

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

August 6, 2013

The minutes of the proceedings of a regular meeting of the City Council of the City of Coos Bay, Coos County, Oregon, held at 7 p.m. in the Council Chambers at City Hall, 500 Central Avenue, Coos Bay, Oregon.

Those Attending

Those present were Mayor Crystal Shoji and Councilors Mark Daily, Jennifer Groth, Stephanie Kramer, John Muenchrath, and Mike Vaughan. Councilor Gene Melton was absent. City staff present were City Manager Rodger Craddock, Acting City Attorney Karen Costello, Deputy Finance Director Amy Kinnaman, Library Director Sami Pierson, Community Development Director Eric Day, Public Works and Development Director Jim Hossley, Acting Fire Chief Mark Anderson, Police Captain Chris Chapanar, Police Sergeant Mike Shaffer, and Police Chief Gary McCullough.

Flag Salute

Mayor Shoji opened the meeting and asked Egyptian Theatre Preservation Association President Greg Rueger to lead the Council and assembly in the salute to the flag.

Public Comments

Dana Gaab, Coos Bay: disapproved of the large lottery sign located south of town; encouraged the Council to disallow the display.

Consent Calendar

Mayor Shoji reviewed the consent calendar which consisted of 3a: approval of the minutes of July 16, 2013; 3b: approval of a Memorandum of Understanding (MOU) amendment with the Oregon Department of Fish & Wildlife (ODF&W) for the Eastside boat ramp project; and 3c: approval of an OLCC license application for limited on-premises sales for Hair Co. Etc. Salon and Day Spa, LLC. Councilor Kramer moved to approve the consent calendar approving the minutes of July 16, 2013, approving a MOU amendment with ODF&W for the Eastside boat ramp project, and approving an OLCC license application for limited on-premises sales for Hair Co. Etc. Salon and Day Spa, LLC. Councilor Daily seconded the motion which carried with Mayor Shoji and Councilors Daily, Groth, Kramer, and Vaughan voting aye. Councilors Melton and Muenchrath were absent.

Consideration of a Planning Commission Appointment

City Manager Rodger Craddock stated Danny Stoddard vacated his position on the Planning Commission. The City advertised the opening from June 20, 2013 through July 25, 2013 and received one application from Rex Miller. Mr. Craddock noted Mr. Miller previously served on the Planning Commission from June 17, 2003 through December 31, 2011. Councilor Daily moved to appoint Rex Miller to the Planning Commission to fulfill the unexpired term ending December 31, 2015. Councilor Kramer seconded the motion which carried with Mayor Shoji and Councilors Daily, Groth, Kramer, Muenchrath, and Vaughan voting aye. Councilor Melton was absent.

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Councilor Muenchrath entered the meeting during the discussion for consideration of a Planning Commission appointment.

Acceptance of the United States Department of Agriculture (USDA) Rural Business Enterprise Grant (RBEG) for the Upper Floor Development Project of Downtown Coos Bay and Empire and Authorize Staff to Expend the Grant and Match Funds from the Urban Renewal Agency

City Manager Rodger Craddock explained the matter for consideration before the Council because the grant was awarded to the City but the project was within the City's urban renewal district(s); stated the likeliness of the Jordon Cove developing the LNG Terminal and Power Plant on the North Spit was looking more of a reality. Recent discussions centered on workforce housing needs during the construction phase; estimated housing needs for 2,800 workers over a 42 month period. Jordon Cove was exploring "man camps" as a potential solution. Mr. Craddock noted several buildings in downtown Coos Bay and in the Empire district with vacant/unused upper floors. The concept of minimizing the use of "man camps" by utilizing/redeveloping vacant/unused upper floors in downtown and Empire buildings was presented to Bob Braddock, Vice President – Project Manager at Jordon Cove Energy Project L.P. Staff provided Mr. Braddock with a list of potential buildings with upper floor living spaces.

Staff applied for a \$20,000 grant from the United States Department of Agriculture (USDA) Rural Business Enterprise Grant (RBEG) to assist in conducting assessments of the buildings as to their suitability for residential redevelopment; on July 18th staff was advised the application was approved. Mr. Craddock stated Jordon Cove agreed to provide the required grant match of \$20,000. The grant and match funds would be used to pay for professional services to aid staff which included but was not limited to performing assessments of the buildings for building codes requirements, identifying zoning issues, obtaining conceptual drawings of possible apartment layouts, and estimating redevelopment costs. Councilor Kramer moved to accept the grant funds. Councilor Daily seconded the motion which carried with Mayor Shoji and Councilors Daily, Groth, Kramer, Muenchrath, and Vaughan voting aye. Councilor Melton was absent.

