

**MINUTES FOR THE REGULAR MEETING
ASHLAND CITY COUNCIL
May 3, 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 announced vacancies on the Tree, Wildfire Mitigation, and Conservation Commissions.

APPROVAL OF MINUTES

The minutes of the Study Session of April 18, 2016 and Business Meeting of April 19, 2016 were approved as presented.

SPECIAL PRESENTATIONS & AWARDS

Michael Cavallaro of the Rogue Valley Council of Governments (RVCOG) provided the annual report and submitted the Program and Financial Update for January 2016 into the record. He thanked the City of Ashland participants for their Transportation Planning efforts. RVCOG was in discussion with the state regarding the possibility of the area receiving reduced Congestion Mitigation and Air Quality (CMAQ) program funds. They wanted to delay the reduction long enough to hold the current scheduled program projects harmless. He went on to note other programs and resources RVCOG provided throughout the valley and shared aspects of the financial report.

The Mayor's proclamation of May 2016 as National Historic Preservation Month was read aloud.

PUBLIC FORUM

Amelia Hensler/450 Wightman/Shared she was a student at Southern Oregon University (SOU) and explained how homelessness was connected to poverty.

Batike Fan/450 Wightman/Also an SOU student addressed the City's camping prohibition law and explained how it violated amendment rights and how those laws deteriorated the lives of homeless people.

Mayor Stromberg explained the Ashland Police Department adhered to the Oregon Revised Statute that protected homeless people's property. Additionally, the assistant city attorney developed a process that when a homeless person returned to society they did not have bad credit ratings.

Mackenzie Murphy/450 Wightman/Was an SOU student and spoke on the criminalization of homeless people in Ashland and the Homeless Bill of Rights.

Huelz Gutcheon/2253 Hwy 99/Spoke on climate change, and what was happening to reduce carbons.

Councilor Voisin/Seffinger m/s to move the approval of a Resolution authorizing the citizens of Ashland to urge the Oregon Legislature, in the 2019 session, to refer to the voters a measure creating a publicly funded health care system serving everyone in Oregon to the May 17, 2016 Council Business meeting. Voice Vote: all AYES. Motion passed.

CONSENT AGENDA

1. Minutes of boards, commissions, and committees
2. Renewal of telecommunication franchise with Sprint Communications
3. Approval of recommendation from the Public Art Commission to accept the Watershed Cairn by Karen Rycheck
4. Biennium 2015-2017 Third Quarterly Financial Report
5. Liquor license application for Sachta Bakshi dba Oberon's Restaurant & Bar
6. Liquor license application for Jeff Chase dba Ashland Street Market
7. Liquor license application for Jeff Chase dba Siskiyou Blvd. Market
8. Liquor license application for Jatinder Kaur dba Taj Indian Cuisine

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

PUBLIC HEARINGS

1. Public hearing and approval of a resolution titled, "A resolution adopting a Miscellaneous Fees and Charges Document and repealing prior fee Resolution 2015-15"

Administrative Services and Finance Director Lee Tuneberg explained the majority of fees and charges did not change. Changes were inflationary, or due to industry increases. He noted a language change to Research Fee (C) requiring a \$25 minimal charge for research. Copy fees would cover any research that fell below \$25.

Mr. Tuneberg clarified the \$10 fee to reprint business licenses. Community Development Director Bill Molnar addressed the \$28 Street Tree Removal Permit fee. The City did not have a fee for private property owners requesting removal of a tree in the right of way in front of their property. The City charged that amount for private property tree removal permits and described the process.

Public Hearing Open: 7:49 p.m.

Public Hearing Closed: 7:49 p.m.

Councilor Rosenthal/Lemhouse m/s to approve Resolution #2016-04. DISCUSSION: Councilor Rosenthal thanked Mr. Tuneberg and his staff for their efforts on the Miscellaneous Fees & Charges document. **Roll Call Vote: Councilor Voisin, Marsh, Morris, Rosenthal, Lemhouse, and Seffinger, YES. Motion passed.**

UNFINISHED BUSINESS

1. Approval of a resolution titled, "A resolution of the City Council establishing a fee for appeals of administrative decisions"

City Administrator Dave Kanner provided background and submitted a chart into the record. The chart showed how the appellant determined the level of involvement they wanted for their appeal process that resulted in either no fees or a range from \$50 to \$150. Appeals were rare and if they did occur, the fee structure would make it less onerous for citizens.

