

## MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

December 1, 2015

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 Fred Brick, Jennifer Groth, Stephanie Kramer, and Mike Vaughan. Councilors Mark Daily and Thomas Leahy were absent. City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Finance Director Susanne Baker, Library Director Sami Pierson, Public Works Director Jim Hossley, Community Development Director Eric Day, Fire Chief Mark Anderson, and Police Chief Gary McCullough.

### Flag Salute

Mayor Shoji opened the meeting and led the Council and assembly in the salute to the flag.

### Public Comments

Melinda Sprague, Coquille: supported Native American student education, referred to the Chalkboard report, and requested support of an Indian education position in the schools. Robert Metcalfe, Coos Bay: supported the efforts to allow small marijuana growers and dispensaries within the city limits, reminded of the January 4, 2016 growers registration deadline. Stephanie Eaton, Coos Bay: advocated for medical marijuana; she had patients that were taken advantage of because of the inability to obtain marijuana within the city limits; it was difficult for patients to obtain marijuana outside of the city limits. Dennis Staggs, Coos Bay: stated he had multiple sclerosis, used medical marijuana to mitigate the symptoms, and requested allowing growers inside the city limits. Rob Taylor, Bandon: recommended changing ordinances to allow marijuana dispensaries and growers within the city limits and upholding the will of the people as they voted in the last election; referred to successful individuals that used marijuana and considered himself as an example. Jim Deathridge, Bandon: smoked marijuana, had owned businesses, owned a dispensary; marijuana was no longer illegal and stated it was unconstitutional to withhold the product or medicine from people. John Cauthorn, Coos Bay: stated he had performed the work of two men or three women at a cannery job and as a result had micro traumas, scoliosis of the spine, osteoporosis, and a lot of pain. Opiates were not preferred and he used a marijuana pill to alleviate the pain; supported allowing marijuana growers within the city limits. Matthew Deathridge, Coos Bay: stated the tenth amendment didn't preclude the state from allowing marijuana growing; encouraged the Council to question constituents; and referred to Genesis, Eve, death, and the tree of life; questioned what happened to Babylon; discussed acupuncture and a bus accident he had been involved; possible children damaged from a bus accident up the river recently; and stated marijuana was an herb. Tom Kurgen, Coquille: stated people wanted to advocate for their health, could not get on Obama care and were forced to use recreational marijuana for medical purposes; the war on drugs was not working, and political representatives should acknowledge the will of the people as stated in the last election.

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### **Consent Calendar**

Mayor Shoji reviewed the consent calendar which consisted of 3a: approval of the minutes of November 17, 2015; 3b: approval of setting a public hearing date for the proposed vacation of a portion of Pennsylvania Avenue before the Planning Commission on January 12, 2016, and; 3c: acceptance of a DUII traffic safety enforcement grant. Councilor Groth moved to approve the consent calendar approving the minutes of November 17, 2015, approving setting a public hearing date for the proposed vacation of a portion of Pennsylvania Avenue before the Planning Commission on January 12, 2016, and accepting a DUII traffic safety enforcement grant. Councilor Kramer seconded the motion which carried with Mayor Shoji and Councilors Brick, Groth, Kramer, and Vaughan voting aye. Councilors Daily and Leahy were absent.

### **New Council Business**

No new business was presented.

### **Approval of 6<sup>th</sup> Avenue Emergency Repair Contract**

Public Works Director Jim Hossley stated a 75 year old 18 inch by 48 inch wooden box culvert located under 6th Avenue between the Pepsi Cola Distributer and O'Neil's Overhead Doors and Continuous Gutters needed replaced. The culvert crossing conveyed storm water runoff from the developed area east of 6th Avenue, in a westerly direction to Isthmus Slough. On November 12, 2015 a sinkhole was observed by the City's wastewater collections crew along the eastern shoulder near the vicinity of the culvert crossing. After further investigation, a void was discovered in the top of the wooden box culvert. On November 13, 2015 City staff consulted with The Dyer Partnership and hired Knife River to perform an emergency repair. Material was removed from the eastern shoulder to expose a void and a steel plate was installed on the sides of the box and over the void. The plate was covered and shoulder backfilled with gravel and was being monitored daily with staff coordinating with The Dyer Partnership and other resource agencies for a final solution. The contract for designing the solution would come to Council for consideration in the future.

