

## MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

July 5, 2016

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, Mark Daily, Jennifer Groth, Stephanie Kramer, Thomas Leahy, and Mike Vaughan were present. City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Finance Director Susanne Baker, Deputy Finance Director Amy Kinnaman, Community Development Director Eric Day, Public Works Director Jim Hossley, Fire Chief Mark Anderson, and Police Captain Chris Chapandar.

### City Council Interviews

At 5:40 p.m. prior to the start of the regularly scheduled Council meeting, interviews for open positions on the Library Board and Tree Board were conducted in the City Hall conference room. No decisions were made.

### Flag Salute

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

### Public Comments

John Chirrick, Coos Bay: stated he was the former General Manager for the Charleston Sanitary District (CSD); referred Council to a letter CSD sent last week to City staff in which CSD's Board expressed concern over a delay in the construction of wastewater treatment plant #2 (WWTP#2); noted CSD's had secured \$6.5 million in funding for their portion of WWTP#2 construction project; advised there was a time limit in which the funding would need to be used; stated CSD Board would not support the non-compliance fines of \$1,600 per day imposed by the Department of Environmental Quality (DEQ) mutual agreement order (MAO); CSD Board was opposed to there being declared moratorium by DEQ. Peter Mason, Coos Bay: stated he purchased a home in Coos Bay that required sewer improvements and had worked with city staff; stated he did not have any difficulties and staff did a good job; did not see any reason why the Council changed course on the WWTP#2 project; encouraged the Council to stay the course with existing construction plan for WWTP#2. Stacy Bear, Coos Bay: stated she was the Chair of Eastside Neighborhood Watch Group; stated as a disaster preparedness measure, the group obtained a 40-foot shipping container in effort to gather and secure emergency supplies; container was placed at the northwest corner of Millicoma school; announced an open house would be held at 7:00 p.m. on Tuesday, July 12th to accept water, shelter, and first aid donations.

### Consent Calendar

Mayor Shoji reviewed the consent calendar which consisted of 3a: approval of the regular and work session minutes of June 21, 2016 and special meeting minutes of June 27, 2016; 3b: approval of contract for library services, and; 3c: approval of annual Oregon Liquor Control

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Commission (OLCC) license renewal for Eagles Lodge #538. Councilor Groth moved to approve the consent calendar approving the regular and work session minutes of June 21, 2016 and special meeting minutes of June 27, 2016, approving a contract for library services, and approving annual OLCC license renewal for Eagles Lodge #538. Councilor Brick seconded the motion which carried with Mayor Shoji and Councilors Brick, Daily, Groth, Kramer, Leahy, and Vaughan voting aye.

### **New Council Business**

No new council business was presented.

### **Presentation of Ideas from the Boardwalk/City Docks Committee**

Public Works Director Jim Hossley stated the Parks Commission formed a boardwalk/city docks committee with the objective of creating ideas for future improvements to boardwalk / city docks. Mr. Hossley provided the Council with a PowerPoint presentation which detailed improvements proposed by committee. Proposed improvements were to expand the south end of the boardwalk and included additional docks, retail shops, parking, bridged walkway, land based fishing, and fish cleaning stations. Depending on Council direction the next step required would be a needs assessment to create a Boardwalk City Docks Master Plan. Councilor Kramer inquired how much it would cost to add new docks. Mr. Hossley stated approximately eight years ago, staff looked into adding two docks similar to the existing docks, adding restrooms, power, and increasing the length of the boardwalk at cost of \$2.5 million. Peter Mason, Coos Bay: was in favor of adding the bridged walkway to connect people back to downtown business.

