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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

SOUTHERN UTAH DRAG STARS, LLC,
and MITSKI AVALOX,

Plaintiffs,

vs.

CITY OF ST. GEORGE, CITY COUNCIL OF
ST. GEORGE, COUNCILMEMBER JIMMIE
HUGHES, COUNCILMEMBER DANIELLE
LARKIN, COUNCILMEMBER NATALIE
LARSEN, COUNCILMEMBER GREGG
MCARTHUR, COUNCILMEMBER
MICHELLE TANNER, MAYOR MICHELE
RANDALL, and CITY MANAGER JOHN
WILLIS,

Defendants.

**REPLY MEMORANDUM IN SUPPORT
OF DEFENDANTS’ MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
PLAINTIFFS’ CLAIMS FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Civil No. 4:23CV44

Honorable David Nuffer

INTRODUCTION

Defendants St. George City, City Council of St. George, Councilmembers Jimmie Hughes, Danielle Larkin, Natalie Larsen, Gregg McArthur, and Michelle Tanner, Mayor Michelle Randall, and City Manager John Willis (collectively “Defendants”) have moved for summary judgment on

Plaintiffs' claims for declaratory and injunctive relief on the grounds that these claims are moot. The Tenth Circuit has held, "Where, as here, a city amends a challenged ordinance in an effort to cure the constitutional infirmities alleged, the prior challenges to the ordinance become nonjusticiable as moot unless the new ordinance is sufficiently similar to the repealed one that it is permissible to say that the challenged conduct continues." *Olson v. City of Golden*, 541 Fed.Appx. 824, 827 (10th Cir. 2013) (unpublished) (cleaned up); citing *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1182 (10th Cir. 2000). The Court granted an injunction and Plaintiffs held their event on June 30, 2023. St. George City then repealed and replaced the ordinance on August 31, 2023. Thus, Plaintiffs' claims for an injunction to hold their event and for a declaration that the repealed ordinance violates the First Amendment are moot.

Plaintiffs argue that their claims apply to the new ordinance because it is sufficiently similar to the old ordinance; however, this is not true. In the new ordinance, St. George City removed the advertising provision and the moratorium, and it changed the appeal procedure so appeals of permit denials are heard by an administrative law judge rather than the City council. Plaintiffs also claim their claims are not moot because they intend to hold new events in the future; however, they have not filed any special event permit applications. Thus, Plaintiffs seek to shift their claims to the new ordinance and litigate its constitutionality based on a permit that has never been submitted, and a denial that has never occurred. For this and other reasons set forth below, Plaintiffs' injunctive and declaratory claims are moot and summary judgment should issue.

**REPLY TO PLAINTIFFS' RESPONSES TO DEFENDANTS' STATEMENT OF
UNDISPUTED FACTS**

Plaintiffs do not dispute any of Defendants' statement of undisputed facts.

**DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF ADDITIONAL
FACTS**

Fact #1: Plaintiff Southern Utah Drag Stars ("Drag Stars") is a grassroots organization which facilitates and organizes inclusive drag shows. Its owner and sole employee is Plaintiff Mitski Avalōx.

Defendants' Response: Undisputed.

Fact #2: Plaintiffs have current and future plans to continue organizing inclusive drag shows and other events, including events that may be considered "special events" under the revised special events provision of the City Code.

Defendants' Response: Defendants do not dispute that "Plaintiffs have current and future plans to continue organizing drag shows;" however, they have not filed any applications for permits for any shows with St. George City.

Fact #3: In the summer of 2022, Defendants attempted to revoke permits issued to HBO to hold a drag-related event in a St. George park. After the then City Manager refused to revoke the permit at the last moment, citing the First Amendment rights of the permittees, Defendants fired him, ultimately paying him \$625,000 in a wrongful termination settlement.

Defendants' Response: Defendants' object to this assertion because it is not founded on admissible evidence. Plaintiffs' cite their own declaration, but they have no personal knowledge of the HBO permits. Similarly, citation to a newspaper article is inadmissible hearsay. The

Instagram page relied upon by Plaintiffs does not support the assertions in Fact #3. Finally, the assertions in this fact are irrelevant to whether Plaintiffs' claims for declaratory and injunctive relief are now moot.

Fact #4: Avalōx founded Drag Stars partly in response to seeing Defendants' publicly hostile reaction to the HBO event, and made it Drag Stars's mission to promote acceptance, visibility, and unity within St. George and other communities in the region, while breaking down barriers and promoting understanding.

Defendants' Response: Defendants object to this fact because it is irrelevant under [Fed. R. Evid. 402](#). It is irrelevant because it involves a different event and different issues. The assertions in this fact are irrelevant to whether Plaintiffs' claims for declaratory and injunctive relief are now moot.

Fact #5: In January 2023, Councilmember Michelle Tanner attempted to revoke the City's sponsorship of a popular St. George farmer's market because the individuals who organize the farmer's market had, at an event at their separate business, hosted a holiday-themed photo booth organized by Plaintiffs.²⁶ Tanner explicitly stated that she was taking this action because she believed Plaintiffs' photo booth event "violated community standards" and because she was opposed to drag "when it involves children."

Defendants' Response: Plaintiffs misstate the affidavits they cite. In addition, this evidence is relevant to damages (and Defendants are not seeking summary judgment on Plaintiffs' damages claim), but is not relevant to whether their claims for declaratory and injunctive relief are moot because they held their event on June 30, 2023, the ordinance at issue has been changed, and Plaintiffs have not applied to hold another event with St. George City.

Fact #6: On March 3, 2023, Plaintiffs applied for a permit to hold a drag event in a St. George city park. The event, titled “Our Allies And Community Drag Show,” would have featured family-friendly music and drag performances; Plaintiffs expected as many as 500 or more people to attend. As originally planned, it would have been a major highlight for drag performers and fans in Southern Utah.

Defendants’ Response: Defendants do not dispute that Ms. Avalox and Ms. Lypsincki had the expectations for the show set forth in their respective affidavits; however, Plaintiffs have submitted no evidence confirming the numbers of performers or attendees.

Fact #7: On March 17, 2023, at 1:53pm, one Lisa Dorn sent Tanner a text message to alert her to Plaintiffs’ planned event. Dorn wrote: “I am so disgusted by this Southern Utah Drag group. They are all sexually abusing kids and should be held accountable.” This was one of many such negative comments sent disparaging the event.

Defendants’ Response: This communication from a citizen to councilmember Tanner is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #8: At 2:59pm the same day, Tanner emailed the Mayor, City Manager, and city attorneys complaining of “adult entertainment being performed in front of children,” and inquiring whether another venue where Plaintiffs had previously held events was “zoned for this type of entertainment” and whether they needed permits to host drag performances.

Defendants' Response: This communication is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #9: At 4:27pm the same day, Lisa Dorn again texted Tanner a link to a website called Eventeny which Plaintiffs were using to solicit vendors.

Defendants' Response: This communication from a citizen to councilmember Tanner is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #10: At 4:47pm the same day, Councilmember Tanner replied to the email chain she had initiated with City leadership stating that she had “verif[ie]d that Southern Utah Drag Stars has violated our ordinance by prematurely advertising” and that she “believe[d] this is also grounds for not issuing their permit.” Tanner’s email attached screenshots from Plaintiffs’ post on the vendor-facing portion of the Eventeny website. One of the screenshots displayed the following statement from Plaintiffs: “Please review the fees attached to being a vendor/sponsor for this event.”

Defendants' Response: This communication is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #11: The City Code provision that Councilmember Tanner was referencing, then-current City Code § 3-10-4(C) (the “Advertising Prohibition”), had *never* been enforced before in any way and had *never* been invoked to deny a special event permit to an applicant.

Defendants' Response: This is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #12: Following Councilmember Tanner's emails questioning Plaintiffs' entitlement to an event permit, City leadership met "to discuss issues that had been raised with Special Events, including the complaint about advertising prior to obtaining a special event permit."

Defendants' Response: This is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #13: City Manager John Willis directed City staff to prepare a list of pending special event applications which were in violation of the Advertising Prohibition. He then directed City staff to specify which of these events could be considered recurring or City-sponsored events.

Defendants' Response: This is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #14: On March 31, 2023, a majority of the City Council voted to instruct City officials to deny permits to three events—including Plaintiffs' event—for violating the Advertising Prohibition.

