

**MINUTES FOR THE REGULAR MEETING
ASHLAND CITY COUNCIL
January 19, 2016
Council Chambers
1175 E. Main Street**

CALL TO ORDER

Mayor Stromberg called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers.

ROLL CALL

Councilor Voisin, Morris, Lemhouse, Seffinger, Rosenthal, and Marsh were present.

MAYOR'S ANNOUNCEMENTS

Mayor Stromberg explained the Study Session would follow the Regular meeting. He went on to announce the City was accepting applications for annual appointments to the various Commissions, Committees, and Boards. The deadline for applications was March 18, 2016.

APPROVAL OF MINUTES

The minutes of the Study Session of January 4, 2016, Executive Session of January 4, 2016 and Business Meeting of January 5, 2016 were approved as presented.

SPECIAL PRESENTATIONS & AWARDS

Police Chief Tighe O'Meara, Public Works Director Mike Faught, and Fire Chief John Karns described flood event responses for each of their departments. The Public Works Department had excavators at key locations where previous flooding had occurred. The GIS Department had prepared maps and there were agreements with various contractors to respond at specific locations. Crews would split into 12-hour shifts for any event that happened. Chief Karns had located shelters if needed. The Police Department would activate all police personnel in the event of a flood and use the 12-hour shifts currently in place. The Fire Department would increase staff and deploy one medical and one fire resource on the other side of the inundation zone. Also in place was a file of historic flood zones for the reverse 911 system. The Fire Department would access the citizen alert system to provide status. They went on to answer questions regarding flood areas, Ashland Creek, Reeder Reservoir, and the plan to manage spillover and overtopping.

PUBLIC FORUM

Susan Rust/42 N Wightman Street/Requested information and expressed concern regarding the Southern Oregon University (SOU) co-generation plant. Mayor Stromberg explained the City Administrator could answer Ms. Rust's questions. Another area of concern was Roca Creek at East Main Street and North Wightman Street where debris had piled up more than once. She had written letters to staff over the years without response. Eventually the City did some dredging that tore up the banks. It was upsetting the City had never responded to any of her correspondence over the years.

Mayor Stromberg requested the City Administrator and Public Works Director to contact Ms. Rust regarding her concerns.

Huelz Gutcheon/2259 Hwy 99/Buying real estate was a safe and secure way to make money. A person could build several cheap rentals before carbon taxes, environmental impact payments, or retroactive charges went into effect. First, they had to get permission from the City controllers. That could be difficult unless the individual had inside information. That could happen if someone showed up at all the meetings, was charming, learned what the controllers wanted and designed construction accordingly.

Paul Rostykus/436 Grandview Drive/Addressed a recently installed guardrail at 345 Grandview Drive, thought it violated the **Ashland Municipal Code (AMC) 13.02.050 Encroachment Permits** and shared concerns regarding safety. City staff had explained the guardrail was exempt from the Encroachment Permit because it was a guardrail and handrail. This guardrail was 350 feet long. The driveway was steep, had numerous variances and it was difficult to see cars. He disagreed with the minor impact statement. City staff informed him the installation met City guidelines that referred to Oregon Department of Transportation (ODOT) specifications. Without a plan, application, permit, and inspection, he questioned how the installation was safe. The guardrail also narrowed Grandview Drive 2-6 feet creating safety issues for pedestrians.

Mayor Stromberg requested the City Administrator to contact Mr. Rostykus and update Council on the issue.

Tara Light/2234 Siskiyou Boulevard/Read from a document submitted into the record regarding solutions to behavioral issues in the downtown area.

CONSENT AGENDA

- 1. Minutes of boards, commissions, and committees**
- 2. Liquor license application for Bonnie Chirrick dba Café 116**
- 3. Appointment of Max Reinhardt to the Public Art Commission**
- 4. Appointment of Sue Newberry to the Transportation Commission**
- 5. Approval of 2016 Council liaisons to boards, commissions, and committees**
- 6. Authorization to amend a contract for municipal audit services with Pauly, Rogers & Co. P.C., extending the contract for one year**
- 7. Authorization to amend a contract with Diamond Parking Services extending parking enforcement services up to two years**
- 8. Approval of a public contract exceeding \$100,000 for cardiac monitor defibrillators and automated external defibrillators**
- 9. Contract addendum with Evergreen Job & Safety Training, Inc.**
- 10. Adoption of findings for Planning Action PL-2013-01858, relating to three separate approved ordinances which amended the City of Ashland Comprehensive Plan, Comprehensive Plan Maps, Transportation System Plan, and Land Use Ordinance (Chapter 18) adopting the Normal Neighborhood Plan**

Councilor Voisin pulled Consent Agenda items #7 and #9 for discussion. Administrative Services Director Lee Tuneberg explained revenue from parking tickets, fees, and charges funded parking enforcement, improvements, studies, and operations. The Hargadine parking structure paid debt service, operation, maintenance, and care of the building.

