



CITY OF EAGLE POINT

"Gateway to the Lakes"

OREGON

EAGLE POINT CITY COUNCIL
17 BUCHANAN AVE. SOUTH, EAGLE POINT, OREGON

JULY 14, 2015

REGULAR MEETING MINUTES

1. CALL TO ORDER – 7:00 P.M.

Mayor Russell called the meeting to order at 7:00 p.m.

Council Members Present: Bob Russell, Wayne Brown, Bill Fierke, Ruth Jenks, Aaron Prunty and Kathy Sell.

Council Members Absent: Jonathan Bilden.

Staff Members Present: Henry Lawrence, City Administrator; Joe Kellerman, City Attorney; Robert Miller, Public Works Director; Melissa Owens, Finance Officer; Sergeant Dustin LaFord, Police Department; Mike Upston, Planning Director; and Cindy Hughes, City Recorder.

Guests: Suzi Collins, Planning Commissioner; Millie Wewerka, Budget Committee and Planning Commissioner; Jerry Zieman, Budget Committee; and members of the public and press.

2. FLAG SALUTE AND INVOCATION

Mayor Russell led the Pledge of Allegiance and Jerry Zieman offered an invocation.

3. AUDIENCE QUESTIONS OR COMMENTS CONCERNING ITEMS NOT ON THE AGENDA

Helen Wolgamott of Eagle Point provided an update about the Blue Star Memorial dedication scheduled for May 21, 2016 at the Harnish Visitors Center. Ms. Wolgamott shared about a Certificate of Appreciation from the National Garden Clubs in recognition of the Central Point Garden Club, and reported it was also in recognition of the City of Eagle Point (Submission No. 1). In closing, Ms. Wolgamott requested the Council to consider suggestions for speakers at the dedication of the Blue Star Memorial Marker.

Bob Pinnell of Eagle Point suggested taking a closer look at the Economic Development Commission's Strategic Initiative No. 5 – Livability, Short Term Action E: Highway 62

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corridor appearance. Mr. Pinnell proposed creating a plan with interested members of the public to enhance the Highway 62 corridor (Submission No. 2) with the addition of trees and vegetation from Crystal Drive to Dutton Road. Additionally, Mr. Pinnell asked and received the Council's consent to bring the item forward through the Economic Development Commission.

4. PRESENTATIONS

There were no presentations.

5. PUBLIC HEARINGS

There were no public hearings.

6. CONSENT CALENDAR

6.1 Presentation of Regular Meeting Minutes of June 23, 2015.

Mayor Russell announced the Consent Calendar and reported that since the meeting of June 23rd, a Letter of Dissent and Protest had been received by Councilor Prunty in regard to Ordinance No. 2015-04. Further, staff researched this matter and there was not a precedent to enter the Dissent and Protest into the Minutes. Based upon Council Rule No. 21, discussion ensued which resulted in the following motion.

Motion: Councilor Sell made a motion to attach Councilor Prunty's letter to both sets of Minutes, June 23rd and July 14th. Councilor Prunty seconded the motion. A brief discussion followed which clarified the motion did not include approval of the Minutes. Roll call: Aaron Prunty, aye; Kathy Sell, aye; Wayne Brown, aye; Ruth Jenks, aye; Bill Fierke, nay; Bob Russell, aye; and Jonathan Bilden, absent. The motion passed with five ayes and one nay. (*Attachment No. 1 - Letter of Dissent and Protest filed by Councilor Prunty on June 25, 2015.*)

Next, Mayor Russell offered to entertain a motion to approve the Consent Calendar. Councilor Jenks moved to approve the Consent Calendar and Councilor Brown seconded the motion. There was no discussion. Roll call: Kathy Sell, aye; Wayne Brown, aye; Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; Bob Russell, abstained; and Jonathan Bilden, absent. The motion passed with five ayes.

7. CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR

There were no items considered for removal from the Consent Calendar.

8. PRESENTATION OF BILLS TO BE PAID

Mayor Russell asked if there were questions about the bills to be paid. Councilor Fierke inquired about the conceptual design for the tennis courts. Robert Miller, Public Works Director, responded that six options were presented by the landscape architect and a selection will be made from the two most favorable options. The Upper Rogue Tennis

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Foundation and the school district will also be involved in the selection of the final option. There being no further questions, Councilor Jenks moved to approve the Bills to be Paid in the amount of \$177,901.63 along with the additional bills list (Submission No. 2) in the amount of \$7,816.42. Councilor Brown seconded the motion. There was no discussion. Roll call: Wayne Brown, aye; Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Bob Russell, aye; and Jonathan Bilden, absent. The motion passed unanimously by those present.

9. OLD BUSINESS

There was no old business.