Defendants' Response: This is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #15: The City Council also instructed City officials to draft a *post hoc* ordinance for the next City Council meeting that would exempt events identified as recurring or “city-sponsored” from the Advertising Prohibition. The Council passed such an ordinance—Ordinance 2023-04-001—on April 6, 2023. In effect, this retroactively exempted a large majority of the list of violators from the Advertising Prohibition.

Defendants’ Response: This is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #16: Meanwhile, Plaintiffs had been working with City Special Events Coordinator Sarah Reber to plan the event. However, on March 31, 2023, the City issued a permit denial letter under Reber’s signature stating that Plaintiffs’ permit would be denied because they had violated the Advertising Prohibition. The City Council denied Plaintiffs’ appeal of the denial on April 11, 2023.

Defendants’ Response: This is irrelevant under [Fed. R. Evid. 402](#). Plaintiffs obtained a preliminary injunction, and pursuant to the injunction, Defendants helped Plaintiffs hold their event on June 30, 2023 at the venue Plaintiffs chose.

Fact #17: On June 16, 2023, this Court issued an order determining that “[t]he record facts viewed together demonstrate quintessential pretextual discrimination seeking to prevent the Allies Drag Show from occurring,” and enjoining Defendants to allow Plaintiffs to hold a version of the event on June 30, 2023.

Defendants’ Response: Undisputed.

Fact #18: On August 31, 2023, Defendants adopted an ordinance that substantially modified the City Code provisions addressing event permits. Among many other changes:

- (1) The ordinance repealed the advertising provision of the City Code that Defendants invoked to deny a permit to Plaintiffs.
- (2) The ordinance expanded the definition of “special event” to include, *inter alia*, any “event which impacts the city by involving the use of or having an impact on public property or facilities, including rights-of-way . . . , or creates public impact through bringing a group of people together in one or more locations for a limited period of time for a particular activity.”
- (3) The ordinance added new penalties for violating the Special Events chapter of the City Code. For example: “Permittees that are found to have violated the terms of this Chapter shall be barred from applying for another Special Event Permit for the same or another event for a period of two years (730 calendar days from the date of the violation). Events and/or permittees which are barred a second time shall be permanently prohibited from applying for a Special Event Permit.” This ban can only be lifted by the City Council in its discretion, and only upon a showing of “[a] complete separation from the organizing person or entity at fault for the violations.”
- (4) The ordinance added an entirely new Chapter to the City Code requiring permits for certain events other than special events, such as “Filming Events” (defined as “The recording by film, video, or other medium of live action or landscapes for educational, commercial, or other purposes beyond personal use” other than “filming for a news broadcast”).

Defendants’ Response: Undisputed.

ARGUMENT

I. PLAINTIFFS' CLAIMS REGARDING THEIR EVENT ARE MOOT.

Plaintiffs concede they held the drag show that was the subject of their complaint on June 30, 2023. “Generally, a claim for prospective injunction becomes moot once the event to be enjoined has come and gone.” *Prison Legal News v. Federal Bureau of Prisons*, 944 F.3d 868, 880 (10th Cir. 2019) (citations omitted). Because Plaintiffs have held their event, any claims for declaratory or injunctive relief related to the event are moot.

II. ST. GEORGE CITY REPEALED AND REPLACED THE SPECIAL EVENTS ORDINANCE ON AUGUST 31, 2013.

The Tenth Circuit has held, “Where, as here, a city amends a challenged ordinance in an effort to cure the constitutional infirmities alleged, the prior challenges to the ordinance become nonjusticiable as moot unless the new ordinance is sufficiently similar to the repealed one that it is permissible to say that the challenged conduct continues.” *Olson v. City of Golden*, 541 Fed.Appx. 824, 827 (10th Cir. 2013) (unpublished) (cleaned up); citing *Citizens for Responsible Gov’t State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1182 (10th Cir. 2000). “A superseding statute or regulation moots a case to the extent that it removes challenged features of the prior law.” *Id.* (citations omitted) (cleaned up).

St. George City repealed and replaced the ordinance governing special event permits on August 31, 2023. St. George City’s superseding ordinance has mooted Plaintiffs’ claims for declaratory and injunctive relief because it has removed the challenged features of the prior law, namely the advertising provision and the moratorium. Plaintiffs do not dispute that these are the provisions they cited in their complaint or that the new ordinance has removed them. Because St.

George City has “remove[d] the challenged features of the prior law,” the claims for declaratory relief related to the prior ordinance are moot.

III. PLAINTIFFS’ ARGUMENTS FOR CONTINUING TO PURSUE DECLARATORY AND INJUNCTIVE RELIEF AGAINST THE NEW ORDINANCE ARE WITHOUT MERIT.

Despite the new ordinance and Plaintiffs’ concession that (1) they have not filed any applications for special events under the new ordinance, and (2) they have no special event permit applications that are currently pending, they argue that their claims are not moot and they may continue to pursue declaratory and injunctive relief against the new ordinance. Their arguments are without merit for the reasons set forth below.

a. St. George City’s new ordinance satisfies the Voluntary Cessation exception to mootness.

The Tenth Circuit has held that “changes that are permanent in nature and that foreclose a reasonable chance of recurrence of the challenged conduct” typically satisfy the defendants’ burden under the voluntary cessation doctrine. *Tandy v. City of Wichita*, 380 F.3d 1277, 1291 (10th Cir. 2004). St. George City satisfied this burden when it repealed the special event ordinance and replaced it with a new ordinance on August 31, 2023. The new ordinance removed the specific provisions Plaintiffs complained of in their Complaint. Thus, the voluntary cessation exception to mootness does not apply.

b. Plaintiffs’ Complaint does not concern future performances.

Plaintiffs argue their claims are not moot because “the Complaint alleges Plaintiffs’ ongoing intent to organize ‘future drag performances’ as well.” Opp., Dkt. #91, p. 14. Plaintiffs point to one paragraph in their 201-paragraph complaint in support of their argument. That paragraph states in its entirety:

Plaintiffs are required by City ordinance to obtain a special event permit in order to conduct their planned drag performance. When the City imposed a six-month moratorium on special event permits, it effectively prohibited Plaintiffs from conducting their planned drag performance or any similar performance in the near future.

Complaint, [Dkt. #2](#), ¶129. This paragraph did not reference future events generally, but the inability to conduct future events due to the moratorium. It is undisputed that the moratorium was revoked on August 31, 2023 and, therefore, any claims related to it are moot. Moreover, more than five months have passed since the moratorium was removed from the ordinance and Plaintiffs have not filed another permit application or moved this Court for leave to amend their complaint.

c. Plaintiffs cite the wrong standard and cases that show their claims are moot.

Plaintiffs next argue that Defendants' motion "is based on a narrow view of the mootness doctrine, with the Supreme Court has rejected." Opp., [Dkt. #91](#), 14. To support this position, they cite *The Cherokee Nation West v. U.S. Army Corps of Engineers*, 2016 WL 4548441 (N.D. Ok. 2016) (unpublished). A review of this case, however, shows it supports summary judgment. In this case, the Cherokee Nation West filed a lawsuit for an injunction allowing them to hold spring and fall fire ceremonies on Fort Gibson Lake. After filing the lawsuit, defendant rescinded its denial of the permit application for September 2014 and later granted a February 2015 application. Defendant then moved for summary judgment on the ground of mootness, but the district court denied the motion because there was no evidence the defendant had changed the policy supporting denial of the permit application. *See Id.*, *3 ("[D]efendants in this case have not taken any steps to suggest there is no reasonable expectation plaintiff's permit application may be denied on allegedly discriminatory grounds in the future. Defendants merely reiterate that its permit application policy "requires it to consider applications on a case-by-case basis." But this policy—

which there is no evidence to show has changed—is the basis for plaintiff’s lawsuit.). By contrast, St., George City repealed the offending ordinance and replaced it with a new ordinance that specifically removed the provisions of the ordinance Plaintiffs contended were unconstitutionally applied in their complaint and preliminary injunction motion. Moreover, unlike the Cherokee Tribe West, Plaintiffs have not submitted any permit applications for future events. Thus, this case illustrates why Plaintiffs’ claims are moot.

d. Plaintiffs’ “intention” to hold events in the future does not create a live controversy.

Plaintiffs shift from mootness to standing in their attempt to create a live controversy to pursue. They argue the matter is not moot because Ms. Avalox states in her Declaration, “Drag Stars and I intend to hold drag events in St. George in the future.” [Dkt. #91](#), p. 2. An intent to hold an unspecified event, at an unspecified location, at an unspecified time in the future does remedy mootness.

