



Council Minutes

October 28th, 2014

ROLL CALL: Mayor Don Ware called the meeting to order at 7:00 p.m. with Councilors Shepherd, Cole, Boyanovsky, Gerber, Van Sandt, and Chambers present. Public Works Superintendent Karl Frink, City Attorney Lauren Sommers, Administrative Assistant Tammi Morrow and City Administrator Scott McDowell were also present.

PUBLIC: Sergeant Brad Kelley, Barb & Tony Koontz, Allen Buzzard, Linda McCormick, Rob Shepherd, John Morrison, Joni Nelson, Tricia Thompson, Elizabeth Coleman, Kathleen Swayze, Dot Marsh, Rhoda Fleishman, Steve Brenner, Kaye Fox, Christine Harrison, Doug Block, John Voight, and Randy and Gayle Simpson.

The pledge of allegiance was recited.

ADDITIONS AND DELETIONS: Mr. McDowell informed Council that he would add an item to the agenda tonight: under discussion items F – Leash Law Petition. McDowell also added that there is no executive session planned for this evening.

MINUTES: Councilor Cole made a motion to approve the September 23rd, 2014 meeting minutes with one small change: strike the last sentence of paragraph 1 on page 3. Councilor Van Sandt seconded the motion as amended, and it passed unanimously.

PUBLIC HEARINGS OR PRESENTATIONS:

“Livin’ in Brownsville” Song Performance – Kathleen Swayze and crew were present to perform a song written by Ken Richter. This song was presented at an event hosted by the Women’s Study Club two years ago. Mrs. Swayze stated that the song is about diversity, neighborliness, and doing the right thing. Kathleen is asking that Council adopt the song as the town song. *Councilor Cole made a motion to adopt ‘Livin’ in Brownsville’ as the town song. Councilor Chambers seconded the motion, and it passed unanimously.* Staff will put together a presentation plaque for Mr. Richter. Mayor Ware moved to take a break for the recording equipment to be moved out of the room.

Review Council Goals – Mayor Ware called the meeting back to order. Mr. McDowell proceeded with reviewing the 2013-14 Council Goals. McDowell highlighted some of the goals that have been accomplished over the course of the year. Ordinance 748 hits the community and economic development plan, focusing on the fundamentals. The active capital improvements plan includes the Calapooia River crossing last summer, and the Millhouse Sanitary Sewer project, two major infrastructure improvement projects. Staff is currently collecting quotes for numerous paving projects around town. The City has been diligently fostering cooperation with several groups, including the Willamette Country Music Festival, Visit Linn Coalition, Brownsville Chamber of Commerce, and many others. An ongoing Council priority is securing water rights for the City’s future. The GR-12 well is in the process of being redeveloped toward that end, which has potential to make a huge positive future impact for the City. The north water line project has been completed, which was truly a community effort, especially with assistance from the family land owners near the project. The City’s Public Works team headed up the effort and subsequently the City was able to save considerable money for the City. McDowell remarked about the amazing training opportunity the water line provided for the crew under Mr. Frink’s leadership.



