



Council Minutes

October 27th, 2015

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

PUBLIC: Sergeant Greg Klein (LCSO), Kaye Fox, Alex Paul, Mark Elliot, Allen Buzzard, Randy Simpson, Gayle Ashford, Chenoweth Robertson, Patty Linn, Merritt Schilling, Bob Babcock, Debbie Jensen, JoAnn L. Neddeau and June Schlosser.

The pledge of allegiance was recited.

ADDITIONS AND DELETIONS: McDowell added Resolution 2015.24 Water System Improvement Project Change Orders. Also, Council found sample job description language for an emergency preparedness coordinator, the aforementioned Resolution and a copy of Mr. Simpson's Business Registration Application on their desks.

MINUTES: Councilor Gerber made a motion to approve the September 22nd, 2015 meeting minutes with two typographical corrections. Councilor Shepherd seconded the motion. The motion passed unanimously.

PUBLIC HEARINGS OR PRESENTATIONS:

Brian Michaels – Randy Simpson's Business Registration Appeal – Mr. Brian Michaels, attorney, had been retained by Mr. Simpson to represent the appeal but failed to appear. Mr. Randy Simpson decided to make the appeal himself. The City Administrator had denied the approval of Mr. Simpson's business registration based on Brownsville Municipal Code 5.20.010, paragraph D.

Mr. Simpson began his appeal by saying he wasn't sure why his lawyer was not present. He indicated that he really wasn't prepared to make this presentation. He stated that they now have the Kirk's Ferry Salon location in full compliance with the dispensary rules. They received their provisional license two months ago. They had until September 15th, 2015 to give the State notification of inspection and they did that. Mr. Simpson hired a private marijuana consulting firm out of Portland to inspect the facility. The owners of the company used to inspect for the State. Randy complied with their recommendations. Mr. Simpson indicated that what he felt was the most significant thing for Council to consider was that House Bill 3400 allows local jurisdictions to opt out, however, existing dispensaries are grandfathered. Mr. Simpson believes he meets the criteria in House Bill that makes him a grandfathered dispensary. Mr. Simpson did not feel that the Cave Junction lawsuit was relevant to his situation. Council's prohibition of Mr. Simpson's dispensary is illegal under State Law according to Mr. Simpson. Mr. Michael's believes they have a valid argument.

Mr. Simpson has spent \$30,000 to get the location ready. Mr. Simpson feels that the City's ordinance is no longer valid as of July 1st, 2015. They are planning to open up at that location. Mr. Simpson said they do not want to fight the City on this issue but that their lawyer is chomping at the bit because he is confident the Simpson's will win. Mr. Simpson pledged to Rick Dominguez that they would pay for a new HVAC system for the Senior Center. He would much rather do that then spend the money on a lawsuit against the City.



Council Minutes

Mr. Simpson said, "If you don't let us open, there will be a lawsuit." Simpson explained that they were having their marijuana giveaways on hot days and the Senior Center was sweltering. Mr. Dominguez told them they really needed a new HVAC system. Mr. Simpson pledged that if they were allowed to open up, they would replace the HVAC system at the Senior Center.

Mr. Simpson continued by saying, "I don't know how much money you're willing to spend... but I don't want to see Brownsville go bankrupt on this issue."

Another major issue is that everyone in Brownsville knows what it is like without them in business, how will voters be able to make an informed decision at the November 2016 general election? We have a year from now to prove that there will be no negative impacts to the City. Mr. Simpson said that in one year he has not seen one negative article about medical marijuana dispensaries. Randy elaborated on recreational marijuana facilities in Bend, Oregon.

"Please give us a chance to show you we can be good neighbors..." Simpson said. Recreational sales are out of the picture because it has been decided by the State.

Mr. Simpson feels that vote was skewed against them [referring to the advisory vote] because medical marijuana dispensary was put in with recreational marijuana. Simpson said, "A lot of people are okay with medical marijuana but don't want the party scene of a recreational facility... I get that." Mr. Simpson thanked Council.

Mayor Ware turned the meeting over to City Attorney Lauren Sommers. Mrs. Sommers went through the procedural pieces of the appeal providing Council with options. Sommers cited the Brownsville Municipal Code and why the application was denied. Sommers said that Council could overturn the decision and grant the license or amend the ordinance.