Councilor Marsh/Voisin m/s to approve Resolution #2016-05. DISCUSSION: Councilor Marsh appreciated Mr. Kanner's efforts to improve the process. Councilor Voisin appreciated Mr. Kanner bringing it forward and making suggested changes. **Roll Call Vote: Councilor Rosenthal, Morris, Lemhouse, Marsh, Seffinger, and Voisin, YES. Motion passed.**

NEW AND MISCELLANEOUS BUSINESS

1. Award of professional services contract in excess of \$75,000 for the Water Master Plan Update
Public Works Director Mike Faught and Engineering Services Manager Scott Fleury and Ashland Water

Advisory ad hoc Committee (AWAC) members Don Morris, John Williams, and Donna Rhee presented the staff report. Staff reviewed master plans and system development charges (SDCs) every five years. The estimated costs for the Water Master Plan was \$150,000 and the cost for the Water Distribution Operation and Maintenance Manual was \$50,000 to \$60,000. Staff sent out a request for proposal that resulted in awarding the contract to RH2. The price for the Water Master Plan Update was \$153,203 and the manual was \$57,000. Costs were one-time purchases and came with free updates.

RH2 introduced staff to two new tools for climate change and water conservation that staff forwarded to AWAC. AWAC member Morris spoke in support of the software tools RH2 recommended and described the technology. AWAC member Williams reviewed the software using his experience as a software developer and physical geographer and shared his impressions. AWAC member Rhee gave her assessment of the software and commented how its sophisticated technology would help AWAC forecast future needs in the master plan update.

Mr. Faught clarified using SDC funds for master planning and tools associated to a master plan was legitimate. If Council was not comfortable staff could look at other funding options. He went on to address the software model and shared feedback from other cities using the software who responded the software provided more efficient use of staff time, good data for predictions, accurately predicted future needs, and during drought, the model had indicated accurate water supply predictions. The software also analyzed short term and long term water needs.

Mr. Fleury explained the statement of work would review items previously done by Carollo Engineers including climate change. RH2 would develop a new water model and calibration of the system that included the addition of Talent Ashland Phoenix Intertie (TAP). They would research TAP going to 3 million gallons a day (mgd), what it would take to push that water into the Crowson zone and system issues if the City resized Crowson and removed the Granite tank. The big portion of the scope was calibrating the water model to make it work efficiently, analyzing the distribution system and impact as well as the location of the proposed Crowson II Reservoir and the Water Treatment Plant and impact. Another scope item was the one water concept in conjunction with the 2020-2030 Capital Improvement Plan (CIP) and the associated financial plan for that planning period. RH2 will do a model to determine system adjustments and upgrades to pump 3 mgd of water through TAP.

The City would pay additional SDCs to the Medford Water Commission to go from 2.4 mgd to 3 mgd. TAP had the capacity to go to 3 mgd. Public Works budgeted \$150,000 in the SDC fund for developer reimbursements. They had not received any requests for current fiscal budget and planned to use that money for the software program. Staff was considering the potential for an inline hydropower project as well.

The current contract with the Medford Water Commission allowed the City a volume of water delivered at a maximum rate of up to 2.4 mgd. This amount could run daily for 4-5 months for summer or during the winter if the City had not depleted the allocated water supply.

Council majority was not interested in having a software demonstration. However, staff would arrange a demonstration for those that were.

Councilor Lemhouse/Rosenthal m/s to award a professional services contract with RH2 in the amount of \$315,976 for the Water Master Plan Update, Maddaus software models and Operations and Maintenance Plan. DISCUSSION: Councilor Lemhouse appreciated the efforts by staff and AWAC and supported their recommendation. Councilor Rosenthal agreed and would support the motion. Councilor Marsh noted this was about climate change and having software that would help predict patterns was a good investment. Councilor Seffinger thought the recommendation was well researched.

Councilor Morris would not support the motion. He would meet with staff and AWAC with his concerns regarding the actual work. Councilor Voisin would not support the motion either and raised concerns regarding software costs.

Councilor Voisin motioned to remove the software models, \$105,032 for later consideration. Motion died for lack of a second.