Presentation on a Resolution Against Provisions of the National Defense Authorization Act (NDAA)

Tom McKirgan, Coquille: stated he was the Southwest Oregon Coordinator for Oath Keepers which was an educational foundation which encouraged others who have taken the oath of office to honor the oath of office to the constitution; was working in association with PANDA (People Against the NDAA) to get the NDAA rejected at a local and state level and eventually the federal government for repeal. Mr. McKirgan submitted a proposed resolution for the Council's consideration which he stated was an outline of all of the constitutional violations the NDAA provided, which were against American people and lawful resident aliens. Mr. McKirgan suggested some of the information provided by the City's attorney was incorrect; requested an open work session with the Council to explain the differences and to allow the Council to make a more informed decision. Rob Taylor, Bandon: asked the Council to read the new proposed resolution entitled "Restoring Constitutional Governance". Mr. Taylor explained the NDAA was formed approximately 50 years ago to pay for the military; noted the problem was that in 2012 the government added several provisions which allowed the federal government to detain

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people indefinitely; believed the issues needed to be addressed starting at a local level and individual rights transcended government hierarchy. Mr. Taylor stated he believed NDAA was unconstitutional; encouraged the Council to pass the resolution against provisions of NDAA; asked the Council to recognize individual rights and pass the resolution in support of individual rights. Tom McKirgan, Coquille: suggested NDAA was a non-partisan issue; asked the Council to review the document he provided entitled, "Myths and Deceptions About the NDAA FY2012"; suggested the proposed resolution was proactive instead of reactive.

City Manager Rodger Craddock stated a Federal District Court for the Southern District of New York found the provisions in Section 1021 of the Act were unconstitutional and the court entered an injunction barring the government from enforcing that provision of the Act; noted the decision was appealed to the United States Court of Appeals for the Second Circuit. On July 17, 2013 the Second Circuit overturned the lower Court's ruling. While the court did not comment on the constitutionality of the Act or Section 1021, the Court made it clear the provisions in 1021 did not apply to citizens of the United States, resident aliens, or to nonresident aliens arrested in the United States. Mr. Craddock provided the Council with a verbatim copy of the Court ruling and noted per the notes provided by the City Attorney Nate McClintock, he did not anticipate the most recent court decision would be the last word on Sections 1021 or 1022 of the NDAA; suggested the matter would eventually find its way to the Supreme Court for final decision as to the constitutionality of the Act and its applicability if any upon United States citizens and resident aliens. Mr. Craddock noted it was the City Attorney's position that passing the resolution would have no effect on how the Supreme Court would rule on the matter and noted the City Attorney recommended not passing the proposed resolution. Acting City Attorney Karen Costello stated the customary way to seek redress against unconstitutional laws was through the courts or legislature; suggested the problem with the resolution was it encouraged and forbid the enforcement of or the assisting of the enforcement of the laws; suggested the resolution went beyond a policy or political statement and would open the City to liability. Ms. Costello stated she concurred with City Attorney McClintock and recommended the Council not pass the resolution.

Councilor Groth stated she was uncomfortable with supporting a resolution which put Coos Bay Police in conflict with current federal laws. Councilors Daily, Muenchrath, and Vaughan suggested more time was needed to read through the additional information provided. Councilor Muenchrath was in favor of reviewing the matter a future date for consideration of a resolution or letter. Mayor Shoji suggested the issue at hand was not a City issue and the matter would be better served by working through proper levels of government. Geno Landrum, Coos Bay: stated he would volunteer to be a test case for the section 1021; suggested the Council was rationalizing in effort not to make a decision to protect their constituents whom they swore to protect. Tom McKirgan, Coquille: stated under the constitution, state, county, and local law enforcement were not required to enforce federal law; advised there was not a venue in Oregon that could ill-afford a lawsuit stemming from assisting a federal agency in affecting an unconstitutional arrest and suggested a City would be vicariously liable if they allowed their law enforcement to participate in such act. Rob Taylor, Bandon: thanked Councilors for their support; suggested the group was considering an initiative petition which would cost the City between \$16,000 to \$20,000 dollars. Councilor Daily inquired as to liability and conflict between upholding federal and state laws wherein Ms. Costello suggested there were conflicts of laws but they did not deal with the alleged unconstitutionality of a law or a government body saying to the next government body they unilaterally determined an action was unconstitutional and