Mrs. Sommers said, "Green Cross has also submitted a Conditional Use Application as well but that is not part of the proceedings here this evening."

Mr. McDowell clarified the business street address as 221 W. Bishop Way as was discussed with Mr. Simpson and Ms. Ashford in a meeting at City Hall yesterday with Administrative Assistant Elizabeth Coleman. McDowell asked Simpson if he purchased the building from Mr. Hopla and Mr. Simpson indicated that he had not. McDowell felt that those two things should be noted for the record.

Council Gerber asked about House Bill 3400 and Mr. Simpson's claim that he is a pre-existing dispensary. Sommers explained the implications of the House Bill by stating that the medical marijuana dispensaries would have had to register with the State and had an approved Land Use Application. Sommers continued saying that the House Bill does not address the City's Business Registration Ordinance which is what this appeal is about.

Mayor Ware asked a question about the intent of a lawsuit. Lauren Sommers indicated that she would not speculate as to what the claims would be but that she would work to tailor the City's defense around the actual claims mentioned in the lawsuit.

Mr. Simson added some commentary from the audience about the business registration ordinance.

Councilor Van Sandt said her biggest issue is to uphold what the people voted on even though she agrees with Mr. Simpson that the wording was not ideal. She feels that next



Council Minutes

November is another opportunity for the voters. Councilor Van Sandt continued by saying that holding a lawsuit over the head of Council may not be the best PR.

City Attorney Lauren Sommers clarified the advisory vote piece.

Council Van Sandt and Mayor Ware did not want to vote different because of the threat of a lawsuit.

Councilor Gerber restated the difference between House Bill 3400 and the Business Registration ordinance. Sommers mentioned the Cave Junction case and the possible implications of that particular ordinance. The Cave Junction case has been appealed by the State of Oregon and it may take another year. McDowell speculated based on conversations with other legal counsel that it will probably go to the State Supreme Court.

Councilor Gerber made a motion to uphold the City Administrators decision and deny the applicant's business registration application. Councilor Shepherd seconded the motion. The motion passed unanimously.

Mayor Ware called a five minute recess.

DEPARTMENT REPORTS:

1. **Sheriff's Report.** Sergeant Greg Klein was present. Klein said traffic citations were up last month and went through a few of the numbers. Klein reported that they have spent 260.5 contract hours in town last month. Deputy Sutton had 17 traffic citations last month. Klein indicated that the LCSO is really running traffic through the School Zone on OR 228.
2. **Public Works.** Mr. Frink reported that Public Works is in the process of scraping filters at the Water Treatment facility. The water projects are nearly complete. Averill Street water line has been completed. GR 12 is nearly complete. Frink reported that seven cotton wood trees had to be removed due to the condition of the trees. A maintenance firm was hired to repaint curbing and such around town. The Library had three new units installed for HVAC. The lighting at the Library is in need of attention due to the T 12 bulbs used there. Energy Trust is working on the project with the City. Frink explained that the downtown lights have had issues. Norm's Electric is trying to run down a short in the wires. Frink reported that it has taken a very long time. The concrete project is pending one more quote; this project includes the sidewalk into Pioneer Park and the finalization of City Hall. Frink said that the infiltration gallery pump failed but has been repaired.
3. **Administrator's Report.** – Mr. McDowell reported that the City has received the audit from Boldt, Carlisle and Smith (BCS) and that he did not have time to complete the necessary resolution required by the report. Staff will be meeting to address the concerns from the report and to discuss those issues with Council. McDowell also said that a resolution would be needed for the concrete project due to the overall price of the contract. McDowell stated that Council may need to consider a special meeting in the next week or two to pass at least these two resolutions. Staff would like to award the concrete contract as soon as possible.
4. **Library Report.** Librarian Sherri Lemhouse was on hand to report to Council. Mrs. Lemhouse talked about story time and other events designed for children. Lemhouse will be working with Head Start this year because they will not be able to make it down to the Library as much as they have in the past. She wants to make



Council Minutes

sure the library stays in touch with those children. The new heating and cooling system is nice although there is a concern with the Reading Room that needs to be addressed. Public Works Superintendent Karl Frink is trying to address the lights issue. Author R. Ann Moore will be our special guest on November 7th from 2:00 p.m. to 3:00 p.m. for questions and answers. The annual book sale is coming up December 5th through the 12th; flyers will be sent very soon. Lemhouse highlighted the magazine selection at the Library.