Continued discussion on motion: Councilor Lemhouse clarified Council was capable of making an informed decision on the matter and did not think it was necessary to have a demonstration in order to approve the software request. **Roll Call Vote: Councilor Lemhouse, Seffinger, Rosenthal, and Marsh, YES; Councilor Voisin and Morris, NO. Motion passed 4-2.**

ORDINANCES, RESOLUTIONS AND CONTRACTS

1. Second reading by title only of an ordinance titled, “An ordinance creating AMC Chapter 9.30 to prohibit smoking in places of employment, in enclosed areas open to the public, and in downtown Ashland”

City Administrator Dave Kanner submitted a map of the smoking ban in the downtown area into the record. He suggested an amendment that would delete the ban in alleyways. Council had removed the OLCC exemption at first reading and the alleyways allowed employees to smoke. Alternately, Ashland Municipal Code (AMC) did not consider an alleyway a shared street and pedestrian facility and recognized them as a street. In addition to the amendment removing alleyways, the property owner of 150 East Main Street wanted the ban to include the public right of way by the Varsity Movie Theatre between 150 and 166 East Main Street.

Staff recommended an amendment removing any of the Oregon Shakespeare’s Festival (OSF) leasehold properties so OSF could determine where or whether they wanted to allow smoking. The City would continue to prohibit smoking on sidewalks surrounding OSF property. Two other amendments would replace the definition of “Enclosed Area” in Section 1 and add 9.30.050 Penalties for Violation inadvertently left out before. A restaurant owner contacted Mr. Kanner and asked Council to consider expanding the smoking ban to prohibit smoking within 10-feet of an outdoor dining area.

The City would distribute rack cards for businesses to display in their stores and lodging facilities that explained the smoking ban and depicted areas that allowed smoking in the downtown. Staff was planning on extensive signage throughout the downtown.

Council noted there was no public place for smokers and it was unlikely private owners would sponsor smokers they were not associated with to smoke in their private space. There were already unintended consequences on Granite Street with restaurant workers going up that street to gather and smoke. The City should identify other central areas in a public way where people could smoke. Sending people to alleys would be a problem. Another suggestion was having signage for designated smoking areas and providing receptacles. There was concern the ordinance was complicated.

The penalty was \$135 as a class 4 violation. Enforcement entailed education first.

Councilor Seffinger/Rosenthal m/s to approve Ordinance #3127 with noted amendments.

Councilor Morris/Marsh m/s to amend the main motion in Section 1, replace the definition of “Enclosed area” means all space between a floor and ceiling that is enclosed on two or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps. If no ceiling is present, “enclosed area” means all space that is included by three or more sides by permanent or

temporary walls or windows, exclusive of doors, passageways, or gaps.” DISCUSSION: Councilor Morris explained it clarified the definition. **Roll Call Vote: Councilor Rosenthal, Lemhouse, Marsh, Seffinger, Voisin and Morris, YES. Motion approved.**

Councilor Rosenthal/Seffinger m/s to amend motion at the end of Section 1 to add under 9.30.050 Penalties for Violation, “Violations of this chapter are Class IV violations as described in AMC 1.08.” Roll Call Vote: Councilor Rosenthal, Lemhouse, Marsh, Seffinger, Voisin, and Morris, YES. Motion passed.

Councilor Marsh/Seffinger m/s to amend the motion to delete in Section 1, 9.30.020(1) the reference to alleyways and modify the prohibition relating to the Theater Corridor. The revised subsection would read as follows:

“A. Except as allowed in AMC 9.30.040, a person may not smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument in a place of employment, in an enclosed area open to the public, on any sidewalk or on any public or private property within ten (10) feet of a sidewalk in Downtown Ashland, on the City property commonly referred to as the Theater Corridor Walkway (Assessor’s Map no. 391E09BC, Tax Lot 901) except for that portion of the property controlled by leasehold right of the Oregon Shakespeare Festival (commonly known as the Thomas Theater), on the sidewalk on North Main Street between Granite Street and the Plaza, on sidewalks on Winburn Way abutting Lithia Park, on the Plaza, or on the area at the corner of East Main Street and South Pioneer Street known as Chautauqua Square. DISCUSSION: Councilor Marsh noted allowing smoking in alleyways would accommodate most of the downtown employees that smoked and hoped over time that did not prove to be a nuisance. Councilor Seffinger thought the amendment would provide safe places for employees to smoke and help make the ordinance successful.

Councilor Marsh/Seffinger m/s to amend the amendment to the motion to read “...abutting Lithia Park,” “in the public walkway between 150 and 166 E Main Street, on the Plaza, or on the area at the corner of East Main Street and South Pioneer Street known as Chautauqua Square.”

Roll Call Vote on the amendment to the amendment: Councilor Rosenthal, Lemhouse, Marsh, Seffinger, Voisin, and Morris, YES. Motion passed.

