

ONTARIO CITY COUNCIL MEETING MINUTES
Tuesday, January 19, 2016

The regular meeting of the Ontario City Council was called to order by Mayor Ronald Verini at 7:00 p.m. on Tuesday, January 19, 2016, in the Council Chambers of City Hall. Council members present were Ronald Verini, Norm Crume, Betty Carter, Thomas Jost, Larry Tuttle, and Charlotte Fugate. Tessa Winebarger was excused.

Members of staff present were Tori Barnett, Mallory Mallea, Kari Ott, Larry Sullivan, Marcy Siriwardene, Steve Mallea, Cliff Leeper, and Betsy Roberts. Dan Cummings participated by phone for the Executive Session.

The meeting was recorded and copies are available at City Hall.

Councilor Carter led everyone in the Pledge of Allegiance.

AGENDA

Mayor Verini asked to place two new items on the Agenda: New Business 8F – Resolution #2016-102, Decreasing the Membership on the Public Works Committee from Seven Members to Five; and 8G – Request to Proceed for Water Line Repairs with Cascade Pipe.

Charlotte Fugate moved, seconded by Norm Crume, to adopt the Agenda as amended. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

CONSENT AGENDA

Betty Carter moved, seconded by Charlotte Fugate, to approve the Consent Agenda, which included the Minutes from the Electronic Meeting of January 8, 2016; a Liquor License Application for Greater Privilege for Bert's Growler Garage; and Approval of the Bills. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

PUBLIC COMMENT

Maggie Wood, Citizens on Patrol, provided an update on the COP program. She believed that crime was being deterred, in part, by the assistance of the COP. She recited some incidents that she was personally involved with while driving around the area, and noted that due to her team's actions, potential criminal activity had been thwarted. They were always looking for new members, and always looking for money. She mentioned that Ontario had a public safety problem. The Fire Department had 2300 callouts in 2015, which was a record. OPD had 10,116 cases. They had recently been involved with Treasure Valley Community College regarding their Criminal Justice program, and they were very excited about that project. She informed every one of the fundraiser being held at Mackey's Restaurant on February 23, 2016, 5pm to closing, as Mackey's would donate 10% of that evening's food profits to the COP program, and encouraged everyone to attend.

Councilor Crume thanked Ms. Wood for all she and her team had done for the city, and led everyone in a rousing round of applause.

PUBLIC COMMENT

Nikki Hall, Ontario, stated she was filing charges against DCS and the Ontario Police Department, and planned to take them to court. She believed that her birth certificate and possibly her passport were stolen by DCS, and the police department would not file a report on the incident and refused to investigate her claims.

Flora Gibbs, Ontario, stated: *"I'm just coming in to let you guys know that yes, we are still here, and we are still hoping to do a medical marijuana dispensary, and to do it correctly. Yes, our lawyer and Mr. Sullivan, Larry Sullivan, have been talking and stuff. And we'd just like you all to know that if there are any concerns, anything that we can discuss, we would be more than happy to, you know, because we do have a lot of the same concerns. We are not retroactive, we are proactive, you know, we want to do it right, and we've been saying that for two years now. We'd like to let you guys know that we plan to keep doing it right, regardless, you know, and I think there is an opportunity medically, as well as in a business stance, you know, and that's how we're looking at it as well. Hopefully, we can all come to an agreement, because, no we do not want to go to court. I think we could all do it, if we all work together. Like we said in the past, we want to work with law enforcement, we want to work with our city, we want to work with our state, and we do want to do it correctly. We do want to keep it here in Ontario, in our state. Both Chuck and I are from here, have lived here our whole lives, and we are not planning on moving. We'd like to continue and grow old here, okay, well I'm already old but, that's okay. We just want to say thank you to everybody. I know this has not been easy for anybody, and I do appreciate everything everybody has said and done here on this committee. Thank you."*