Mr. Hossley reviewed the conditions which resulted in the City declaring a need for emergency repair pursuant to Section 11 of the City's contracting rules. The contract with Knife River was on a time and material basis and The Dyer Partnership was on site at all times to observe and direct work. Based on discussion with Knife River, staff anticipated costs would not exceed \$10,000. Councilor Kramer moved to approve the award of the emergency repair (after the fact) for the storm culvert repair project along 6th Avenue to Knife River for an amount not to exceed \$10,000 pursuant to the emergency contract rules found in Section 11 of City of Coos Bay Ordinance No.365. Councilor Brick seconded the motion which carried with Mayor Shoji and Councilors Brick, Groth, Kramer, and Vaughan voting aye. Councilors Daily and Leahy were absent.

### **Approval of Purchase for a Public Works Pickup Truck**

Public Works Director Jim Hossley provided a brief history on the transportation vehicle used by Public Works engineering staff; noted in 2013 the City purchased a surplus vehicle from City of Hillsboro (1996 Chevrolet S-10 Pickup) to temporarily replace the 1985 Toyota for \$500.00. The

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1996 S-10 was in need of replacement due to mileage and increasing maintenance costs. Staff explored the various procurement processes as allowed through the City's purchasing rules to obtain the best pricing which included quotes from local dealers, State of Oregon, and the Joint Powers and found a new replacement vehicle. Mr. Hossley noted purchase of the vehicle was approved in the FYE16 budget; \$10,000 of the total cost would come from the Major Capital Reserve Fund and the remainder from the Wastewater Improvement Fund. The total cost of the new truck, including delivery to Coos Bay, would be \$28,937.41. Additional funds would be expended for registration and aftermarket equipment at a cost not to exceed \$4,000.

Councilor Kramer moved to accept the bid and approve the purchase of a 2015 Chevrolet Colorado 4X4 crew cab with standard equipment, from Hubbard Chevrolet plus the purchase of aftermarket equipment not to exceed \$33,000. Councilor Groth seconded the motion which carried with Mayor Shoji and Councilors Brick, Groth, Kramer, and Vaughan voting aye. Councilors Daily and Leahy were absent.

### **Discussion on Kinetic Art Proposal for Highway 101 Right-of Way**

Public Works Director Jim Hossley stated Councilor Vaughan previously discussed with Council the possibility of placing a piece of kinetic art on a street light base in the Oregon Department of Transportation (ODOT) right of way near the northern terminus of the recently completed Highway (HWY) 101 sidewalk and fence railing project. By consensus, the Council requested staff look into the possibility of placing the art piece in the ODOT right of way. Per Chris Hunter, Assistant District Manager for ODOT Region 3, District 7, ODOT would not remove a street light nor would they be willing to allow an art installation at that location; noted ODOT had a formal process to request placement of art in ODOT highway right of way.

Mr. Hossley reviewed ODOT's process for placement of artwork on state highway right-of-way and noted safety was of primary concern for ODOT; therefore any artwork allowed on state highway right of way must be found by ODOT to not diminish the safety of motorists or the state highway system. Mr. Hossley noted if approved, the City would be liable for all issues related to placement of art in the ODOT right of way, and per any future IGA, the City would hold ODOT harmless. All costs related to creation, placement and maintenance of the proposed artwork and the surrounding area would be the responsibility of the City. Engineering costs were estimated between \$3,000 and \$5,000. Cost to install the art would depend upon engineering and ODOT requirements.

Staff requested Council direction on how to proceed which included location for the art as well as how the art met the community's historic or cultural character. Mayor Shoji suggested she was in favor of finding a way to encourage public art and was not sure the City was ready to accept this item at this time. Mayor Shoji suggested setting up conditions for accepting public art, addressing who would judge safety concerns; consider ODOT requirements, and consideration for ongoing maintenance of the public art piece. Mayor Shoji suggested a public art policy could be considered when deciding 2016 Council goals. Councilor Kramer suggested the art piece had moving arts and wondered if it would be ineligible and suggested placing it on city property to mitigate the ODOT rules. Councilor Brick stated it was beautiful, however he had difficulty with it being along a roadway because of the ODOT rules; the cost of installation and maintenance were a concern and suggested shifting the funds to roads or other areas. Mayor Shoji stated guidelines were needed and suggested the public should help fund public art

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projects. Councilor Vaughan stated the exercise and criteria for judgement were needed as were the ODOT rules and suggested submitting the project to ODOT to learn from the process.

Consensus was for staff to review other cities public art guidelines and criteria and bring information back to the Council.

