

RESOLUTION NO. 83-79

A RESOLUTION OF THE CITY OF DELTA, UTAH APPOINTING JIM C. ALLAN TO THE OFFICE OF DELTA CITY ADMINISTRATOR AND APPROVING AN EMPLOYMENT AGREEMENT BETWEEN DELTA CITY AND JIM C. ALLAN AND ADOPTING BY REFERENCE THE PROVISIONS OF SAID EMPLOYMENT AGREEMENT.

BE IT RESOLVED by the City Council of the City of Delta, Utah:

1. Jim C. Allan is hereby appointed, as provided in Section 3-921 of the Revised Ordinances of Delta City (1981 edition) as the Delta City Administrator, subject to the limitations and provisions set out in the City Administrator Employment Agreement attached hereto as Exhibit "A," and which exhibit is by this reference incorporated as a part of this resolution.

2. The City Administrator Employment Agreement attached hereto as Exhibit "A" is hereby approved and adopted as to the City of Delta and authorization is given for the Mayor and City Recorder, respectively, to execute and attest the same on behalf of Delta City in substantially the form of the attached Exhibit "A."

3. The Mayor of the City of Delta, acting with the advice and consent of the City Council, is hereby designated as the official responsible for administration, enforcement and application of the terms of the attached employment agreement.

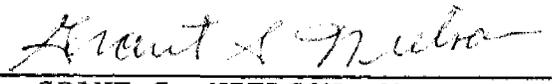
4. The duties, powers and responsibilities of Jim C. Allan as Delta City Administrator shall be those adopted by ordinance, resolution or directive of the City Council and those set out in the attached employment agreement.

5. This resolution shall become effective upon adoption.

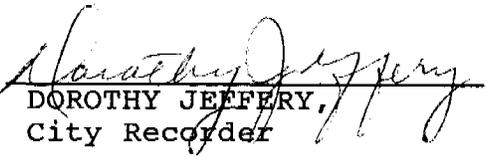
6. In the event that any provision of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

7. To the extent that any ordinances, resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

ADOPTED AND APPROVED this 17th day of October, 1983.


GRANT S. NIELSON, Mayor

Attest:


DOROTHY JEFFERY,
City Recorder

appointment and employment, and agrees to be subject to the general supervision and orders, directives, duties, responsibilities and obligations of said position.

2. Term of Employment. The term of this agreement shall be a period of one year, commencing November 1, 1983 and terminating October 31, 1984, subject, however, to prior termination as hereinafter provided. At the expiration date of October 31, 1984, this agreement shall be considered renewed for an indefinite period subject to termination at any time by the Delta City Council as provided in Section 10-3-925, U.C.A. (1953), or any provision enacted as a successor to said section.

3. Duties. Allan shall serve as the city administrative officer and shall in that capacity act as an assistant to the Delta Mayor and shall perform such duties, responsibilities and functions as may be directed by the mayor and such duties as may be established by ordinance, resolution or other directive of the City Council. Allan shall serve Delta loyally, diligently and effectively and shall at all times exert his best efforts to promote the interests of Delta and shall do nothing which will not be in the best interests of Delta. Allan shall devote sufficient of his time, attention, knowledge and skill solely to the business and interests of Delta as shall be necessary to adequately perform the duties established for the office of Delta City Administrator.

4. Place of Employment. Allan shall perform his duties as Delta City Administrator at the offices of Delta City, or at such other places as may be required in the performance of such duties.

5. Compensation. For his active, full-time service as city administrator, Allan shall be paid by Delta as follows:

a. An annual salary of \$24,000.00 payable by monthly installments on the days designated for payment to Delta City employees, subject to deductions as set out herein.

b. Additional compensation of \$100.00 per month as an allowance for travel costs incurred in performance of his duties as Delta City Administrator.

c. The parties agree that Allan shall be exempt from contribution to the Utah State Retirement Fund and Delta shall not be required to make contribution on Allan's behalf, unless Allan and Delta are required to do so by applicable Utah law. In the event that Delta is required to make contributions to the Utah State Retirement Fund and is obligated to make payroll deductions from Allan's salary for his contribution, Allan's salary shall be increased by the amount of such applicable payroll deductions. Allan shall at his option be entitled to

CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

THIS AGREEMENT made on the date shown below between the CITY OF DELTA, a municipal corporation of the State of Utah of P.O. Box 397, Delta, Utah 84624, referred to herein as "DELTA," and JIM C. ALLAN of 1169 South 760 West, Provo, Utah 84601, referred to herein as "ALLAN."

RECITALS

The parties recite the following as the basis for entering this agreement:

A. Delta is a municipal corporation and political subdivision of the State of Utah located in Millard County, Utah and is classified under the laws of the State of Utah as a city of the third class.

B. The Delta City Council has determined that it will hire Allan to the position of City Manager or Administrator as provided in Section 10-3-924, et seq., Utah Code Annotated (1953), as amended and Sections 3-921 to 924 of the Revised Ordinances of Delta City (1981 edition).