PRESENTATION

Annual Financial Report for Fiscal Year 2014-15

Chelsea Haring, Auditor, presented. She worked with the firm Lewis, Poe, Moeller, Gunderson & Roberts. First, they really appreciated being in a contract with the city to do the audit again this past year. This would be the second year they would do it. Everyone should have received a packet, which included two letters in the front. Those were required communications between them and city. She had met with the Audit Committee already, which was done while her firm was here on site. The management letter indicated information about the Journal Entries, which were attached. It would show that the firm made some journal entries, and Kari [Ott] had proposed most of those entries, and there was nothing that was material that the Council needed to be concerned about. Most of them were closing journal entries. As a board, that was very important. They knew that during the year, they were receiving financial statements there were accurate. They didn't have to make a ton of entries at the end of the year, so what they were seeing was accurate during the year. That was very important. They also noted that they had no disagreements with management, no problems with anyone; in fact, it was very good working with staff. Management signed a representation letter that made certain representations to the firm. The second letter was their management letter, which was where her firm would report any findings to the Council. There were different levels of findings. There were material weaknesses or significant deficiencies, but they didn't have any of those to report this year. The only thing they had was something they considered as an "other matter", and that was just something they'd bring to the Council's attention, but there were no major issues found. As indicated, the only suggestion they had was over disbursements. That was related to checks. When checks were disbursed, there were two check runs that happened during a month. Kari printed off the monthly reports for the Council, and there were certain expenditures that happened that were generic, such as utilities. Those could be cleared by Tori [Barnett]; those did not have to go before the Council every time for payment. However, they were suggesting that all of those expenditures get include in the monthly reports and not just on the check register list. She believed that Kari was already implementing that. That was the only thing they were going to bring to the Council's attention.

In looking at the Financial Statement Audit they performed, this year they didn't have to do a federal compliance audit as the city didn't have enough federal expenditures. They just did a financial statement audit. In that audit, they would obtain reasonable assurance that the financial statements were not materially misstated, ensuring that the users of the financial statements were receiving accurate data. They used many things through materiality levels. They didn't test every single transaction. They did look at riskier things, such as disbursements for reimbursement for key people, cell phones bills, that type of things. They looked at credit cards closely. But, they were not doing a full fraud audit.

On pages one and two, they would see the audit report that was performed. This year, they had a clean opinion. Last year, and for many years before that, the audit report was qualified for the capital assets. This year, Kari worked hard to clear that all up, and there was no qualified opinion on this report this year. There was a clean opinion throughout the document for all units. The next pages were the MDA, which was prepared by city staff. It

reflected a broad overview of what was occurring. It was a great place to look for the big picture of the financial statement for the year, and some insight to what could be coming up.

In the back of the audit, page 78, was the Oregon Independent Auditor's Report. There were a couple things noted there as exceptions. The city hadn't filed with the Commission of Bureau of Labor and Industry. That meant that if the city had a budgeted public improvement, even if budgeted but not done during that year, it still required a filing be done. They discussed that with Kari, and believed it had been filed. The city had not done any public improvements, so that was something noted. It was supposed to be filed 30 days prior to the adoption of the budget, but it could be filed after. Another thing noted as an exception was that there were certain items that had to have bids obtained for, go through the bidding process, and there was a chip seal project that was performed during the beginning of the fiscal year, that bids were not obtained correctly. Every other transaction they researched, since there was a new Public Works contract, all of those were documented.

The next exception was due to some budget over expenditures. As noted, they were very minor. There wasn't anything over \$2700. That would not result in any issues or problems.