Roll Call Vote on amended amendment: Councilor Rosenthal, Lemhouse, Marsh, Seffinger, Voisin, and Morris, YES. Motion passed.

Councilor Rosenthal/Seffinger m/s to amend 9.30.020(B) to include outdoor dining areas. DISCUSSION: Councilor Rosenthal thought the amendment was fundamental since people sitting at outdoor dining could not avoid smoke. Councilor Seffinger agreed with Councilor Rosenthal. Councilor Morris confirmed subsection B included the 10-foot buffer. Councilor Morris and Marsh confirmed the amendment applied citywide and not just the downtown area. Mayor Stromberg suggested staff track problems that emerged due to the smoking ban and bring options to Council in the future. Councilor Lemhouse supported outdoor dining being citywide and thought it was reasonable. Councilor Seffinger added it also protected the employees of businesses with outdoor dining. Councilor Marsh would support the amendment but thought it was problematic on a citywide basis. **Roll Call Vote: Councilor Rosenthal, Lemhouse, Marsh, Seffinger, Voisin, and Morris, YES. Motion approved.**

Continued discussion on amended motion: Councilor Marsh thought the ban was important and predicted the City would have to develop informal smoking areas that could become problematic to businesses and residents. Mayor Stromberg commented the city received 300,000 visitors yearly and almost all passed through the downtown area. It was legitimate to address smoking in these areas. Councilor Voisin talked to citizens who felt this was overreach by local government. Another concern was having the police regulate and cite behavior. The ban discriminated against employees, visitors and

homeless people who smoked. She predicted issues in the future and would not support the motion. Councilor Lemhouse addressed concerns made regarding enforcement and explained documentation proved repeatedly that enforcing smaller quality of life violations and crimes eventually prevented larger crimes. The job of a police officer was not to only enforce, investigate, and prosecute; it was also to deter behavior. **Roll Call Vote on amended main motion: Councilor Rosenthal, Lemhouse, Marsh, Seffinger, and Morris, YES; Councilor Voisin, NO. Motion passed 5-1.**

Police Chief O'Meara explained Councilor Lemhouse was talking about the "Broken Windows Theory" in policing. Deterrence helped eradicate behavior. Officers would take enforcement action after they had the opportunity to educate offenders. The new ordinance would not over burden the Police Department and served as another tool.

2. Second reading by title only of two ordinances titled, "An ordinance amending the City of Ashland Comprehensive Plan to adopt the Ashland Municipal Airport – Airport Layout Plan Update 2004-2025, as a supporting document to the City of Ashland Comprehensive Plan,"

Councilor Lemhouse/Morris m/s to approve Ordinance #3126. Roll Call Vote: Councilor Marsh, Rosenthal, Morris, Lemhouse, Voisin, and Seffinger, YES. Motion passed.

"An ordinance amending the Ashland Municipal Code 18.3.7.030 Airport Overlay Regulations, Chapter 18.4.3.040 Parking Ratios, Chapter 18.5.1, Table 18.5.1.010, Summary of Approvals by Type of Review Procedure, Chapter 18.5.7.020.C, Exempt from Tree Removal Permit and Chapter 18.6.1.030, Definitions."

Councilor Morris/Seffinger m/s to approve Ordinance #3125. DISCUSSION: Councilor Morris thought it would benefit the airport and doing business at the airport. Councilor Seffinger agreed. **Roll Call Vote: Councilor Morris, Marsh, Seffinger, Rosenthal, Voisin and Lemhouse, YES. Motion passed.**

3. Second reading by title only of an ordinance titled, "An ordinance amending AMC Chapter 10.64 Obstructing Sidewalks and Passageways"

City Attorney Dave Lohman proposed four changes to the ordinance. The first change was **10.64.020(B)** and would delete the following, **"Except as otherwise permitted by ordinance or by a conditional use permit or by a special event permit, no person shall physically preclude other persons' use of a pedestrian passageway by exclusively occupying or placing an object or animal thereon for longer than 5 minutes with the intent to interfere with free passage thereon,"** and replace with, **"No person shall obstruct travel on a pedestrian passageway for longer than a reasonable period of time, and in no event longer than 5 minutes, by exclusively occupying or placing an object or animal thereon with the intent to interfere with free pedestrian passage. Anyone blocking a pedestrian passageway must cease doing so immediately after observing or otherwise having been made aware that a person with an ambulatory disability is waiting for obstruction-free travel thereon."**

If an officer asked someone to move and he or she refused, the officer did not have to wait five minutes to issue a citation. The judge would decide if it was reasonable or not. The pedestrian passageway ran the entire length of the street. Moving a few feet or to the next block would still be blocking the passageway. The person's actions determined intent, not the officer.