C. Allan is a graduate of the Graduate School of Management of Brigham Young University with a Masters of Public Administration degree and is capable of performing the position of City Administrator of Delta City.

D. The Delta City Council has determined that it will hire Allan to the position of City Administrator for Delta City and expects to receive from Allan a satisfactory level of performance and wishes to identify the terms and conditions of such employment.

E. Allan will incur substantial personal costs and opportunity costs by accepting employment with Delta City and desires to identify certain terms and conditions of such employment.

F. The parties desire to identify their agreement relating to employment of Allan as Delta City Administrator as set out herein.

NOW, THEREFORE, the parties hereto, for the mutual covenants and other consideration expressed herein, do agree as follows:

1. Employment. Delta hereby employs, engages and appoints Allan to fill the position of Delta City Administrator as identified by Section 3-921 of the Revised Ordinances of Delta City (1981 edition) and Allan hereby accepts and agrees to such

receive any or all of such benefits as are provided to full-time city employees, including, without limitation, vacation, sick leave days, compensation time, health and accident insurance coverage (including dependant coverage), group term life insurance, workmans compensation insurance and other similar employment benefits after satisfactory completion of 90 days employment with Delta City.

d. Such further merit pay increases, cost of living adjustments or other pay increases as are afforded to Delta City employees under the Delta City personnel policy and amendments thereto.

6. Termination of Employment. Notwithstanding the provisions of paragraph 2 above, Allan's employment by Delta City under this agreement may be terminated by majority vote of the City Council at any time for cause as provided in Section 10-3-925, U.C.A. (1953), as amended. The employment may also be terminated at any time without cause by majority vote of the City Council; provided, however, that in event of termination by the City Council prior to October 31, 1984, Delta City shall be obligated to pay to Allan as liquidated damages the lesser of six months compensation, including salary, benefits, and travel allowance at the rate payable to Allan at the date of termination, or the salary, travel allowance, and other benefits that would be payable to Allan through the remainder of the one year employment period ending October 31, 1984. If this agreement is not terminated prior to October 31, 1984, the agreement may be terminated by either party upon two weeks notice.

7. Place of Residence. Allan shall, at his option, be permitted to maintain the residence of his family in Provo, Utah until the end of the 1983-84 school year and for a reasonable time thereafter to allow sufficient time for moving of the family residence and possessions. Allan shall be required, in the event that his family does so continue to reside in Provo, Utah, to maintain a place of residence in Delta from Monday through Friday of each week, excepting holidays, vacations and other days when excuse from work under the provisions of the Delta City personnel policy and to be available for fulfillment of his duties as Delta City Administrator at such other times as may be necessary.

8. Entire Agreement. This document contains the entire agreement concerning the employment of Allan by Delta and shall, as of the effective date hereof, supersede any other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this agreement or any representation including the execution and delivery hereof, except such representations as are specifically set forth herein and each party hereto acknowledges that he or it has relied on its own judgment in entering into this agreement.

The parties further acknowledge that any payments or representations that may have heretofore been made by either of them to the other are of no effect and that neither of them has relied thereon in connection with his or its dealings with the other.

9. Amendment of Agreement. No alteration, modification, amendment or other change of this agreement shall be binding upon the parties unless the same is made in writing, approved by the Delta City Council and by Allan and executed by the authorized officers of Delta and by Allan. The provisions of this section may not be waived except by written agreement as set out herein or by amendment of city policies by the City Council as provided for herein.

10. Assignment. The rights and obligations of Delta under this employment shall inure to the benefit of and shall be binding upon the trustee, personal representative, heir or other successor of Allan by descent or distribution, but neither party shall be entitled to assign this agreement without the express prior written consent of the other, the subject of this contract being personal and unique to the parties hereto.

11. Binding on Successors. This agreement shall be binding upon the heirs, personal representatives, trustees and any other successors or assigns of the parties hereto.

12. Termination for Additional Causes. Notwithstanding anything in this agreement to the contrary, Delta is given the option to terminate this agreement in the event that Allan shall, during the term hereof, become permanently disabled as defined below. The option to termination shall be exercised by Delta giving notice to Allan at his last known address by certified mail. On the giving of such notice, this agreement shall cease on the last day of the month in which the notice is so mailed, with the same force and effect as if such last day of the month were the date originally set forth herein for the termination date of this agreement.

For the purposes of this agreement, Allan shall be deemed to have become permanently disabled, if, during the term hereof, because of ill health, physical or mental disability or for other causes beyond his control he shall have been continuously unable or unwilling or shall have failed to perform his duties hereunder for 90 consecutive days, or if, during the term hereof, he shall have been unable or unwilling or shall have failed to perform his duties for a total period of 120 days, irrespective of whether or not such days are consecutive.

It is further understood and agreed that notwithstanding any other provision hereof Allan is suspended or terminated and requests and opportunity to be heard at a meeting of the City Council, such meeting shall, at the sole option of the Delta City

Council, be considered a legislative act of the Council and not an administrative one.

13. Severability. All agreements and covenants contained herein are severable and in the event any of them are held invalid by a court of competent jurisdiction, this agreement shall be interpreted as if such invalid provisions were not contained herein.

