



Council Minutes

October 24th, 2017

ROLL CALL: Mayor Don Ware called the meeting to order at 7:00 p.m. with Councilors Cole, Block, Shepherd, Chambers, and Gerber present. Councilor Neddeau was excused. Councilor Gerber arrived at 7:29 p.m. Administrative Assistant Tammi Morrow, Public Works Superintendent Karl Frink and City Administrator Scott McDowell were also present.

PUBLIC: Kim Clayton, Jannea Deaver, Elizabeth Coleman, Tricia Thompson, Marilyn Grimes, Robert & Alfreda Miller, Bryan Bradburn, Greg Klein, (LCSO), Jorden Parrish (*The Times*), and Alex Paul (*Democrat Herald*).

The pledge of allegiance was recited.

ADDITIONS AND DELETIONS: McDowell would like to add under Action Items: 10) D. EcoNorthwest. There are no deletions tonight.

MINUTES: Councilor Cole made a motion to approve the September 26th, 2017 meeting minutes as presented. Councilor Chambers seconded the motion, and it passed unanimously.

PUBLIC HEARINGS OR PRESENTATIONS: None tonight.

DEPARTMENT REPORTS:

1. **Sheriff's Report.** LCSO Sergeant Klein reported that September had 10 traffic citations, 9 warnings, 72 complaints, and 43 hours for traffic enforcement. He stated that recently there have been a lot of issues with juveniles out after curfew. The parents of the juveniles have been issued a warning, and the next step will be to issue citations. He will report back next month on this issue. Councilor Cole asked if breaking curfew causes problems, and Klein replied that they are trying to be proactive for the summer months and the potential increase in vandalism.
2. **Public Works.** Public Works Superintendent Karl Frink reported that there have been a few small water leaks, mostly at the customer shut off valves. The influent control valve is back on-line. On Friday he switched over from the river to the City wells. This was timely, as the river was a wreck on Saturday due to weather. The sewer collection system on Depot Avenue has been installed, and the City will be testing it soon. Public Works has been doing a lot of tree maintenance in the last few weeks. Frink talked with the street painter. They assured us that that project would be finished up this year. As the weather is now turning, it looks like that will not be happening; he will be looking for a new contractor next spring. The Park Caretakers left today, and we will close the park on October 31st, 2017 as per ordinance. PW has marked several cemetery plots and headstones in the last month. Councilor Cole congratulated Staff for receiving the Gold Award from City Counties Insurance. She said Staff is very appreciated by Council. Mr. Frink stated that he is proud to get this safety award.
3. **Administrator's Report.** McDowell stated that on November 9th, 2017 the Oregon Lottery and the Brownsville Saloon will be doing a grand opening event in the post office parking lot and the City lot north of the doctor's office on Spaulding. Approval has been secured from the interested parties.



Council Minutes

McDowell mentioned again that utility billing and financial accounting software will again be looked at. There is funding in the budget, and it needs to be expended by year end.

Vice President Gary Shepherd and Treasurer Cindy Clark of the Brownsville Canal Company have tendered their resignations from that organization. Council may remember that last May the group had voted to disband. When the City found out, the Canal Company was informed that without insurance, the City could not provide the water for the Canal. Insurance was reinstated and water flowed this year. McDowell and certain Councilors have yet to meet to discuss the implications. If insurance is not in place by April, the City will opt to not put water in the ditch this year as the liability to the City is too great.

McDowell reported that the Bi-Mart Willamette Country Music Festival (BWCMF) is contemplating relocation. The Anderson's would like to focus on farming and farming operations. BWCMF may hold one more event here in 2018 or it may move to a new location this next summer. More information as it becomes available.

President Debbie Berry, Eugene Kennel Club, has informed the City that after 39 years their group has disbanded. They have sent us a \$3,600 donation as a parting thank you for the many years they hosted their dog show in the Park. She also wanted to express her sincere appreciation to Council for their many years here.

McDowell is still in the process of vetting Inspections Unlimited for the inspection project for the Rec Center and Pioneer Park.

McDowell recently attended a GoTeam meeting around economic development on a grander scale. This is the first meeting that may be gaining some traction with some of the big players like Corvallis, Albany, LBCC, OSU, etc.

