



## Council Minutes

September 18<sup>th</sup>, 2018

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

**PUBLIC:** Kim Clayton, Chenoweth Roberts, Marilyn Grimes, Lois Ziolybas, Bob Babcock, Dan George, Charlotte Bates, Allen Buzzard, Jennifer Moody (*Democrat Herald*), Phil and Kaye Fox, Lt. Michelle Duncan (*LCSO*), Kevin Rogers (*Brownsville Fire Department*), Marilee Frazier, Rick Dominguez, John Lee, Norman Simms, Kneil Stucky, Betsy Ramshur, Bryan and Amy Bradburn, Blaine Cheney (*CLRA President*), Sean Johnson (*CLRA Vice President*) and Jordan Parrish (*The Times*).

The pledge of allegiance was recited.

**ADDITIONS AND DELETIONS:** McDowell would like to add under Discussion Items: F. Private irrigation system. There are no deletions tonight.

**MINUTES:** Councilor Block made a motion to approve the July 24<sup>th</sup>, 2018 meeting minutes as presented. Councilor Shepherd seconded the motion, and it passed unanimously.

### **PUBLIC HEARINGS OR PRESENTATIONS:**

1. **Bob Babcock – Light Pole Flag Concern.** Mr. Babcock took the podium and expressed appreciation for allowing him time to speak. He wrote a letter to the paper about his concerns regarding the flying of the flags on Main Street. He enjoys seeing the flag displayed with dignity and respect and he is not sure that the flags flying on Main Street are meeting that criteria. Cmdr. John Lee of the Travis Moothart American Legion Post #184 spoke next. He stated that the American Legion is responsible for putting up and maintaining the flags in town. He discussed the military code that was adopted in 1923 and stated that they use that code as a guideline. He said that as long as the wind is going to blow, the flags are going to be tangled. Flags should be allowed to fly freely in the breeze. The American Legion has always had very positive comments on the flags. Last year they flew them all summer and then they had to retire those; they have since gotten donations to replace those flags and still receive great comments and reactions from local folks and visitors alike. As long as he is the Commander and with permission from the City, the flags will continue to fly on national holidays and from June 14<sup>th</sup> to September 12<sup>th</sup> each year.

Councilor Chambers commented that she loves to see all the flags out. Councilor Block stated that he likes to see them up there as well. Councilor Neddeau asked if there was some type of rigging for keeping the flags untangled. American Legion member Rick Dominguez stated that they have a group that goes out every other day to untangle them. By the time he gets to one end of the street, some of the flags are tangled again because of the wind. They are working on the issue, trying to figure out what might work better. Mr. Babcock spoke again stating that he thinks that a lot of people come here because Brownsville is a historical town, and that it is not respectful to fly the flags when they become so tangled. He hopes there is a



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better way to take care of the flags. Councilor Chambers stated thank God the flag still flies.

- 2. Bryan Bradburn – Outdoor Marijuana Grows.** Bryan Bradburn, E. Washington Ave., stated that this is the third year in a row that marijuana has been stinking up his house and shop. He thanked Council for the ordinance passed last Fall. He stated that something was better than nothing, but basically that's what this ordinance is, nothing. Marijuana has been growing in his neighbor's yard since June. This year the neighbor has four plants, which is less than he grew last year, but the overwhelming marijuana stench is unappreciated to say the least. The plants are 10 to 11 feet tall and 8 feet wide. Bradburn expressed appreciation to the Councilors that took the time to come out and see what he was talking about. On the face, the ordinance looks good, but reality is that it is ineffective. Consistency is a problem. The nuisance of the smell is not there 24/7 but the stink is there multiple times each day as the wind changes. Bradburn reviewed pictures he supplied to Council today. The pictures address the size of the marijuana grow and how the overwhelming stench adversely affects his property's livability. The pictures also speak to the view of the plants from the public views. The ordinance doesn't pan out because of timing. Folks have to come out and verify multiple times before a nuisance can be determined. This ordinance is no deterrent due to the time allotment in the nuisance itself.

