



Council Minutes

September 23rd, 2014

ROLL CALL: Mayor Don Ware called the meeting to order at 7:00 p.m. with Shepherd, Cole, Boyanovsky, Gerber and Chambers present. (Councilors Van Sandt arrived at 7:25 p.m.). Public Works Superintendent Karl Frink and City Administrator Scott McDowell, City Attorney Lauren Sommers, and Administrative Assistant Tammi Morrow were also present.

PUBLIC: Phil and Kaye Fox, Elizabeth Coleman, Jannea Deaver, Mike & JoAnn Neddeau, Marilee Frasier, Joni Nelson, Jennifer Moody, Allen Buzzard, John Morrison, Roger Gaither & Rod Sell (Santiam Spokes), Sergeant Brad Kelley, Larry Rolhbacker, Mary Swanson, Lloyd Morley III, Eva Jean Morley, Wesley Montgomery, Mike Landi, Caryn Shepherd, Sal & Leda Sepulveda, Ally Maser, Zack Cloud, Christine Harrison, Don Grubbs, Debbie Jensen, June Bvechting, Pam Parker, Rhea Graham, Bess Ludahl, Natalie Turner, Randy and Gayle Simpson, and Attorney Brian Michaels.

The pledge of allegiance was recited.

ADDITIONS AND DELETIONS: Mr. McDowell informed Council that he would not add items to the agenda tonight, as it looks to be a full agenda. Mr. McDowell did request that Santiam Spokes be allowed to present first, as the other issues could get quite lengthy.

MINUTES: Councilor Boyanovsky made a motion to approve the July 22nd, 2014 meeting minutes as presented. Councilor Cole seconded the motion, and it passed unanimously.

PUBLIC HEARINGS OR PRESENTATIONS:

Santiam-Calapooia Scenic Bikeway Proposal – Roger Gaither and Rod Sell they appreciated the hospitality they have received from Brownsville. Santiam Spokes is developing a 72.6 mile scenic bicycle ride/loop through Brownsville and would like a letter of support from the City for their proposal. The group will petition the State for the trail to complement the Willamette Valley Scenic Bikeway. They are seeking support from each community that this route will impact. There is no financial obligation from the City, but it should bring tourism dollars to each town. Oregon is the only state that has a scenic bikeway program. This is a great type of tourism, people come in, spend their money, and leave. There is a separate bike-friendly business program as well. *Councilor Gerber made a motion to authorize the City Administrator to draft a letter in support of the Santiam-Calapooia Scenic Bikeway Proposal. Councilor Cole seconded the motion.* Discussion was called for. Councilor Chambers asked if the money that is required to be budgeted for bikeways could be used for this project. Mr. McDowell responded that perhaps it could. Councilor Cole remarked that bicycling is just the demographic we looking for in Brownsville, and she thanked the gentlemen for being here to promote it. *The vote was called for, and passed unanimously.*

Medical Marijuana Moratorium Update – Mayor Ware welcomed the audience to the meeting, and asked for civility. He stated that honor and respect for all will be observed and asked that everyone join in that effort. Comments will be limited to 3 minutes per person. Mr. McDowell thanked City Attorney Lauren Sommers for being present, and gave a brief overview of this issue Council has been working on for the last several months. A Medical Marijuana Committee was formed, and they brought forth a recommendation that the City implement a business registration program. State law has



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allowed cities to pass a moratorium, and the City has done that, acting in good faith. Since the moratorium has been enacted, the dispensary has opened, forcing the City to look at the rules, and see what kind of enforcement should happen. Mr. McDowell has prepared legislation for consideration tonight. Mr. McDowell has also been in contact with Linn County Sheriff Bruce Riley and they would like a piece of legislation from Council before enforcement will be acted upon. Mr. McDowell turned the meeting over to Attorney Sommers. Ms. Sommers stated that the Simpson's have been quoted in the *Albany Democrat-Herald* as wanting to open a medical marijuana dispensary. Attorney Sommers then went on the state that the proposed marijuana giveaways – they characterize as transactions between two cardholders. However, since the Simpsons are licensed, the City's position is that they are indeed acting as a dispensary with these transactions. Ms. Sommers has contacted the Oregon Health Authority (OHA), but they do not have the ability or intention of enforcing city ordinances. They enforce the State rules, not necessarily the City's ordinances. Mr. McDowell stated that Senate Bill 1531 says that cities are allowed to adopt moratorium, but it doesn't give folks an affirmative act to use marijuana. Safe harbor goes away if the dispensary is operating while under a moratorium. Staff has brought a general penalty provision which the City code does not currently contain.