Councilor Vaughan noted there was a wetland in the area proposed for retail shops; suggested incorporating a wake zone if new docks were added; suggested moving the fishing dock closer to the tide gate; questioned if a portion of property was owned by Port of Coos Bay and suggested ownership should be determined. Councilor Brick expressed concern about the cost and funding to build new docks. Councilor Leahy suggested looking at projects that could be incorporated without a great deal of expense; was in favor of house boats and floating restaurants. Councilor Daily suggested revenue from the shops should go towards boardwalk maintenance; noted limited access to the south end docks and suggested the bridge would be necessary; expressed concern about availability of parking; preferred converting existing boardwalk structures to shops and suggested looking into relocating the boardwalk railroad spur to eliminate parked trains along the boardwalk. Councilor Kramer liked to proposal and expressed concern about the overall costs and maintaining existing infrastructure. Mayor Shoji suggested moving forward with improvements to existing infrastructure; was not opposed to adding a kayak launch and fishing docks; noted the disconnect between the Front street improvements and boardwalk. Councilor Vaughan questioned what direction was given to the committee; suggested these were concept ideas. City Manager Rodger Craddock stated the purpose of master plan was to have concepts in place that would allow staff to seek grants and other funding which matched up with specific site development; advised a study was in process to look into converting the existing boardwalk structures for different use. Consensus of the Council was to postpone direction until report on use of existing boardwalk structures was presented.

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### **Consideration of Appointments to the Tree Board**

City Manager Rodger Craddock stated there were three openings on the Tree Board which included a Parks Commission representative, a Coos Bay Downtown Association (DTA) representative, and a citizen at-large position. The Parks Commission recommended Ariann Lyons as their representative and the Downtown Association recommended Elizabeth-Claire "EC" Knox as their representative. Applications were received from Cora Vandervelden, Brian Allen, and Darrick Betzenderfer for the citizen at-large position. Mayor Shoji stated herself and Fred Brick were the only Council representatives that attended the Tree Board and Library Board interviews earlier; recommended appointing two people Cora Vandervelden and Brian Allen. City Manager Craddock would prepare an updated ordinance for future Council approval in the event the Council decided to appoint an additional committee member to the Tree Board. Mayor Shoji moved to approve the Parks Commission appointment of Ariann Lyons and the DTA's recommendation to appoint Elizabeth-Claire "EC" Knox as their representatives on the Tree Board for four-year terms ending June 30, 2020. Councilor Brick seconded the motion which carried with Mayor Shoji and Councilors Brick, Daily, Groth, Kramer, Leahy, and Vaughan voting aye. By action of Council ballot, the Council appointed Cora Vandervelden and Brian Allen to the Tree Board for a four-year term ending June 30, 2020.

### **Consideration of Appointments to the Library Board**

City Manager Rodger Craddock provided a brief history of the Library Board; noted on April 7, 2015 James Moore was appointed to fulfill George Ruggles' unexpired term ending June 30, 2016. Applications were received from James Moore, Carol Sanders, Amber Kelly, and Jennifer Stephens for one opening on the Library Board. By action of Council ballot the Council appointed James Moore to the Library Board for a four-year term ending June 30, 2020.

Councilor Brick exited the meeting at 7:51 p.m. and returned at 7:53 p.m.

### **Consideration to Allow Night Time Work for Construction of the Blossom Gulch and South 10<sup>th</sup> Street Sanitary Sewer Improvement Project**

Public Works Director Jim Hossley stated the City of Coos Bay Municipal Code Chapter 9.20 Offenses Against Public Peace regulated "unreasonable noise". Mr. Hossley reviewed the section covering unreasonable noise violations which included the erection, excavation, demolition, alteration, or repair of any building in residential districts other than between the hours of 7:00 a.m. and 6:00 p.m. except in case of urgent necessity in the interest of the public's welfare and safety, and then only with a permit issued by the City.

City Manager Rodger Craddock exited the meeting at 7:54 p.m. and returned at 7:56 p.m.

Mr. Hossley stated the limits of the Blossom Gulch & S. 10th Street sanitary sewer improvement project were from Elrod Avenue to Anderson Avenue adjacent to Blossom Gulch Elementary School. During a normal school day there were parents and busses dropping off students before 8:00 a.m. and from 2:30 p.m. onward. It was a very congested area in the morning and afternoon and construction during that time period would cause safety concerns along with significant delays with respect to the school traffic. After September 5, 2016 the School District requested the project be done during the night, citing safety reasons. Mr. Hossley estimated construction would

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be completed prior to September 5, 2016; however, if the project did extend beyond September 5<sup>th</sup>, anticipated night work would be completed on or before September 23, 2016. Residences impacted by the night work were sent letters advising of the work and that Council was considering the matter tonight. Councilor Daily moved to allow the contractor that was awarded the bid for Blossom Gulch & S. 10<sup>th</sup> Street to work nights starting September 6, 2016 during the hours of 4:00 p.m. through 6:00 a.m. to a maximum date of September 23, 2016. Councilor Brick seconded the motion which carried with Mayor Shoji and Councilors Brick, Daily, Groth, Kramer, Leahy, and Vaughan voting aye.

