PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JULY 14, 2011

Present: **Mayor Dana Williams; Council members Alex Butwinski; Joe Kernan; Cindy Matsumoto; Dick Peek; and Liza Simpson**

Tom Bakaly, City Manager; Mark Harington, City Attorney; Diane Foster, Sustainability Manager; Thomas Eddington, Planning Manager; and Matt Cassel, City Engineer

Andrea Olson, InterPlan

1. City Council questions/comments. Alex Butwinski reported that there was significant public input at the Planning Commission meeting last night on the temporary zoning ordinance. People were upset about the scope of the TZO described in the Planning Commission meeting packet and complained about lack of notice. There seems to be notice issues with almost every serious application and he felt the City could do more. The Planning Department could publish a tentative agenda with the current meeting agenda. He suggested exploring publishing the City Council agenda in the *Park Record*. Mr. Bakaly pointed out that noticing a TZO is different than other zoning-related ordinances but staff will follow-up on the cost of publishing the City Council agendas.

Alex Butwinski asked that a work session be scheduled on the sale of memorial benches on City property and Diane Foster suggested that this be discussed on August 25 with the topic of conservation easements with Summit Lands Conservancy.

Liza Simpson stated that she also attended the Planning Commission meeting as well as the Mountainlands Community Housing Trust meeting where its audit was approved. She reported that a redistricting meeting will be held at the High School on July 26 at 6 p.m. The police quarterly meeting was productive and well attended. Cindy Matsumoto discussed the Library Board meeting and noted that circulation is up over last year. Habitat for Humanity is breaking ground this week on its affordable housing project. Mayor Williams discussed speaking to the Newcomers Club and welcoming the Truckers Association to town. He spoke about making needed improvements to the Quinns Junction Dog Park and briefly explained the Wounded Warriors Program sponsored by the National Ability Center.

Mr. Williams continued that he is also unclear about some elements of the TZO and has received a lot of negative feedback. He understood the Council was looking at lot combinations but the Planning Commission meeting staff report described a much larger scope. He doesn't know what to do. Mr. Butwinski interjected that the direction in crafting the TZO was to look at the impact of the size of houses on lot combinations which should be the focus. All other discussions were distractions from what was intended to be accomplished and the General Plan needs to reflect what we want to be. This is again scheduled before the Planning Commission on August 24 and the public wants this addressed as soon as possible. Mayor Williams expressed confusion about restrictions on single lots and Joe Kernan stated that number of stories was not discussed by Council. The Mayor believed the goal was to make sure lot combinations are compatible with the surrounding neighborhood. Liza Simpson agreed and felt direction was to conduct an analysis of lot combinations to ascertain negative impacts with regard to compatibility in Old Town. A third floor limitation in Old Town was added about a year and a half ago with the enactment of the new Historic District Guidelines and Land Management Code amendments and there have not been enough projects processed so far under the new regulations to evaluate their effectiveness.

Mark Harrington explained that the Planning Manager asked Council members if the TZO should include an expansion to the existing large lots that have already been combined and there was some debate about this on June 23. Planning is creating a pending ordinance in addition to the TZO that would explore some of those issues so that there is some equity. He pointed out that only addressing lot combinations represents a small number of potential applications and he felt that Mr. Eddington was clear at the meeting that he would be looking at more than lot combinations in the future. The Mayor stated that there is confusion about increased setbacks for single lots and Alex Butwinski stated that people now think three stories will be prohibited.

Mr. Harrington expressed that he found Council members' reactions surprising based on the comments from the last three plat amendments. These are planning solutions to the compatibility problem which are felt to be better than a formula in addressing footprint issues. Mr. Butwinski felt there were many concerns raised that were unnecessary because of the way the TZO was presented. The scope of what was presented was broader than what Council wanted. Cindy Matsumoto stated that members wanted to look at the size of homes on combined lots and she felt it should be broad. Tom Bakaly believed that it is much easier to pull the TZO back than it is to expand it and the Council is in a position to scale back the scope of the TZO. Mr. Butwinski pointed out that the TZO is quite clear about addressing floor area ratio and Mr. Bakaly countered that you can't have that discussion without height. Mr. Butwinski continued to point out that four other items were not contemplated and believed that floor area ratio is the clear issue. It is not about reducing total square footage of the house but applying applicable zoning and his concern is streetscape but the TZO goes way further than that.