Superintendent Mike Morrison addressed Consent Agenda item #9 and explained staff budgeted job and safety training every year. This request extended the original agreement an additional two years.

Councilor Voisin/Rosenthal m/s to approve Consent Agenda items. Voice Vote: all AYES. Motion passed.

Joseph Kauth/1 Corral/Spoke on Consent Agenda item #10 regarding the Normal Neighborhood Plan. Three years ago the Mayor had an arborist indicate a tree next to his house was a fire hazard enacting the Ashland Forest Resiliency (AFR) cut because it was deemed a fire hazard by a handful of national organizations really not involved with the area. When questioned by Mayor Stromberg, Mr. Kauth further explained he had overheard a conversation the Mayor had regarding a tree in his yard that was a fire hazard. Ever since that time, the Mayor had been suggesting that fire was a huge problem and the AFR cut was in

its third year. Councilor Marsh raised a point of order noting that Mr. Kauth might not realize he was speaking on the Normal Neighborhood Plan. Mr. Kauth responded his testimony was context and continued, equating weather patterns and drought experienced in California to the AFR cut. Mr. Kauth friended Mayor Stromberg on social media and began suggesting the slash piles of thousands of green material were acting as a lightning rod. This created a rush to cut green trees creating thousands and thousands of lightning rods. Developing 500 houses on one of Ashland's last wetlands was impetuous, unwarranted, greedy and worthy of investigation.

PUBLIC HEARINGS (None)

UNFINISHED BUSINESS

1. Request to extend City water service outside of City limits

John Chmelir/West Jackson Properties/Continued with his presentation to request the City extend water service to his facility. He provided statistics on the increase of Alzheimer's disease, the need for beds for these patients, and the necessity of a fire sprinkler system. The letter from the City's consultant suggested the request to connect to city water was a complicated engineering issue and it was not. The City's Talent Ashland Phoenix (TAP) line had a capacity of 4.25 million gallons per day (mgd). The pump station would put out 3 mgd when upsized to its final size. There was no way their connection would reduce the capacity of the line. The fire hydrant line they wanted to connect to was below the pump station and not affected by the pump station. West Jackson Properties wanted to connect to the line that connected to the fire hydrant line. In the event of a fire, the Fire Department would connect to that line anyway.

The ordinance was not clear that all conditions had to be satisfied simultaneously. The request met approval criteria for No Detriment and In Ashland's Best Interest. Mr. Chmelir listed the things West Jackson Properties had done for the City that ranged from moving businesses out of the floodway to approving an easement for the City to have a temporary pump station. He did not think the approval criteria to obtain a failure letter from the county and the infeasible determination criteria were possible or feasible.

Without the extension to TAP, the state, Fire District 5, and the Public Works Department would require a storage tank that held 40,000-45,000 gallons of water. He had experience sizing and building water storage systems, confirmed the City paid them for the easement and thought he got close to a fair price for the easement.

He went on to address the seven conditions recommended by staff in the Council Communication. The second condition requiring the applicant to construct a distribution line within the city to his property was not workable. They complied with the majority of conditions stated. However, there was a conflict in the code between siting of buildings and parking and development in a flood plain. If the Council denied the request for extension, they would continue to build the project. The project was for profit. Connecting to the TAP line would save the applicant money, was safer for the residents, safer for the firefighters, and a reasonable accommodation considering all the things they had done for the City.

City Administrator Dave Kanner explained the staff recommendation remained the same. He confirmed it was possible to connect a fire suppression system to the TAP line. The question was whether the City should. From an infrastructure planning, land use, and legal standpoint, Council should deny the request.