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McDowell stated that the City Staff and the City Engineer will continue to explore other water source options. While working on economic development options, Staff has discovered that the City is unable to directly buy and sell land to possible interested parties. While this limits the City's options, the City is working with local landowners to have some land available for possible interested parties. The national flood insurance market is changing, and may have massive implications due to the Biggert-Water Act. Don Ware was tasked as a private citizen to go out and do some research on a senior living facility. Primary residence setbacks are currently being reviewed. The Code states the residence has to be 20' from the street, 10' from the sides, and 30' from the back in relation to property lines. If these setbacks are not observed or enforced, it creates ongoing problems for property owners, neighbors and City Hall. The City has taken over the sports scheduling for the Central Linn Recreation Association as well as scheduling the rental of the building and the tables and chairs, and it seems to be working well. As far as capital improvements are concerned, Staff is working on water/wastewater contracts and inventorying the system. Due to shortness of funding at the County level, the Kirk Avenue project has been temporarily put on hold. The County would like to complete this project, but the time frame is unclear at this point. They have asked for the City's patience. At the Staff level, cross training has been happening. Instead of just finance, billing, planning, etc., we are trying to change our culture to more of an administrative assistant level. With the cross training, Staff is more prepared and able to share information that best serves the public. Resolution 718 has provided the City Officials with an accountability system. The Emergency Planning Committee had an effort that was going pretty well for awhile. Due to personality issues, the committee was dissolved. Council rewrote the ordinance to allow the administrator to appoint the members in the future. The committee will focus on goals articulated in the ordinance, in particular the continuity of operations and an emergency disaster plan. Mr. Frink and the City Engineer will be involved. One of the most important aspects of this effort is the public education component. Hopefully the school district and fire department will be involved, perhaps incorporating it into the fire prevention education system. Another option would be to begin to hand out go-kits to new residents when they set up their utility account. Eventually all City residents would receive one of these kits. The City may need to budget funds to make this happen. Overall, for a small staff, we have accomplished a lot this year, even while dealing with a lot of major issues that have come to the forefront of the City's dealings and affairs.

DEPARTMENT REPORTS:

1. **Sheriff's Report.** Sergeant Kelley was present. He stated that he just had a short report tonight. He said that they have one deputy going on maternity leave soon. Mayor Don Ware stated that he would like to see a minimum of two patrols each day, and asked if that was possible. Sergeant Kelley responded that he had been in town all day today, and LCSO should be able to do that easily.
2. **Public Works.** Mr. Frink reported that as Mr. McDowell indicated, Public Works has installed a 12" water main – totaling 870 feet of pipe. The project was completed for just under \$25,000 using City staff. The contracted price for this project would be approximately \$125,000 - \$150,000. The savings for completing this project in-house was substantial. It was also a great way to develop our inexperienced Public Works crew. Mr. Frink hopes to accomplish a small project like this each year. Both generators are currently being serviced, on an eight-year plan. In streets, Mr. Frink has received a 4th bid for the paving projects. He will meet with Mr. McDowell Thursday to determine outcomes. On Saturday four trees around town fell due to high winds. Public works responded to all calls, with minimal disruption to the City. The Park has been closed for the



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season now. The restrooms are closed as well, but the portable toilet will remain open all winter.

- 3. Administrator's Report.** – Mr. McDowell stated that the library project is pretty much completed. It has been a huge success. Staff and community partners such as the Library Advisory Board, Friends of the Library, etal. all played a vital role in this success. The Millhouse sanitary sewer is complete, and Staff is extremely well pleased with the outcome. The Contractor and City Engineer did an exceptional job and Council did a great job with handling the change orders. These are several outcomes that the City can feel great about. Mr. McDowell had a visit from the Linn County Road Department. They indicated that they would like the campaign signs removed from the right-of-way as soon as possible. In the past, the County had maintained the position of ambivalence, but that stance has shifted due to complaints received. Councilor Chambers and Mr. McDowell are continuing to meet concerning the City's animal policies. The remediation at 120 Moody Court continues. Over the past several weeks 23 feral cats have been trapped and removed from the property. There are approximately 4 remaining cats. To finish the project, the remaining cats should be spayed or neutered so that they problem is not just as prevalent in 8 months time. Staff will follow up with the situation on a monthly basis. The situation at 382 Kirk remains unchanged. Fines started to accrue on October 6th, 2014. To date the total amount accrued is \$575.00; offers of help have been declined. McDowell would like direction from Council on how they would like to proceed. There are a few options. Council could elect to simply continue to offer help and levy fines against the violation. The violation fines would eventually be attached to the property, however there is a cap. Ms. Sommers was unsure what the cap was; she can investigate that. Another option is to cite the offender into court with an administrative warrant and let the judge decide the matter. Mr. McDowell stated that the City's community development program is being challenged by one citizen, and Council needs to evaluate what these implications are overall. Councilor Shepherd posed the question of "When is enough, enough"? This situation has been going on in some form since 2008. He truly feels that Council needs to step up and deal with the situation. The ordinances need to apply to all residents, not just some. Councilor Van Sandt stated that she really doesn't have a problem with the refrigerator on the front porch. She wonders if the ordinance is too specific. Councilor Chambers stated that as a citizen she doesn't necessarily have a problem with the refrigerator on the front porch either. However, as a councilor, the issue is fairly clear. As an acting Council, we need to enforce the ordinances and back up Staff as enforce the rules that we, as Council, have made. *Councilor Shepherd made a motion to send out another letter offering help to 382 Kirk, defining fines levied to date, and authorizing Mr. McDowell and legal counsel to review the situation in a citation form and bring more information back to Council at the November meeting. Councilor Chambers seconded the motion, and it passed unanimously.*