Mayor Williams commented on the number of calls he received on changes to single family lots and Mr. Eddington confirmed that there are no potential changes with regard to the footprint or setbacks for 25' x 75' single lots. The two story suggestion would have applied if implemented but the Commission wasn't very interested in that and asked staff to return with some visual analysis. Mayor Williams believed that the word is already out and the Council should let the Planning Commission do its job but again expressed his concern that so many people interpreted the staff report so differently.

Mr. Bakaly reiterated that this is hard and staff can communicate better and do a better job of noticing but at the end of the day, these are difficult decisions and he is not sure any amount of communication or noticing will make them less difficult. He stated that we cast a wide net to make sure that all issues were covered and the Planning Commission members are deciding what is important to them. Council can change the scope or let the process go forward.

Joe Kernan stated that his main goal is to find out whether there are too many large homes in Old Town changing its historic character, acknowledging that smaller homes still need to be adequate living spaces. Cindy Matsumoto expressed that the streetscape is her main concern and everything should be on the table to talk about it. She recognized that there were angry property owners at the Planning Commission meeting as a result of rumors and believes there is a mandate from a lot of people to look at this. Ms. Matsumoto felt it appropriate to look at heights and setbacks and the TZO should go through the process. Dick Peek agreed that the streetscape is important to him and the goal is historically compatible massing and scale. The Mayor asked if members are comfortable with what is before the Planning Commission and Mr. Butwinski stated he is not. The TZO is too broad in light of the General Plan rewrite and his intent was very narrow in scale.

Thomas Eddington stated that staff has done individual analyses with regard to lot combination applications before Council and the TZO is an effort to address issues comprehensively. There are streetscapes and also cross-canyon and massing views and looking at the number of stories, size of footprint, and setbacks is a possible method to improve compatibility. It is easier to prepare visual analyses comprehensively because there are questions on all issues.

The Mayor stated that he personally is comfortable with the process and the net has been cast. He doesn’t want to redirect staff and the Planning Commission. Joe Kernan concurred as long as the focus is lot combinations. Liza Simpson agreed. Mark Harrington interjected that the TZO technically only applies to lot combinations. As the draft ordinance further restricts lot development and/or the proposal is pulled back, someone can not just apply for something that is prohibited by the pending draft. The current pending draft had a two story limitation and to the degree that that gets pulled back, then people can still move forward resulting in a more fluid process. People can still apply on existing lots that aren’t implicated by the current draft which is why the two-tiered approach was selected. The prohibition of application under the TZO only applies to lot combinations. Mr. Harrington felt the discussion at the Planning Commission meeting was productive because it was public and open and these decisions are difficult. He encouraged keeping the debate active, lively and spirited. He referred to criticism of staff by not providing the right tools to address compatibility correctly and staff is trying to come up with ideas to provide the Planning Commission the tools to address concerns without having a piece by piece determination on compatibility. Considering everything will result in the best possible recommendation.

2. Traffic and Transportation Master Plan. Matt Cassel referred to goals and associated performance measures outlined in the staff report which will effectively track the status of the Master Plan. He explained designating parking, bike lanes, sidewalks, etc. in road cross-sections to prioritize uses on undersized streets. He brought the Plan to the Planning Commission on June 8, 2011 and a draft report has been distributed to stakeholders. A lot of input has been rendered. He recommended bringing a couple of chapters of the Master Plan to Council members at a time at the end of August or early September.