10. NEW BUSINESS

- 10.1 Resolution No. 2015-39. A Resolution authorizing a City of Eagle Point Personal/ Professional Services Contract with National Pavement Maintenance PDX LLC for the 2015 Seal Coat Project.

Robert Miller, Public Works Director, reported the City is in the third year of the pavement management program and referenced a map in the agenda packet with the proposed locations of approximately 68,000 square yards of seal coating. Only one bid was received by the deadline and it was less than anticipated, coming in lower than last year's cost. A brief discussion followed about the schedule for Poppy Ridge, and the scheduled work is a continuation of the work started last year.

Mayor Russell asked for a motion to approve Resolution No. 2015-39. Councilor Fierke made a motion to approve Resolution No. 2015-39 and Councilor Jenks seconded the motion. There was no discussion. Roll call: Wayne Brown, aye; Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Bob Russell, aye; and Jonathan Bilden, absent. The motion passed unanimously by those present.

- 10.2 Resolution No. 2015-40. A Resolution authorizing Local Agency Agreement No. 30651 Congestion Mitigation and Air Quality Program with the State of Oregon, through its Department of Transportation, for the Stevens Road-East Main Street to Robert Trent Jones Boulevard Project.

Robert Miller, Public Works Director, reported the City was successful in obtaining a grant through the Rogue Valley Metropolitan Planning Organization (RVMPO) for improvements to Stevens Road-East Main Street from Hillside Elementary School (HES) up to Robert Trent Jones Boulevard. The project includes sidewalks, curb and gutter on the south side of Stevens Road-East Main Street from HES to Robert Trent Jones Boulevard, and from HES to Bridgeport Drive on the north side as part of a reduced funding option. A crosswalk at Bridgeport Drive (allowing access to both sides of the road), bike lanes, drainage improvements and lighting are included with the project, in addition to left turn lanes at key intersections, and resurfacing of the existing pavement.

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Mr. Miller explained the total project cost is estimated at just over \$2,700,000 and the grant from RVMPO includes Congestion Mitigation and Air Quality (CMAQ) funding up to \$1,332,497, and Surface Transportation Program funds up to \$1,104,043. CMAQ and STP funds are included and will not require additional agreements. The City is required to provide an estimated percentage match of \$278,874 (minimum of 10.27 percent). There was additional discussion about budgeting over two and possibly three budget years. Mr. Miller clarified that the sidewalk, curb and gutter would match up with the existing sidewalk, curb and gutter at the southern most point of HES.

Mayor Russell asked for a motion to approve Resolution No. 2015-40. Councilor Sell made a motion to approve Resolution No. 2015-40 and Councilor Jenks seconded the motion. There was no discussion. Roll call: Bill Fierke, aye; Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Wayne Brown, aye; Bob Russell, aye; and Jonathan Bilden, absent. The motion passed unanimously by those present.

Councilor Jenks and City Attorney, Joe Kellerman, commended Mr. Miller for obtaining the project funding. Councilor Jenks contributed the award to Mr. Miller's wise suggestions during negotiations. Mr. Miller also gave credit to Mike Upston, Planning Director.

- 10.3 Resolution No. 2015-41. A Resolution setting Wage Levels for Management Positions for the City of Eagle Point for 2015-2016.

Henry Lawrence, City Administrator, explained that effective July 1, 2015, the City entered into the third year of the labor agreement with the Teamsters General Unit and Teamsters Police Unit. The third year includes a 2% cost-of living adjustment, which the Council generally provides to non-represented management staff. Mr. Lawrence further explained that the adjustment did not include his salary as it is under a separate contract.

Mayor Russell asked for a motion to approve Resolution No. 2015-41. Councilor Fierke made a motion to approve Resolution No. 2015-41 and Councilor Prunty seconded the motion. There was no discussion. Roll call: Ruth Jenks, aye; Aaron Prunty, aye; Kathy Sell, aye; Wayne Brown, aye; Bill Fierke, aye; Bob Russell, aye; and Jonathan Bilden, absent. The motion passed unanimously by those present.

- 10.4 Discussion and update regarding Oregon legislative actions and implementation of legal marijuana under Measure 91.

Henry Lawrence, City Administrator, deferred to City Attorney, Joe Kellerman. Mr. Kellerman explained that the Local Option section in House Bill 3400 was the most pressing deadline but approximately six months are left until anything has to be

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done. Mr. Kellerman stated he did not have suggestions but explained that legislation allows cities to “opt out” of allowing commercial marijuana. Basically, cities in counties that defeated Measure 91 by a margin greater than 55% may do so by Council action. Cities in counties where Measure 91 received 45% of the vote or more may refer an opt-out measure to their voters. Such a referral would place a moratorium on commercial marijuana activities until the general election in November, 2016. In Jackson County, the bill passed by 53.6%; however, Eagle Point’s Precincts 27 and 29 resulted in “no” votes of 56.84% and 57.91%.