### **Consideration for Approval of a Marijuana Business License Ballot Measure and a Tax Ballot Measure – Approval Would Require Adoption of Resolution 16-11 and Resolution 16-17**

Finance Director Susanne Baker stated at the June 7, 2016 City Council meeting, the Council directed staff to prepare the necessary paperwork to file ballot measures for the November 8, 2016 election. The questions approved were: 1. Should the business license ordinance be amended to allow state registered and licensed marijuana activities to operate within the city?; 2. Shall Coos Bay impose a three percent tax on sales of marijuana items by recreational marijuana retailers in the city? Ms. Baker stated staff prepared the SEL 802's, resolutions, and the required advertisements for the local newspaper to place these questions on the November ballot.

Mayor Shoji questioned what constituted marijuana activities as noted in question one. City Attorney Nate McClintock stated any marijuana activities as allowed by Oregon Revised Statutes; dispensaries, wholesalers, retailers, and growing agriculturally; noted growing agriculturally was in violation of the City's zoning ordinance. Mayor Shoji expressed concern about creating confusion with conflicting rules since the City did not allow commercial agriculture. Ken Folker, Coos Bay: agreed the use of "activities" in the proposed ballot question was confusing; suggested changing the proposed ballot measure. Councilor Daily suggested adding as allowed by state law after the word "activities" and to include clarification on prohibited farm use. Mayor Shoji stated she was not clear on what exactly constituted marijuana items as noted in question two wherein City Attorney McClintock stated it was anything related to recreational marijuana; for example: edibles and extracts. Consensus was for staff to revise the draft ballot measures based on Council's input and to bring back at a future date for approval.

### **Clarification of City Council's Direction Regarding Wastewater Treatment Plant #2**

City Manager Rodger Craddock stated at the June 21, 2016 City Council meeting, the Council approved appointing a Council Committee to work with an attorney with wastewater expertise. The committee, comprised of Mayor Shoji, Councilors Brick and Leahy, conferred with the attorney on June 27<sup>th</sup>. Based on their conversations, a scope of work was drafted for both the engagement of the attorney and an engineering firm suggested by the attorney. The scope of work was sent to the committee members and the rest of the Council for review prior to submitting it to the consultants. Upon review, Councilor Daily pointed out the scope of work was inconsistent with his motion which was approved by a majority of the Council. The motion in substance was limited to the formation of the committee along with appointment of committee members, and the direction to work through the attorney to draft a request for proposal to privatize (in whole or in part) the wastewater utility. Due to the confusion as to the scope of work the Council intended to

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be done, the matter was brought back for clarification. Once clarification was received, the appropriate scope of work would be provided to the attorney and work would commence.

Mayor Shoji noted Charleston Sanitary District and the Oregon International Port of Coos Bay had urged support for the City to move forward with existing construction plan for wastewater treatment plant #2 (WWTP#2); stated the wastewater attorney asked for a scope of work; noted the motion called for an assessment of wastewater treatment options, developing a request for proposal (RFP) for private wastewater treatment with best available technology, and determine if viable to move forward with private plant. Mayor Shoji stated the committee was not given any instruction as to what constituted viability; questioned if it was financial or timeline viability. Councilor Daily stated the committee was formed to engage a wastewater treatment attorney with the intent to have the attorney develop a proposal for a private wastewater treatment with the best available technology; staff should assist the attorney with anything requested, staff should not move forward with current treatment plant unless the Council discovered through the special attorney that it was not viable to move forward with a private plant; stated at this stage the Council did not know what constituted viability; intention was not to do a comparison between the City and DB Westerns proposal for the specific reason it appeared the majority of the Council did not have confidence in what staff had proposed and a minority of the Council lacked confidence in DB Westerns proposal. Councilor Daily stated the majority that approved the motion was in favor of privatizing the wastewater treatment plant because the Department of Environmental Quality (DEQ) would hold the private owner to higher standards which were not required of the City; suggested privatization would release the city of liability; wanted a third opinion to determine best rates for city and rate payers and wanted to see the cleanest discharge. Councilor Daily stated the city already had 13 years into the project; initial cost was \$800,000 and was now upwards of \$120 million; suggested as a comparison, evaluation of privatization with best technology available was very valid.