Consultant Andrea Olson explained that one of InterPlan's tasks was to build a travel demand model for Park City and its input is very data intensive. The model was built to address two specific hypothetical days including a *peak-peak* day and average off-season day. The model calibrated very well and close to Federal Highway Administration calibration guidelines. Through a computer-assisted presentation, she displayed existing traffic volumes on a *peak-peak* day during Sundance or Christmas and displayed the same in year 2020 with no growth. However, she emphasized that there is more traffic because Park City is significantly impacted by the areas around the City which will continue to grow. It also assumes that none of the goals in the Master Plan have been achieved. She noted that she can display any scenario. Ms. Matsumoto expressed interest in the growth of second home owners and Ms. Olson explained that second home ownership was accounted for in the model as well as growth in tourism. She displayed 2040 in the *peak-peak* and pointed out that the model is a robust tool for the Council to use in decision-making. Matt Cassel pointed out the benefit of projecting results without actually building improvements first.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JULY 14, 2011

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, July 14, 2011. Members in attendance were Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Thomas Eddington, Planning Manager; Shelley Hatch, Business Licensing Analyst; Polly Samuels McLean, Assistant City Attorney; and Kurt Simister, Building Inspector.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Wounded Warrior Program - The Mayor referred to the Wounded Warrior Program hosted by the National Ability Center and discussed recognizing deployed servicemen and women in the Park City area over the years.

Sgt. Hobsett, participant, stated that NAC has done a wonderful job of getting soldiers here and helping them deal with their injuries. He emotionally spoke about the importance of public support and elements of the Program. Park City is a beautiful community.

III PUBLIC INPUT *(Any matter of City business not scheduled on agenda)*

1. Unrestricted parking request – Ron Whaley, 819 Park Avenue, stated that he is the only full-time resident on the block and surrounding area. He detailed his parking trends over the years and added that the City always waived his parking tickets. The City Council heard his concerns a year and a half ago but the remedy was not what he wanted. He requested a review of his parking situation again with Council (not with staff). The City Manager recommended that a work session be scheduled.

2. Temporary Zoning Ordinance - Jim Totora, long time Woodside Avenue resident, referred to the Planning Commission meeting last night specifically confusion on the TZO relating to single Old Town lots. He spoke about the process amending Historic District regulations two years ago. The Mayor clarified that the TZO does not affect single family dwellings on single lots. Planning Manager Thomas Eddington confirmed and explained that the focus is on setbacks on larger lots and lot combinations. Mr. Totora hoped that property owners will not have to fight another battle and he urged members to protect the *little guys*.

IV CONSENT AGENDA *(Items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items")*

Consideration of authorization to the City Manager to execute an Agreement with Questar Gas to extend the main gas pipeline to the water treatment plant site in the amount of $113,846, in a form approved by the City Attorney - Liza Simpson, "I move we approve the Consent Agenda". Joe Kernan seconded. Motion unanimously carried.

V RESIGNATIONS AND APPOINTMENTS

Consideration of the appointment of Melissa Soltesz and Linda McCausland to the Public Art Advisory Board for terms expiring June 30, 2013 – Alex Butwiski, "I move that we appoint Melissa Soltesz and Linda McCausland to the Public Art Advisory Board for terms expiring June 30, 2013". Dick Peek seconded. Motion unanimously carried.

VI NEW BUSINESS *(New items with presentations and/or anticipated detailed discussions)*

Consideration of an appeal of the City Manager's decision on the application of Title 4, Licensing, of the Municipal Code, more specifically convention business license fees – appellants - Heidi Hughes and Mike Sweeney – Shelley Hatch explained that this is an appeal of the business license fees assessed for 136 Heber Avenue, 408 Main Street, and 825 Main Street. On December 15, 2010, staff met with the appellants who were informed that each business needed to obtain a license and on January 10, 2011, Ms. Hughes submitted an application for 136 Heber Avenue to Kurt Simister in the Building Department who informed her that she would need to apply for multiple convention sales licenses for the locations of each of the vending booths. At the time of inspection, Mr. Simister noticed multiple vending booths inside each location and the appellants were again advised that they needed multiple licenses. On January 18, 2011 the applicants submitted a letter to Assistant City Manager Michael Kovacs requesting review of staff's decision requiring multiple licenses. On January 21, 2011, Mr. Kovacs supported staff's determination that each promoter must have his own convention sales license or business license. Ms. Hatch continued to explain that on January 24, 2011, the applicants paid under protest for additional multiple licenses for 136 Heber Avenue, 408 Main Street and 825 Main Street totaling $9,187 and of this amount, $972 was collected by the City for the HMBA which is not refundable.