The City Council and Attorney Kellerman discussed:

- Time, place, and manner.
- Ordinances outlawing outside grows.
- Taxation – amending Eagle Point’s Ordinance to tax at a rate of whatever is the greatest amount allowable by legislature.
- Moratorium on commercial or medical marijuana and Eagle Point’s Business License requirements.
- Judicial decisions regarding Federal Law.
- Opting Out for any type of retail or medical marijuana facilities (producers, wholesalers, retailers, or any combination - not four plants in a back yard) would disqualify the City to receive state revenues on marijuana.
- Odor, nuisance, and enforcement.
- Future review of Ordinances from surrounding cities, and samples provided on the League of Oregon Cities’ website.

Mike Upston, Planning Director, suggested the Council address the following issues first:

- 1) Time, place and manner – locations for dispensaries and hours of operations;
- 2) Impacts with growing and selling – standards, possibly including odor impact;
- 3) Vote on ballot, November 16;
- 4) Local option tax; and
- 5) Abandon and hang hat on business license.

In addition, Attorney Kellerman referenced the Cole Memorandum (James M. Cole, Deputy Attorney General, U.S. Department of Justice, Memorandum for All United States Attorneys dated August 29, 2013), and explained about the eight key factors addressed in the memorandum.

A lengthy discussion continued in which Attorney Kellerman made it clear that there were many unknowns that would continue for some time. Other points of discussion included:

- California as the world’s 8th largest economy and potential impacts of legalization in California.
- Nuisances and unreasonable interference of land use.

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Councilor Fierke recommended letting the citizens vote on the issue which was met with the Council's support. Discussion continued which resulted in Mr. Lawrence determining to bring back the ballot issue; and time, place, and manner issue for discussion. In the interim, Attorney Kellerman recommended amending the Ordinance to allow for taxation of 10% or the maximum amount allowed by law.

11. REPORTS FROM CITY COUNCIL AND CITY COMMITTEE REPRESENTATIVES

Councilor Fierke announced that the D9 Board will meet the following week; however, there had been an informational meeting with the School District earlier in the day. Discussion items included student visitors from Showa Japan during the week of August 3rd; support for a spray park, electronic reader board, partnership with the YMCA, and a court case related to the school district. Councilor Fierke also discussed various spray parks in the area, the City Administrator's review, the downtown property, and water rates.

Councilor Jenks reported attending the Rogue Valley Area Commission on Transportation (RVACT) meeting, and a continuing discussion regarding grants which she deferred to Robert Miller, Public Works Director. In addition, Councilor Jenks reported that tribal entities with a local interest have the right to be invited and seated as voting members. Also presented during the RVACT meeting was OReGO, an ODOT test program, for taxing miles driven which will include 5,000 participants. Councilor Jenks reported an absence of enthusiasm for the test program; and discussed the impact to communities such as Eagle Point with 85% of its population commuting and the average Oregonian's household transportation budget at approximately 30%.

Mayor Russell reported enjoying the 4th of July celebration and commended the Community Association and Suzi Collins for doing a great job.

12. STAFF REPORTS

Mike Upston, Planning Director, discussed the reactivation of the Cottonwood Subdivision project and public hearings scheduled with the Planning Commission on August 18th and City Council on September 8th. Other zoning issues include regulations for electronic reader boards and signage. Mr. Upston also referenced the Friday Letters with reports of a strong upward trend in construction permits, an increase in the rate of new single family homes, and an increase in the number of improvement permits to existing homes. Mr. Upston reminded everyone about City events and the Second Saturday Program, and concluded the report by encouraging everyone to attend and invite their friends to the Annual Street dance on August 15th.

Melissa Owens, Finance Officer, reported the Finance Department is working on: closing out the fiscal year and making sure items are appropriately allocated to the correct fiscal year; starting projects for the new fiscal year; and the USDA loan documents.

Robert Miller, Public Works Director, provided an update on the partnership with the YMCA and working toward having a part time or full time director for Eagle Point. In

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regard to the presentation on OreGO at the RVACT meeting, Mr. Miller reported there was some indication that the program may become mandatory in the future. Mr. Miller also discussed fundraising for Eagle Point park projects and plans for the Parks and Recreation Commission to review spray parks at its July meeting. Further, Mr. Miller reported negotiations in progress with the engineering firm for the USDA project. Councilor Jenks inquired about the tennis court project fund raising efforts reported in the Friday Letter and expressed uneasiness about feeling disconnected by the lack of information on those efforts. As a solution, Mr. Miller offered to share information from the tennis court meetings he attends.

Sergeant LaFord did not provide a report; however, Councilor Jenks commended his efforts on weed enforcement, noting areas had been mowed that she had never seen mowed before.