If Council were to adopt this general penalty provision, then the City/LCSO could enforce all violations. Councilor Gerber inquired as to whether this new enforcement would fall back to provide for other situations in the code? Mr. McDowell replied in the affirmative, and stated that this legislation is very similar to Albany's code. State law states that the City can only impose a misdemeanor, with a maximum fine of \$6,000. This proposed general penalty provision is significantly less than the maximum penalty. Councilor Shepherd asked if this enforcement penalty could be used in other areas such as nuisances, junk, and weeds. Mr. McDowell responded that the nuisances ordinances – 8.50 already has a penalty stated in the Code. This provision will apply to all those ordinances and areas of the Code that do not currently have enforcement penalties. Councilor Cole asked how the enforcement would take place. Mr. McDowell responded that a peace officer could/would issue citations. Councilor Cole then commented that as much as she doesn't like having to vote for a general penalty provision, she thinks that the City needs something like this to uphold Council decisions. It is a tool that the City can use in many situations. She also stated that it doesn't mean the City would have to enforce or use the general penalty provision, just that the City could.

Citizen Comments – Attorney Brian Michaels, Eugene, stated that he had been retained by the Simpsons to represent them. He said the laws dealing with marijuana are very confusing, and now they have added in the dispensary situations. He said that prior to the dispensary act, you could not tell people that they could not grow marijuana in Oregon. The State law allows it. He said the moratorium makes no sense. Everywhere else in Brownsville you are allowed to grow and dispense, but the City is telling the Simpsons that they can't do it in the dispensary. Mr. Michaels stated that this is what will be addressed in litigation, when/if we get to that stage. Several people (many from out of town) spoke in favor of the dispensary, stating marijuana's medical benefits as well as creating a place of fellowship for users. One Brownsville citizen spoke in opposition to having the dispensary.

Council Comments – Councilor Cole stated that this issue is not about the efficacy or the contribution that medical marijuana makes to people's lives. That is not the issue we are discussing. The issue under discussion is about the fact that we have thoroughly discussed this situation in committee. That committee came forward with a recommendation, and Council then acted on this advice. The troubling issue is that the moratorium has been violated, and that doesn't sit well. The Simpson's behavior does



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not speak of being a good neighbor. Again, it's not about medical marijuana, it's about complying with City ordinances. Councilor Van Sandt apologized for being late. She agrees with Councilor Cole, and also stated that she is a registered nurse and understands the medical benefits of marijuana. The moratorium is only for a year. Councilor Van Sandt stated that the culture is swinging, and if they could just be patient, they may get through the process and then see what happens. Councilor Chambers stated that she agreed with Councilors Cole and Van Sandt. She also does not feel like the Simpsons have been good neighbors. She would like to go with the general penalty provision and enforce it. Councilor Boyanovsky quoted out of the 2014 Council Goals. Basically he said that our Municipal Code and ordinances that we put out are to strive to achieve a balance within the City. He has polled several of his constituents, and his vote will reflect their wishes. Councilor Shepherd reiterated that this issue is not about medical marijuana, it is more about good neighbor policy. Mayor Ware stated that this moratorium year would give the City time to study the issue and make sure that we had made the right decision for Brownsville. Instead, Mr. McDowell has received some disturbing communications from the Simpsons, calling the Council bigots. This is not right, and Ware indicate that he will vote with the rest of the Council.

Councilor Cole made a motion to approve Ordinance 749, as an emergency, effective immediately. Councilor Boyanovsky seconded the motion, and it was voted on and passed unanimously.