Mr. McDowell had an opportunity to review with Sergeant Kelley the weapons discharge process. Sergeant Kelley stated LCSO is still researching protocol from the County's standpoint. The application site at the Christian Church was inspected, and approved by all parties. The other applications are on administrative hold at this point. Mr. McDowell remarked that he really feels that City lots within our town are too small to safely discharge weapons. The previous ordinance was fairly effective, and urges Council to consider changes to this current ordinance. The business registration permit process was passed at the last Council meeting, and that process will roll out as soon as possible. Council



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felt that all businesses in town should be charged, even existing businesses. The fee is a nominal, one-time fee of \$15, which unless the business changes, stays in effect for the duration of the business. The City requested an extension for our water rights from the Oregon Water Resources Department (OWRD), based on the outcome of the Cottage Grove case. We got a letter granting said extension. Willamette Neighborhood Housing Services contacted us regarding the CDGB and HUD changing their numbers. This change will not impact the current status, but may require us to do a survey in the future. Sweet Home Sanitation will be here next month. The auditors have supplied us with the preliminary audit numbers. Staff will be working on that soon. There is a new grant modules online web service available. You type in your parameters and they seek out grant opportunities for your organization. Councilor Cole also wanted to share another grant opportunity with the Mayor and Administrator. *Councilor Gerber made a motion to authorize Mr. McDowell and Mayor Don Ware to investigate the grant module service. Councilor Cole seconded the motion, and it passed unanimously.*

4. Library Report. No comments.
5. Court Report. No comments.
6. Council Comments. No comments.
7. Citizen Comments. John Voight, 668 Calapooia, stated that he would like to be added to next month's agenda. He has consulted with his attorney, and has been told that there is no reason the City cannot grant him access to his newly acquired property off of Sage Street. Regarding the City's weapons discharge policy, he stated that he felt that any arrows being shot in town is a very bad idea.

Randy Simpson, Sheep Head Road, was present and stated that he feels very misunderstood in Brownsville. He said that last month he brought his attorney because he feared an action against them from the City. He stated that he has not donated any more medical marijuana since the last Council meeting. He again asked for Council to lift the ban.

Allen Buzzard, 220 School Avenue, wanted to offer input on the street tree plan for Spaulding Avenue. He feels that brick or concrete might be a better building choice instead of wood for longevity. He congratulated Randy Simpson for talking about an issue that is polarizing the city. Tony Koontz, Brownsville, spoke next. He applauded Mayor Don Ware for taking the time to study the marijuana issue. Mr. Koontz has been an educator for 35 years in the Harrisburg School District. He said that contrary to what he has heard people say, he believes that marijuana is a gateway drug. He has witnessed this in his own family with his son. He stated various statistics on drug use and marijuana in particular. He is concerned that people would think that using marijuana would not have an impact on our society, especially our youth. He implored Council to continue to take a good hard look at the impact of marijuana on our society. Barb Koontz spoke next and stated that she loves living in America and the freedom of choice that we all have. She is deeply concerned about having a marijuana dispensary in our downtown core. She would like to see the medical marijuana dispensed through a pharmacy just like all other drugs that are helpful. Her family has suffered tremendously due to marijuana and the choices that her son and his friends have made in their lives. She has seen real harm done. Ms. Koontz stated that she is grateful for the moratorium, and she prays for wisdom for the City.