Henry Lawrence, City Administrator, reported the City's most significant issue regarded the Medford Water Commission's cost of service study and a proposed rate increase of 42% at 12% per year beginning January 1st. Mr. Lawrence explained the increase would impact all surrounding cities and a workshop with the Medford Water Commission is scheduled on August 12th. Further, Mr. Lawrence assured the Council that the City would be represented at every meeting. There was additional discussion and strong concern expressed. At Mr. Lawrence's direction, the Medford Water Commission's cost of service study and the proposed rate increase will be on the next agenda.

13. INFORMATION

13.1 OLCC License Renewals.

OLCC License Renewals were acknowledged earlier in the meeting.

14. ADJOURN

There being no further business, Mayor Russell closed the meeting at 9:03 p.m.

Respectfully submitted,


Cindy Hughes, City Recorder

ATTEST:


Robert E. Russell, Mayor

Ordinance 2015-04 is overly broad, intended to target special classes, and abridges fundamental rights guaranteed by our state and federal constitutions.

I

Ordinance 2015-04 is overreaching. A person in charge of City Property may exclude any person who violates an applicable provision of the law..., which is defined in the ordinance as any City Ordinance, rule or regulation promulgated by the Parks and Recreation Department, and includes *any offense or traffic offense of the State of Oregon*, etc. (emphasis added). This is far too broad. If we wish to regulate offenses related to city property, we should name those offenses and provide an appropriate penalty. Additionally, it is important to remember, *all* of those offenses are already named as offenses in other city ordinances or state statute.

It is not hard to imagine a person receiving a parking citation (warning) one day and exclusion the next. Or an otherwise peaceful protester being excluded without warning, for obstructing vehicular or pedestrian traffic on a public way or making an unreasonable level of noise (per ORS 166.025, Disorderly Conduct) while picketing.

Ordinance 2015-04 is a feel-good measure that does nothing to further city interest. All offenses at the state and local level are now restated under another new ordinance. It is unnecessary and will have no substantive impact on conduct or behaviors.

II

The purpose of this ordinance, *prima facie*, is to limit disruptive conduct, and disruptive and offending behaviors. As previously stated, we already have ordinances and statutes that address these issues. Therefore, the purpose or intent must be found elsewhere.

Those who have attended our council meetings and heard our deliberations should clearly recognize the intent is to decrease the number of transient or indigent persons, and those school-aged, who gather on city property, especially our parks.

The intent of this ordinance is to target specific classes, based on wealth and age, and prevent them from assembling on city property. The intent is to limit access and assembly of those classes in our public forums because they cause discomfort and inconvenience. We must remember though that assembly is often meant to cause discomfort and inconvenience. An employee strike for example has far less impact if some people are not inconvenienced. That inconvenience is signal to the overall message.

The message this ordinance is attempting to quash, by removing those classes of people, is that the City does not provide them other opportunities. Their message is found in and by their assemblage. They are limited, based on their class, in how they can deliver that message in other meaningful ways.

This ordinance is a method of moving that message from the forefront by excluding those people from our public forums. It makes it easier for us to eat our lunches in peace and tranquility without feeling uncomfortable or inconvenienced by those certain classes of people. We no longer have to see the problem or hear their message.

It's been stated many times that our kids have nothing else to do. Ordinance 2015-04 tells our youth to do that "nothing" somewhere else, somewhere more convenient for the rest of us.

III

Article 1, Section 1 of the Oregon Constitution states all men are equal in right. Section 20, no law shall be passed granting to any citizen or class of citizens privileges or immunities which upon the same terms not equally belong to all citizens. Finally, Section 26, *no law shall be passed restraining any of the inhabitants of the State from assembling together* (emphasis added). Section 26 is unambiguous.

This ordinance abridges fundamental rights guaranteed by our state and federal constitutions. The exclusion of people, whether we believe them to be part of a special class or not, from our public forums is unconstitutional. An ordinance abridging fundamental rights must be more narrowly tailored than Ordinance 2015-04.

As an example of what it means to be narrowly tailored and serve a governmental interest; in Oregon the Governor may exclude someone from public property based on a declared emergency period. There must be a publicized emergency proclamation, the property must be clearly identified and limited, and the proclamation must be limited to a period of time (ORS 131.705 through 131.735). When the danger no longer exists, the governor must rescind the exclusion. An excluded person has *immediate* access to the circuit court for review of the exclusion order, and that review is given priority over all other cases on the docket of the circuit court. Ordinance 2015-04 does not have similar limits or protections.

Ordinance 2015-04 excludes persons from lawful assemblage, a right guaranteed by the Oregon and federal constitutions. It is not narrow in scope (includes all offenses at the state and local level). It is not based on a governmental interest (i.e., an emergency or a clear and present danger). It is inherently unlawful.

It is for these reasons I respectfully dissent.

Aaron Prunty