Plaintiffs argue “Defendants have cited no authority supporting their proposition that Plaintiffs’ continued interest in holding events in St. George is moot.” *Opp.*, at 15. This is not true. Defendants cited the Tenth Circuit’s decision, [Olson v. City of Golden, 541 Fed.Appx. 824 \(10th Cir. 2013\)](#) (unpublished), in their motion and it directly addresses this issue. In [Olson](#), the plaintiff challenged a campaign finance ordinance. Like Plaintiffs, the plaintiff in [Olson](#) challenged the constitutionality of the ordinance and “[w]ith Olson’s federal suit still pending the City amended the Ordinance in 2010, replacing the challenged related-to phrase in the definition of ‘expenditure’.” *Id.*, at 826. The Tenth Circuit held the change in ordinance rendered the claim moot:

When the City amended the Ordinance, however, it addressed Olson’s first two claims directly, providing, as to each point, the very cure that Olson sought ... We conclude, then, that the 2010 Amendment created differences between the pre- and post-Amendment versions of the Ordinance that are so fundamental to Olson’s first two arguments – indeed, which addressed the very ‘gravamen of those claims,’ that to address them now would run afoul of the prohibition against advisory opinions.

Id., at 828. As in *Olson*, St. George City’s reworking of the ordinance to specifically address the two provisions Plaintiffs have complained of and to provide the independent review of an administrative law judge has rendered Plaintiffs’ claims for injunctive and declaratory relief moot.

Defendants also cited the Tenth Circuit’s decision in *Utah Animal Rights Coalition v. Salt Lake City Corp.*, 371 F.3d 1248 (10th Cir. 2004) for two provisions. First, the Tenth Circuit held that Plaintiffs have no legally cognizable interest in the constitutionality of an obsolete statute ... Such challenges are clearly moot. *Id.*, at 1251. This is plainly applicable because St. George City has repealed and replaced the special events ordinance. Second, the Tenth Circuit also held, “The alleged violation took place in 2001, the Olympics have come and gone, and neither temporary restraining order, preliminary injunction, nor permanent injunction could have any present-day effect.” *Id.*, at 1257. This also plainly applies because Plaintiffs held their event last summer. Plaintiffs do not address either of these issues, and instead argue their situation is different because they “remain active in St. George and seek to hold more events and more drag performances there in the future.” *Opp.*, *Dkt. #91*, 16. This representation is mere speculation, as Plaintiffs have not applied for a permit to hold another event, and the Tenth Circuit did not carve out an exception to its holdings for such speculation. Tellingly, Plaintiffs cite no cases holding that mootness does not apply under similar circumstances to those here.

In addition to failing to distinguish *Olson* and *Utah Animal Rights Coalition*, Plaintiffs did not cite any cases holding that changes to the ordinance like those here did not satisfy mootness. This is fatal to their claims.

e. Plaintiffs acknowledge the new ordinance is not “sufficiently similar” to the repealed ordinance.

The Tenth Circuit has held, “Where a new statute is sufficiently similar to the repealed statute that it is permissible to say that the challenged conduct continues, the controversy is not mooted by the change, and a federal court continues to have jurisdiction.” *Citizens for Responsible Government State Political Action Comm. v. Davidson*, 236 F.3d 1174, (10th Cir. 2000) (cleaned up).

Plaintiffs do not argue that the new ordinance is similar to the repealed ordinance. Instead, they take issue with new provisions and argue (without any evidence) that Defendants will use the new provisions to discriminate against them. By pointing to new provisions, Plaintiffs tacitly acknowledge that the statutes are not “sufficiently similar” to proceed with claims for declaratory and injunctive relief. The Tenth Circuit reached the same conclusion in *Davidson*, holding, “We have carefully compared each challenged provision in § 104 to the most analogous provision in §105.3, and we conclude that the differences between the two statutes are too numerous and too fundamental to preserve our jurisdiction.” *Id.*, at 1182. As in *Davidson*, the differences in the ordinances are dispositive, regardless of Plaintiffs’ concerns about how the new ordinance will be applied.

In addition, a review of Plaintiffs’ concerns about the new ordinance shows they are without merit. This is made clear by change in the ordinance to have appeals of permit denials heard by an administrative law judge rather than the City Council. Plaintiffs contend this will

place more obstacles in their way because the ALJ is appointed by the City Council. *See* Opp., Dkt. #91, p. 18-19. This makes no sense because all judges, from Supreme Court justices to ALJs, are appointed by persons or political bodies that may later appear before them or seek to remove them from their position. According to Plaintiffs' logic, no judge could make a decision involving the body that appointed it, and yet, judges in federal, state, and municipal courtrooms across the country do this very thing every day. Mere appointment and oversight is not evidence of bias, and Plaintiffs have not submitted any evidence that any St. George City ALJs have been accused of, let alone found to be, mere puppets of the City Council. Moreover, the new ordinance provides the right to appeal to the state district court. This right provides a check on any mistakes, intentional or otherwise, the ALJ might make. This appeal structure mirrors those in municipal, state and federal courts, and Plaintiffs have submitted no evidence that it has been, or will be, used as a means to infringe on their constitutional rights or any case law suggesting it violates the First Amendment.

Plaintiffs also take issue with the new provision requiring compliance with the law for eligibility for a special event permit. Although Plaintiffs contend this is a prior restraint on speech, it has not restrained their speech, or the speech of anyone else, in any way. Plaintiffs have not submitted any evidence that the ordinance has been applied in the way they fear.

Plaintiffs resort to other dire predictions that the new ordinance may be interpreted in violation of the Constitution in the future; however, they submit no evidence these provisions have been applied in the way they suggest against anyone, and it is undisputed that these provisions have not been applied in this way against Plaintiffs because they have not applied for a permit. Thus, these arguments are without merit.

f. Plaintiffs admit they are seeking an advisory opinion.

Plaintiffs argue that their “requested permanent injunction and declaratory relief will provide necessary safeguards to protect against Defendants’ discriminatory actions when Plaintiffs apply to host future drag performances.” Opp., [Dkt. #91](#), 14-15. This argument presupposes Plaintiffs will apply to host another similar event and that they will be discriminated against. It also concedes that Plaintiffs are not currently being discriminated against and they have no present conflict with the current ordinance. Thus, Plaintiffs acknowledge they are seeking an advisory opinion. As the Supreme Court recently opined, “federal courts do not adjudicate hypothetical or abstract disputes. Federal courts do not possess a roving commission to publicly opine on every legal question. Federal courts do not exercise general legal oversight of the Legislative and Executive Branches, or of private entities. And federal courts do not issue advisory opinions.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423-424 (2021) (cleaned up).

g. Plaintiffs chose not to participate in public vetting of the new ordinance.

Plaintiffs’ complaints about the new ordinance ring hollow because they chose not to participate in the public comment process before it was passed. St. George City held informal work meetings on the proposed new ordinance on July 20, 2023 ([1049151.pdf \(utah.gov\)](#)), August 17, 2023 ([1042385.pdf \(utah.gov\)](#)), and August 24, 2023 ([1042391.pdf \(utah.gov\)](#)). See Exh.1. Prior to these meetings, St. George City published notice that the meetings would include “Discussion regarding proposed changes to the special events ordinance.” ([Notice | Public Notice Website \(utah.gov\)](#), [Notice | Public Notice Website \(utah.gov\)](#), and [Notice | Public Notice Website \(utah.gov\)](#)). See Exh. 2. Thereafter, the City published the final proposed ordinance on August 25, 2023 and on August 31, 2023 adopted Ordinance 2023-017 repealing and replacing the special

event provisions. St. George published notice that the Ordinance had been adopted on September 1, 2023. ([Notice | Public Notice Website \(utah.gov\)](#)). *See* Exh. 3. Plaintiffs had the opportunity to attend and raise their concerns during this process, but they chose not to do so.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant Defendants' motion for summary judgment on Plaintiffs' claims for declaratory and injunctive relief.

DATED this 16th day of February, 2024.