Before Clean-up Day Staff issued about 20 request for action letters (RFA's) to community folks, reminding them of the Clean-up Day and services offered. One particular property is in super bad shape. LCSO Sgt. Greg Klein alluded to some of these issues at 517 Averill. Sweet Home Sanitation and Public Works crew met there today and worked on the issue for about 35 minutes. There will be further cleanup in 2 weeks if the situation is not corrected before then. There is also a theft of services investigation underway at this location.

McDowell extended a contract with Don and Carol Neddeau to perform Park Caretaker duties again next year. They will be returning from Arizona in February, and their duties will officially begin again in May and last through most of September. McDowell indicated that they would be allowed back in the Park on February 24th, 2018 and will perform light duties per contract for camping early.

McDowell recently had the Council Chambers and Community Room entry doors painted to be more easily recognizable.

4. **Library Report.** Mayor Don Ware stated that things are happening well there.
5. **Court Report.** No comments.



Council Minutes

6. **Council Comments.** Councilor Chambers commented that the American Legion is having a Haunted House this year. Entrance requires \$2 or a donation of 2 cans of food.

Citizen Comments. Marilyn Grimes asked if the City really needs to have an ordinance about growing marijuana? The plants are not hazardous in the green growing phase. She stated that it is our legal right to grow 4 marijuana plants, and the City has no right to regulate marijuana. Grimes believes if you regulate marijuana, you will need to regulate other substances as well.

Robert Miller stated that Bryan Bradburn sprayed roundup on his plants and his garden; not a very nice thing to do. Miller stated that after this he got pretty radical with Bradburn. There are other people on his side, and they are watching him. He wanted to be sure that Bradburn knew this.

Bryan Bradburn spoke next and feels that Miller's last comment was a threat to him personally. Regardless, he feels compelled to speak about the issue. Life is short and after 5 1/2 months of marijuana, he is exhausted. He lives it every day. As much as has been said, Bryan does not dislike the Millers. They are simply at odds about this issue. What he would like to propose is that they all sit down and see what a compromise might be. He and his family need to not be stressed about the situation. He would like some resolution that helps everyone deal with the situation in the best way, and not infringe on others. Miller has a right to grow his plants, but Bryan needs to have some rights as well. He's looking for a way to live peacefully with his neighbors. We are a small community and we need to try to get along, that is all he desires. He's proposing to come together and try to solve the problem. He is still in favor of an ordinance.

LEGISLATIVE:

A. O 769 – Architectural Front (Second and Final Reading). Councilor Shepherd moved to read O 769 by title only. Councilor Chambers seconded the motion, and it passed unanimously. Councilor Shepherd moved to approve O 769 as presented. Councilor Chambers seconded the motion, and it passed with Councilor Cole opposed, all others in favor (5-1).

B. O 770 – Marijuana Home Grow Operations (First Reading). Councilor Cole moved to approve O 770. Councilor Shepherd seconded the motion. Discussion was called for. McDowell explained that the City of Eagle Point has passed this kind of marijuana ordinance to keep odor down. City Attorney Ross Williamson reviewed this sample ordinance and removed several items. Marijuana is still illegal under federal law, so comparisons with alcohol or any other legal substance is not applicable. This is an issue that the City should address in some manner.

McDowell read an excerpt from an email received from Commissioner John Lindsay. *"The issue as I understand it tonight, is the offensive smell from the production of marijuana on local residential property. There are numerous cases being litigated in both state and federal courts right here in Oregon taking on the issue of the stench that emanates from these drug grows. Marijuana does not enjoy the "right to farm" protections afforded under ORS 30.936 because the properties are not zoned as agricultural resources. Additionally, Oregon Administrative rule prohibits the growing of marijuana*



Council Minutes

in residential zoning. As with most nuisance activities in certain jurisdictions, those activities can be barred from use under the government of jurisdiction.

I have received both calls and emails from residences of Brownsville that have had issues of their livability being affected by this drug activity. In recent cases that I am dealing with, there is much discussion among property appraisers and the impacts of pot growing and properties they occur on. Marijuana contains certain chemicals that eventually absorb into porous material and the smell cannot be removed. Appraisers are now considering that this reduces the value of property by 10% and has potential impacts of neighboring property values. Appraisers are also studying the impacts of smell trespassing onto nearby properties. For residential properties these impacts are considered to reduce values perhaps 5-10%. Just as nobody wants to have friends over onto the back deck to smell sewage, most people do not want the skunk odor. Linn County has made growing of marijuana against county code in residential areas."