On the actual financial statement, some highlights included the Statement of Net Position [page 10], the government wide statements which were the Statement of Net Position and the Statement of Activities. Those two would look quite a bit different from last year, and that was due to the implementation of GASB68, which was a governmental accounting standard. This was for entities with defined benefit plans, such as PERS, who would not be required to report pension liability or asset based on the employer's proportionate share of the PERS liability. Basically, PERS obtained actuaries to do valuations that two different measures mandate. June 31, 2014, they did a measurement (showing as a prior period adjustment on the Statement of Activities, because that was bringing that into this year), and was detailed in Note 11, on page 43. One major thing was that there was a net pension asset listed on the Statement, which was \$2M. Those amounts were coming from the PERS actuaries, and could fluctuate substantially from year to year. As of June 20, 2014, the city had a liability of almost \$4.5M, and then it swung at the end of the fiscal year to be the \$2M asset. That would fluctuate with the PERS market. This year, they were overpaid because of the asset on the Statement. They would also see deferred amounts, related to the pension, so there were deferred inflows and deferred outflows. Those were related to contributions made subsequent to year's end.

With regard to the net position of the city, it increased by \$7.2M over the prior year, and much of that was due to the GASB68 adjustment. The total fund balances, page 12, had decreased by \$128K, but the General Fund, it increased by \$171K over the prior year.

Mayor Verini thanked Chelsea for the report.

NEW BUSINESS

Appointments to Various City Committees

Tori Barnett, Interim City Manager, presented.

It was once again time for the annual appointments to the various city committees, boards, and the Planning Commission. The following data outlined the vacancies, and indicated those citizens who had expressed an interest in serving:

Airport board: 2 vacancies [4-year term]

Three letters received – Shay Myers, Eugene Doughty, and Richard Newman. Mr. Newman also indicated an interest in appointment to the Planning Commission. Luke Keller stated he was not seeking reappointment.

Budget Board: 2 Vacancies [4-Year Term]

One letter received – John Hall. Larry Heidbrink stated he did not wish to seek reappointment.

Planning Commission: 2 Vacancies [4-Year Term]

Two letters received – Ralph Poole and Richard Newman. Rita Kanrich stated she was not seeking reappointment.

Public Works Committee: 2 Vacancies [3-year Term]

No letters received; Mike Miller and Ron Cornmesser stated they would not be seeking reappointment.

Recreation Board: 2 Vacancies [3-Year Term]

No letters received.

V&C Bureau Board: 3 Vacancies [3-Year Terms]

One letter received, one telephone call – Bob Quinn and Laura Davis. Currently Mayor Verini serves as the representative from the Council; he will need reappointment, or another member from the Council needs to be appointed. Wants to be appointed

Norm Crume moved, seconded by Thomas Jost, to reappoint Shay Myers and appoint Eugene Doughty to the Airport Committee; to reappoint John Hall to the Budget Board; to reappoint Ralph Poole and appoint Richard Newman to the Planning Commission; and to reappoint Bob Quinn and Laura Davis to the Visitors and Conventions Bureau. Expiration of terms to follow those established by ordinance. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

Mayor Verini voiced his desire to remain as Council representative on the Visitors and Conventions Bureau Board.

Charlotte Fugate moved, seconded by Betty Carter, to reappoint Ronald Verini as Council representative on the Visitors and Conventions Bureau Board. Expiration of term established by ordinance. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

Resolution #2016-101: Receive/Expend Unanticipated Revenue for OPD

Steve Mallea, Police Lieutenant, presented.

The Ontario Police Department received unexpected stipend training funds from Greater Oregon Behavioral Health Inc. (GOBHI) to put toward attendance at the National Crisis Intervention Team (CIT) conference in Chicago, Illinois in April. The Department would like to expend those funds for the training, and a budget change was required to do so.

Law enforcement's contacts with individuals suffering from mental health issues were on the increase. Communities across the United States were adopting the National Crisis Intervention Team approach. Law enforcement in Malheur County started working with Lifeways, through Greater Oregon Behavioral Health Inc., to implement such a program. Police staff developed a training module to aid those officers who encountered individuals with mental illness in, to provide better services to them and the overall community. This training program was designed to help further the current program.

Because of the Department's interest and current investment into the implementation of CIT in Malheur County, GOBHI provided a \$750 stipend to help pay for a representative of the Ontario Police Department to attend the National CIT Conference in Illinois in April. The stipend would cover approximately half the cost to attend the conference. Lifeways would be covering the other half of the costs associated with this training, with the exception of meals. The Department currently had sufficient funds in the training line to cover those meals.