SNOW CHRISTENSEN & MARTINEAU

/s/ Scott Young

Scott Young

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of February, 2024, I electronically filed the foregoing **REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF** with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Annette Gamero _____

Exhibit 1

**ST. GEORGE CITY COUNCIL MINUTES
WORK MEETING
JULY 20, 2023 4:00 P.M.
CITY COUNCIL CHAMBERS**

PRESENT:

**Mayor Michele Randall
Councilmember Jimmie Hughes
Councilmember Dannielle Larkin
Councilmember Gregg McArthur
Councilmember Natalie Larsen
Councilmember Michelle Tanner**

STAFF MEMBERS PRESENT:

**City Manager John Willis
City Attorney Tani Downing
City Recorder Christina Fernandez
Deputy City Attorney Jami Brackin
Assistant City Attorney Ryan Dooley
Community Services Director Jim Bolser
Special Events Coordinator Sarah Reber – following the closed meeting
Executive Assistant Emilie Pinkelman – following the closed meeting
Operations Director Marc Mortensen – following the closed meeting**

CALL TO ORDER:

Link to Mayor Randall calling the meeting to order: [00:00:00](#) [Recording 1]

ADJOURN TO A CLOSED MEETING:

Request a closed meeting to discuss litigation, security, property acquisition or sale, or the character and professional competence or physical or mental health of an individual.

Link to motion: [00:00:04](#) [Recording 1]

MOTION:

A motion was made by Councilmember McArthur to adjourn to a closed meeting to discuss possible litigation.

SECOND:

The motion was seconded by Councilmember Tanner.

VOTE:

Mayor Randall called for a vote, as follows:

Councilmember Hughes – aye
Councilmember McArthur – aye
Councilmember Larkin – aye
Councilmember Larsen – aye
Councilmember Tanner – aye

The vote was unanimous and the motion carried.

The meeting reconvened following the closed meeting.

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July 20, 2023
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DISCUSSION REGARDING PROPOSED CHANGES TO THE SPECIAL EVENTS ORDINANCE:

Link to introduction from City Manager John Willis and presentation from Community Development Director Jim Bolser, including discussion between City Manager John Willis, Deputy City Attorney Jami Brackin, the City Council, Assistant City Attorney Ryan Dooley, Mayor Randall, Special Events Coordinator Sarah Reber, and Mr. Bolser: [00:00:10](#) [Recording 2]

[Agenda Packet \[Page 7\]](#)

ADJOURN AND RECONVENE IN A REGULAR MEETING OF THE CITY COUNCIL:

Link to motion: [00:43:23](#) [Recording 2]

MOTION:

A motion was made by Councilmember McArthur adjourn and reconvene in a regular meeting of the City Council.

SECOND:

The motion was seconded by Councilmember Larkin.

VOTE:

Mayor Randall called for a vote, as follows:

Councilmember Hughes – aye
Councilmember McArthur – aye
Councilmember Larkin – aye
Councilmember Larsen – aye
Councilmember Tanner – aye

The vote was unanimous and the motion carried.

/s/Christina Fernandez

Christina Fernandez, City Recorder

**ST. GEORGE CITY COUNCIL MINUTES
WORK MEETING
AUGUST 17, 2023 3:00 P.M.
ADMINISTRATIVE CONFERENCE ROOM**

PRESENT:

**Mayor Michele Randall
Councilmember Jimmie Hughes
Councilmember Dannielle Larkin
Councilmember Gregg McArthur
Councilmember Natalie Larsen
Councilmember Michelle Tanner**

STAFF MEMBERS PRESENT:

**City Manager John Willis
City Attorney Tani Downing
City Recorder Christina Fernandez
Deputy City Attorney Jami Brackin
Assistant City Attorney Ryan Dooley
Community Development Director Jim Bolser
Special Events Coordinator Sarah Reber
Executive Assistant Emilie Pinkelman**

CALL TO ORDER:

Link to Mayor Randall calling the meeting to order: [00:00:00](#) [Recording 1]

ADJOURN TO A CLOSED MEETING:

Request a closed meeting to discuss litigation, security, property acquisition or sale, or the character and professional competence or physical or mental health of an individual.

Link to motion: [00:00:05](#) [Recording 1]

MOTION:

A motion was made by Councilmember Larsen to adjourn to a closed meeting to discuss litigation.

SECOND:

The motion was seconded by Councilmember Larkin.

VOTE:

Mayor Randall called for a vote, as follows:

Councilmember Hughes – aye
Councilmember Larkin – aye
Councilmember McArthur – aye
Councilmember Larsen – aye
Councilmember Tanner – aye

The vote was unanimous and the motion carried.

The meeting reconvened following the closed meeting.

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August 17, 2023
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DISCUSSION REGARDING PROPOSED CHANGES TO THE SPECIAL EVENT ORDINANCE:

Link to presentation from Community Development Director Jim Bolser, including discussion between Mayor Randall, the City Council, Deputy City Attorney Jami Brackin, City Attorney Tani Downing, City Manager John Willis, Special Events Coordinator Sarah Reber, and Mr. Bolser: [00:00:00](#) [Recording 2]

[Agenda Packet \[Page 7\]](#)

The meeting recessed for the regular meeting of the City Council; the work meeting reconvened following the regular meeting.

Link to the continued presentation from Community Development Director Jim Bolser, including discussion between Mayor Randall, the City Council, Deputy City Attorney Jami Brackin, City Attorney Tani Downing, City Manager John Willis, Special Events Coordinator Sarah Reber, Executive Assistant Emilie Pinkelman, Assistant City Attorney Ryan Dooley, and Mr. Bolser: [00:00:00](#) [Recording 3]

Councilmember Tanner left the meeting.

ADJOURN:

Link to motion: [01:00:30](#) [Recording 3]

MOTION:

A motion was made by Councilmember Hughes to adjourn.

SECOND:

The motion was seconded by Councilmember McArthur.

VOTE:

Mayor Randall called for a vote, as follows:

Councilmember Hughes – aye
Councilmember Larkin – aye
Councilmember McArthur – aye
Councilmember Larsen – aye

The vote was unanimous and the motion carried.

/s/Christina Fernandez

Christina Fernandez, City Recorder

**ST. GEORGE CITY COUNCIL MINUTES
WORK MEETING
AUGUST 24, 2023 4:00 P.M.
ADMINISTRATIVE CONFERENCE ROOM**

PRESENT:

**Mayor Pro Tem Jimmie Hughes
Councilmember Dannielle Larkin
Councilmember Gregg McArthur
Councilmember Natalie Larsen
Councilmember Michelle Tanner**

EXCUSED:

Mayor Michele Randall

STAFF MEMBERS PRESENT:

**City Manager John Willis
City Attorney Tani Downing
City Recorder Christina Fernandez
Deputy City Attorney Jami Brackin
Community Development Director Jim Bolser
Parks and Community Services Director Shane Moore
Special Events Coordinator Sarah Reber
Executive Assistant Emilie Pinkelman
Deputy Fire Chief Brad Esplin
Battalion Chief Coty Chadburn**

CALL TO ORDER, INVOCATION AND FLAG SALUTE:

Mayor Pro Tem Hughes called the meeting to order and welcomed all in attendance. The invocation was offered by Rabbi Helene Ainbinder with Beit Chaverim Jewish Community and The Pledge of Allegiance to the Flag was led by Deputy Fire Chief Brad Esplin.

Link to call to order, invocation, and flag salute: [00:00:00](#)

**DISCUSSION REGARDING PROPOSED CHANGES TO THE SPECIAL EVENT
ORDINANCE:**

Link to presentation from Community Development Director Jim Bolser, including discussion between the City Council, Deputy City Attorney Jami Brackin, Mayor Pro Tem Hughes, City Attorney Tani Downing, City Manager John Willis, Special Events Coordinator Sarah Reber, Parks and Community Services Director Shane Moore, and Mr. Bolser: [00:03:10](#)

[Agenda Packet \[Page 3\]](#)

ADJOURN AND RECONVENE IN A REGULAR MEETING OF THE CITY COUNCIL:

Link to motion: [00:54:13](#)

MOTION:

A motion was made by Councilmember Tanner to adjourn and reconvene in a regular meeting of the City Council.

SECOND:

The motion was seconded by Councilmember McArthur.

St. George City Council Minutes
August 24, 2023
Page Two

VOTE:

Mayor Pro Tem Hughes called for a vote, as follows:

Councilmember Hughes – aye
Councilmember Larkin – aye
Councilmember McArthur – aye
Councilmember Larsen – aye
Councilmember Tanner – aye

The vote was unanimous and the motion carried.

/s/Christina Fernandez

Christina Fernandez, City Recorder

Exhibit 2

Support

PUBLIC NOTICE WEBSITE
DIVISION OF ARCHIVES AND RECORDS SERVICE

City Council Meeting Agenda

General Information

Government Type:

Municipality

Entity:

St. George

Public Body:

City Council

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Notice Information

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Notice Title:

City Council Meeting Agenda

Notice Subject(s):

Other

Notice Type(s):

Notice, Meeting

Event Start Date & Time:

July 20, 2023 03:00 PM

Description/Agenda:

NOTICE OF WORK MEETING OF THE CITY COUNCIL
OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a work meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, July 20, 2023 commencing at 3:00 p.m.