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therefore they would not carry out the action. Councilor Muenchrath questioned the harm in passing a resolution. Ms. Costello stated the resolution directed the City to act or not to act in law enforcement capacities; the resolution was asking for local law enforcement, local city officials, and anybody in official capacity to not follow the federal law in terms of enforcement. Councilor Daily moved to postpone consideration for a later date and to possibly craft a letter to the State Legislature or Congress. Councilor Muenchrath seconded the motion which carried with Councilors Daily, Kramer, Muenchrath, and Vaughan voting aye and Mayor Shoji and Councilor Groth voting nay. Councilor Melton was absent.

Review on the Second Hand Stores Ordinance 5.20

Police Chief Gary McCullough stated the purpose of the proposed amendment to Coos Bay Municipal Code (CBMC) 5.20 ordinance was to assist the Police Department in regulating certain business activities which presented an extraordinary risk of being used by criminals to dispose of stolen property. The regulation listed in CBMC 5.20 was intended to reduce criminal activity by providing timely police awareness of such property transactions and by regulating the conduct of persons engaged in secondhand property activity. Chief McCullough stated on May 21, 2013 Police Department staff presented the Council with an amended ordinance requiring businesses that purchase, pawn, or consign certain personal property items to electronically report those transactions through an online reporting system and for the property be held for a 14 day period prior to the property trading hands from the business to customers. Chief McCullough provided the Council with a copy of the current ordinance, an annotated copy of the ordinance with staffs recommended revisions, addressed correspondence from affected business owners, provided a list of concerns noted from the May 21st Council meeting, and provided a news article advising the public of changes in regulations in connection with certain regulated property. Police Captain Chris Chapanar and Police Sergeant Mike Shaffer reviewed the differences between the old and proposed ordinance.

Sergeant Shaffer advised estimated costs for transitioning to the RAPID reporting system was approximately \$400. Chief McCullough stated the RAPID system offered the same online security as online banking or other secured sites; department was working on a policy for proper distribution of recovered stolen property; recommended firearm dealers be subject to the 14 day hold requirement. Councilor Muenchrath inquired why guns were exempt from the 14 day hold requirement wherein City Manager Rodger Craddock advised the current ordinance required firearm dealers to hold secondhand guns for ten days. Ken Lawrence, Coos Bay: stated he was the owner of the Hole in the Wall Gun Shop; stated he would like the Council to remove the 14 day hold requirement for secondhand gun purchases; provided the Council with Oregon Revised Statute (ORS) 166.175 covering authority of City to regulate used firearms; stated he was not a secondhand store and suggested he was exempt from the proposed ordinance. Steve Thompson, Coos Bay: inquired if the proposed ordinance/14 day hold requirement applied to gun shows wherein Chief McCullough stated a gun show would be classified as trade show and therefore would be exempt from the 14 day hold requirement. Anna Marie Larson, Coos Bay: inquired if vendors within an antique mall would be required to have business license. City Manager Rodger Craddock stated only the principal owner of shop needed a business license. Doug Hille, Lakeside: noted the last sentence in ORS 166.170 stated: "Ordinances that are contrary to this subsection are void". Christopher Barbee, Coos Bay: stated he was the owner of Empire Firearms; also referenced ORS 166.170; City Manager Rodger Craddock suggested the Council allow the City Attorney to review the ORS and the

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case law in effort to determine relevance. Mr. Barbee suggested implementation of the RAPID reporting system was burdensome and estimated it would cost his business \$1,200 dollars a year. Tom McKirgan, Coquille: expressed concern about the cost burden to business owners with the implementation of the RAPID reporting system; inquired what qualified a business as a secondhand store. Geno Landrum, Coos Bay: stated he was a free market advocate; inquired what the City business license revenue was used for. It was the consensus of the Council to direct staff to clarify ORS's 166.170 and 166.175 and prepare an ordinance to be considered at a future date.