Next item before Council was the Business Registration legislation. *Councilor Cole made a motion to pass O 747 as an emergency as well; it is a tool that City will be able to effectively use as needed. Councilor Shepherd seconded the motion.* Discussion followed with Mr. McDowell suggesting reviewing the exemptions. Ms. Sommers suggested that striking paragraph C might better serve Council's goals in this area. *Councilor Gerber made a motion to amend previous motion by Councilor Cole regarding O 747 by striking 5.20.010 section C. Councilor Shepherd seconded the motion, and it was voted on and passed unanimously. Councilor Cole made a motion to rescind her previous motion, and to pass O 747 as amended and as an emergency. Councilor Chambers seconded the motion, and it was voted on and passed unanimously.*

Nuisance Abatements – Mr. McDowell provided an update for Council. Clean-up Day was moved this year from April to October with the mindset that it would give the citizens an opportunity in the fall to do clean up. On September 12th, Councilor Shepherd and Mr. McDowell posted 12 properties for nuisances. In most cases, the residents were consulted and plans were made for compliance. In general, Staff goes out about once a week and checks the town for non-compliance issues and infractions. He reminded Council that we usually give a certain grace period so that folks can take corrective action on their own. It can take 3-4 weeks before a property is posted/abated. During this time, a *Request for Action* letter may be sent, which we feel is a kinder, gentler approach. Eight out of ten folks usually comply with this RFA. Keep in mind, the City is not trying to make the City look like *Better Homes and Gardens* we are just asking that the Municipal Code, the social contract, be honored by all living in Brownsville. As Council knows, due to the UGB restrictions, we cannot go out and annex land so it is more important than ever to protect what we have to keep Brownsville growing and lively.

In regards to the abatement at 382 Kirk, Staff set a nuisance abatement in place in April 2013. In a conversation with Ms. Garrison, she stated that she would be moving the freezer to the back porch by June 2014. Staff granted her this extension, but no progress has been made. Ms. Garrison is now asking for another extension of 90 days to move the



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freezer. She would also like to install a sink outside to create an outside canning kitchen at the end of the west driveway. Staff has followed the code, and done due process in this matter. Councilor Chambers commented that she would like to deny the extension – it has been 18 months with no progress, and frankly, the extension requests may never end. *Councilor Cole made a motion to deny the extension request. Additionally, the outside kitchen request is not permitted within the current code, so it needs to be denied as well. Councilor Shepherd seconded the motion, and it was voted on and passed unanimously.* Discussion was called for. Mr. McDowell stated that he will be gone on vacation until October 6th, 2014. *Councilor Cole amended the motion to give Colleen Garrison an extension to October 6th when Mr. McDowell returns from vacation. Councilor Gerber seconded the motion, and it was voted on and passed unanimously.*

Mr. McDowell gave an update on the situation at 120 Moody Court. As Council will recall in June a couple of neighbors came forward with a complaint about feral cats in the neighborhood. Staff was able to locate a contractor to trap the feral cats humanely. An agreement has been worked up, signed by all parties, and notarized. This process is going to take a certain amount of time due to the disposition of the cats. *Councilor Cole made a motion to approve the agreement with Spay, Inc. concerning cats at 120 Moody Court. Councilor Van Sandt seconded the motion, and it was voted on and passed unanimously.* Mayor Ware called for discussion. Councilor Chambers asked if the cats will be spayed/neutered. Mr. McDowell responded that the contractor will be keeping the cats due to the hardship of trying to re-home feral cats. Mr. McDowell suggested that Council may want to take a look at legislation concerning harboring animals at a later time. Councilor Shepherd stated that when they posting these abatements and talking with residents, they had a lot of good interaction with people. There was one incident where a home owner came out and was mad, kicking the sign over. However, when they got back to the office, there was one person that was very unhappy with being posted.

DEPARTMENT REPORTS:

1. Sheriff's Report. Sergeant Kelley was present. He stated that he had been out due to a torn rotator cuff. He has had a lot of desk time. Sergeant Kelley stated that they have hired one new deputy, Brandon Thurman, joining the south county team. They will be adding one more full-time deputy by the end of the month, and then they should be up to speed with personnel. This last weekend there was a string of car break-ins. Two persons have been arrested, and the investigation is ongoing. The WCMF went well. The LCSO call load actually went down 29% this year.
2. Public Works. Mr. Frink reported that there were 18 water leaks in the system this month. This could be repercussions from the cold weather from last winter. Public Works is working on several projects including finishing up the Millhouse project, installing a new water line down Willson Avenue, and installing a new 12" water main. Back flow testing happened in September. The Park Caretakers left on September 9th. Mr. Frink has also been in contact with paving companies in hopes of completing some fall paving projects. Discussion was called for. Councilor Shepherd stated that he didn't think the City should pave Hume Street, as it is not a public street. Councilor Gerber inquired about the boiler at the Rec Center. Mr. Frink replied that the boiler is not an easy fix. The boiler is about 40 years old and has a shelf life of 20 years. A new one will have to be installed at some point. At that time a sump pump will also need to go down into the



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basement as well. Councilor Cole commented that Council is very appreciative of Mr. Frink being out there taking care of our City for us.