As these funds were not anticipated during the annual budget process, the Department had not budgeted to receive or expend such funds, and a resolution was required to do so. The proposed resolution designated the expenditures be recognized within the Police Department training line, with the proposed revenues being recognized as an increase within the city's General Fund.

Norm Crume moved, seconded by Charlotte Fugate, that the City Council adopt **Resolution 2016-101, A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET ACKNOWLEDGING RECEIPT OF UNANTICIPATED REVENUE FUNDS AND APPROPRIATING EXPENDITURES WITHIN THE GENERAL FUND**. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

Ordinance #2714-2016: OMC 3-24 to Establish a Business License for Medical Marijuana Dispensaries, and Declaring an Emergency (1st Reading)

Larry Sullivan, City Attorney, presented.

As a result of a Land Use Board of Appeals (LUBA) decision, in December, 2015, the City Council repealed its previous ordinance, Ordinance No. 2700-2015, requiring medical marijuana dispensaries to have business licenses. Although the City Council permanently banned dispensaries in July, 2015, when it enacted Ordinance No. 2704-2015, the City was currently involved in litigation in which a dispensary was attempting to open in the city, despite the ban. Another business had also hired a lawyer to try to force the city to allow that business to operate a dispensary.

Based upon previous Council discussions, the Council consensus had been to require any dispensaries to have business licenses. Ordinance No. 2714-2016 imposed the same business license requirements that were in repealed Ordinance No. 2700-2015, with the exception of the land use regulations that led to the LUBA decision. Enacting Ordinance No. 2714-2016 would not affect the city's ban on dispensaries. Enacting the ordinance would insure that if any businesses obtained a court determination that they were exempt from the ban, they would have to obtain a business license from the city and comply with the requirements of the ordinance.

The Council did have the authority to impose additional restrictions other than those set forth in this ordinance, or the Council could choose to eliminate some. This was only the first reading, which he had drafted as an emergency reading only because they were receiving legal challenges. If, despite the city's ban, one or more dispensaries were permitted to pen, the emergency language would ensure that the city had an ordinance on the books to deal with it.

Mayor Verini verified they still had the zoning and restrictions were still in place.

Mr. Sullivan stated that was correct. The city adopted a separate zoning ordinance in May, 2015, which was never challenged. It had the same restrictions. If the proposed ordinance was adopted, all the same regulations would still be enforced because of the subsequent zoning ordinance. That ordinance was on the books in the event that a business attempted to open in Ontario. They'd have to comply with the zoning restrictions in that ordinance.

Mayor Verini asked if between the first and second readings, there were changes, those could be discussed prior to the second reading.

Mr. Sullivan indicated that was correct. The Council could take longer, too, for the second reading. He noted a correction that needed to be made in the Whereas clause on the proposed ordinance, which was missing the word Council. That would be fixed by second reading.

Charlotte Fugate moved, seconded by Norm Crume, that the City Council approve **Ordinance No. 2714-2016, AN ORDINANCE ADDING CHAPTER 24 OF TITLE 3 TO THE ONTARIO CITY[sic] CODE TO ESTABLISH A BUSINESS LICENSE FOR MEDICAL MARIJUANA DISPENSARIES, AND DECLARING AN EMERGENCY, on first reading by title only**. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

Proposed Lease with Larry Kitamura

Larry Sullivan, City Attorney, presented.

Larry Kitamura had been occupying approximately 2.67 acres of city land adjoining the airport for several years without a written lease agreement with the city. Apparently he and former staff members had an oral agreement, the details of which were unknown. There was no record of rent having been paid in recent years.