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She reminded Council that there are lots of opportunities for people to get their drugs in other places. Gayle Simpson spoke next and stated that if marijuana was legalized, it would remove the street element. Dispensaries are under strict regulations, and that would eliminate the black market even more, she claimed.

LEGISLATIVE:

1. **O 748: Public Works Standards, Accessory Structures, & Fences (First Reading).** Mr. McDowell informed Council that basically this ordinance incorporates Public Works Standards into a workable model for the City. He has notified the Department of Land and Conservation's Ed Moore (DLCD) of the proposed ordinance as required by State law. Staff is asked to do planning and zoning with a formalized permitting process. The way it has been done in the past has led to many problems. Zoning rules, etc., are impossible to enforce without inspections. The Zoning Code is one of the only ways for the City to enforce City laws. If Council wants refrigerators on the front porches, it is certainly Council's right to allow. Last October Staff brought a summary of abatements for the summer season and some recommendations for improving the abatement programs. No changes were made, and perhaps Council is not ready to make these changes. What Staff is requesting is the ability to implement and carry out direction a Code that is able to be enforced and apply equally throughout the City. For the last three years while working on major projects, Mr. McDowell, Mr. Frink, and City Engineer Ryan Quigley have been diligently trying to work with the existing Code and prevent problems and issues for future water and sewer infrastructure. We are here tonight to talk about what more a formalized ordinance concerning Public Works standards, accessory structures and fences will look like in practicality. A new construction permit has been created with a focus on streamlining the process for ease of citizens and staff. The Planning Commission recommended adding a section for the applicant to hire a surveyor to certify that they hit the 1' above flood elevation requirement for buildings on the application. Councilor Cole asked if the Planning Commission has reviewed the form. She would also like to suggest adding the Historic Review Board requirement to the process. Fence requirements were discussed, in particular the chain link material and placement. Councilor Van Sandt stated that she had no problem with people having chain link fences in their front yards. She stated that she thought this might be another case of the ordinances being too specific. Councilor Shepherd stated that a chain link fence may fall within the vision clearance parameters, and that he would like to keep the language about chain link in the ordinance, and not exclude it. Councilor Cole supports the existing chain link fence wording as currently presented. Deer fence requirements were also discussed. Mr. McDowell circulated a picture showing several fences around town that were built on the right-of-way and shows the difference between a properly and the actual right-of-way. Clearly, this is an issue and needs to be addressed. For the fence ordinance, it seems more information is needed. Staff will report back to Council regarding deer fence and chain link options.
2. **O 750 Imposing a Tax on Marijuana.** Mr. McDowell gave a small preface and then turned over the floor to City Attorney Lauren Sommers. Mr. McDowell stated that Council needs to keep in mind that everything to do with medical marijuana is



