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CITY OF *Caldwell, Idaho*

ATTORNEY-CLIENT COMMUNICATION PRIVILEGED AND CONFIDENTIAL

MEMORANDUM

To: Councilor Scott Tilmant
From: City Attorney Oscar Klaas
Cc: Mayor Phillips, City Council Members, City Clerk
Date: April 2, 2026
Re: Validity of vetoes issued for Caldwell City Council Resolution Nos. 095-26 and 096-26

This memorandum is in response to your request made on April 1, 2026 for a legal opinion of the validity of the vetoes issued by Mayor Eric Phillips for Caldwell City Council Resolution No. 095-26 and No. Resolution 096-26 (“Quiet Zone Resolutions”), both of which relate to the implementation of a quiet zone within the City of Caldwell. This request is appropriate pursuant to Caldwell City Code 3-13-03(1). **This opinion is a privileged and confidential attorney client communication that should not be disseminated beyond the original recipients without the consent of the majority of the City Council.**

As explained further below, it is the legal opinion of the City Attorney that the veto authority of the mayor is limited to ordinances and does not extend to resolutions of the City Council. Therefore, the “vetoes” issued by the Mayor on April 1, 2026, are of no legal effect and have no binding authority.¹

LEGAL BACKGROUND & AUTHORITY

1. The Limits Of Mayoral Veto Authority Under Idaho Law

The powers of a mayor are not absolute, but rather mayoral powers are limited to what is granted by state law and city ordinance. Idaho Code § 50-607 provides, in part, “The mayor shall have and exercise such powers, prerogatives and authority as is conferred by the laws of the state of Idaho or as may be conferred upon him by the city council[.]” Moreover, a mayor has a statutory duty to “take care that the ordinances of the city and provisions of this act are complied with and enforced.” Idaho Code § 50-602. As observed by the Idaho Supreme Court, “The mayor

¹ A press release regarding the attempted vetoes was issued and placed on the City’s social media page prior to the issuance of this opinion.

of a city is a creature of the statute. His powers and duties are fixed by the statute and the ordinances of the city, and he must act in accordance therewith[.]” *Moore v. Hupp*, 105 P. 209, 211 (1909). Consequently, whether a mayor has authority to veto a resolution is matter of determining if such authority has been conveyed by either state law or city code. Based upon my review and interpretation of the applicable state law and city code which define the veto power of a mayor, a mayor does not have the legal authority to veto council resolutions in general, and the Quiet Zone Resolutions in particular.

Both the Idaho law and the Caldwell City Code contain provisions regarding the veto authority of the mayor which are substantively the same. The state law provides the following regarding mayoral veto authority:

The mayor shall have power to veto or sign any ordinance passed by the city council; provided, that any ordinance vetoed by the mayor may be passed over his veto by a vote of one[-]half ($\frac{1}{2}$) plus one (1) of the members of the full council, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance, and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become law without his signature.

Idaho Code § 50-611.

The Caldwell City Code provides the following regarding mayoral authority to vote on decisions and veto laws passed by the City Council:

(1) Vote: The Mayor shall have the vote on any decision to be made by the Council only when the Council is equally divided.

(2) Veto: The Mayor shall have the power to veto or sign any law passed by the Council; provided, that any law vetoes by the Mayor may be passed over his veto by a vote of two-thirds of the elected members of the Council, and should the Mayor neglect or refuse to sign any law and return the same with his objections, in writing, at the next regular meeting of the Council, the same shall become a law without his signature.

Caldwell City Code 3-05-11.²

According to the plain language of the code sections cited above, the specific grant of authority to a mayor for a veto is limited to ordinances. There is no mention or indication of veto power for any other type of legislative action of the city council in either state law or the city code, including resolutions. The language of Caldwell City Code 3-05-11 supports this conclusion. It provides the mayor expansive authority

² The only difference between the state law and city code of relevance for this legal opinion is the use of the term “ordinance” in state law and “law” in the City Code. Because to terms “law,” the two words are synonymous for the same legislative action and bear no legal distinction, both will be collectively referenced as “ordinance.”

to vote on “*any decision* to be made by the Council” when the City Council is equally divided but narrowly reserves the veto power to “*laws* passed by the Council.” (emphases added).