The proposed lease was an annual lease for \$801, based on a charge of \$300 per acre. There was no automatic renewal provision, but the lease allowed the parties to extend it in writing. Either party could terminate the lease at any time upon a 30-day notice. The lease was for agricultural purposes only, and because of its proximity to the airport, a 15-foot height limitation had been placed on any equipment used on the property. The lease also required the Tenant to keep up the appearance of the property and to use the space for storing or accumulating junk.

The Council had a few options: they could direct staff to evict Mr. Kitamura from the property, or have him sign a written lease agreement. Staff recommended approving the written lease agreement.

A question raised at the work session related to this parcel going back on the tax roles, and that was correct. The parcel was currently tax-exempt, so this lease could cause taxes to be due for this piece. He hadn't heard back what the potential tax could be, but it would most likely be assessed as farm use. That wasn't currently addressed in the lease. Council could table the issue pending the information getting before Council; or the Council could approve the lease subject to the insertion of language outlining if the parcel did become taxable, it would be the tenant's responsibility to pay those taxes. Ultimately, it would be the city's responsibility.

Mayor Verini asked how to word the motion to include that additional language.

Mr. Sullivan suggested *"I move that the City Council approve the annual lease agreement with Larry Kitamura, and authorize the Mayor to sign it, upon condition that the tenant is required to pay any real property taxes on the property"*. If Mr. Kitamura didn't renew the lease, or the city didn't renew it, beyond the current least term, it might result that the taxation of the parcel would not occur until after the lease had expired.

Mayor Verini so regardless, the city would be responsible for the taxes.

Mr. Sullivan confirmed that was correct. Another option was to have him get an estimate of that, and then increase the rent in that amount, that was another option.

Councilor Tuttle suggested just putting in the contract that Mr. Kitamura had to pay the taxes.

Mr. Sullivan stated that was would be fine.

Councilor Tuttle asked if this parcel was a separate piece. If it was, how was the county going to assess it. Didn't they have to have metes and boundaries on that?

Mr. Sullivan stated they had some way of doing that. They'd done it before.

Councilor Jost asked if anyone had spoken with Mr. Kitamura on this lease.

Mr. Sullivan stated Mr. Kitamura had received the existing lease, but not with the tax verbiage.

Norm Crume moved, seconded by Thomas Jost, that the City Council **approve the annual lease agreement with Larry Kitamura and authorize the Mayor to sign it upon the condition that Tenant pay property taxes**. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

Carol Robertson Settlement

The action was taken care of at the Thursday, January 14, 2016, work session.

Resolution #2016-102: Decrease Membership on Public Works Committee from Seven to Five

Tori Barnett, Interim City Manager, presented.

Ordinance #2457, the establishing ordinance for the Public Works Committee, indicated an initial membership of seven individuals; however, under Section 2-8-2(C) of that ordinance, it gave the City Council, subsequent to the initial appointment of seven members, the authority to decrease to five members, or increase its membership to

no more than eleven. It had been stated on several occasions that the Committee struggled to get attendance at the monthly meetings, or had the required number to have a quorum. At the Thursday work session, Councilor Tuttle had stated if the Council consensus was to decrease the membership to five, he would speak with the individuals currently on the Committee, to get their opinion on the change. She had received a phone call that morning from Councilor Tuttle, stating had spoken with the remaining membership, and they were all in favor of the decrease from seven to five. Because of the language in Section 2-8-2(C) in the ordinance, the Council had the authority to make the change via resolution as opposed to having to change the ordinance.

Betty Carter moved, seconded by Charlotte Fugate, to adopt **Resolution #2016-102, A RESOLUTION DECREASING THE MEMBERSHIP ON THE PUBLIC WORKS COMMITTEE FROM SEVEN TO FIVE.** Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

Request to Proceed: Emergency Water Line Replacement

Cliff Leeper, CH2M, City Public Works Director, and Betsy Roberts, CH2M, City Engineer, presented.