Mr. McDowell stated that Council voted last Fall for this outdoor marijuana grow ordinance. Councilors Chambers, Block, and Shepherd volunteered to work on several plans of action on miscellaneous nuisances. McDowell was in close contact with Mr. Bradburn to understand the lifecycle of marijuana. State law allows folks to grow four plants. Indoor plants grow to about 4 feet; outdoor plants are much larger. After monitoring the situation for several weeks, Councilor Shepherd and Mr. McDowell posted the property on September 6<sup>th</sup>, 2018 and indicated to the property owner to abate the nuisance or be cited into Municipal Court. One plant was then harvested but three large plants remained. Mr. McDowell then contacted the Linn County Sheriff's Office to issue a citation. Linn County Sheriff Yon was concerned about the implications of it being a marijuana related citation and refused to issue said citation according to Lieutenant Duncan. Yon and his Staff indicated that it could be a civil rights violation if a citation was issued. She said their District Attorney tries to keep them informed on all the new rules and regulations around the marijuana issue. She said that unfortunately the State of Oregon has made the law so complicated that it is hard to enforce any laws. While examining the City of Brownsville ordinance, the Sheriff thought it best to put it before their County counsel before taking action; basically, to determine their liability.

Duncan stated that when they issue a citation, they are technically taking away folk's civil liberties for that moment while issuing a citation. Penalties and rights were discussed further. McDowell asked why the view couldn't be cited? The plants could be seen from public view. Councilor Shepherd asked why the City couldn't get an officer to at least go out and take a look? We're not asking the deputy to convict the person right then even if a citation is written. It's the same process as a traffic ticket. Lieutenant Duncan responded that perhaps she misunderstood. LCSO was not comfortable with issuing a citation today without vetting the situation through their attorney. Councilor Shepherd stated that he is very unhappy with the situation. The City is not asking for LCSO to speak to the guilt or innocence of the folks receiving the citation, we were simply asking them to issue a citation as necessary by our ordinance. Lt. Duncan stated that maybe she had



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misunderstood, but if the nuisance is in view, they can send out someone tomorrow. Councilor Gerber asked about the implications not just for the marijuana nuisance, but other nuisances as well such as abandoned vehicles, trash, potential sound or smell issues, etc. – mostly LCSO is just concerned about what the penalties the ordinance states? If you are able to enforce those, her understanding is the level of the penalty assigned to it is what you're questioning?

Lieutenant Duncan responded that they were concerned about the legality of the ordinance. They must determine that it is legal and lawful. There are 91 pages for rules about marijuana alone. Councilor Gerber stated this does not pertain in particular to marijuana, rather it is a nuisance law. Mr. McDowell stated that this is where we find ourselves, trying to figure it out. The City has no authority to cite because the Administrator is not a sworn peace officer. Duncan has submitted the issue to County Counsel for further clarification. McDowell said that the only thing that the City can do is wait for County Counsel to issue a decision. Mayor Ware asked if we will get an answer tomorrow. Duncan stated that she was unsure, they will try to expedite it as soon as possible.

- Blaine Cheney – Meeting Conduct.** Mr. Cheney represents the Central Linn Rec Association as president of that organization. He stated that they recently had an issue with different groups wanting to use the building at the same time. CLRA activities must take precedence. The Board tries to be good stewards of the facility, while honoring the kiddos. Sometimes conflicts do arise. When this happens, the parties are notified by the City of an event conflict. Marilyn Grimes and Lois Ziobas recently came to the Rec Board and expressed interest in guaranteeing a time slot year-round for their walking program. They wanted this guarantee for no charge/fee rental of the building. The CLRA Board discussed the issue and then wrote them a letter to summarize the discussion and their position. Basically, that the group will still be able to use the facility but needs to be aware that if a conflict arises, they may have to give up that timeslot. The CLRA reserves the right to revisit or modify this arrangement. If not agreeable, CLRA will cancel the walkers timeslot.

Marilyn Grimes then wrote CLRA a very disrespectful four-page letter, stating that it was appalling to solicit money from seniors or those on low incomes and that no other group has taken better care of the facility. The walking group will no longer turn off the lights shut doors or clean anything up. The CLRA board was very disturbed by this letter. It felt like Mrs. Grimes was manipulating the truth and showing a lack of respect for the building, the City, and the CLRA. Mr. Cheney feels that we are unable to please Mrs. Grimes and would like to suggest that she be removed from the Facilities Review Committee as she is biased and has made intentionally misleading statements about the CLRA.

Marilyn Grimes took the podium next and read the letter she sent to Blaine Cheney and CLRA in a loud voice and with great intensity. She stated that since she sent the letter, buzzers and lights have been left on and the walkers are no longer going to be responsible for fixing these things. They do not feel respected. They walk for an hour four times a week; how much money do you think you are going to get from us?

Councilor Gerber stated that there was a request on the table to remove Marilyn Grimes from the Facilities Review Committee. She proposes that we have a group investigate the request and make a recommendation prior to the next meeting. Councilor Thompson asked if there is something to be gained from this



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investigation or do we have enough information to make a decision tonight? Councilor Chambers stated she will not vote. Councilor Block said that he was not fond of the language in the letter about not being good stewards now.