Councilor Kramer stated she was under the impression that Councilor Daily was seeking clarification on the differences between City and DB Westerns plan. Councilor Kramer moved for City to obtain an analysis of the CH2M/SHN plan and DBWT proposal for the City's WWTP#2 from an independent engineering firm with substantial experience with design and construction of municipal wastewater treatment plants for purpose of obtaining an independent recommendation for which plan best fit the city's current and future wastewater needs. Mayor Shoji seconded the motion. Councilor Daily stated he did not think Councilor Kramer was allowed to make such motion since she was on the losing side of the original motion that she was now trying to amend. City Attorney Nate McClintock stated Councilor Kramer's motion was a separate motion and noted both evaluations could be completed simultaneously. Councilor Vaughan expressed concern Councilor Kramer's motion did not relate to clarification of Councilor Daily's original motion; suggested Councilor Kramer's motion was underhanded. Councilor Leahy declared a potential conflict of interest stating the Coos Bay Boat Building Center (of which he served as Board Chair) received a forgivable loan from the owner DB Western; clarified prior conflict was that he was considering taking a private/personal loan from owner of DB Western. City Attorney McClintock stated potential conflict still allowed Councilor Leahy to vote on the matter. Mayor Shoji questioned how developing an RFP with would reveal if privatization with best available technology was the best option. Councilor Daily stated the RFP would ask if private development of a wastewater treatment plant with best available technology was the best option; it was up to the companies that responded to tell the city what they believed was the best available technology in addition to providing reassurances that DEQ would agree; stated Council was not establishing

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what best technology was, that would be left to the companies responding to the RFP. Councilor Kramer re-read her motion. Councilor Daily stated he was making vote under protest as he believed it was against Council Rules. City Attorney McClintock stated this was a separate motion and advised both evaluations could be completed simultaneously; prior motion was already granted, this was a separate motion asking for a separate option. Councilor Daily suggested the Council had been misled by staff for the past thirteen years, they never introduced the idea of a private plant, nor had they introduce the idea of best available technology; intention of motion was to explore privatization with best available technology, it was not about pitting staff against DB Western. Councilor Vaughan stated the motion that was brought back for clarification included best technology and questioned how the two proposals could be compared since the City's plan did not include best technology; suggested there was a learning curve and Council did not have the experience or expertise to make these types of decisions without exploring privatization. Councilor Kramer re-read her motion and a call for the question was made which failed with Mayor Shoji and Councilors Groth and Kramer voting aye and Councilors Brick, Daily, Leahy, and Vaughan voting nay.

Councilor Groth exited the meeting at 8:31 p.m. and returned at 8:34 p.m.

Councilor Daily stated the next task was to allow the attorney to develop a RFP for a private best available technology plant. City Attorney McClintock stated engineering services was qualification based so it would be a request for qualification (RFQ) not an RFP. Councilor Daily suggested the RFQ would provide information from different sources about best available technology which must meet DEQ and Environmental Protection Agency (EPA) standards. Councilor Vaughan question how long the RFQ process would take whereby City Manager Craddock estimated six weeks. Councilor Daily noted the part of the motion that stated staff should not move forward with current treatment plant plans unless the Council discovered through the specialty attorney that it was not viable to move forward with a private plant and stated the attorney might independently advise the evaluation process was not viable; noted staff was not objective and could not be relied upon to make such determination. Councilor Daily stated the purpose of the motion was to get a separate opinion, all questions in the motion should be answered by the special attorney which included a special council or engineer the attorney hired in effort to provide the requested information.