The agenda for the meeting is as follows:

1. Request a closed meeting to discuss litigation, security, property acquisition or sale, or the character and professional competence or physical or mental health of an individual.
2. Discussion regarding proposed changes to the Special Events ordinance.
3. Adjourn and reconvene in a Regular Meeting of the City Council.

Give Feedback

** THE COUNCIL WILL MOVE TO
THE CITY COUNCIL CHAMBERS FOR
THE CITY COUNCIL REGULAR MEETING**

NOTICE OF REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a regular meeting in the City Council Chambers at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, July 20, 2023, commencing at 5:00 p.m.

The agenda for the meeting is as follows:

- Call to Order
- Invocation
- Flag Salute

1. Mayor's recognitions and updates.
2. Public hearing and consideration of Ordinance No. 2023-002 annexing property into the City of St. George, and adjusting the corporate boundary lines, to include 163.1055 acres.

BACKGROUND and RECOMMENDATION: At their meeting held on April 13, 2023, the City Council approve a resolution to accept the Petition for Annexation for approximately 163.1055 acres located west of Dixie Drive on the former Burt Burgess property. Following the approval of the resolution, the City must certify the Petition and mail written notices. Following the certification, the City Recorder posts a public notice giving residents notice that an annexation petition has been filed and that the City may grant the petition and annex the area unless a written protest to the annexation is filed with the Washington County Boundary Commission; the City has not received notice of any protests. The property is located at approximately 1600 South Dixie Drive. Specific County Tax ID Numbers: 7497-A, 7497-C, 7498-C-1, 7498-C-1-A, 7498-D, 7498-E, 7498-F. Staff recommends holding the public hearing and approval of the ordinance.

3. Consider approval of a Cooperative Agreement with UDOT for the installation of a Traffic Signal at Sunset Blvd and 1300 West.

BACKGROUND and RECOMMENDATION: UDOT completed a detailed safety audit on Sunset Blvd due to recent pedestrian fatalities in the area. To improve safety, the roadway has been restriped, signage has been improved, and UDOT proposed an overhead pedestrian beacon at 1300 West. The city and UDOT determined that it would be better to upgrade the beacon to a traffic signal, due to the high volume of traffic, and the unfamiliarity of motorists in the area with that type of device. Staff recommends approval of the agreement.

Give Feedback

4. Consider approval of Resolution No. 2023-006R providing for a special bond election to be held on November 21, 2023, for the purpose of submitting to the qualified electors of the City of St. George, Utah a proposition regarding the issuance of not to exceed \$29,000,000 General Obligation Bonds; and related matters.

BACKGROUND and RECOMMENDATION: State law requires approval of a resolution at least 75 days in advance of the election to place a General Obligation Bond on the ballot for consideration by the voters. Tonight's item is to consider approval of a resolution that would place a General Obligation Bond in an amount not to exceed \$29,000,000 on the November 21, 2023 ballot for voter consideration, establish October 19, 2023 as the date for the public hearing, approve the ballot form, and direct the posting of the notice for the election. The proposed bond issuance would be for the purpose of financing all or a portion of the costs of acquiring, constructing, and improving Trails, Parks, and Recreation facilities and amenities throughout the city, for the purpose of connecting communities and revitalizing existing facilities. The proposed term of the bond would not exceed 25 years from the date of issuance. Staff recommends approval.

5. Consider approval of the RAP Tax Grants distribution list based on the recommendations of the St. George Arts Commission.

BACKGROUND and RECOMMENDATION: Each year since the approval of RAP Tax, the St. George Arts Commission receives, and reviews grant applications from local cultural non-profits. The St. George Arts Commission met on Thursday, May 25th, 2023 to discuss applications for RAP Tax Grants in the 2023-2024 fiscal year. The Commission received and reviewed 27 applications for funds this year, totaling \$444,048 in requests and has recommended allocations totaling \$250,000.

6. Consider approval of Resolution No. 2023-007R entering into an Interlocal Agreement with the County for the 2023 Byrne Justice Assistance Grant (JAG) Program Award.

BACKGROUND and RECOMMENDATION: The St. George Police Department is applying to receive the 2023 Department of Justice, Edward Byrne Memorial Justice Assistance Grant, (JAG) award. The \$30,781 award will be used to purchase defensive tactics training mats to provide added protection for officers during dynamic training scenarios, SWAT level ballistic vests and accessories will be purchased for the department's SWAT team for the additional personnel that are being added to the team for response to critical incidents, and rifle plates and carriers are to be purchased for the School Resource Officers to have available to them in their respective school offices. This is needed so the SRO has immediate access to rifle rated ballistic protection when responding to active threats within their schools. The

Give Feedback

interlocal agreement is part of our application process and has been signed by Washington County and St. George City each year we have applied for the grant. Staff recommends approval of the resolution.

7. Consider approval of Resolution No. 2023-008R authorizing the Mayor to sign the Interlocal Cooperation Agreement for Facility Rentals between City of St. George and Washington County School District.

BACKGROUND and RECOMMENDATION: The City and the School District have allowed each other to rent its facilities over the years free of charge. This Interlocal Agreement formalizes this practice by reducing it to writing. Staff recommends approval of the resolution authorizing the Mayor to sign the Interlocal Agreement as presented.

8. Consider approval of Ordinance No. 2023-003 amending Title 10-8D-1 of the St. George City Code to add Food Truck Park as a permitted with standards use, to amend Title 10-17A to add Food Truck Park along with its specific standards, and to amend Title 10-19-5 to add off-street parking requirements for Food Truck Parks for a project to be called Food Truck Park. Case No. 2023-ZRA-002

BACKGROUND and RECOMMENDATION: Food Trucks are permitted within the City of St. George as a portable or mobile unit. They are allowed on private property with an existing business on the lot, and the owner must provide a route of their intended points of sale. The gathering of food trucks on a vacant lot, or food truck parks, are not permitted within the City at this time. At the May 9, 2023, Planning Commission meeting, a public hearing was held for this item, but before a motion was made this item was continued. The Planning Commissioners wanted staff to meet with our Pretreatment Department to discuss the requirement of commissary kitchens and grease interceptors. For the June 27, 2023, Planning Commission meeting, staff did alter the requirements to remove the requirement for commissary kitchens, but to keep the requirement for grease interceptors at Food Truck Parks. There again was much discussion at the meeting. At this meeting, the discussion concerning grease interceptors and overnight parking continued. The applicant brought up his concerns about the requirement of all Food Truck Parks to require grease interceptors because it seemed cost-prohibited for small Food Truck Parks with three trucks or less. The Planning Commissioners discussed this topic at length, but in the end recommended approval of the ordinance as presented by staff. Please refer to Exhibit B for the minutes of the May 9th and June 27th Planning Commission meetings.

9. Consider approval of Ordinance No. 2023-001 amending an approved PD-C (Planned Development Commercial) on approximately 0.27 acres, located at 184 North 200 West Street for the purpose of adding a 12-room boutique hotel for a project to be known as STG

Give Feedback

Inn, with conditions from the Planning Commission. Case No. 2023-PDA-008

BACKGROUND and RECOMMENDATION: On January 5, 2023, this property was rezoned to the PD-C (Planned Development Commercial) designation with an associated use-list. This is a request for an amendment to this approved PD-C. On June 13, 2023, the Planning Commission held a public hearing on this item. There were public comments made. After the public hearing closed, the four Planning Commissioners present discussed this item at length. To forward a positive recommendation, four positive votes were needed; however, the Planning Commission received three positive votes. Therefore, the motion to recommend approval failed with a 3-1 vote in favor of the requested amendment with conditions. This item was continued at the July 6, 2023 City Council meeting. The item is now being presented with additional options.