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really in a flux at this time due to Measure 91. If SB 1531 passes, the State thinks that they have the right to say you, the City, SHALL allow dispensaries, and you SHALL do this and that. It remains to be seen what will really happen. A lot of cities are passing these ordinances in effect before the law is voted on as it will be too late after the law passes to then go back and retroactively enforce a tax. Mr. McDowell directed Council to find in their packet an ordinance that would allow the City to tax both medical and recreational marijuana. The ordinance will impose the taxing structure and how the tax will be collected; the resolution will set the rates. Council can adjust the rates as they see fit. Lauren Sommers also directed Council to review the draft ordinance in their packet. She said that cities have done a number of different things: some are taxing both categories of medical and recreational, some are taxing just recreational. There are a number of ways of going about this; it will simply boil down to policy choices that Council will make. The purchaser pay the tax, the seller will collect the tax, and be allowed to keep a small administrative portion of the tax. The tax will only apply to licensed sellers, and only retail sales will be taxed, growers are not taxed. In terms of time lines, the vote will take place on November 4th, and the Measure will take effect on December 4th. In order to have the argument that the City had a tax in place before the Measure, Council is asked to implement this ordinance before December 4th. The resolution can be adopted at the same time, but can be adopted at a later time as well. Ms. Sommers recommends adopting the ordinance tonight so that it can be "grandfathered" into law later if necessary. Councilor Cole stated that she does not support a tax on medical marijuana, but will support a tax on recreational marijuana. Rates were discussed, and Mr. McDowell informed Council that the reason for choosing a 6% tax rate is because the other franchise agreements and transient room taxes that the City collects fall generally between 4% & 8%. Councilor Gerber agrees with Councilor Cole that we don't tax medical marijuana. Councilor Shepherd would like to tax both at the 6% to be fair and across the board. He sees no reason not to tax both. Councilor Gerber stated that by not taxing the medical marijuana, it would reinforce the validity of its medicinal properties. We tax rooms, but that is more of an entertainment than a medical issue. Councilor Van Sandt agreed with Councilor Gerber and Councilor Cole – 0% tax on medical marijuana. Ms. Sommers reminded Council that the rates can be set when the resolution is enacted; for now, this is just discussion. The ordinance is broad enough to encompass both medical and recreational marijuana. Ms. Sommers also informed Council that in section 14 there is some missing language. Basically the general penalty provision will be used to enforce this ordinance. *Councilor Gerber made a motion to amend O 750 as recommended by legal counsel. Councilor Cole seconded the motion and it passed unanimously. Councilor Van Sandt made a motion to authorize the first reading of O 750 by title only. Councilor Cole seconded the motion and it passed unanimously. Councilor Gerber made a motion to authorize a second reading of O 750 by title only. Councilor Chambers seconded the motion and it passed unanimously. Councilor Cole made a motion to adopt O 750. Councilor Shepherd seconded the motion and it passed unanimously.*

3. R 2014.19: System Development Charges Reversion. Mr. McDowell informed Council that this resolution refers back to Council goals. This reversion will revert



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the SDC rates back to the 2006 rate. The reason for the rate decrease was to make it affordable to locate and live in Brownsville. The rate reversion will put the City back in the middle of the pack in terms of SDC's in the Willamette Valley. *Councilor Cole made a motion to approve R 2014.19 as presented. Councilor Van Sandt seconded the motion and it passed unanimously.*

4. R 2014.20: Adopting a Marijuana Tax Rate (6%). This is a companion resolution to the O 750. It will be discussed at the November meeting.
5. Don and Debbie Nealon Proclamation. Mayor Don Ware made a proclamation recognizing and congratulating the Nealons on their improvements to their location at 105 E. Bishop Way and their reinvestment in the community. All Council members will sign the proclamation and Staff will frame it appropriately.

ACTION ITEMS:

1. Official Appointments. Mr. McDowell informed Council that all current serving members of the Park Board, Budget Committee, and Historic Review Board would like to be reappointed. *Councilor Cole made a motion to approve appointees as provided by Mr. McDowell. Councilor Van Sandt seconded the motion and it passed unanimously.*
2. Satellite Providers and Local Coverage Request. Several community members have requested that the City petition the government, or the powers that be, to enable the local area residents to be able to choose between our "local" news channel of either Eugene or Portland via satellite. It makes a lot of sense from a public safety standpoint as well to be able to get more local news and alerts. Portland weather is very often quite different than south valley weather. *Councilor Gerber made a motion to authorize Mr. McDowell and Mayor Don Ware to go forth on this issue. Councilor Shepherd seconded the motion and it passed unanimously.*

DISCUSSION ITEMS:

1. Bi-Mart Willamette Country Music Festival. McDowell informed Council that Linn County recently held the second reading on changes having to do with their mass gathering permits, etc. They have held work sessions that included the Festival folks, and they seemed to go well. However, at the last work session, the Festival folks were basically told that it was the Commissioner's ordinance and some people were not going to like the changes. If some of the changes that they are proposing take effect, it could result in negative outcomes for the WCMF according to them. The Festival folks are hoping for another work session to work out any differences and have more conversation on the topic. Councilor Cole stated that she would be terrifically disappointed if the WCMF is chased away. They have helped our community and organizations tremendously.
2. Emergency Contractor Resolution Concept. Mr. McDowell informed Council that Staff is looking at implementing levels for the Emergency Preparedness



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Committee. Level 1 will deal with Goods and Services; Level 2 will deal with Non Profit such as Churches; and Level 3 will deal with individuals. The resolution that Council will see soon will have these different tiers. More information to come. McDowell will be forming a committee soon as per ordinance.

3. Recreational Vehicles. Mr. McDowell informed Council that we have had some problems in the past with the current RV language due to gray areas. Councilor Cole and Mayor Don Ware offered to work with Mr. McDowell to consider ideas and concepts.
4. 2015 Council Meeting Schedule. Mr. McDowell asked Council about the 2015 Meeting Schedule and what they would like to see. Last year Council recessed during August and that seemed to work well with everyone's schedule. *Councilor Van Sandt made a motion to approve the 2015 Council Meeting Schedule with a recess in August. Councilor Cole seconded the motion and it passed unanimously.*
5. September Financials. No questions or concerns.
6. Leash Law. Mr. McDowell was recently presented with a Leash Law petition to require dogs to be on leashes city wide. Councilor Cole and Councilor Chambers would like to see something for future legislation. Council encouraged Mr. McDowell to go forth.

COUNCIL COMMENTS: Councilor Cole reiterated that she would like to see the Historical Review Board (HRB) have more teeth. Perhaps the Park Board could refer their plans/ideas (for street furniture, signage, remodeling, etc.) to the HRB for their approval. She stated that she thinks the HRB has a real value as a Board. * The HRB only oversees the historical downtown area. Councilor Van Sandt and Councilor Gerber agree with Councilor Cole. Councilor Cole stated that currently the HRB is just a review Board, and she would like them to be utilized more effectively. It may provide some consistency. Mr. McDowell summed up Councilor Cole's comments. She is requesting that the street tree project be referred to the HRB for approval. Mr. McDowell replied that the Parks and Open Spaces Advisory Board (POSAB) has several requirements by State statute and there is a clear line of sight for these types of projects to be reviewed and recommended by the City's POSAB. This street tree idea has been in the works by the POSAB for several years. This recommendation has been well thought out and reviewed by this committee for quite awhile. The legalese of what Councilor Cole is suggesting is that the ordinance would need to be changed to require POSAB to have a review done by the HRB. Council already has the authority to use any standing board or committee for review or to create an ad-hoc committee for any purpose. *Councilor Van Sandt made a motion to have the street tree plan reviewed by the HRB for their recommendations. Councilor Cole seconded the motion and it passed unanimously.* Council would like Staff to look at amending the ordinance to require the POSAB to review with the HRB any plans for the historical downtown area. Councilor Boyanovsky thanked Attorney Sommers for being present and making sense for Council out of all of the legalese.



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ADJOURNMENT: *Councilor Shepherd moved to adjourn at 9:34 p.m. Councilor Gerber seconded the motion, and it passed unanimously.*

A blue ink signature of S. Scott McDowell, consisting of stylized initials.

City Administrator S. Scott McDowell

A black ink signature of Don Ware, written in a cursive style.

Mayor Don Ware

- * - *Councilor Cole clarified her intention at the November 25th, 2014 Council meeting. Please refer to those meeting minutes for more information.*