Lois Zioybas spoke next stating that the situation has been blown out of proportion. Marilyn gets verbal and sometimes that can be misinterpreted. Basically, she said they resent cleaning up after others and no one has even said thank you. That is what they are upset about. All they want to do is use the facility when no one else is using it. Health issues were referenced, and she stated they do appreciate CLRA letting them walk there, and that the building is about the kids. They do miss walking there.

Mr. McDowell spoke next. He said the whole situation is relatively absurd, and that yelling at volunteers that serve on the CLRA Board is ridiculous too. Mr. McDowell took the initial phone call asking for the early-morning gym time for the volleyball kids. Past Pres. George Frasier always maintained that any program that deals with the kids takes priority. McDowell then contacted Marilee Frazier and Marilyn Grimes to let her know that the next two weeks the gym was needed for a volleyball camp. Ms. Zioybas then contacted Mr. McDowell, and he told her that the City cannot grant a specific time slot.

Councilor Thompson then asked of Mr. Cheney what his primary goal was tonight. He reiterated that he would like to suggest removing Marilyn Grimes from the Facilities Review Committee due to his perception of her bias and inability to make a fair decision.

*Councilor Shepherd made a motion to honor the CLRA's request to remove Marilyn Grimes from the Facilities Review Committee at this time. Councilor Block seconded the motion. Discussion was called for. Councilor Chambers stated that she disagreed with the motion. The vote was called for with everyone voting in favor except Councilor Chambers.*

### DEPARTMENT REPORTS:

1. **Sheriff's Report.** LCSO Lt. Michele Duncan reported that in August there were 24 traffic citations, 30 warnings, 93 incidents, 22 hours for traffic enforcement, and total hours were 201. Deputy Mumey is assigned to Brownsville currently and one of the new Lidar radar guns will be used in town soon to better facilitate traffic enforcement. Mayor Ware stated that he appreciated the increase in traffic patrol. Councilor Shepherd lodged a complaint about illegal parking in the handicapped areas in town. Lt. Duncan said that they can't write tickets randomly, they have to witness the offense, but that she would inform deputies of the concern.
2. **Public Works.** Public Works Superintendent Karl Frink reported that the Robe Street project is well under way now. The project started on September 10<sup>th</sup>, and currently about two-thirds of the water main is installed. The contractor is doing an exceptional job. Other work for the month included the annual backflow testing, replacing pressure relief valves, and a water line installation on Depot Avenue. The sewer line of the Lepman project is complete and has been accepted by the City. Curbs are installed, and compaction testing has been passed. The Oak Street rehabilitation project is complete. The project commenced on the Friday of the City-wide garage sale weekend, not by intention, but the contractor had a last-minute opening, and so the City took advantage of the opening. The street was ground down in one day and paved the next. The whole operation went relatively



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smoothly. Street painting has been done for the year, but there are still a few minor issues to resolve.

Park Caretakers Don and Carol Neddeau have finished their duties in the park for the year. They did a great job; it was an easy transition for Public Works to take over the duties of the Park again. The cemetery has been mowed and trimmed, and the blackberries will be cut back again this year.

3. **Administrator's Report.** Mr. McDowell reported that the Chamber will be holding a Candidate's Forum on October 16<sup>th</sup> in Council Chambers at 7:00 p.m. Clean-up Day is slated for October 6<sup>th</sup>, depot style at the Rec Center from 7:30 a.m. – 3:00 p.m. Seniors and disabled folks are able to make special pick up arrangements by calling Sweet Home Sanitation and setting that up on a case by case basis. The nuisance committee met and made some changes. Phone calls were appreciated by most folks and clean up ensued as needed. The cleanup project at 382 Kirk has been completed; we are just waiting on the contractor to pick up a pile of debris. Last year the City had 2 complainants about dog feces in a neighborhood that was destroying the outside livability in the area. The City encourages neighbors to work together and help each other, but often that does not work with these types of offenses and the folks can feel quite powerless to effect any change. McDowell noted that he has signed an IGA with the COG for IT services to be used as needed. They sent down some of the higher-level IT staff to work on the two ransomware viruses for us, but next time they will need to charge us for the services.

McDowell reported that Staff is pretty impressed with the work that had been done this year by Council in relation to staying on task and actually closing on some of the issues. He reminded Council that they can advocate for a particular position in the upcoming election. While on duty, Staff cannot. There is some clarification material which will be available from Mrs. Morrow or Mr. McDowell surrounding the marijuana ballot measure. Please check downstairs for that language and information.