Public Works Director Mike Faught introduced RH2 Regional Manager Jeff Ballard who reviewed the information provided by Mr. Chmelir and his engineering consultants as well as the questions submitted by Mr. Chmelir at the last Council meeting. Mr. Ballard agreed with their calculations of capacity. The line was more than capable in size and volume to supply the proposed facility. The City had the ability to serve that property. That said, he did not recommend allowing the connection. The City spent millions of dollars

to supply an emergency connection to Ashland. They hired him to design, assist with construction, and coordinate with Mr. Chmelir to get the facility operating. The City had not evaluated how it benefited the city or determined use over the next 5-20 years. TAP was a large investment and provided a significant benefit to the city. From a technical standpoint, he would never recommend making a quick decision on a request that could affect the flexibility of the City's long-term use of an investment that size. The City installed the fire hydrant at Mr. Chmelir's request. Allowing the extension would tie the City to that connection in perpetuity. If Council wanted to serve that facility, the City should evaluate it as a system improvement in that area and service area and verify whether it affected long-term use.

Mr. Faught added staff did not recommend the connection either. As the City moved forward to update the Water Master Plan there were some portions of that system they would have the consultant review. The City paid Mr. Chmelir \$161,000 for the property and the easement. Mr. Faught worked with Mr. Chmelir and Jackson County on the right of way and secured an easement from the County before Mr. Chmelir took back ownership. The City also worked with Mr. Chmelir on facility design. The Public Works Department did not recommend an isolated connection like the one proposed.

Mr. Ballard addressed the difference between a fire hydrant and a fire suppression system. The fire hydrant would function independent of anything else. If the fire connection were allowed, Jackson County would not require Mr. Chmelir to build a facility that supported his site against fire. If Council denied the connection, the County would still require him to build those facilities to ensure the building had adequate fire suppression. If the City supplied fire suppression to that building, they would have that responsibility and liability forever. It was a different level of responsibility and liability commitment than a fire hydrant. Water systems in general had two types of pipes, transmission, and distribution. Distribution lines supplied water to customer connections, lines to the fire hydrants and delivered water from storage to the customers. Transmission lines moved water from a source to a distribution system.

The TAP line was a high-pressured pipeline that moved water from other towns to Ashland. Minimizing connections to that line helped maintain flexibility for the future use of that facility. Currently, the TAP system could supply 2.13 mgd to Ashland. The City of Talent supplied that water from their pump station to Ashland. If the City ran that pump station at 1,740 gallons per minute, Talent may not have the capability to supply the fire suppression at that moment to that site. Talent did have storage capacity and the City of Ashland would have to make a commitment based on that storage to supply water to the fire connection.

Growth areas and future developments were planned, coordinated, engineering evaluated, and recommendations made. The current request bypassed the planning and evaluation process to determine the best use. Mr. Faught added the City would most likely build a separate distribution system in the north end as land incorporated within city limits. It would not be a transmission line. Staff had not planned or reviewed any of that as of yet nor had they looked at future growth in that area to consider water sources and those were concerns. The Water Master Plan update would look at the proposal to increase TAP from 2.13 mgd to 3 mgd. That would affect multiple systems. Staff would also review the recently adopted Normal Neighborhood Master Plan and distribution systems for the entire north end instead of one isolated fire connection.

Mr. Kanner clarified the fire hydrant was not required by any government agency. It was a negotiation point in the purchase and sale agreement in the easement with Mr. Chmelir.

City Attorney Dave Lohman explained the City would have additional liability and provided examples. Staff could write an ordinance that provided for a class of users if it was in the City's best interest. This would not apply to a single request. Mr. Faught addressed annexation and explained the developer paid for the infrastructure. The City would only participate in the project through System Development Charges (SDC). The developer would provide the engineering and the City would review the plans to make sure it

would work with the city systems.

Mr. Kanner added historically Ashland had taken strong measures to discourage urban style development outside city limits. This was not a request for an exception to the ordinance to allow urban style development outside city limits. It was a request for Council to ignore the ordinance to allow this development outside city limits. If Council wanted to extend the line, staff could bring an amendment to the current ordinance and then reconsider the matter.

Fire Chief John Karns explained the occupancy type for the facility would require a fire sprinkler system per state law. The Fire Department would consider the center a target hazard and would have a preplan developed.

Council comments were interested in finding a way to provide water, questioned the reduction in use one connection might make, and how annexation would make the process easier. Opposing comments did not want to jeopardize the \$8,000,000 investment the City made in TAP, noted potential liability issues, and how the request set precedence.