5. Court Report. No comments.
6. Council Comments. No comments.
7. Citizen Comments. Allen Buzzard, 220 School Avenue, was concerned about the street patch on School Avenue caused by the construction of a neighbor's house. Buzzard wanted to make sure this was a temporary patch. Buzzard complimented Public Works Superintendent Karl Frink for the patching and street painting around town.

LEGISLATIVE:

1. Resolution 2015.23: Adding Right-of-Way on North Avenue. McDowell explained the history of a one foot strip that was deeded to a private company years ago when the subdivision was built that would prevent future construction. The company is no longer solvent and the City was able to purchase this one foot strip from Linn County. Councilor Shepherd asked if the costs would be passed along to the new property owners. McDowell indicated that the costs were less than \$200 and it is something the City should have never allowed.

Councilor Gerber made a motion to adopt Resolution 2015.23 as presented. Councilor Neddeau seconded the motion. The motion passed unanimously.

2. Resolution 2015.24: Authorizing Change Orders for the 2015 Water System Improvements Project. McDowell explained these change orders have been approved by City Engineer Jon Erwin and are articulate in the body of the resolution document. Pacific Power will be responsible for reimbursing the City \$777.01 for sidewalk repair.

Councilor Gerber made a motion to adopt Resolution 2015.24 as presented. Councilor Shepherd seconded the motion. The motion passed unanimously.

3. Arbor Day Proclamation. Mayor Ware proclaimed Arbor Day as November 4th, 2015.

ACTION ITEMS:

1. Authorize Central Linn School District Agreement. McDowell recapped the meeting the City had been invited to meet with the Central Linn Recreation Board and the Central Linn School District regarding possibilities for the Blakely property and facilities owned and operated by the Central Linn School District. The Central Linn School Board went on record at their May 11th, 2015 meeting to define goals



Council Minutes

for the property and are currently discussing possibilities with Willamette Neighborhood Housing Services (WNHS), a firm from Corvallis, Oregon.

The focus of the discussion was around the Blakely gymnasium. McDowell reviewed the concerns of the City primarily being the condition of the Rec Center on Park Avenue. Superintendent Gardner indicated that it cost the Central Linn School District about \$18,000 for the Blakely gymnasium. He thought that the roof and the paint needed attention within the next few years.

McDowell reported that the City puts quite a bit of money into the Rec Center every year to keep it operational. The City upgraded the roof and the paint along with floor maintenance that should allow the building to operate through the year 2028. The replacement cost for the floor is about \$100,000.

The outcome of the meeting was for Council to consider hiring an inspector to review the condition of the Rec Center and the Blakely gymnasium to determine associated costs and such.

McDowell stated that new information had come to light regarding the property deeds. Superintendent Gardner is currently reviewing that information. McDowell drew Council's attention to the report that was in the agenda packet and discussed briefly the bigger picture and the implications of possible Central Linn School Board decisions on Council processes and procedures as they pertain to the Planning Commission. Is the Central Linn School District planning additional gymnasiums as part of a possible school bond?

McDowell indicated that it is not City property or facilities.

McDowell recommended tabling this discussion for the special meeting or until November depending on the need for a special meeting. McDowell indicated that he had received a call from Mr. Merritt Schilling and asked if he had any questions or comments. Mr. Schilling and Mr. Bob Babcock indicated that their questions were answered.

Councilor Shepherd made a motion to table this item until Council has more information. Councilor Gerber seconded the motion. The motion passed unanimously.

Mayor Ware stated that if an agreement for the operation of the facility were to be agreed on, it would be very important to have a cost schedule split among the parties involved in the agreement.

Councilor Neddeau asked about the usage of the Blakely gymnasium. The Central Linn Recreation Board and the Central Linn School District currently use the building.

Councilor Shepherd made a comment about the financial viability of the Central Linn Recreation Board and their ability to partner for an additional space.



Council Minutes

2. Adopt Updated Employee Handbook. McDowell said that the model handbook City/County Insurance Services nearly tripled over the last ten years. McDowell thanked Staff for their review and assistance. McDowell said that he did miss some changes offered by Administrative Assistant Elizabeth Coleman. He would like to add those grammatical changes.