### **Discussion on Medical/Recreational Marijuana Businesses**

City Attorney Nate McClintock referred to the Council memo wherein November 1998, Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA). On August 5, 2014, the Council enacted Ordinance 461 which amended the City's business license ordinance to precluded issuance of a business license to any business not in compliance with local, state, or federal law. Currently, marijuana remained a Schedule 1 controlled substance under the Federal Controlled Substances Act (CSA), marijuana related businesses were not eligible to obtain a city business license. Additionally, the City's current development code regulations did not allow commercial growing of any commodity, including marijuana, as agriculture and was not a permitted land-use within the City.

On October 21, 2014, the Council enacted Ordinance 464 establishing a tax on the sale of marijuana and marijuana-infused products in the City of Coos Bay. The Council also enacted Resolution 14-19 establishing a tax rate of 7.5% for the sale of marijuana, medical marijuana, and marijuana infused products. It should be noted that the Council took this action in an effort to grandfather the right to tax marijuana related sales prior to any vote on Measure 91. In November 2014, Oregon voters approved Ballot Measure 91, the Control and Regulation of Marijuana Act, legalizing the growing, distribution, possession, and use of marijuana in certain amounts for non-medical personal use.

The Oregon State Legislatures 2015 comprehensive reform changes made to Measure 91; noted the City would not regulate medical and/or personal marijuana grows unless they were found to be out of compliance with the state rules. While the grows were considered agricultural, they were treated as a home garden. It could be argued OMMA licensed caregivers who grow for multiple OMMA patients were engaging in a business where marijuana and money changed hands, but the City had not attempted to regulate caregivers; information on license holders and their locations were not available to the City. One of the amendments of HB 3400 allowed medical marijuana growers to sell excess marijuana to medical marijuana dispensaries, which would be a business under the City's business license ordinance.

Since the passage of the Control and Regulation of Marijuana Act, both staff and the Council were contacted by individuals interested in conducting marijuana related businesses within the City. Some of which believed the passage of Measure 91 invalidated the City's business license ordinance, marijuana related tax resolution, and the City's Development Code. City Attorney McClintock did not believe this would not be invalidated. Others advocated based on local voter support and approval of Measure 91, the Council should amend the applicable ordinances and resolutions and allow marijuana related businesses inside the city-limits within the confines of the current applicable state laws.

City Attorney McClintock stated he and the League of Oregon Cities reviewed the applicable state laws regulating medical and recreational marijuana which did not negate the City's "home

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rule” authority to enact ordinances regulating marijuana unless expressly preempted by state law. Based on the City Attorney’s review of the relevant laws, Oregon’s Constitution related to home rule and the applicable case law, he believed the City had several different options.

First, do nothing.

Second, enact an Ordinance which bared the retail sale of commercial marijuana products through medical marijuana dispensaries located in the City until January 1, 2017. It was anticipated by SB 460 that it would take some time for the Oregon Liquor Control Commission (OLCC) to enact regulations for the issuance of licenses for retail commercial marijuana dispensaries. Thus, the act provided for the “early sale” of limited amounts of non-medical marijuana products from medical marijuana dispensaries. There currently were no licensed medical marijuana dispensaries in Coos Bay.

Third, enact an ordinance which prohibited one or more of the types of marijuana related business activities (medical marijuana processing sites, medical marijuana dispensaries; recreational marijuana producers; recreational marijuana processors; recreational marijuana wholesalers; recreational marijuana retailers). As part of this ordinance, if any such activities were banned, the Council must refer the issue to the voters at the next general election (November of 2016). If all marijuana related activities were banned, the City would not receive taxes collected by the State. The distribution of taxes (10 percent of that collected by the State) was based upon the number of marijuana related State licenses issued for businesses in the City. Thus, even if such businesses were allowed in the City, if no State licenses were issues for businesses within the City, the City would not receive any tax revenue from the State.

Fourth, prior to the approval of ballot measure 91 legalizing the sale and use of recreational marijuana, the City passed an ordinance which allowed for the imposition of a tax on recreational and medical marijuana. The idea was that since Ballot measure 91 had within its text some limitations on the ability of local governments to tax marijuana it was felt that by enacting a tax provision prior to the measure passing local governments would avoid these restrictions. After the passage of measure 91, the legislature passed HB 3400 which allowed a local government to tax the sale of marijuana products up to three percent of the sales price. In order to implement this tax, the Council must refer the issue to the voters at the next general election. It was most probable the provisions of HB 3400 regarding local taxing rendered the City’s prior taxing ordinance unenforceable. Thus, if the City wished to tax marijuana sales, it would have to obtain voter approval, and would be limited to a maximum of three percent.