Councilor Marsh/Seffinger m/s to deny the request from West Jackson Properties, LLC, for a connection to the City water system outside the city limits. DISCUSSION: Councilor Marsh noted the project was compelling but after reviewing the facts, she saw no reason to grant the request. It set a dangerous precedent and threatened potential management of an \$8,000,000 investment. Approving the request would jeopardize a significant City infrastructure for people who did not live in the city or paid city taxes and were not part of the group of people the City invested in TAP. It would undermine future decision making for a single user outside city limits. Mr. Chmelir could move forward with the project with an investment of \$150,000 for the tank. It also opened the door for future applications. The liability concerns of feeding a single user off a transmission line when there was no guarantee of redundancy was discomfoting. Councilor Seffinger agreed with Councilor Marsh. The project was worthwhile and she supported it but it would set a precedence that would make it difficult to deny other applicants.

Councilor Rosenthal wanted to support the connection. It seemed simple and straightforward. Staff and the City's consultant did not recommend the connection. He thought a step was missing, could not identify it, and wondered if there was a way it could happen anyway. Councilor Lemhouse looked at the request differently and wanted to continue to work on it with staff to see if the City should explore annexation. Council should be willing to look beyond the boundaries for things that add to the community. He would not support the motion and wanted to see further discussion and exploration. Councilor Morris would also vote against the motion. There had to be a way to make it work. Eventually the area would annex into the city and the water tank demolished and redone.

Councilor Voisin explained the holding tank would still need water after it emptied. The hook up was already there and questioned why the applicant could not connect to the line. The reduction in flexibility regarding TAP was vague and she thought an exception could be made. That the request would set precedence was also an unknown and she did not think the liability was a strong issue. She was considering voting against the motion.

Mayor Stromberg noted turning down the request would not stop the project. The state did not have standards on having a water tank for a sprinkler system that ran out of water during a fire. If they revised the ordinance and set up new standards Mr. Chmelir's facility could meet, anyone who met those standards would have a right to connect to the system. Liability issues were complicated by the fact that the City would serve the facility in a way not standard or typical of how the water system was engineered.

Councilor Marsh added this was a specific application to hook up to the TAP line. If Council did not think that was a good idea they should pass the motion and have staff continue to explore options.

Roll Call Vote: Councilor Rosenthal, Marsh, and Seffinger, YES; Councilor Lemhouse, Voisin, and Morris, NO. Mayor Stromberg broke the tie with a YES vote. Motion passed 4-3.

- 2. Second reading by title only of an ordinance titled, “An ordinance amending chapters 18.2.2, 18.2.3, 18.2.5, 18.3.2, 18.3.3, 18.3.5 and 18.6.1 of the Ashland Land Use Ordinance relating to the homegrown marijuana cultivation and marijuana-related businesses including production, processing, retail sales, testing, and wholesale and declaring and emergency”**

Planning Manager Maria Harris read the title in full then read the changes made to the ordinances aloud.

City Administrator Dave Kanner explained staff was discussing the power used for industrial grows. It might be possible to amend the electric rate ordinance to allow the electric utility to negotiate specific power purchase agreements with large energy customers to provide an incentive for them to use electricity during off peak hours. It would minimize the impact on the system and the risk of getting into Tier 2 rates. In Ashland, a commercial indoor grow was limited to 5,000 square feet. Staff discussed the possibility of requiring LED lights but preferred to see state standards to that effect. The City could not use their Bonneville Power Administration (BPA) money to provide incentives for marijuana growers. It was preferable to have the statewide coalition of utilities currently working on this issue develop something the legislature voted into statewide building codes.

Manufacturing equipment for processing marijuana had to meet building codes for mechanical and required the owner to have the appropriate permits. The state law originally prohibited the production of oils and extracts in a residential situation but amended that prohibition with the latest house bill. People could do a limited amount of extraction in a residence.

Councilor Voisin/Seffinger m/s to approve Ordinance #3120 and to adopt the ordinance and declaring an emergency and to adopt the ordinance as an emergency enactment.

DISCUSSION: Councilor Lemhouse would not support the motion. Allowing large commercial grows within city limits would be problematic for the same reasons Denver CO was experiencing and would take up available commercial space. Alternately, the federal government could change enforcement and that would have ramifications for large commercial grows. Another concern was not preserving R-1 zones and allowing marijuana grows. This was an attractive nuisance.

Roll Call Vote: Councilor Rosenthal, Voisin, Seffinger, Marsh, Morris and YES; Councilor Lemhouse, NO. Motion passed 5-1.

NEW AND MISCELLANEOUS BUSINESS

Mayor Stromberg moved the Ashland Water Advisory Committee Member appointments to #1 with Council consent.

1. Ashland Water Advisory Committee Member appointments

Public Works Director Mike Faught contacted the original Water Advisory Committee members and everyone was available with the exception of one whose workload would not permit participation. Mr. Faught was also recommending two more members, Rich Miller and Joe Graf.