Mr. McDowell would like to clarify some rumors around the Kirk Avenue paving that have surfaced, again. The rumor is that the City received funding from Linn County for the project, and that it was spent elsewhere. This is simply not true. Around the same time the City and County were approved for the Gateway project, so that project took precedence. Shortly after that, the County had to make some tough decisions about funding future projects. They then created ranked list of criteria for funding projects. Kirk Avenue is way, way, down the list. If the County does find funding for this project, the City would still need to contribute about \$250,000 toward the project. So, just to be clear, the City has never received any funding for the Kirk Avenue project. The odds of Kirk Avenue being funded by Linn County are relatively non-existent.

4. **Library Report.** No comments.
5. **Court Report.** No comments.
6. **Council Comments.** No comments.
7. **Citizen Comments.** Turner Whitfield, Northern Drive, was present and asked that Council make the Kirk Avenue project a higher priority as it is quite rough.



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Sean Johnson, CLRA Vice President, complimented Mr. Frink and the Public Works crew for the backstop in the Park. It was in dire need of repair, and the work is greatly appreciated.

### LEGISLATIVE ITEMS:

1. **Resolution 2018.19 – Remote Attendance.** McDowell reminded Council that in July he was tasked by Council with this issue. He took that information, and crafted this resolution, trying to articulate as best as possible. *Councilor Gerber moved to approve as presented. Councilor Neddeau seconded. A vote was called for with all voting for the resolution with the exception of Councilor Block and Chambers.*
2. **Resolution 2018.20 – Planning Fees.** McDowell reminded Council that Staff reviews fees each year. Minor changes this year just included syntax fixes. *Councilor Gerber moved to approve R 2018.20 as presented. Councilor Shepherd seconded the motion, and it passed unanimously.*
3. **Resolution 2018.21 – Park Fees.** Staff reviewed current Park fees. There was something of a conundrum over the cleaning of the grill in the pavilion this year. Park Board reviewed the fees and made a recommendation of a rate increase of \$50 this year. Brownsville City residents will still qualify for a reduced rental rate. *Councilor Chambers moved to approve the park fee increase. Councilor Neddeau seconded the motion, and it passed unanimously.*
4. **Ordinance 777 – Alyrica Telecommunications Franchise (Emergency).** *Councilor Gerber moved to read O 777 by title only. Councilor Shepherd seconded the motion. The motion passed unanimously.* McDowell stated that City Attorney, Mark Wolfe, wrote this proposal. Upon further study there are a few typographical errors, which have since been corrected. This opportunity is fantastic for the City! Alyrica want to keep the prices as low as possible. The City has made some compromises to keep the prices low. Agreements are reviewed every 3 years so that Council can make any necessary corrections then. McDowell is asking for an emergency passage for this ordinance. Alyrica could go live as early as June 2019. *Councilor Gerber made a motion to adopt O 777 with modifications as an emergency passage. Councilor Block seconded the motion, and it passed unanimously.*
5. **Arbor Day Proclamation.** Mayor Ware proclaimed October 6<sup>th</sup>, 2018 as Arbor Day in the City of Brownsville.

### ACTION ITEMS:

1. **OLCC Renewals.** Annual OLCC renewal information was in the agenda packet. *Councilor Shepherd moved to approve OLCC renewals as presented. Councilor Gerber seconded the motion, and it passed unanimously.*
2. **Certificate of Occupancy.** A contractor has made a request to the City asking for a Certificate of Occupancy prior to paying the SDC's (System Development



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Charges) on a newly constructed structure. McDowell stated that this matter is before Council because he did not have the authority to grant this request. *Councilor Block made a motion to deny the request. Councilor Shepherd seconded the motion.* Discussion was called for. Councilor Gerber asked about the practicality of denying this request? McDowell stated that it is totally within Council's purvey to do this. The structure was a duplex, one SDC got paid, and one did not. The duplex has been signed off by the County, but they will wait for the City to also sign off on the building. Councilor Block stated that he does not want to see that precedent set. The City cannot be the banker for all the builders. Councilor Thompson concurs. *A vote was called for and passed unanimously.*