After receiving the letter from Mr. Kovacs denying their appeal, Mr. Sweeney and Ms. Hughes requested a hearing with City Manager Tom Bakaly which occurred on April 28, 2011. On May 4, 2011 a letter was sent to the applicants from Tom Bakaly denying their appeal. On May 16, 2011 the applicants appealed the decision to City Council and on July 11, 2011 submitted a packet for City Council review but there was not enough time to respond to all issues raised. Ms. Hatch pointed out that the main issue is whether staff's determination was correct on licensing each individual gifting booth. She explained that gifting booths are stand-alone structures in areas that are developed in a particular brand for their merchandise. According to Park City Municipal Code Section 4-2-1, *it is unlawful to engage in business without a license on a temporary or permanent basis*. She quoted other sections of the Code dealing with the definition of a business and a section dealing with convention licenses and read language, *The Finance Department may issue a license for a period not to exceed two weeks for a temporary use of a convention or meeting rooms within any licensed convention or a meeting facility for the purpose of temporary retail sales of goods or services whether conducting with a convention or not.* Convention sales licenses are used only in an "A" assembly use area, and a business license is used with a "B" assembly use which differentiates them. Under the convention sales license section it states that it is the responsibility of the host to ensure licensing and compliance with the Uniform Building Code and the Fire Code and therefore based on the Code's definition of engaging in business, the City requires separate licenses for each booth and it is the responsibility of the host to inquire about the licensing.

Ms. Hatch stated that it is true that in the past the City has not enforced the requirement for each booth to have separate licenses and it is just recently that the Building and Finance Departments began meeting regularly during Sundance to discuss applications.

If the City Council chooses to grant the appeal and refund the extra fees to the applicants, staff feels that in all fairness, other businesses who were also required to have multiple licenses should also receive refunds. The total fees that would be refunded would be approximately $13,500. This amount includes a refund to the appellants. She stated that the applicants argued that between 2002 and 2010, they hosted various hospitality groups and filming suites during Sundance and were only required to have one convention sales license for each location. In 2011, the City uniformly required a license for each gifting booth when the City was aware of several gifting booths at one location. The applicants also argue that gifting should be exempt under PCMC 4-3-9 for solicitors of orders for future sales of delivered goods however because there are no orders being made and merchants are only placing their products in good media exposure, staff does not feel the exemption is valid. Because gifting is engaging in business as defined in PCMC 4-3-9(d), the Code places the responsibility in the host business and their promoter to ensure licenses for the persons engaging in business in the host business' location. Each gifting booth should be required to have a convention sales license and staff requests that Council review the appeal and consider upholding the Finance Department's and the City Manager's decisions to deny the refund for the additional fees paid for convention sales during Sundance 2011. Additionally, the Sundance packet included *The Rules of the Road* that included information on business and convention sales licenses.

Appellant Heidi Hughes explained that she and Mr. Sweeney are not hosts and work with people from the industry who want to come to Park City and be a part of the Sundance Film Festival. They work with the Main Street venues to fill their spaces and once a good match is made, they work very hard to make sure that it works for everybody and that the operation is compliant with City codes and regulations. They are not here to debate ambush marketing which is undefined in the Code as is the term *gifting*. If gifting is allowed, which it is, then the rules covering it should be clear and consistently applied which they were until this year. She stated that this appeal is about applying the Municipal Code. Companies that are not official sponsors of the Sundance Film Festival include movie industry businesses, and financiers who come to town to spend money on venue rental, lodging, meals, transportation, all at premium rates. No one would dispute the fact that these people bring a lot of money into the community. If the Municipal Code needs to be changed to regulate how these people conduct business while they are here, change the Code to regulate the way business in Park City is to be conducted during Sundance, post the *Rules of the Road* that accurately reflect how to conduct business and enforce the rules consistently. She reiterated that this has been the case until Sundance Film Festival 2011. According to the staff report, the staff agrees with their position that the Codes from 2002 through 2010 were interpreted and applied as they stated in their position statement, i.e., one venue, one business, one license per PCMC Title 4, Licensing. She quoted the staff report about the City uniformly requiring a license for each gifting booth when it was aware that several gifting booths were in a location.