3. Administrator's Report. – Mr. McDowell stated that Bob Anderson reports that there is a potential bank very interested in coming to town.

Water Rights Update – Mr. McDowell had a conversation with Mr. Robert Schroeder, our water rights attorney. We have asked for an administrative hold to be placed on our two significant water rights while the Oregon Supreme Court deals with an appeal involving the City of Cottage Grove. It may take up to two years for this process to be completed. GR 12 redevelopment will not be affected, and that project is moving full steam ahead.

Boldt, Carlisle, Smith were in the week of September 8th to begin the annual audit process. Staff has followed up with questions and details needed for their fieldwork. Staff anticipates the audit may not be completed until early next year.

The Millhouse project is nearing completion. The project cost is \$175,496.35, with \$9,253.00 being held in escrow for final project completion details. Mr. McDowell reminded Council that we have inherited a lot of problems with infrastructure throughout town. In these cases we fix as many problems as we can due to financial restraints.

Swap Meet MOU was not upheld by Laura Meckle. This is the third time that we have had problems with Ms. Meckle and MOU compliance. Mr. McDowell told Mr. Morrison, Chamber president, that he would not be recommending any more agreements be executed with Ms. Meckle. The Eugene Kennel Club event went well. The Tour DaVita event that came through town was a big success. The organization was able to raise over \$1 million in Oregon, and it is pretty cool to be a part of that.

Eric Stalford has submitted a letter indicating his intent to resign from the upcoming Council election, citing his work schedule as the reason.

The library project is going well; it appears to be right on schedule. The Grand Opening and Ribbon Cutting Ceremony are scheduled for October 3rd at 10:30 a.m.

On the weapons discharge policy, staff has been unable to make contact with the one applicant, but there has been no more shooting at that location. He might have read in the paper that Council had denied his request, or he may have contacted his insurance company, and gotten a warning from them. Mr. McDowell still intends to consult with LCSO to establish some standards and provisions for this policy.

Mr. McDowell reminded Council that annual clean-up day is October 4th, and the Household Hazardous Waste day is October 11th. The HHW materials will need to be taken to the Sweet Home Transfer facility.

One of the Council goals, the Emergency Preparedness Committee, has not been organized as of yet as Staff has not had the time to devote to this area. An alternative idea might be to form a 501(c)3 group to handle this important committee. Also, Staff has made "Come to Council" cards to give out to



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customers and community members that have questions or concerns that Council needs to address.

4. Library Report. No comments.
5. Court Report. No comments.
6. Council Comments. Councilor Chambers addressed the cat issue. She said that so far the City has spent over \$3,000. She feels that there is a need to form a committee to address the issue. Cats are getting dumped all over town. Councilor Chambers will meet with Mr. McDowell, do some initial research, and bring a report back to Council in October.
7. Citizen Comments. Joni Nelson addressed Council and thanked them for handling a tricky issue with grace, kindness, and wisdom.

LEGISLATIVE:

1. O 748: Public Works Standards, Accessory Structures, & Fences (Draft). Mr. McDowell informed Council that they will find a draft Ordinance presented for a Title 15 Amendment. Ms. Coleman and Mr. McDowell have talked to the Department of Land and Conservation's Ed Moore. This proposal is a draft only. Please contact Staff with any inquires or changes you would like to make before the next meeting. The first reading will happen in October, the second reading in November, and it will take effect in December. Councilor Van Sandt has several questions about it; Councilor Cole thought on her first read that it looked good.
2. Arbor Day Proclamation. Mayor Ware proclaimed October 18th, 2014 as Arbor Day for this year. Ms. Coleman stated that at the last Park Board meeting the group decided to do something different this year to honor Arbor Day. They will get the local community and schools involved in participating in a collage, poster, or poetry collaboration. Park Board is planning on doing a tree search in the area. They are still playing with ideas, but it could be a mapped out tree walk or drive. Ms. Coleman stated that the City does not necessarily have to plant a tree for Arbor Day, just has to have some sort of celebration. Park Board is not opposed to also perhaps planting a tree this Fall. Councilor Gerber commented that this idea reminds her of when the City was trying to become a recognized Tree City, and that it was a very fun thing.