10. Consider approval of Ordinance No. 2023-004 amending the city zoning map by amending the zone from C-2 (Highway Commercial) and OS (Open Space) to PD-R (Planned Development Residential) and adopting a development agreement on approximately 19.72 acres, located west of the 900 South and 250 West intersection for the purpose of allowing a 224-unit multi-family development to be known as Soleil Ridge Apartments, with conditions from Planning Commission. Case Nos. 2023-ZC-006 and 2023-DA-003

BACKGROUND and RECOMMENDATION: This application has a long history. Between May 2020 and May 2021, four separate General Plan amendment applications came before the Planning Commission and City Council to change the land use designation on the property to HDR. The applicant then made an application for a hillside permit and a zone change. At the end of 2021, the application went to the Planning Commission where questions about the rockfall area and city property needed to be resolved before proceeding forward. The applicant has now resolved the mitigation issues and proposes a development agreement solidifies that proposal. The Planning Commission held a public hearing on June 27, 2023 and recommends approval of the application with conditions.

11. Consider approval of a Hillside Development Permit to allow a 224-unit, multi-family project on approximately 19.72 acres, located west of the 900 South and 250 West intersection, to be known as the Soleil Ridge Apartments, with conditions from Planning Commission. Case No. 2021-HS-007

BACKGROUND and RECOMMENDATION: The Hillside Review Board held a public meeting on August 18, 2021 and the Planning Commission held a public meeting on June 27, 2023 and recommended approval of the application with a 6-0 vote, with conditions.

12. Consider approval of a conditional use permit to build a new City Hall building and

Give Feedback

parking structure located on the northeast corner of Main Street and 100 South Street for a project to be called City Hall. Case No. 2023-CUP-002

BACKGROUND and RECOMMENDATION: This conditional use request is for a new building and parking garage that exceeds 20,000 square feet on the main level. The proposed location for the City Hall building will be where the former Wells Fargo drive-thru teller is located on city-owned property recently purchased from Wells Fargo Bank. The Planning Commission held a public meeting on this item on July 11, 2023 and recommended approval of this conditional use permit.

13. Consider approval of a preliminary plat for Cove Valley, an 11-lot residential subdivision on 2.61 acres located at approximately 2500 East and 5550 South, on the extension of Malitsoh Way, north of White Dome Drive. Case No. 2023-PP-022

BACKGROUND and RECOMMENDATION: This parcel of land is in the Southern Hills East Area Zone Plan. This preliminary plat proposes to subdivide this 2.61-acre piece of land into eleven single family home lots. There will be three phases. Phase one will contain one lot, phase two will contain five lots, and phase three will contain five lots. This location is zoned R-1-7 (Single Family Residential, 7,000 sf minimum lot size), and all lots are proposed to be over 7,000 square feet with the density of 4.2 dwelling units per acre. This item was presented to the Planning Commission in a public meeting held June 27, 2023.

Give Feedback

14. Consider approval of a preliminary plat for Estates at Old Farm, a 21-lot residential subdivision on 14.50 acres located north of 2450 South Street and east of 2580 East Street. Case No. 2023-PP-023

BACKGROUND and RECOMMENDATION: On March 17, 2023, the City Council approved a zone change that included these 14.50 acres, changing the zone from A-20 (Agricultural, 20-acre minimum lot size) to R-1-20 (Residential, 20,000 sf minimum lot size). After this approval, on April 6, 2023, the 4-lot 76.04-acre Old Farm Preliminary Plat was approved. The applicant is requesting to further subdivide Lot 1 of that approved preliminary plat. This item was presented to the Planning Commission in a public meeting held June 27, 2023. .

15. Consider approval of a preliminary plat for Sunshine Way Subdivision, a 3-lot residential subdivision on 0.61 acres located on the northwest corner of 200 South Street and 200 West Street. Case No. 2023-PP-024

BACKGROUND and RECOMMENDATION: This parcel of land is located at the northeast corner of 200 West Street and 200 South Street. The lot currently has one home on it. This item was presented to the Planning Commission at a public meeting on July 11, 2023.

16. Consider approval of a preliminary plat for The Estates at Copper Ridge, a 42-lot single family residential subdivision on 70.83 acres located on Hillrise Drive, south of Summit Ridge Drive. Case No 2023-PP-013

BACKGROUND and RECOMMENDATION: In 2021, the site was granted approval of a PD amendment, hillside permit and preliminary plat. Because a final plat was never recorded, the preliminary plat lapsed and is no longer valid. This application would reinstate that preliminary plat. The Planning Commission held a public meeting on June 27, 2023 and recommends approval of the application with a 6-0 vote.

17. Appointments to Boards and Commissions of the City.

18. Reports from Mayor, Councilmembers, and City Manager.

19. Request a closed meeting to discuss litigation, security, property acquisition or sale, or the character and professional competence or physical or mental health of an individual.

Give Feedback

Genna Goodwin, Deputy City Recorder Date

REASONABLE ACCOMMODATION: The City of St. George will make efforts to provide reasonable accommodations to disabled members of the public in accessing City programs. Please contact the City Human Resources Office, 627-4674, at least 24 hours in advance if you have special needs.

Notice of Special Accommodations (ADA):

NA

Notice of Electronic or Telephone Participation:

NA

Meeting Information

Meeting Location:

175 E 200 N
St. George, UT 84770

[Show in Apple Maps](#) [Show in Google Maps](#)

Contact Name:

Christina Fernandez

Contact Email:

christina.fernandez@sgcity.org

Contact Phone:

(435)627-4003

Notice Posting Details

Notice Posted On:

July 14, 2023 02:15 PM

Notice Last Edited On:

November 16, 2023 03:57 PM

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File Name	Category	Date Added
2023.07.20 Recording_1 Work.MP3	Audio Recording	2023/08/02 08:50 AM
2023.07.20 Recording_2 Work.MP3	Audio Recording	2023/08/02 08:51 AM
2023.07.20 Recording_1 Regular.MP3	Audio Recording	2023/08/02 08:51 AM

File Name	Category	Date Added
2023.07.20 Recording 2 Regular.MP3	Audio Recording	2023/08/02 08:51 AM
2023.07.20 Minutes Work.pdf	Meeting Minutes	2023/11/16 03:57 PM
2023.07.20 Minutes Regular.pdf	Meeting Minutes	2023/11/16 03:57 PM
2023.07.20 2ND UPDATED City Council Agenda Packet.pdf	Public Information Handout	2023/08/02 09:17 AM

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Support

PUBLIC NOTICE WEBSITE
DIVISION OF ARCHIVES AND RECORDS SERVICE

City Council Meeting Agenda

General Information

Government Type:

Municipality

Entity:

St. George

Public Body:

City Council

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Notice Information

[Add Notice to Calendar](#)

Notice Title:

City Council Meeting Agenda

Notice Subject(s):

Other

Notice Type(s):

Notice, Meeting

Event Start Date & Time:

August 17, 2023 03:00 PM

Description/Agenda:

NOTICE OF WORK MEETING OF THE CITY COUNCIL
OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a work meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 17, 2023 commencing at 3:00 p.m.

The agenda for the meeting is as follows:

1. Request a closed session to discuss litigation, security, property acquisition or sale or the character and professional competence or physical or mental health of an individual.
2. Discussion regarding proposed changes to the special events ordinance.
3. Adjourn and reconvene in a Regular Meeting of the City Council.

Give Feedback

** THE COUNCIL WILL MOVE TO
THE CITY COUNCIL CHAMBERS FOR
THE CITY COUNCIL REGULAR MEETING**

NOTICE OF REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a regular meeting in the City Council Chambers at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 17, 2023, commencing at 5:00 p.m.

The agenda for the meeting is as follows:

- Call to Order
- Invocation
- Flag Salute

1. Mayor's recognitions and updates.
 - a. Read a Proclamation proclaiming September 21, 2023 as Recovery Day.
 - b. Read a Proclamation proclaiming September 10-16, 2023 as National Patriotism Week.
2. Consent Calendar.
 - a. Consider approval to award bid to Circle D Enterprises/Empire Waste Services for portable toilets and dumpsters for the St. George Marathon.

BACKGROUND and RECOMMENDATION: This was a formal bid process in order to establish a contract to provide dumpsters and portable toilets for the St. George Marathon. Two companies submitted proposals. Staff recommends awarding the bid to Circle D Enterprises/Empire Waste in the amount of \$57,152.

- b. Consider approval to purchase two fire engine/pumpers from Pierce Manufacturing/Siddons-Martin Emergency Group utilizing the Sourcewell National Purchasing Contract.

BACKGROUND and RECOMMENDATION: This purchase is for fire apparatus needed for new stations and replacement. Staff recommends the purchase of the trucks from Pierce Manufacturing/Siddons-Martin Emergency Group in the amount of \$2,156,549.98.

- c. Consider the approval to purchase Self Contained Breathing Apparatus (SCBA) and related equipment from LN Curtis utilizing National Purchasing contract/sole source.