Ms. Hughes stated that their questions and the basis for their appeal is when, why and how in 2011 did staff change the Code or the interpretation of the Code. How can staff claim they were not aware of other situations where several gifting suites were in one location when staff inspected and issued permits to those spaces, i.e., four other locations 738 Main Street, 580 Main Street, 264 Main Street and 608 Main Street and 255 Main Street, Slamdance. Why weren't the Sundance *Rules of the Road* changed to reflect these significant changes in the interpretation of the Code and why are other events and festivals such as Park City Food and Wine Festival, Tour of Utah, Park Silly Sunday Market, and the Arts Festival treated differently? Through their research and the data presented in the DVD, she felt they have satisfied the burden of proof that the staff's decision was in error.

She argued certain Findings of Fact in Mr. Bakaly's letter.

Finding No. 1. Between 2002 and 2010, appellants hosted various hospitality gifting and filming suites during Sundance under one convention sales license for each location. Ms. Hughes stated that they are not the ones who are hosting. Their role is connecting people and being in compliance with all of the rules and regulations. She spoke about their good reputation.

Finding No. 4. The nature of gifting has changed considerable from 2002 to 2011. In 2011, gifting involves booths with representatives for each company to represent their product and give it to people who give the product the right exposure. Generally, the product is not given to the general public. She disagreed with the preceding. Neither the Code nor the nature of gifting has changed from 2002 to 2011 and she referred to their Exhibit E which is the 2009 permit packet for the former Phoenix Gallery. It clearly shows on the floor plans and in the operational plan multiple gifting areas and booths and it was permitted under one business license for all entities. Different activities at various times of the day were explained.

The Mayor discussed the Gibson House where guitars were featured and Assistant City Attorney Polly McLean explained that if the venue had a "B" use which is a business license, it is assessed by square footage. She distinguished the Gallery application from the other two because the City collected the HMBA fees and Ms. Hughes is now asking for that money back as opposed to a refund for an "A" usage which was at the Jon Louis Restaurant and at the Town Lift, but her understanding is that in prior years staff had only collected one fee per location. In 2011, staff started communicating better so business licensing had a better understanding of what was actually happening with inspections since Business Licensing doesn't visit sites. Staff determined they had been misapplying the Code in years past and that each business should have to pay a business convention sales license. In 2011, the Code was interpreted differently.

Finding No. 5. Gifting booths are usually stand-alone structures or areas which are devoted to a brand of merchandise which are then given to celebrities. Ms. Hughes explained that gifting is not just the act of giving to celebrities, it also includes the public which depends on the targeted audience. There are several instances where some of these places were open to the public. Since sampling is not allowed on the street, sampling was conducted inside.

Finding No. 6. Pursuant to 4-2-1 of the Park City Municipal Code, "it shall be unlawful for any person to engage in business within Park City whether on a temporary or on a permanent basis, without first procuring the license required by this Chapter".

Finding No. 7. Section 4-1-20 of the Municipal Code defines "engaging in business" as "includes all activities engaged in within the corporate limits of Park City carried on for the purpose of gain or economic profit, except that the acts of employees rend4ring service t employer shall not be included in the term business unless otherwise specifically prescribed. "Engaging in business" includes but is not limited to, the sale or rental of tangible personal or real property at retail or wholesale, the manufacturing of goods or property ad the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation, or other calling, except the rendering of personal services by an employee to his employer under any contract of personal employment". Heidi Hughes reiterated that nowhere in the Municipal Code does it specifically address the act of gifting. As far as the Municipal Code is concerned gifting is not considered an act of business and is not regulated. Businesses are allowed to give away free samples of merchandise, goods and services, except alcohol.