Councilor Gerber arrived at this point of the meeting (7:31 p.m.).

McDowell continued by saying that this is encouraging news from Commissioner Lindsay for abutting neighbors rights. Council has heard several complaints from City residents experiencing real health issues and olfactory offenses in residential areas. Growing marijuana, inside or out, produces atrocious odors that many find offensive. Mr. McDowell stated that some parts of the ordinance as stated could be unenforceable, however some parts can be reworked to be a little stronger. The City Attorney is a little concerned about some of the enforceability issues and removed the signage portion citing a freedom of speech concern. Councilor Cole asked what the results from Eagle Point are. McDowell stated that he did not know, but truly it is irrelevant as the City needs to decide whether they are going to try to regulate it or not. We know that we have 4-5 property owners growing sizable marijuana grows. Staff has been around town and have witnessed complaints in these areas. There is one on north Oak Street that emanates about 300' in all directions. The best description is a very strong skunk smell that permeates everything.

The only thing that can be used to address the odor is a carbon filtration system, and even that has limitations. When it is in harvest, there is not much you can do to abate the odor. This problem is only going to grow, as more and more people decide to grow marijuana. McDowell implored Council to begin a letter writing campaign and let the legislators know the consequences of allowing marijuana grows to be established in residential areas, and truly all over the State. Another way to approach the issue might be to address the number of plants grown in town. McDowell feels that one thing Council could do is to limit the amounts of plants folks can grow, and also establish penalties for exceeding this limit. Then the LCSO can go in, and actually do a count, and the City could proceed with levying fines and penalties as needed.

Another item to consider is to establish set back rules. All plants must be a certain distance from an adjacent property line. Setbacks will not help with odor. One plant can easily be 10 feet tall and 5 feet wide. Councilor Gerber asked



Council Minutes

if there is a similarity between our stringent weed ordinance and what we are trying to do here. In some ways this is true, except these nuisances are way more impactful than blackberries growing on a neighbor's fence. Gerber wondered if we can regulate marijuana this way.

McDowell suggested Council consider the path Commissioner Lindsay stated. Should it be allowed at all in residential areas? Councilor Block was wondering the same thing. The email was received late in the day, and McDowell was unable to do research on the topic. McDowell is trying to give options here. It is already required to be out of view by State law, so there was talk of perhaps bolstering that angle as well.

Councilor Cole commented that she did not think the Eagle Point ordinance and information is irrelevant. Are they finding that their litigation is increasing, their law enforcement being tested, or has the ordinance had an effect? She would like to know this information before we create legislation here in Brownsville. Is there some way that we could find out? She is willing to call down there are talk with folks if needed. McDowell will do some research and try to get some information for Council.

McDowell would like to hear from Council. Are they in favor of moving forward with reviewing another ordinance in November? Councilor Cole and Councilor Chambers says they are in favor, conditionally. Councilor Shepherd reacted in favor, saying if you lived in the right spot, you can smell it all the time. He feels Council has an obligation to ensure that residents don't have devalue in the property values due to neighborhood marijuana grows. Councilor Gerber would like to move forward and investigate the residential angle, and is also interested in the Eagle Point information. Mayor Don Ware stated that he didn't think we should rush into this. Councilor Gerber commented that it would be another first reading. McDowell responded that yes, it would be, but Council could pass an emergency ordinance at the next meeting if they chose to. Councilor Chambers asked if there will be a distinction between medical and recreational? McDowell responded that the odor is the odor. The rules are the same for home grows, but no one is doing any enforcement. He will be working on a proposed rewording for next meeting.

ACTION ITEMS:

1. **2018 Council Schedule.** *Councilor Cole moved to approve as presented. Councilor Gerber seconded the motion, and it was approved unanimously.*
2. **Recess December Council Meeting.** *Councilor Shepherd made a motion to recess the December meeting as there may be a quorum issue. Councilor Cole seconded the motion, and it passed unanimously.*
3. **Appointed Officials.** *Councilor Cole moved to approve candidates as noted on the handout for Budget, Parks, and Library, and to authorize the City to advertise for other vacancies. Councilor Chambers seconded the motion. Discussion followed. Councilor Gerber asked if we automatically continue to reappoint or should we consider options to open it up for others to serve? McDowell stated that*



Council Minutes

frankly there are appointed officials in good standing, and others in not good standing. The City has issues communicating with members and some appointees don't execute their duties.