ACTION ITEMS:

1. Town Song Proposal. Kathleen Swayze informed Council that this song was written by Ken Richter. She asks that Council table this item until next month when she hopes they can pull off a live presentation of the song. She stated that this song encapsulates Brownsville's kindness and quirkiness.
2. Appoint Library Advisory Board Member. McDowell informed Council that there was only one applicant for the Library Advisory Board – Theresa Wilhelm. *Councilor Cole made a motion to appoint Theresa Wilhelm to this Board. Councilor Van Sandt seconded the motion and it passed unanimously.*



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3. Park Board: Street Tree Plan. McDowell informed Council that Park Board would like to make a recommendation for a new street tree plan on Spaulding Avenue. It has taken Park Board about 5 years to generate this plan for Council. The current trees have been past their useful life for some time now. These new planter boxes would incorporate plant life that is lower in height. Business owners would like to still be able to use their sandwich boards on the sidewalks. The proposal is for 5 planters. There is some sheeting and some plastic inserts that will help preserve the planters. Councilor Van Sandt would like to know what the cost of the boxes would be and also what the maintenance costs would be. Ms. Coleman responded that they are still in the planning stages on some of these items. Councilor Chambers asked about wheelchair accessibility. Councilor Gerber thinks that Council should hear more details before making this decision.

DISCUSSION ITEMS:

1. Bi-Mart Willamette Country Music Festival. McDowell informed Council that Linn County recently sent out an agenda to pass changes to the Outdoor Assembly Code. If the Code is changed to what was proposed in March, it would basically prevent the BWCMF Festival in Linn County. There is another hearing for the Festival tomorrow morning at 9:30 a.m. Hopefully, the 2015 & 2016 events will be approved at that hearing.
2. Fourth of July Event. Tabled at this time.
3. SDC Fees. Council wanted to take a look at restructuring these fees for the future to promote growth and development. There are a couple of problems – planning a water plant in 2022 which will be a \$4 million project. The costs for the study alone for this project will range from \$50,000 - \$60,000. Any changes to the methodology would more than likely result in higher SDC's. McDowell will report back in October.
4. Candidate Forum. Mr. McDowell informed Council that the Chamber will be holding a candidate forum event on 10/14/2014 here in Council Chambers at 7:00 p.m. Refreshments will be served, and folks should have an opportunity to ask questions of the candidates.
5. Sweet Home Economic Development Group. Mr. McDowell and John Morrison had planned on talking with this group. It has not transpired yet. Indefinite hold for now.
6. June Financials. No questions or concerns.

CITIZEN COMMENT: Allen Buzzard addressed his next question to City Attorney Sommers asking if we were going to bankrupt the City treasury by fighting the medical marijuana litigation. Ms. Sommers replied that she could only give advice to the City, and secondly, she would have to do the research to answer that question. Mr. Buzzard said that he is afraid of the demeanor of the Simpsons and is afraid that they may proceed down the litigation path.



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COUNCIL COMMENTS: Councilor Van Sandt responded that the whole Council is concerned with the issue of the City Treasury and the possible upcoming litigation.

EXECUTIVE SESSION: The Council adjourned to Executive Session at 9:24 p.m. pursuant to ORS 192.660 Section (e).

Mayor Ware & Council returned to Regular Session at 9:28 p.m.

Council Gerber made a motion to appoint Councilor Boyanovsky and Councilor Shepherd to assist Staff, including Administrative Assistant Elizabeth Coleman, with easement negotiations. The motion was seconded by Councilor Cole and approved unanimously.

ADJOURNMENT: Councilor Shepherd moved to adjourn. Councilor Boyanovsky seconded the motion, and it passed unanimously. The meeting was adjourned at 9:29 p.m.

Handwritten signature of S. Scott McDowell in blue ink.

City Administrator S. Scott McDowell

Handwritten signature of Don Ware in blue ink.

Mayor Don Ware