Finding No. 9. Convention sales licenses are required for temporary "A" assembly use, such as restaurants or other assembly use and during Sundance are charged a flat fee for each separate entity engaging in business as required in Municipal Code 4-3-9. Business licenses are required for "B" assembly use, such as retails space. Those fees are calculated based on square footage as listed in the Business License Fee Schedule in Municipal Code 4-2-17. Ms. Hughes pointed out that the City also collects the fees for the HPCA in association with business licenses for assembly use. Their position is that even though gifting is not defined in the Code, if it is considered business under 4-2-2-1, it is exempted.

Mike Sweeney stated that the exceptions to the business revenue license fee provide that *no business license fee shall be imposed under this Chapter upon the following persons or businesses*. . .and (d) states *any person from a corporation exhibiting goods for sale concurrent with to a group display, meeting, or convention duly authorized to be held provided that the convention is duly licensed under applicable ordinance.* They believe that gifting is exempt and when this Code was written in 2002, the whole concept was to try to make the Olympics work so only one license had to obtained. It was the time the convention sales license was introduced which also provides a hotel or any other assembly place the opportunity to bring in a convention under one license. He argued that the Park Silly Sunday Market, the Art Festival, Tour of Utah and Food and Wine Festival were licensed with one permit and all other vendors operated under that umbrella. The reason multiple licenses did not have to be pulled is because of the exemptions in the Code which is the whole purpose of the convention sales license. He stated that both he and Ms. Hughes were under the impression that that is the way the Code was interpreted and they have been licensed this way since 2002. If every vendor is required to pull a license, then the Code should clearly state that and they believe that the Code says that only one business license or one convention sales license is required per location. Mr. Sweeney stated that they did not receive the benefit of communication from the City in time so that they could explain to their clients that the rules had changed and he questioned staff's authority to change those rules. He believes that it is the City Council's responsibility to amend the ordinance so it is clear. They have been doing exactly what they had been doing in the past and he again commented on information not being communicated. The *Rules of the Road* indicated that only one business license or convention sales license is required.

In response to a question from Cindy Matsumoto, Mr. Sweeney explained that PSSM doesn't have a business license but a master festival license that allows them to host vendors. She pointed out that he is not a special event. Mike Sweeney commented that during the Sundance time frame, they are allowed to pull a convention sales license for a restaurant or a bar or a business license for a retail space where a full business license fee for the year has to be paid. They are not opposed to paying a fee that covers City services and felt that the ordinance can be amended so that the people doing business as an official sponsor or doing business during Sundance pay their fair share. He explained that Sundance has an MFL and official sponsors do not have to obtain a separate license for each location but not each booth. Building Inspector Kurt Simister emphasized that there are differences between a MFL, a special event, and tag-ons which are entities riding on the coattails of these events making the licensing and approvals specific. Many times fees are waived with MFLs and only one license is required for a special event.

Heidi Hughes referred to Finding No. 10 (did not read it into the record) and stated that licensing in 2011 was different and was not done pursuant to the Municipal Code. It was not how the Code was interpreted or enforced in the past years. GRAMA reports are included in the appeal package which shows that in years prior to 2011, it was one venue one business license. In 2011, it was clearly interpreted and enforced differently without public notice or approval by the City Council. Furthermore, the language in the Sundance *Rules of the Road* published by the City has not changed for at least three years. It was not made clear to them until very late in the game that the interpretation had changed and there was going to be a requirement for additional money and licenses.

Finding 11. For every location having gifting suites which Business Licensing was aware of, the City required separate convention sales licenses for each gifting booth as well as a license for the promoter who organized the gifting booths. She stated this is not the case, it is not what the data shows or what actually happened. As mentioned before, they had several other locations in 2011, all of which were engaging in business exactly the same the way as at 408 Main. Those venues were inspected and permitted consistent with years past. In response to a question from Liza Simpson about questioning this point with staff, Ms. Hughes responded that this was all happening as the Festival was beginning and she didn't ask the question at the time because she didn't want to pay more money and wanted to get licensed and move on. Cindy Matsumoto asked what would have happened if Business Licensing knew the same kind of business operations were conducted at 738, 580, 364 and 608 Main Street. Ms. Hatch indicated that separate licenses would have been required. She explained that most applications are very vague and not forthcoming and staff began to catch these situations by meeting more as a team specifically with building inspection and code enforcement. Mr. Simister explained that inspectors started asking more questions about the lay-outs of seating plans. Ms. Hughes stated that they had submitted floor plans to obtain the permits and inspections were conducted and she stated that applications were consistent with past years. In addition to all of these permits, they obtain conditional use permits for over-crowding which also requires an operational plan.