When you're on a City board or committee, appointees need to remember to represent the City. However the City has experienced people favoring personal agendas and "pet" projects. Most members do a very good job for the City. For example, Gary Compton has served well for over 25 years, runs a very good meeting, handles his position well. So the system has always been to ask members if they would like to be reappointed. The problem is now that certain appointees are not performing properly and causing harm to the City because of their behavior. McDowell also noted that there is no vacancy on the Planning Commission. Councilor Shepherd would like to see an advertise in the paper to fill these positions. *A roll call vote was called for, with Councilor Cole, Councilor Chambers, and Mayor Don Ware voting in favor, and Councilor Shepherd, Councilor Gerber, and Councilor Block voting against. The vote was 3-3, the motion failed. Councilor Gerber made a motion to advertise all positions, requesting existing members to reapply, and then consider the appointment for all boards. Objective criteria with set questions and a rating system could be used if there are more folks than needed. Councilor Shepherd seconded the motion.* Discussion followed. Councilor Cole stated that she would like to understand the reasoning behind this, and how will they be assessed? Councilor Shepherd suggested having office staff evaluate as they have the most contact with folks. McDowell suggested having Mayor Don Ware and one staff member evaluate and make recommendations. Councilor Gerber like the idea of having a job description, and what the position entails. Councilor Chambers stated that there are current people who are seasoned members. Councilor Shepherd suggested that some folks may not have the chance to apply, as the positions are filled automatically. Councilor Cole stated that one concern is to have a fair and objective criteria for making a decision. Councilor Gerber suggested maybe having a set of questions for all to answer, perhaps anonymously. *A vote was called for with all voting in favor, with only Mayor Don Ware opposed, motion passed.*

DISCUSSION ITEMS:

1. **EcoNorthwest.** McDowell provided an email that was received late in the day today for Council. The e-mail is from Executive Director Fred Abousleman, COG, describing a regional economic development study currently underway for the region. Several area partners (LBCC, OSU, OCWCOG) have pledged \$1,500 each towards the estimated cost of \$9,000. McDowell recommended pledging \$500 toward this project. Other area cities will also be asked to contribute. *Councilor Gerber made a motion to pledge \$500 for the project. Councilor Shepherd seconded the motion, and it was approved unanimously.*
2. **Camping Changes.** McDowell stated that as Council may remember, camping was closed by emergency this season. Park Board has made recommendations for Council including limiting camping to Friday, Saturday and Sundays. Some exceptions will apply, such as a mid-week holiday. Council encouraged McDowell to go forth and bring back to Council what will be needed.



Council Minutes

3. September Financials. No comments.

CITIZENS COMMENTS – Bryan Bradburn returned to the podium and stated that upon reflection he is very disturbed by the threats issued by Mr. Miller. He is now very concerned for his physical safety, and wondered if he needs to contact LCSO.

Robert Miller returned to the podium and apologized to Mr. Bradburn stating that he did not mean to issue threats to him.

Mr. McDowell offered to facilitate a negotiation with the parties directly involved in the situation.

Councilor Cole stated that she appreciated that those concerned are working through this together and encouraged them to use their heart and try to cooperate with each other.

EXECUTIVE SESSION – Mayor Don Ware read into the record:

- Oregon Revised Statutes, Chapter 192.660 governs the conditions for a public body to convene in an Executive Session. The City will invoke Section (h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.
- Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session.
- A final decision may be made after this Session.

Executive session was entered into at 8:06 p.m.

Executive session was adjourned at 8:30 p.m.

Councilor Block made a motion stating that the City has no other choice but to withdraw for another hearing or face a costly lawsuit that will likely not end in favor of the applicant according to the City Attorney and those in the know. The next marijuana hearing is set for November 14th, 2017 at 7:00 p.m. in Council chambers. Councilor Shepherd seconded the motion, and it passed unanimously.

ADJOURNMENT: *Councilor Shepherd moved to adjourn at 8:33 p.m. Councilor Gerber seconded the motion, and it passed unanimously.*

Attest:

A blue ink signature of S. Scott McDowell.

S. Scott McDowell
City Administrator

A blue ink signature of Don Ware.

Don Ware
Mayor