Councilor Rosenthal/Marsh m/s to approve the AWAC members as recommended by staff. Voice Vote: all AYES. Motion passed.

2. Recommendation of the ad hoc Committee on the City Recorder Position

Councilor Seffinger explained an ad hoc committee was formed to review the City Recorder’s position and make a recommendation whether the position should remain elected or become an appointed position. The committee met four times. After the second meeting, City Recorder Barbara Christensen decided to leave the committee but agreed to offer assistance as needed. The Committee determined unanimously that

the position be appointed as it was throughout Oregon with the exception of two cities. Appointing the City Recorder would ensure the City had a qualified person filling the position. The City Recorder was an administrative position that made decisions and provided essential services to the City based on knowledge, skills, education, and experience. The Committee thought an appointed person that went through a rigorous selection process would possess skills critical to the position.

Minutes from the third committee meeting prompted Ms. Christensen to contact ad hoc Committee Chair Seffinger and resulted in a fourth meeting January 7, 2016. During that meeting, Ms. Christensen explained if appointed, the City Recorder position should have the same selection and supervision status as the City Attorney position. She questioned if the position would be at a department head level and if it would retain a full time assistant as it did now.

This input, the potential of updates to both the City Charter and Ashland Municipal Code (AMC), possibly moving some of the Recorder's duties to other departments, legal questions on specifying hours and qualifications in the City Charter and AMC along with procedures for removal of office, led Councilor Seffinger to recommend postponing the decision. This would give the Mayor and City Attorney time to review and respond and Council would be able to make a well informed vote on the matter. These changes would not go into effect until the current City Recorder retired. Alternately, it was unlikely the public would change the position from elected to appointed if the Council was not unanimous in their vote. The recent newspaper article written by Councilor Rosenthal made it clear the vote would not be unanimous.

Councilor Seffinger/Marsh m/s to postpone the vote on this item until after the November election of 2016 for further study and to be placed on the January 2017 Council agenda.

DISCUSSION: Councilor Marsh did not think it was reasonable to move forward on a Charter amendment that did not have full Council support. This would give them time to hear public input, gather more information and research. Councilor Seffinger clarified during the postponement of the item, the Mayor and City Attorney would continue working on adding minimum requirements to the City Charter and AMC, and establish a process for removal if an individual failed to meet the requirements. They would also determine what duties should remain with the position and what duties could be assigned to other departments. The ad hoc Committee recommended making the position appointed and not elected. She further clarified tasks not written in the City Charter could be reviewed and possibly moved to other areas within the City.

Councilor Voisin thought staff needed clear direction regarding the issue and asked Councilor Seffinger to write out a detailed indication of what she wanted staff to do. The directions to staff were too vague. Councilor Seffinger did not think she was as vague as Councilor Voisin indicated. Mayor Stromberg explained they could talk to the City Recorder and make sure they had all her issues and points included in the review.

Councilor Lemhouse/Rosenthal m/s to amend the motion that the Mayor, Councilor Seffinger, and Councilor Rosenthal work with the City Attorney to look at recommendations made by the commission and examine the recommended changes to consider that Councilor Seffinger brought forward. **DISCUSSION:** Councilor Lemhouse thought it would be beneficial to have Councilor Rosenthal as a counter to the Committee's pro on appointing the position. It was also appropriate since Councilor Rosenthal was Council Chair. Councilor Rosenthal added the object was spending more time to come up with something that would get more support on the Council while addressing the legitimate concerns staff and the ad hoc Committee identified. Councilor Voisin confirmed Council could send questions and concerns to the City Administrator. **Roll Call Vote: Councilor Voisin, Morris, Lemhouse, Seffinger, Rosenthal, and Marsh, YES. Motion passed.**

Councilor Seffinger thanked the ad hoc Committee members for their efforts and contributions regarding the issue. Their work would help resolve the issue in a positive way. Councilor Lemhouse supported in general what the Committee put forward but recognized the issues Ms. Christensen brought up as well. His concern was having the best system in place and supported the idea of an appointed position if crafted correctly. **Roll Call Vote on main amended motion: Councilor Voisin, Morris, Lemhouse, Seffinger, Rosenthal, and Marsh, YES. Motion passed.**

ORDINANCES, RESOLUTIONS AND CONTRACTS (None)

OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

ADJOURNMENT OF BUSINESS MEETING

Meeting adjourned at 9:47 p.m.

Barbara Christensen, City Recorder

John Stromberg, Mayor