Finding 15. At the location 825 Main Street, Mike Sweeney paid without protest five other convention sales licenses for the promoter Best Events. Those five other licenses were for tent on deck, garage, House of Swag, Carrera and Stella Café. Mr. Sweeney stated that these are the same convention sales licenses that were required and paid for during past Sundance Film Festivals which satisfied PCMC's requirements regardless of how many different brands were located in the Town Lift Plaza within each individual business space. Except for 2011, these same acquired convention sales licenses and business licenses satisfied the City's licensing requirements for the Town Lift Plaza since 2004.

Ms. Matsumoto asked why he paid for individual vendors at 825 Main Street and Mr. Sweeney explained that for each location in the Town Lift Plaza he did not want to argue with the City and paid the fees under protest.

Finding No. 18. For the location, 408 Main Street (Gallery) appellant paid for a business license for the square footage of the location. Appellant Heidi Hughes paid in protest $972 in HPCA *fees collected by the City for four gifting booths.* Ms. Hughes explained that their client in the space was Variety Magazine and they had already paid for one business license and one HPCA fee but at the determination, Michael Kovacs determined that additional licenses must be obtained. It was decided on the spot that in order to be in compliance, she would pay the HPCA fee for each one of those booths which she did. Subsequently she has been told that those fees are gone and she has to deal with the HPCA. The City required her to pay the fee and if she is owed money back, the City should pay her. Mike Sweeney interjected that another problem is that the HPCA fee is based on a business license and he questioned if this was the appropriate mechanism to pay the City for additional fees.

Heidi Hughes expressed that she wasn't sure if she should continue reading her report on the Conclusions of Law and Mayor Williams stated that they should assume that members have read their packet material and the salient points of the appeal have been made. He felt it is time for Council to deliberate. In response to a question from Liza Simpson, Ms. Hatch explained that type of license is driven by building use. Kurt Simister added that A and B uses are defined in the Building Code and A is an assembly use of over 49 people and B is a business use with less than 49. It is a *mall concept* with an anchor building with multiple businesses in it. Mike Sweeney again explained that if the building is a restaurant it is an A use but an art gallery would be a B.

Shelley Hatch pointed out that the Sundance Institute holds the MFL and businesses can apply to be sponsors. The tag-on businesses are not sponsors under the MFL umbrella. The convention sales license is totally separate. She stated that Section 4-1-20, engaging in business, addresses the purpose of gain and emphasized that no one gives anything away for nothing; there is a purpose. The reason staff asked for the HPCA fee was because it needed to be accounted for.

Tom Bakaly referred to Page 39 of the packet. In making his determination he considered whether gifting is engaging in business and the Code specifies *<u>all</u> activities engaged in within the corporate limits of Park City carried on for the purpose of gaining economic profit*. He concluded that gifting meets the definition of engaging in business and giving somebody a gift certainly falls within the category of <u>all</u> activities and it is for the purpose of gain. His next question was whether there should be individual licenses or a collective license and read the language, *it shall unlawful for any person to engage in business when in Park City on a temporary or permanent basis without procuring a license.* The *any person* suggested an individual to him and not a group or organization to license on behalf of another. Mr. Bakaly stated that he denied the appeal based on that Code section and the wording, *Businesses which make all or portions of their license business location available to other persons for the purpose of engaging in business shall be responsible to ensure that such persons obtain business licenses*. . .He believes that if a business is being used for gifting or delegated to a representative, the host needs to obtain the proper business licensing. Mr. Bakaly noted that he considered past practices but ultimately made his decision on language in the Code. Those businesses got a break in the past and by looking at this interpretation for 2011, they were engaging in businesses and should have had individual licenses. With regard to the HPCA fee, staff acted in compliance with the ordinance and wasn't in a position to consider refunding it. For the benefit of Liza Simpson, it was explained that on licenses based on square footage, the HPCA fee is collected by the City.

