig is taking the position that he would not enforce that ordinance. Is this correct, Craig?

Craig Hall said no, that was an example only. To be candid with you, I am not aware if the Town allows chickens or not. That was merely an example.

Darryl Lewis said there was an example of not enforcing an existing ordinance.

Mayor Peterson said I believe he said he would not want to do it criminally.

Darryl Lewis said he said he would not want to enforce it. This is very confusing to me and it is a good point at this juncture because in fines and forfeitures we are discussing how to penalize the citizens of this Town if they do not comply with ordinances in view of the Town. I wonder what recourse the citizens have against the City Council for unequally enforcing laws. Is there any provision for this, Craig?

Craig Hall said I can give you 2 answers – criminal law must be enforced uniformly and equally throughout the Town. You cannot pick on one person for a DUI and then let another person with a DUI go. You cannot do this. You have to have equal enforcement for these types of rules and regulations. You asked what is the recourse for the Town Council. The ballot box is the recourse. This is the process from a legislature standpoint.

Darryl Lewis said I am talking about law. Violations of existing law. Okay You made the comment earlier that enforcement and penalties are the same. No, they are not. This is why we have an English language that uses words that have definitions. Enforcement is an act and penalty is a fine. I think it is important to understand that in this enforcement and penalty issue, you made the statement earlier, that the Sherriff will not enforce civil complaints. He will only deal with criminal complaints, and criminal complaints need a very formal, legal document to start the process of criminality. I can see going down this road for both of these issues. I can see this Town needing maybe not one attorney, but maybe 4 or 5 or 6 attorneys because we will have lawsuits going back and forth 14 ways from Sunday. In closing, I would like to make a comment about short-term rentals. The comment was made that the number of cars can easily dictate the number of people in a residence. I take issue with this because the comment was for 4 people and 2 rooms. They could have 4 cars and they could have 4 people in each car and that is 16 people. If it was an SUV then it might be 6 people in the car. We are talking about overnight stays. What about visitors who are visiting the people staying overnight? If there are 4 people staying overnight, what about if their extended family comes for a party? It would be legal, and it fits all of the parameters that I have heard discussed. You could have 75 people there.

Mayor Peterson said if I could just mention that the question about the terms of language regarding the visitors, it did mention a maximum of 4, daytime included, and there would not be the ability to throw a party.

Lynn Potter said regarding the short-term housing ordinance, we could put a sunset law on it and after a year it has to be renewed or let go. If everyone knows that the sunset clause is there then there will be no problems if the businesses have to be shut down in a year. If there is concern about it, there are ways out of it. Also, hotels have to keep track of everyone who stays there. You could put it in the ordinance. We have the technology. Use your phone to take a picture of the drivers license and text it right into the Town. The Town can have a phone number that collects all of these. Everyone who stays there has to be sent into the Town or just a name if not an ID. This way, the Town can keep track of the number of people and how much income is coming into the Town.

Councilmember Blake said he thinks it is a good idea to have a sunset clause.

Brian Hanson said I have short-term rentals, 1 at Brian Head and a couple in LaVerkin. I pay 2% a month to the City of Brian Head for a shuttle service year-round. This is in addition to the regular taxes I have to pay. This is a great way to bring income into the community. The rate in Brian Head is 14.3% and the rate in LaVerkin is 12.7% and it is a room tax. I pay this to the State, and some comes back to the city. There is something that could be added for enforcement. When it comes to room size, windows, carbon monoxide and smoke detectors, the Hurricane Fire Department goes through my house once a year and I pay them \$100. They safety check everything for me. And they can also say only so many people can be in the room. I have 2 homes here in Town and I am going to rent one of them. I do month to month 30-day rentals right now. I feel like I have more control over a short-term rental than I do a long-term. For long-term, they can bring in as many people as they want. With short-term, I can limit it. I can say so many people in my house and so many per room. In some ordinances, if you have over 10 people in the house you have to have a sprinkler system which is expensive to put in. I have been doing this for 10 or 12 years and we never had a real problem. I do not want my house torn apart and I do not want parties there. We need to know how to do enforcement, but as an owner, put it on me to enforce it.

11. Staff Reports:

Councilmembers Stirling, Blake and Sheltman said none.

Mayor Peterson said Utah League of Cities and Towns will have their mid-year conference April 25 & 26 in St George and he will be attending.

The Main Street project is underway. They meant it when they said April 22nd and work has begun. The actual rip up has begun of the old ADA ramps to the sidewalks. The actual requirement for them has changed over time and UDOT, whenever they are doing this type of project, brings them up to the current requirements and code. I do know that some people have said it looks like perfectly good sidewalk that is being ripped up. UDOT is doing this and they are paying for it because they want to make sure they are in compliance with ADA requirements. This project is expected to continue through May 18th with regard to the new surface going down, but then it will take until the end of June before things properly cure and then they can paint. Expect to have UDOT with us pretty consistently for the next month and then expect them to come back and do some painting about a month later.

12. Closed Meeting: None

13. Adjournment:

The meeting was adjourned at 8:14 PM.

APPROVED ON THIS 22nd DAY OF May, 2019



Mayor, Wayne Peterson

ATTEST:



Peggy Rosebush, Clerk/Recorder