Fifth, if the Council wished to allow marijuana business, the current business license ordinance would need to be amended as would the Land Development Code should the City wish to allow commercial marijuana grows. Should this be the desire of the Council, the Council may want to have the Planning Commission consider adding time and place restrictions above and beyond those listed in recently amended state laws.

City Attorney McClintock stated there was a conflict between state and federal law. The oath of office taken by the Council did require upholding federal and state laws. Generally, federal law trumps state law when a conflict occurs. City Manager Rodger Craddock stated the oath of office had been in effect through the City Charter since at least the 1940’s. City Attorney

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McClintock stated there would be a conflict regardless of the Council's decision until Federal government changed to meet State law.

Councilor Kramer stated she was not against marijuana and questioned the Council's liability. City Attorney McClintock stated approving a dispensary would be a violation of Federal law. City Manager Craddock stated the Attorney General under the current administration was not proceeding with enforcement against those in violation of Federal law. Mayor Shoji suggested upon signing of federal grants the City would not be able to attest compliance with Federal law.

Councilor Vaughan asked how the City of North Bend addressed the issue wherein City Manager Craddock stated they do not have a business license but do have an occupancy license. Councilor Vaughan suggested farming had changed and micro-grows did not use traditional farming methods. Zoning could be allowed for urban farming to allow for micro-grows without compromising the intention of the land development ordinance. Mayor Shoji stated electrical and structural code issues would need to be addressed to comply with standards. Councilor Brick questioned prior comments by Rob Taylor on the space needed for a grow. Councilor Brick questioned where the line was drawn between personal and commercial growers. City Manager Craddock stated an excess grow to sell to a dispensary or processor would trigger a business license. Commercial grows and processing were not allowed through the land development ordinance.

Councilor Groth suggested OLCC was still writing the regulations and felt the Council may be getting ahead of OLCC. Councilor Groth asked if there was an enforcement mechanism for business license violation wherein City Manager Craddock stated there was a fine of \$500. Councilor Brick asked about the process to implement the 3% tax on recreational marijuana. City Manager Craddock stated a Council resolution, placement on the ballot, time for staff to draft a business license ordinance and fee resolution; advertise for a public hearing and Council to vote to amend the ordinance. The Planning Commission would also need to process a land development ordinance change which would include noticing the public and a public hearing with final decision by the City Council.

Councilor Vaughan supported option 5, heard compelling public testimony from the audience, and would like to see what other communities were doing, their oaths of office, and if it relieved Council responsibility. City Attorney McClintock stated there were other jurisdictions with dispensaries where their Council had taken the same oath as the City of Coos Bay.

Councilor Groth thanked the public for their participation, did not hear much testimony about dispensaries but rather more regarding personal use; and hoped to clarify it was dispensary and processing the Council would like to hear about to address the issue. City Manager Craddock referred the public to make written comments via email or the comment card.

Consensus was to wait until January, receive additional public comment, and make a decision at that time.

### **City Attorney's Report**

No comments were given.

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### City Manager's Report

City Manager Rodger Craddock stated congressional leaders were successful in helping the City receiving a biological opinion from the National Marine Fisheries Service (NMFS) for the Empire Treatment Plant; final DEQ approval within 60 – 90 days with construction in early 2016 with.

### Council Comments

Councilor Brick stated Matt Rowe, Mayor of Coquille, would be running for County Treasurer with a kick off on Thursday at 6:00 p.m. at the Labor Temple in North Bend. Councilor Groth stated there were three each openings on the Budget Committee and Planning Commission and suggested the Councilors speak with the public to entice applications. Councilor Kramer reminded of the Bus Jam and taking donated items to the Coos Bay Bi-Mart; and noted she liked the Empire Blvd project television commercial. Councilor Vaughan stated the Little Theatre on the Bay had been painted and Phase 2 commenced at \$1.0 - \$1.5 million with fundraising efforts continuing. Mayor Shoji stated the Empire Christmas tree lighting event was scheduled for December 5<sup>th</sup> at 5:00 p.m. next to the Star of Hope; and there would be a theatre production at the Dolphin Theatre at 7:00 p.m. on the same night.

### Executive Session

An executive session was scheduled pursuant to ORS 192.660 (2) (i) for the purpose of evaluating the job performance of the City Manager. No decisions were made.

### Adjourn

There being no further business to come before the Council, Mayor Shoji adjourned the meeting. The next regular Council meeting was scheduled for December 15, 2015 in the Council Chambers at City Hall.

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Crystal Shoji, Mayor

Attest: \_\_\_\_\_  
Susanne Baker, City Recorder