2. The Quiet Zone Resolutions Are Not Subject To Mayoral Veto Authority

This raises a secondary question of whether the Quiet Zone Resolutions may be considered ordinances in this specific situation. The answer to this question is a clear, no. While resolutions and ordinances are both types of permitted legislative actions for a municipal government, ordinances require an additional layer of formality that resolutions do not, and in specific situations ordinances are mandatory. Idaho Code § 50-902 makes it clear that resolutions and ordinances are different legislative acts when it clearly distinguishes between the two, “The passage or adoption of every ordinance, and every resolution or order to enter a contract shall be by roll call of the council with the yea or nay of each being recorded, and to pass or adopt any ordinance or any such resolution or order, a majority of the council shall be required.” The remainder of section 50-902 only refers to the passage of ordinances with no mention of resolutions. If the State Legislature viewed resolutions to be the same as ordinances, there would be no need to make such distinctions.

Further, under Idaho law, a city council may act by resolution or by ordinance unless a particular type of action is required by the constitution, a statute, or another city ordinance. For example, an ordinance is legally required for a city for certain conveyances or exchanges of real property owned by the City (Idaho Code §50-1403); to establish zoning districts (Idaho Code § 67-6511); and appropriating a budget (Idaho Code § 50-1003). There is no similar positive legal requirement for an ordinance to enter contracts or to direct city staff to implement a project approved in the budget.

The Quiet Zone Resolutions were clearly not intended by the City Council to be ordinances, nor can they reasonably be construed as ordinances. First, there is no legal requirement that the actions directed by the Quiet Zone Resolutions must be done by ordinance. Resolution No. 095-26 is expressly for the purpose of accepting a bid proposal for the railroad quiet zone proposal. Similarly, as to Resolution No. 096-26 directing implementation of a railroad quiet zone, there is no legal requirement for the City to pass an ordinance to proceed with a project appropriated in the annual budget. For sound practical reasons, the City does not pass an ordinance for every contract approval or project. There is no reason for the Quiet Zone Resolutions to be an exception to this standard practice. Nor is there any indication the intent of the City Council intended to treat the Quiet Zone Resolutions as an ordinance. This is indicated by the fact that the motion to place the Quiet Zone Resolutions on the council agenda did not request they be an ordinance; that the notice for the Quiet Zone Resolutions did not include the statutory requirements for styling and noticing an ordinance set forth in Idaho Code § 50-901; and there was no objection when the Quiet Zone Resolutions were passed of noncompliance with those notice provisions.³

³ The standard agendas for City Council meetings contain these explanations of resolutions and ordinances. “*Ordinances and resolutions are formal measures considered by the City Council to implement policy which the Council has considered.*” “*Resolutions govern internal matters to establish fees and charges pursuant to existing ordinances. Ordinances are laws which govern general public conduct. Certain procedures must*

One final note, Idaho law only requires a roll call vote in favor of the resolution approving a contract by the majority of the council for such a resolution to pass. Idaho Code § 50-902. Although it is the standard administrative practice of the City to have a document memorializing the passage of resolutions, likely for record keeping purposes, it is not a legal requirement. It follows that resolutions are effective upon the completion of the roll call vote by the City Council and do not require a formal signature by the mayor.

CONCLUSION

In conclusion, based on the analysis set forth above, it is legal opinion of the Caldwell City Attorney that the Caldwell Mayor does not have the legal authority to veto the Quiet Zone Resolutions because they are not ordinances. Therefore, the “vetoes” of the Quiet Zone Resolutions issued by the Mayor on April 1, 2026, have no binding or legal authority to prevent the City Council’s approval of the Quiet Zone Resolutions. Moreover, it is my opinion that the Quiet Zone Resolutions were effective at the conclusion of the roll call vote conducted by the City Council on March 25, 2026. Furthermore, there is no need for the City Council to address or consider passing the Quiet Zone Resolutions over the “vetoes” issued by the Mayor, unless the City Council elects to do so to remove any latent ambiguity regarding the legislative decision to implement railroad quiet zones in Caldwell. That is a policy decision within the discretion of the members of the City Council and not a decision or recommendation from the City Attorney.

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be followed in the adoption of both ordinances and resolutions; state law often establishes those requirements.”