Councilor Gerber made a motion to adopt the updated employee handbook as presented with the provision to make grammatical and typographical changes. Councilor Van Sandt seconded the motion. The motion passed unanimously.

3. Approve Various Committee Reappointments. McDowell indicated that Mrs. June Schlosser will not serve another term on the Budget Committee. The City appreciates her contributions. Josh Kometz & Rob Wingren (*Planning Commission*), Pat MacDermott (*Parks & Open Space Advisory Board*), Jennifer Ashcraft (*Library Advisory Board*) and Jim Bitle (*Historic Review Board*) all agreed to serve another term.

Councilor Van Sandt made a motion to reappoint the members as presented with the addition of Mrs. Schlosser's decision to decline to service on the Budget Committee. Councilor Gerber seconded the motion. The motion passed unanimously.

4. Approve August 2016 Council Meeting Recess. Councilor Shepherd made a motion to approve a recess of Council in August 2016. Councilor Gerber seconded the motion. The motion passed unanimously.

5. Melero Lease Agreement. Mr. McDowell recommended tabling this item until the Council "drive around."

Councilor Shepherd made a motion to table this item until further review. Councilor Van Sandt seconded the motion. The motion passed unanimously.

Councilor Van Sandt reminded McDowell about the RV discussion. McDowell reported that the City has sent multiple letter to folks about excessive RV usage. McDowell and Administrative Assistant Tammi Morrow met with the LCSO to discuss the next step which is enforcement. McDowell explained some of the challenges with enforcing this ordinance, however the general idea is to keep people from living in recreational vehicles.

DISCUSSION ITEMS:

1. Emergency Preparedness Logistics. McDowell, with the permission of Councilor Van Sandt, indicated that Administrative Assistant Tammi Morrow, Councilor Van Sandt and himself had met to discuss this issue. Councilor Van Sandt is working up some language for changes to the ordinance. Staff has placed sample job description language for review. The outcome of the meeting was that Council would consider changing the ordinance and approving a job description through



Council Minutes

the end of the year and go out for advertisement in January and may appoint someone in February.

Mayor Ware said that we really need to get on this because of its importance to the community. Councilor Chambers wanted to remind everyone that the City has been trying to work on this issue and several problems have prevented good, meaningful progress.

2. Ash Street Water Line. McDowell reminded Council that the Budget Committee had set aside some money for the future redevelopment of the water line for Ash Street. The deal the City has forwarded to the property owner at the end of the street is if you provide an estimate for putting the water line in to City standards, the City will consider cost sharing on this project. The reason for the cost sharing idea is due to the current size of the line which is 1.5” which does not meet City standard. The City also has 12 connections on that current line. The City finally received a quote and Public Works Superintendent Karl Frink and McDowell had a chance to review the numbers. McDowell indicated that the property owner that has property for sale would like some type of commitment. McDowell recommended tabling this item possible for the special meeting because Council will need to see the numbers and consider another option such as a Local Improvement District (LID). The discussion was tabled until the next meeting by consensus.
3. Elected & Appointed Officials Availability Report. Council Gerber, Councilor Shepherd and Mayor Ware met with Mr. McDowell to discuss various attendance issues. The outcome of the meeting was to not reappoint that particular member due to attendance reasons. Council will stand on the ordinance and Council Rules regarding attendance and conduct. Councilor Gerber stated that everything would start “fresh” January 2016.
4. September Financials. No questions or comments.

CITIZENS COMMENTS – No comments.

COUNCIL COMMENTS – Councilor Chambers asked about Clean-Up Day. Mayor Ware indicated that they did start an hour later. McDowell said the Sweet Home Sanitation will be attending next meeting. Councilor Chambers prefers the other style for clean-up. She does appreciate having a Clean-Up Day. Chambers also said Mayor Ware gave a very impassioned plea for the Brownsville Community Foundation. Chambers was impressed with his presentation.

ADJOURNMENT: *Councilor Van Sandt moved to adjourn at 8:24 p.m. Councilor Gerber seconded the motion, and it passed unanimously.*

City Administrator S. Scott McDowell

Mayor Don Ware