Joe Kernan believed that the change in the interpretation of the Code in 2011 was significant and there was not much time for Mr. Sweeney and Ms. Hughes to pass along the costs. He felt the language in the Code is unclear. He is inclined to provide a refund to them and to amend the Code in the meantime. Dick Peek agreed with staff's analyses in denying the appeal and believed that each individual business should be licensed. Ms. Simpson asked if fees are structured to recovery costs and Mr. Bakaly advised that there are two components, the administrative fee and fee collected to support free bus system.

Cindy Matsumoto believed that the appellants tried to follow the rules as they understood them but agreed with staff's interpretation that a business license is required for each entity. She acknowledged that they were not able to pass on the costs to their clients and was interested in how other members felt. Alex Butwinski agreed with Mr. Kernan. He stated that people expect certainty and it is reasonable to refund this year's fees. The appellants are now on notice and the ordinance will be enforced. The fee paid to the HPCA is a matter that will need to be addressed by the affected parties. Liza Simpson voiced her support of staff's decisions and recommended that business license fees be addressed in the *Rules of the Road* in the future. Shelley Hatch interjected that they are already there. Ms. Simpson believed that the nature of gifting has changed. She was inclined to refund the money but then realized there are five other locations where they didn't get caught and maybe the fairer thing to do would be to call it a *wash*.

Mayor Williams stated his concern about departments not communicating until recently and the timing of the matter so close to the beginning of the Festival. He can live with the majority decision but believed the Code should be clearer. He emphasized that tag-on operations are not part of the Festival; they are here to make a profit off of a Festival that they do not support as a sponsor. While ambush marketing is not what Council is here to decide, if Ms. Hughes and Mr. Sweeney were under the MFL umbrella, there would be no issues. He indicated to the appellants that they are here to try to make a profit off of someone else's event and he believed they are hosts. Each vendor should have to pay for a business license but the Mayor expressed concerns with the timing and that fees were not collected historically. The Code needs to be clear and not open to interpretation. Ambush marketing is Sundance's biggest threat and he is sensitive to the MFL holder and potential impacts on Sundance Institute.

Polly Samuels McLean suggested that the motion include all three parts of the appeal including the general refund, the HPCA fee refund and refunding the other people that paid for convention sales licenses for a total of $13,500. Mark Harrington explained that those people have no standing, but it is brought up as a matter of fairness. If the basis of the decision is estoppels for these individuals based on their circumstances, a full refund to the others is not necessarily prudent. The majority of members were not in favor of refunding fees to others. The HPCA fee was discussed. Ms. Simpson did not feel this is a fairness issue because they are not part of the appeal.

Joe Kernan began making a motion which only addressed the general refund issue and Mark Harrington suggested framing the motion to include language granting the appeal and directing staff to return with findings based on estoppels principles for these appellants only and not the fees paid by others. The motion should include no refund on the HPCA fee and a finding that staff did not error with the assessment of fees. Staff is also directed to clarify the Code that gifting is conducting business. Joe Kernan, "I so move". Cindy Matsumoto seconded. <u>Motion unanimously carried</u>.

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Michael Kovacs, Assistant City Manager; Thomas Eddington, Planning Manager; Diane Foster, Sustainability Manager; Joan Card, Environmental Regulatory Manager; Jason Christensen, Environmental Regulatory Attorney; and Mark Harrington, City Attorney. Cindy Matsumoto, "I move to close the meeting to discuss property and litigation". Dick Peek seconded. Motion carried unanimously. The meeting opened at approximately p.m. Joe Kernan, "I move to open the meeting". Liza Simpson seconded. Motion unanimously carried.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott, City Recorder