This discussion started during the work session last Thursday, which addressed the sanitary sewer project and the water line breaks that had occurred. There were two alleyways – one they had already been working in, and three of the four breaks had occurred there, but they were done with the sanitary sewer replacement there. The concern was that the water line could break in the future. The proposal was to pipe burst and replace that old 6-inch water main. In researching the project, it was about 50% completed, and reviewed what still had to be completed. There was one location where they'd like to what they'd learned on the previous alleyway; there was another alley where the water line appeared to be close to the sanitary sewer line. They had concerns about pipe bursts in that area. It serviced White House Dental, so there were businesses located in the area. It would be prudent to not have any 36-hour outages in this type of location. They asked the contractor, following Council approval, about the first alleyway, which was already done for sewer replacement, as well as working in the second alleyway. Two prices were received. In looking at the existing contract, \$494K, they removed a piece of work due to change conditions, reducing the amount of work for the contractor, by about \$94K. With the two changes, alleyway #1 would be about \$46K; alleyway #2, was a shorter section, and would run about \$16K. She also included a contingency of about 10% because they didn't have final prices. She was pleased with the numbers, the contractor knew the site, he had his insurance and bonds in place, and he was already mobilized. Bottom line was about \$468K, so it was still under the total contract amount. They recognized there would be two different pots of money because it was both sanitary sewer work and water work, so the City Manager and Finance noted it would take a resolution to set aside roughly \$70K for water line work from a different budget. They were looking for an approval to move forward on negotiating a change order with the existing contractor.

Mr. Sullivan stated the original contract hadn't involved any water line replacement, and this one now did, so it went beyond the original procurement. If the original contract scope had referred to having the contractor also do some potential water main work, there wouldn't be an issue on this. If it wasn't within the scope of the procurement, it could be done as a change order, but the Council might have to also make findings as part of that indicating that it's being done on an emergency basis and it does appear to be justified. Under the Oregon Public Contracting law, emergency meant circumstance that a) could not have been reasonably foreseen, b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare, or safety; or c) require prompt executive of a contract to remedy the condition. This fit the requirements for an emergency issue.

Councilor Tuttle asked what type of engineering would need to take place.

Ms. Roberts stated they did not have to go through the Oregon Health Authority; the city had authority to do their own extensions.

Councilor Jost asked about pressure on the new line, going into older lines. Would that result in additional bursts down the line?

Ms. Roberts stated anytime they exposed the pipe, it increased the possibility of a break. If it wasn't exposed, even the older pipe should be alright.

Norm Crume moved, seconded by Charlotte Fugate, to authorize CH2M Hill to enter into a Change Order for the installation of a water line for a cost of up to \$70K, on an emergency basis. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

CORRESPONDENCE, COMMENTS, EX-OFFICIO REPORTS

Tori Barnett stated she had expected to hear from Slavin Management that day, but had not, so she'd be in contact with them in the morning, with regard to the City Manager recruitment.

Councilor Tuttle asked if the Police Chief application that had been presented to Mayor Verini had been forwarded to Human Resources.

Ms. Barnett stated it had not.

Mayor Verini stated no, as there was further discussion with the applicant before it would be passed on.

Councilor Fugate stated she had a meeting with one of the community leaders last Friday, and in that conversation, she stated that the community viewed this Council and the city as inept because they had not found a City Manager, a Police Chief, and some concerns about the Fire Chief. She knew they'd been working on it, but they needed to be proactive, and to get this done. They needed to work together to resolve these positions.

EXECUTIVE SESSION

The Council entered into an Executive Session at 8:23 p.m. under ORS 192.660(2)(e), to discuss real property. Council reconvened into regular session at 8:57 p.m. No action was necessary as a result of the Executive Session.

ADJOURN

Charlotte Fugate moved, seconded by Larry Tuttle, that the meeting be adjourned. Roll call vote: Crume-yes; Winebarger-out; Carter-yes; Jost-Yes; Tuttle-yes; Fugate-yes; Verini-yes. Motion carried 6/0/1.

APPROVED:



Ronald Verini, Mayor

ATTEST:



Tori Barnett, MMC, City Recorder