BACKGROUND and RECOMMENDATION: This purchase is part of the Fire Department's

Give Feedback

ongoing effort for replacement of Self-Contained Breathing Apparatus (SCBA) to replace older existing units on fire apparatus that have become obsolete along with the Honeywell SCBAs that have been discontinued. Staff recommends the purchase of SCBAs in the amount of \$204,382.06.

d. Consider approval of a sole source purchase for 138 kV breakers for the Green Valley Sub Ring Bus.

BACKGROUND and RECOMMENDATION: This request is for a sole source purchase from Siemens Energy as they are the only manufacturer of equipment compatible with the existing system. Staff recommends purchasing the breakers from Siemens Energy Inc in the amount of \$196,050.

e. Consider approval of a contract with Specialty Applicators, LLC for seal coat for various streets within the City of St. George.

BACKGROUND and RECOMMENDATION: This is a sole source contract. This product (GSB-Friction Seal) will be used on Indian Hills Drive, 1000 East, and Tuweap Drive. The product has been used for the past few years selectively on other City streets with excellent results. Staff recommends approving the contract in the amount of \$174,685.

Give Feedback

f. Consider approval of the grant offer for AIP #3-49-0060-045-2023 to reconstruct and expand the terminal apron at the St. George Regional Airport.

BACKGROUND and RECOMMENDATION: The grant for Reconstruction and Expansion of Terminal Apron was applied for on March 6, 2023 and amended on August 9, 2023 to increase the amount from \$13,453,000 to \$15,960,275 due to increased construction costs. The final grant agreement/document will be received from the FAA at the end of August 2023 and the grant agreement must be approved, signed, and returned to the FAA no later than September 14, 2023 in order to secure the airport grant. Staff recommends approval of this draft grant agreement contingent on final legal approval once the official document is received.

g. Consider approval of a Reimbursement Agreement between St. George City and Joule Plaza, LLC for installation of storm drain improvements and roadway improvements along Tabernacle Drive from 200 West to 300 West.

BACKGROUND and RECOMMENDATION: Off-site runoff from Tabernacle Street has flooded the ground floor of Joule Plaza and the parking lot of Courthouse Corner. There is no storm drain in Tabernacle Street between 200 West and 300 West. Staff recommends approving

the agreement in the amount of \$141,922.25.

h. Consider approval to continue to waive fees for the Bloomington Community Picnic organized by The Church of Jesus Christ of Latter-day Saints Bloomington Stake on September 26, 2023 at Bloomington Park.

BACKGROUND and RECOMMENDATION: This is an annual event that the community of Bloomington has held for many years. There will be a BBQ and activities free for the public. The fee waiver includes: 1) Special Event fee (\$150); and 2) Park Reservation fee (\$400). Staff recommends approval.

i. Consider approval for the Lion's Dixie Round-Up Rodeo to have a Beer Garden during their event September 14, 15, 16, 2023 at the Dixie Sun Bowl.

BACKGROUND and RECOMMENDATION: This is the 3rd year the Lion's Club would like to hold a Beer Garden as part of their event in a fenced off, secured area. Staff recommends approval with the condition that the applicant obtain insurance with the correct endorsements prior to the event.

j. Consider approval of the continued sponsorship of the Lion's Dixie Round Up Rodeo organized by the St George Lions Club on September 14, 15, 16, 2023 at the Dixie Sun Bowl.

BACKGROUND and RECOMMENDATION: This annual event held at the Dixie Sun Bowl includes evening rodeos Thursday-Saturday from 7:00-11:00pm, a parade on Saturday at 9:00am. The sponsorship request includes fee waivers of the following: 1) Special Event Permit fee (\$150/day), 2) Sublicense fees; 3) Annual Alcohol permit fee (\$500); 4) Local Consent fee (\$50); 5) Encroachment fees; 6) Security fees; 7) Water hydrant fee ; and 8) Deposit application fee. Staff recommends approval with the conditions that the Special Event Application, Encroachment permit Application, Parade Application, and DABS Single Event Permits are approved prior to event date.

k. Consider approval to continue sponsorship of the annual Juan Festival event organized by Canyon Media on October 14, 2023 at Vernon Worthen Park.

BACKGROUND and RECOMMENDATION: This event started in 2017. The sponsorship includes: 1) Fee waiver for the Special Event Permit fee (\$150/day); 2) Fee waiver for the park reservation (\$400/day); 3) Setup big stage; 4) Extra trash cans and liners; 5) Firetruck and flag on display (\$210/hour); and 6) St. George Police to provide a booth for interaction with public. Staff recommends approval.

Give Feedback

l. Consider approval of the minutes from the meetings held on July 6, 2023; July 13, 2023; August 3, 2023 (Work); and August 3, 2023 (Regular).

3. Consider approval of Ordinance No. 2023-011 approving a development agreement on approximately 1.0 acres located at 368 South Mulberry Drive for the purpose of allowing the applicant to build a garage in Open Space zone in exchange for a sewer line and an access easement on the applicant's property to be granted to the City of St. George to be known as Eric Martin Development Agreement. Case No. 2023-DA-005

BACKGROUND and RECOMMENDATION: This development agreement addresses the applicant wanting to build a garage/barn in the rear of his property which is zoned OS (Open Space). In the open space zone accessory structures are required to be a minimum of 100' feet from any dwelling. For the applicant to build his non-habitable garage/barn and comply with the setback from any dwelling, the proposed building would be located over the sewer easement. The applicant is working with the City to give a sewer easement and drainage easement (for access and maintenance of the Virgin River) in order to be able to build the garage/barn within the required setbacks. At their meeting held on July 11, 2023 the Planning Commission held a public hearing and recommended approval with a vote of 6-0 with no conditions.

4. Consider approval of Ordinance No. 2023-012 changing the zone from M & G (Mining & Grazing) to PD-C (Planned Development Commercial) on approximately 13.385 acres located approximately at 2050 West Chandler Drive to allow the development of 23 hobby garages and 99 short-term RV resort sites on the property, with conditions of the Planning Commission. Case No. 2023-ZC-007

BACKGROUND and RECOMMENDATION: In 2022 (Case No. 2022-GPA-003) the City Council reviewed a General Plan Amendment for the Tonaquint Commercial and approved a Commercial area on 13.734 acres. In October 2022 (Case No. 2022-ZRA-003), there was a zoning regulation amendment for hobby garages approved as a permitted with standards. The intent at the time of the ZRA was to provide standards for hobby garages. The applicant worked with city staff to provide feedback on the permitted standards for hobby garages and is now coming back with the zone change for hobby garages and RV Resort short term rental on this property. This zone change proposal is for 23 hobby garage units on 3.117 acres and Short-Term RV Resort with 99 total sites on 10.263 acres. The RV Resort will include 65 pull through RV sites, 20 back in sites, and 14 camping sites. The proposal includes a 2,200 sq. ft. building to check in lobby, office, game room, showers, laundry, and pet bathing area. At their meeting held on July 11, 2023, the Planning Commission held a public hearing and recommended approval with a vote of 5-1 with conditions.

Give Feedback

5. Consider approval of Ordinance No. 2023-013 amending an approved PD-C (Planned Development Commercial) on approximately 4.06 acres, located at Dixie Downs Rd and Snow Canyon Pkwy for the purpose of building three professional office buildings for a project to be known as Precision Professional Plaza, with conditions from the Planning Commission. Case No. 2023-PDA-010

BACKGROUND and RECOMMENDATION: On May 6, 2004, the proposed property was approved as the Estrella PD-C (Planned Development Commercial) on the east side of Snow Canyon Pkwy and Dixie Drive. The approved uses were those in the C-2 commercial zone. In 2018 there was an application submitted for a zone change on the proposed property. The application was withdrawn at the time because the property was not owned by the applicant. The applicant has since purchased the property and is now requesting the zone change amendment to develop the property. At their meeting held on July 11, 2023, the Planning Commission held a public hearing and recommended approval, with conditions, with a vote of 6-0.