### **DISCUSSION ITEMS:**

1. **Brownsville Road – Traffic Safety Device Request.** McDowell stated that Guy DiTorrice would like a traffic safety device out north of town on Brownsville Road. The road would need to meet certain highway rules and criteria to have a device installed there. Mr. DiTorrice was directed to contact Linn County and discuss the issue at that level.
2. **Unmanned Aircraft System (UAS) / Drones.** McDowell was asked by Council last month to put an ordinance together around this topic. The City Attorney feels this is more of a privacy issue. Incidents should be reported to LCSO, and they will enforce laws by State statute.
3. **BWCMF – Harrisburg – Letter of Support.** Mr. McDowell reported to Council that the WCMF is expected to move next year's festival location to Langdon's Farm, off of Gap Road near Harrisburg. Festival Director, Anne Hankins is asking for a letter of support from the City addressed to Linn County Commissioners and Sheriff Jim Yon. This festival has had huge financial impact for the local schools, the Chamber and the business community at large. *Councilor Shepherd made a motion to send a letter of support for the WCMF. Councilor Chambers seconded the motion, and it passed unanimously.*
4. **Election Editorial.** Councilor Chambers censured Mayor Ware for running an editorial in the paper about the upcoming election before the candidacy filing deadline date and announcing his intention of running for Mayor again. Chambers stated that she knew of at least 2 people who would have run for this position, but did not because of Don Ware's statement and his overall popularity. She believes that Mayor Ware took an unfair advantage by printing this statement before the filing deadline. Councilor Chambers stated that she has been personally called out for posting things on social media sites and feels this is the same thing. Chambers stated that Don Ware presents himself as Mayor and editor, and they are truly two separate entities.

There have been several incidents in the past where Don Ware has written things in the paper inappropriately. Councilor Shepherd agreed with Councilor Chambers and stated that Ware should have waited until the 24<sup>th</sup> to print his editorial to be fair. Mayor Ware stated that in 4 years he won't make the same mistake. Councilor Gerber stated that she also agrees with Chambers and Shepherd; Ware's actions



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were not overtly illegal, but the use of the paper to promote himself is not appropriate given the facts of this situation.

5. **Private Irrigation Issue on Robe Street.** McDowell stated that the situation on Robe Street warrants Council guidance at least. For many years, folks have been allowed to put things in the public right-of-way. On Robe Street there is a private irrigation system right in the path of the new water line project. Initially the City Engineer and Superintendent Frink did not think the project would be more than a couple of pipes and would not be a big deal to replace. Instead when the project was opened up, it was found to be 13 sprinkler heads and 90' of pipe. Mr. Frink stated that he remembered hearing the former City Planner give the property owner permission to put this equipment in the right-of-way. There was \$300 built into the contract for this part of the project, but the contractor does not want to deal with an irrigation system of this size. McDowell stated that there are several options: 1) do nothing; 2) get a professional bid for replacement of irrigation system in right-of-way; or 3) pay for a portion of the system. Councilor Shepherd stated that he used to work for the County, and when they ran into similar issues, they would allow the customer to recover their pipes. One idea would be to give the property owner the \$300 built into the contract. *Councilor Shepherd made a motion stated that he thought it would be bad policy to pay for repair or replacement in the right-of-way. He said the folks should be allowed to recover their product, but that the City will not be paying for it to be replaced or repaired. Councilor Neddeau seconded the motion.* Discussion was called for. Councilor Thompson was a little concerned about the comment that the property owner had been granted permission by the City. Councilor Neddeau stated that that could not even be verified. Councilor Chambers remarked that it wasn't current staff that had allowed the situation. Councilor Gerber stated that anything built out on the right-of-way is one of the risks of the property owner. *The vote was called for and passed unanimously.*
6. **July and August Financials.** No comments.

**CITIZENS COMMENTS** – Marilee Frasier was present and informed Council that the Emergency Preparedness Committee night is scheduled for October 2<sup>nd</sup>, 2018 at the American Legion at 7:00 p.m. There will be donuts and hot cider available. She also stated that there are storms coming with the winter weather, and that everyone should get water and emergency supplies ready for an emergency situation.

**COUNCIL COMMENTS** – Councilor Block and Shepherd along with Mr. McDowell have been attending the LCSO quarterly meetings to try to elicit more Sheriff's office coverage for the City. Councilor Shepherd's personal opinion is that traffic cites are up this month due to the threat of cutting off the funding. Staff and Council are also very unhappy about LCSO's flat refusal to issue a citation for a marijuana nuisance. LCSO is submitting the ordinance to their legal counsel to determine its legitimacy before issuing the citation. Council and Staff feel that legality and guilt or innocence are up to the judge to determine, not LCSO. Council is not happy with them telling the City which ordinances they will cite and which they will not.





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**ADJOURNMENT:** Councilor Gerber moved to adjourn the Council meeting at 9:03 p.m. Councilor Shepherd seconded the motion, and it passed unanimously.

Handwritten signature of S. Scott McDowell in blue ink.

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City Administrator S. Scott McDowell

Handwritten signature of Don Ware in black ink.

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Mayor Don Ware