The second change to **10.64.020(B)** applied to anyone in a wheelchair or with some other ambulatory disability and would require the person blocking the passageway to move immediately after either observing the person was disabled or being told the person was disabled.

The next change was **10.643.020(C)** and deleted (2.) **“The area of a public sidewalk that is within 6 feet of the enter edge of any roadway or any City owned or controlled fixture or structure; and,”** and replaced with, **(The area of a public sidewalk that is (a) within 6 feet of the outer edge of any roadway, (b) within 6 feet of any city owned or controlled fixture or structure, or (c) within 10 feet of any crosswalk: and.”**

Staff proposed make sitting on a bench identified in the Downtown Sidewalk Usage Map exempt. If a bench were within the 10-foot radius of a sidewalk, it would be exempt. This would not apply to planter ledges and boxes.

The third change would replace the following language under **10.643.020(C) (3) “That portion of any public walkway that is 6 feet in width,”** with **“An area of unobstructed passage 6 feet in width on any sidewalk, walkway, or path improved to City standards.”** Council discussed possibly removing sidewalk from the language.

The final change was the addition of three exceptions to **10.64.020(E): 6. Sitting on a bench shown on the City’s Downtown Sidewalk Usage Map; 7. Permitted by ordinance or by a conditional use permit or by a special event permit to temporarily block a pedestrian passageway; or 8. Exercising the constitutionally protected right of freedom of speech or assembly.**

Councilor Marsh/Morris m/s to approve Ordinance #3128 as amended by City Attorney with the following changes to Section 10.64.020(C)(2), (B) to read “...within six feet of any City owned or controlled fixture or structure adjacent to the curb, or within 10 feet of any crosswalk” and to delete the word “sidewalk” from Section 10.64.020 (C) (3). DISCUSSION: Councilor Marsh commented passing the ordinances was really about the community coming together and determining the rules. The intent was setting reasonable standards about how the community lived together and shared the public space. Councilor Morris added it allowed people to walk safely down the street. It would not address every intersection but came close. Councilor Marsh confirmed the motion would not preclude people from sitting in front or by City Hall. Councilor Seffinger expressed concern regarding the disruption employees encountered with people sitting outside City Hall. Councilor Marsh responded the smoking ban would prohibit smoking in that area.

Councilor Voisin was encouraged about the volunteers that would be walking around downtown during the summer educating the public and helping direct travelers and homeless people. Councilor Lemhouse agreed with Councilor Morris. The ordinance addressed safe passage, the ability for people to use the downtown, and a significant ongoing problem the community had shared with Council. It would not alleviate all the issues, that would take a community effort and realization there was an issue the community as a whole needed to address. Councilor Rosenthal referred to the listening session regarding problems downtown and the hours of testimony asking Council to address these issues. He agreed with Councilor Marsh, this was a reasonable approach. He had concerns it would be difficult to explain and hoped it would make the downtown more comfortable, safe, and healthy for everyone.

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

- 4. Approval of a resolution titled, “A resolution authorizing the citizens of Ashland to urge the Oregon Legislature, in the 2019 session, to refer to the voters a measure creating a publicly funded health care system serving everyone in Oregon”**

Item delayed until the May 17, 2016 Council Meeting.

OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

Councilor Lemhouse announced trails in the watershed area that were previously closed for maintenance reopened the week before. He went on to explain a recent car accident that involved an uninsured drunk driver hitting Ashland High School Senior Tarquin Daily who at the time was parked in his car after baseball practice. His leg was badly broken. The family set up a GoFundMe account, <https://www.gofundme.com/TarQuinDaley> for medical expenses.

Councilor Seffinger announced that Friday, May 6, 2016 at 4:00 p.m. the Peace Commission was hosting a listening session with a potluck at 5:00 p.m.

Councilor Voisin thanked the Council for graciously receiving her students during Public Forum. She taught a class called Ethical Thinking for the 21st Century. Her honor students chose the topic of homelessness.

Councilor Kanner announced the City's application to partition the property at 380 Clay Street would receive final approval soon pending challenges.

ADJOURNMENT OF BUSINESS MEETING

Meeting adjourned at 10:27 p.m.

Barbara Christensen, City Recorder

John Stromberg, Mayor