6. Consider approval of Ordinance No. 2023-014 amending an approved PD-C (Planned Development Commercial) on approximately .86 acres, located on the southeast corner of River Road and George Washington Boulevard for the purpose of adding a 5,230 square foot restaurant for a project to be known as McDonald's, with a condition from the Planning Commission. Case No. 2023-PDA-011

Give Feedback

BACKGROUND and RECOMMENDATION: This lot is a part of the River Crossing Planned Development. In 2016, The Boulder Creek Commons Planned Development was established with a general layout of the property and a use list (2015-ZC-035). Then in 2021, the name of this development name was changed to River Crossing and a conceptual site plan was approved. Prior to 2020, there was a limit of three drive-thrus allowed in this development; however, in 2020, that limit was removed, and drive-thru standards were created and approved for this specific development. At their meeting held on July 25, 2023, the Planning Commission held a public hearing and recommended approval of this item with one condition, with a vote of 6-0 vote.

7. Consider approval of the preliminary plat for the Desert Color Substation, a single lot subdivision on approximately 4.63 acres located to the west of Sage Haven Phase 8 at the end of Katydid Court. Case No. 2023-PP-025

BACKGROUND and RECOMMENDATION: The applicant would like to create a lot for a future power substation. At their meeting held on July 25, 2023, the Planning Commission recommended approval with a vote of 5-0.

Contact Phone:

(435)627-4003

Notice Posting Details

Notice Posted On:

August 14, 2023 11:57 AM

Notice Last Edited On:

November 03, 2023 09:40 AM

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File Name	Category	Date Added	Give Feedback
2023.08.17 Work Recording 1.MP3	Audio Recording	2023/08/23 08:29 AM	
2023.08.17 Work Recording 2.MP3	Audio Recording	2023/08/23 08:29 AM	
2023.08.17 Work Recording 3.MP3	Audio Recording	2023/08/23 08:29 AM	
2023.08.17 Regular Recording.MP3	Audio Recording	2023/08/23 08:29 AM	
2023.08.17 Minutes Work.pdf	Meeting Minutes	2023/11/03 09:40 AM	
2023.08.17 Minutes.pdf	Meeting Minutes	2023/11/03 09:40 AM	
2023.08.17 UPDATED Agenda Packet.pdf	Public Information Handout	2023/08/23 08:20 AM	

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DIVISION OF ARCHIVES AND RECORDS SERVICE

City Council Meeting Agenda

General Information

Government Type:

Municipality

Entity:

St. George

Public Body:

City Council

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Notice Information

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Notice Title:

City Council Meeting Agenda

Notice Subject(s):

Other

Notice Type(s):

Notice, Meeting

Event Start Date & Time:

August 24, 2023 04:00 PM

Description/Agenda:

NOTICE OF WORK MEETING OF THE CITY COUNCIL

OF THE CITY OF ST. GEORGE,

WASHINGTON COUNTY, UTAH

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a work meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 24, 2023 commencing at 4:00 p.m.

Give Feedback

The agenda for the meeting is as follows:

Call to Order

Invocation

Flag Salute

1. Discussion regarding proposed changes to the special events ordinance.

2. ADJOURN AND RECONVENE IN A REGULAR MEETING OF THE CITY COUNCIL.

** THE COUNCIL WILL REMAIN IN THE
ADMINISTRATIVE CONFERENCE ROOM
THE CITY COUNCIL REGULAR MEETING**

Give Feedback

NOTICE OF REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a regular meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 24,

2023, commencing at 5:00 p.m.

The agenda for the meeting is as follows:

1. PUBLIC HEARING AND CONSIDERATION OF ORDINANCE NO. 2023-015 VACATING AN EXISTING RIGHT OF WAY EASEMENT FOR UTILITIES LOCATED AT BETWEEN 600 SOUTH STREET AND 700 SOUTH STREET AND ALSO 800 EAST STREET AND SOUTHBOUND I-15.

BACKGROUND AND RECOMMENDATION: THIS EASEMENT WAS GRANTED MARCH 9, 1978 TO THE ST. GEORGE UTILITY COMMISSION A NON-EXCLUSIVE PERPETUAL RIGHT OF WAY EASEMENT FOR UTILITIES AND OTHER INCIDENTAL PURPOSES. THE JOINT UTILITIES COMMISSION RECOMMENDED APPROVAL.

2. CONSIDER APPROVAL OF ORDINANCE NO. 2023-011 APPROVING A DEVELOPMENT AGREEMENT ON APPROXIMATELY 1.0 ACRES LOCATED AT 3681 SOUTH MULBERRY DRIVE FOR THE PURPOSE OF ALLOWING THE APPLICANT TO BUILD A GARAGE IN OPEN SPACE ZONE IN EXCHANGE FOR A SEWER EASEMENT AND DRAINAGE EASEMENT ON THE APPLICANT'S PROPERTY TO BE GRANTED TO THE CITY OF ST. GEORGE TO BE KNOWN AS ERIC MARTIN DEVELOPMENT AGREEMENT. CASE NO. 2023-DA-005

BACKGROUND AND RECOMMENDATION: THIS DEVELOPMENT AGREEMENT ADDRESSES THE APPLICANT WANTING TO BUILD A GARAGE/BARN IN THE REAR OF HIS PROPERTY WHICH IS ZONED OS (OPEN SPACE). IN THE OPEN SPACE ZONE ACCESSORY STRUCTURES ARE REQUIRED TO BE A MINIMUM OF 100' FEET FROM ANY DWELLING. FOR THE APPLICANT TO BUILD HIS NON-HABITABLE GARAGE/BARN AND COMPLY WITH THE SETBACK FROM ANY DWELLING, THE PROPOSED BUILDING WOULD BE LOCATED OVER THE SEWER EASEMENT. THE APPLICANT IS WORKING WITH THE CITY TO GIVE A SEWER EASEMENT AND DRAINAGE EASEMENT (FOR ACCESS AND MAINTENANCE OF THE VIRGIN RIVER) IN ORDER TO BE ABLE TO BUILD THE GARAGE/BARN WITHIN THE REQUIRED SETBACKS. AT THEIR MEETING HELD ON JULY 11, 2023 THE PLANNING COMMISSION HELD A PUBLIC HEARING AND RECOMMENDED APPROVAL WITH A VOTE OF 6-0 WITH NO CONDITIONS.

3. CONSIDER APPROVAL OF ORDINANCE NO. 2023-016 CHANGING THE ZONE FROM C-2 (COMMERCIAL) TO PD-C (PLANNED DEVELOPMENT COMMERCIAL) ON APPROXIMATELY 2.83 ACRES LOCATED AT 3270 EAST FLOWERS WAY TO BUILD FIRE STATION #10 ON THE

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Notice of Special Accommodations (ADA):

NA

Notice of Electronic or Telephone Participation:

NA

Meeting Information

Meeting Location:

175 East 200 North
St. George, UT 84770

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Contact Name:

Christina Fernandez

Contact Email:

christina.fernandez@sgcity.org

Contact Phone:

(435)627-4003

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Notice Posted On:

August 28, 2023 08:41 AM

Notice Last Edited On:

November 03, 2023 09:43 AM

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File Name	Category	Date Added
2023.08.24 Regular Meeting Recording.MP3	Audio Recording	2023/08/28 08:41 AM
2023.08.24 Work Meeting Recording.MP3	Audio Recording	2023/08/28 08:41 AM
2023.08.24 Minutes Work.pdf	Meeting Minutes	2023/11/03 09:42 AM
2023.08.24 Minutes.pdf	Meeting Minutes	2023/11/03 09:43 AM
2023.08.24 Agenda Packet.pdf	Public Information Handout	2023/08/28 08:41 AM

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Exhibit 3

Support

PUBLIC NOTICE WEBSITE
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Ordinances Approved and Adopted by City Council

General Information

Government Type:

Municipality

Entity:

St. George

Public Body:

City Council

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Notice Information

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Notice Title:

Ordinances Approved and Adopted by City Council

Notice Subject(s):

Ordinances

Notice Type(s):

Notice

Event Start Date & Time:

August 31, 2023 05:00 PM

Description/Agenda:

PUBLIC NOTICE

Please be advised that August 31, 2023, the City Council of the City of St George approved the following ordinance(s):

Ordinance No. 2023-017 repealing Chapter 10 of Title 3 of the St. George City Code and reenacting provisions regarding Special Events and to enact Chapter 11 of Title 3 regarding other event permits.

Notice of Special Accommodations (ADA):

NA

Notice of Electronic or Telephone Participation:

NA

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Meeting Information

Meeting Location:

175 East 200 North
St. George, UT 84770

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Contact Name:

Christina Fernandez

Contact Email:

christina.fernandez@sgcity.org

Contact Phone:

(435)627-4003

Notice Posting Details

Notice Posted On:

September 01, 2023 10:30 AM

Notice Last Edited On:

September 01, 2023 10:30 AM

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