Approval of a Contract for Geotechnical Evaluation of the Library Foundation

Due to the late hour, Mayor Shoji postponed consideration of approval of a contract for geotechnical evaluation of the Library foundation for a future date.

Consideration of Approval for a Rain Garden/Public Courtyard on City Owned Property

Councilor Vaughan having rendered the concept drawing for the proposed rain garden was deemed to have a conflict of interest due to his involvement in the project. Councilor Daily advised his son was an apprentice on the proposed project whereby the Council declared no conflict for Councilor Daily's participation in the consideration of the proposed project.

Public Works and Development Director Jim Hossley stated David Ford, owner of the building at 245 S. 2nd, requested the City to consider allowing the installation of a rain garden on public property located sought of his building. The proposed garden would include using a portion of the City parking lot and some portions of the total improvement would also be incorporated into the adjacent sidewalk. Mr. Hossley provided features of the proposed rain garden; noted the project would cause the elimination of six parking spaces on the south side of the building. A request was also made to allow one of the building tenants to serve alcohol beverages at the tables in the garden area. Mr. Hossley advised the Council of Coos Bay Municipal Code (CBMC) 9.15.020 Drinking in Public Places; noted per the City's insurance carrier, as property owner the City would assume all liability for the consumption of alcohol in the garden and any subsequent issues regarding the rain garden or alcohol consumption. Mr. Hossley noted additional concerns including use of public property for the sole benefit of a private business owner and parking considerations associated with repurposing the six parking spaces; suggested surplus and sale of the property was an option for consideration. Councilor Daily inquired if the property could be leased. City Manager Rodger Craddock confirmed leasing was another option for consideration.

Shannon Souza: stated she was the owner of Sol Coast Consulting & Design and as the onsite architect/engineer for the project was speaking on behalf of the business owner; suggested the rain garden would be designed to accommodate all of the flows from a 25 year surge storm; noted the upgraded storm system would result in a net benefit to the City. Carmen Matthews, Coos Bay: stated his business was located adjacent to the proposed rain garden; suggested the request was a collective community project which could result in a capital improvement on City property and willing to conform to any codes, permits, standards or requirements in effort to move forward with the project. Geno Landrum, Coos Bay: suggested the City should divest itself of all public properties; recommended leasing the six parking spots for fair market value. Dana Gaab, Coos Bay: suggested the proposed project fit in with the vision of the Sustainable

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Design Assessment Team (SDAT). Mayor Shoji and Councilors Daily and Kramer were in support of the project and favored leasing the property. Councilor Muenchrath supported the project but was in favor of selling the proposed property. Councilor Muenchrath moved to authorize staff to negotiate a lease agreement. Councilor Kramer seconded the motion which carried with Mayor Shoji and Councilors Daily, Groth, Kramer, and Muenchrath voting aye. Councilor Melton was absent. Councilor Vaughan abstained from the vote is deemed, pursuant to the provisions of 4.7.4 of the Rules of the City Council, to have voted with the majority, which approved the motion.

City Attorney's Report

No comments were given.

City Manager's Report

City Manager Rodger Craddock asked the Council's support in thanking the volunteers from the Latter Day Saints Church and NW Community Credit Union for their recent efforts in helping the City to complete two park projects.

Council Comments

Councilor Groth reported the Streets Task Force met earlier in the day and was pleased with the outcome; announced a ground breaking ceremony was scheduled for 10:00 a.m. on Saturday, August 10th for the Coos Historical Maritime Museum. Mayor Shoji asked the Council to schedule an open discussion on the Mingus Park Memorial. City Manager Rodger Craddock recommended arranging a special meeting to consider the matter. Councilor Daily suggested the subject was better discussed in executive session. Mr. Craddock stated under Council rules any Council member could request a topic be brought to a regular or special Council meeting. It was the consensus of the Council to schedule a special meeting at the Library on August 27, 2013 with the Council accepting further written comment on the matter but no further spoken public comment on the matter.

Adjourn

There being no further business to come before the Council, Mayor Shoji adjourned the meeting. The next regular Council meeting was scheduled for August 20, 2013 in the Council Chambers at City Hall.

Crystal Shoji, Mayor

Attest:

Susanne Baker, City Recorder