14. Governing Law. It is the intention of the parties hereto that this agreement and the performance hereunder and all suits and proceedings hereunder shall be construed in accordance with the laws of the State of Utah.

15. Non Disclosure by Allan. Allan acknowledges and agrees that any information obtained by him while employed by Delta that is confidential and is important to the interests of Delta and to the effective operation of Delta City shall, while Allan is employed by Delta and at any time thereafter, not be disclosed in any way by him, whether directly or indirectly, concerning such confidential matters.

16. Headings. The headings of this agreement are inserted for convenience only and are not to be considered in construction of the provisions hereof.

17. Waiver of Breach. The waiver by either party of a breach of any provision of this agreement shall not operate or be construed of a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties have executed this agreement this 17 day of October, 1983.

CITY OF DELTA, UTAH

By: Grant S. Nielson
GRANT S. NIELSON, Mayor

Attest:

Dorothy Jeffery
DOROTHY JEFFERY,
City Recorder

Jim C. Allan
JIM C. ALLAN

RESOLUTION NO. 83- 100

A RESOLUTION PROVIDING SPECIFICATIONS FOR CONSTRUCTION OF A FENCE BY SOUTHLAND CORPORATION AROUND THE PERIMETER OF THE PARCEL ON WHICH A "7-11" STORE IS PROPOSED FOR CONSTRUCTION AND OPERATION IN LOT 2 OF BLOCK 61, DELTA TOWNSITE, PLAT A.

RECITALS

The City Council of the City of Delta, Utah, referred to herein as the "City Council," hereby recites the following as the basis for adoption of this resolution:

A. On August 1, 1983, the City Council authorized the issuance of a class "A" beer license to Southland Corporation authorizing sale of light beer at a 7-11 Store to be operated by Southland Corporation on a portion of Lot 2, Block 61, Delta Townsite Plat A, provided that Southland Corporation comply with all applicable City ordinances and regulations.

B. Prior to approving issuance of a class "A" beer license at the site and for the purposes specified, the City Council made a specific finding that the 7-11 Store would not be in the proximity of the Delta Elementary School and the Delta Stake Meetinghouse of the Church of Jesus Christ of Latter-Day Saints, as the term proximity is defined in Section 32-4-17, Utah Code Annotated (1953), if among other conditions, a suitable fence was constructed around the perimeter of the parcel on which the 7-11 premises would be located. The Council further found that the purpose of the fence was to provide for the safety of children attending the Delta Elementary School and determined that the fence should be sufficient to deter passage by children between the school grounds and the property owned by Southland Corporation. The Council further determined that the fence should be of a solid material which would obscure vision between the school grounds and the Southland Corporation property.

C. Since August 1, 1983, officials of the Millard County School District have demonstrated to the City Council that the safety of children attending Delta Elementary School would be enhanced by construction of a fence that would deter passage of children between the school grounds and the Southland Corporation property, but that such fence should not obscure vision so as to allow observation of any children or other persons who may be located in the vicinity of the 7-11 Store premises by employees of the Millard School District.

D. The City Council has therefore determined to adopt this resolution to modify and amend its August 1, 1983 action in the manner set out herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Delta, Utah:

Section 1. Proximity Finding. The City Council hereby finds that a fence should be constructed between the Delta Elementary School grounds and the property on which Southland Corporation proposes to operate a 7-11 Store on a portion of Lot 2 of Block 61, Delta Townsite, Plat A, according to the official plat thereof and further finds that such fence is necessary, along with factors of distance, orientation of the respective buildings, accessibility between buildings, application of Delta City regulatory ordinances and other factors to permit issuance of a class "A" beer license to Southland Corporation in accordance with Section 32-4-17, Utah Code Annotated (1953), and the applicable ordinances and regulations of the City of Delta.

Section 2. Amendment of Fence Specifications. The City Council hereby determines and specifies as a condition of issuance of a class "A" beer license to Southland Corporation that a suitable fence shall be constructed along the perimeter of the parcel on which the 7-11 Store premises are to be constructed and operated by Southland Corporation. The Council further specifies that the fence shall be constructed of materials such that children or other persons on or about the parcel on which Southland Corporation proposes to operate the 7-11 Store will be readily visible by personnel of the Millard County School District having supervisory responsibility over school aged children attending Delta Elementary School. The Council further specifies that the fence shall be of a chainlink material at least six feet in height and shall be installed in a quality, workmanlike manner, with no openings or passageways between the Southland Corporation property and the Delta Elementary School grounds.

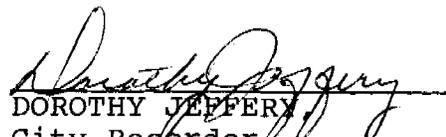
Section 3. Effective Date. This resolution shall become effective upon adoption.

Section 4. Severability. In the event that any provision of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

Section 5. Repeal of Conflicting Resolutions. To the extent that any ordinances, resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND ADOPTED THIS 5th day of Dec, 1983.


GRANT S NIELSON, Mayor

Attest: 
DOROTHY JEFFERY
City Recorder