Councilor Groth questioned the purpose of the specialty attorney committee whereby Councilor Daily stated it was to select an attorney to perform the evaluation. Mayor Shoji stated the committee spoke with the attorney who advised he needed a scope of work in order to proceed. Councilor Groth questioned Councilor Brick and Leahy if they understood scope of work. Councilor Brick stated there was confusion during the committee meeting as to the intent of the motion which played a role in the committee coming to the conclusion to evaluate both proposals; suggested Council move forward with the attorney's proposed process but slightly change the scope of work to include all parameters before the Council including DEQ's \$1,600 per day fine and the risk to the City and Charleston's already secured financing in effort to determine if privatization was viable. Mayor Shoji asked how the committee could get the attorney's opinion on what was viable without the knowing about the enforcement orders. Councilor Brick stated the committee would provide the information to the attorney. Councilor Daily stated the attorney needed to ask those questions. City Manager Rodger Craddock stated if he understood correctly, in order for someone to write an RFQ they would need to know the needs of the treatment plant; staff could provide flows and loads for the plant, how many people the plant served, the inflow

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and infiltration issues. Councilor Daily stated all the parameters the attorney felt he would need to put the proposal together. City Manager Craddock suggested sending the facilities plan which outlined the flows and loads in addition to sending information on the mutual agreement order (MAO) and enforcement letters; ask the attorney to draft the RFQ, timelines, and what the attorney would recommend. Councilor Brick agreed but under the stipulation that use of best possible technology be included. Councilor Daily questioned what fee the City would be charged if plant was privatized; confirmed the timeline could be consideration for viability; noted there were different things which created viability: putting the best end product to the bay, financial impact, etc. Councilor Leahy stated he thought the timeline to meet the DEQ's was part of viability and thought moving forward with construction was part of that. City Manager Craddock advised the next deadline was September 12, 2016 for site preparation; noted the Council could elect to allow site preparation to proceed but noted financing could be recalled if the Council elected to move forward with privatization; also completed site prep work might need to be redone if plans for private plant varied for the existing plans. Councilor Daily suggested incorporating the site prep work into the RFQ. City Manager Craddock stated it could, but in order to meet the MAO and loan requirements, bids needed to be advertised six weeks prior to beginning the site prep work; noted the Council needed to determine what was acceptable to spend, staff provided information to assist Council so they could make their decision.

Councilor Leahy suggested Councilor Daily should take his place on the committee in effort to provide better communication. Mayor Shoji stated if the committee members did not understand the communication she did not believe the members should be on the committee; stated she was not willing to have the citizens pay fines noting there was a project and plan in place ready to go; was not willing to put financing in jeopardy; did not understand as a member of the committee where the committee stood on the matter; questioned when decisions would be made noting citizens were on losing end of the matter; stated she did not know if she wanted Councilor Daily leading the special attorney committee. Councilor Daily stated the Mayor did not understand the majority vote position to pursue better technology and better rates; did not understand how it was acceptable to anybody that the process had been ongoing for 13 years at a cost of \$800,000 and was now \$120 million. Mayor Shoji stated she did not agree with Councilor Daily's cost figures. Councilor Daily stated the city's process was horrible and a bad decision in his opinion. Mayor Shoji stated DEQ was the reason the timeline was extended, not the city. Councilor Daily stated he was not making a motion but wanted to read what he intended to make as a motion: move to have the wastewater attorney represent the city with regard to any fines and/or penalties and/or moratoriums that DEQ might levy and to further have the attorney explore the viability of suing DEQ for institutional failure. Councilor Daily stated he agreed with Mayor Shoji in that he believed DEQ was the catalyst for the city's current position. Mayor Shoji closed the discussion stating she was not willing to take on DEQ as part of the city's wastewater proposal.

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

City Attorney Nate McClintock advised that if the special attorney committee was planning on making recommendations to the City Council, the meetings would be considered public meetings and needed to be noticed. If the committee was simply providing facts and information to the Council, it would not be considered a public meeting. Consensus of the Council was to provide notification of the committee meetings.

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**City Manager's Report**

No comments were given.

**Council Comments**

Councilor Groth expressed concern about recent tone of Council discussion and emails.

**Adjourn**

There being no further business to come before the Council, Mayor Shoji adjourned the meeting. The next regular Council meeting was scheduled for July 19, 2016 in the Council Chambers at City Hall.

Attest:

  
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Susanne Baker, City Recorder

  
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Crystal Shoji, Mayor