

CITY OF ALBANY  
CITY COUNCIL  
Council Chambers  
Wednesday, April 9, 2014  
7:15 p.m.

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE

Konopa led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Councilors Bill Coburn, Floyd Collins, Bessie Johnson, Rich Kellum, Ray Kopczynski, and Dick Olsen.

Councilors absent: None.

PRESENTATION

Fire Department Citizens' Awards

Fire Chief John Bradner said during the afternoon of December 9, 2013, Mark and Andrea Ylen witnessed a house on fire on Grand Prairie Road. He said once they got to the house, Mrs. Ylen knocked on the door to alert anyone who might be inside. One of the occupants had realized there was a fire and was gathering his daughter to get out when he heard the knocking. Mark and Andrea then assisted him and his daughter in getting safely outside while calling 9-1-1. They acted with unselfish concern for others. Bradner presented Mark and Andrea Ylen with a Certificate of Appreciation for providing lifesaving assistance.

Bradner said in the early snow-covered evening of February 8, 2014, Rich Roven was walking his dog and saw smoke coming from an attic window of a home on Elm Street. When he reached the home, the front door was open so he yelled inside to see if anyone was there. He made contact with one occupant who he found stranded in her living room. Bradner said the occupant was recovering from surgery and had made several failed attempts to get to the stove to put out the fire, even falling against the stove and injuring herself. She was only able to drag herself to the living room to open the front door while the fire continued in the kitchen. Bradner said Roven entered the home and attempted to cover the pan which was on fire, but couldn't. He was able to get the burning pan out of the house and placed it in the snow. He said if Roven not taken immediate action to help his neighbor when he did, this fire would have entered into the attic and created significant damage to the home or created a toxic environment for its resident who may not have been able to get out. Bradner presented Rich Roven with a Civilian Lifesaving Award for his actions on February 8, 2014.

Bradner said on the morning of December 3, 2013, James Myrick was traveling on Highway 20 when he witnessed a collision of two cars ahead of him. He stopped, turned on his emergency flashers, and called 9-1-1. He said Myrick proceeded to check on the occupants of the cars involved in the collision. One driver was not injured; but Myrick found the other driver with his head hanging out the broken side-window, having difficulty breathing, and trapped inside the car. He said Myrick had to reach through a broken window to get the driver's head into a position that assisted with his breathing and to stabilize his neck. He held the driver in this position until the Fire Department arrived, and he continued to provide assistance to firefighters while they worked to remove the driver from the car.

Bradner said Myrick is an Army veteran who served in Afghanistan in 2007 as a combat infantryman with the 173rd Airborne Brigade. During his military service, he took a combat lifesaving course which he later taught and undoubtedly provided the skills he used to assess the driver's condition and provide critical life-saving care. He said Myrick's service through the military and his willingness to provide assistance on December 3, even with the threat of fire or injury to himself, exemplifies his courage and character as an outstanding and citizen. Bradner presented James Myrick with a Civilian Lifesaving Award for his actions on December 3, 2013.

Bradner said it is the Albany Fire Department's mission to Prevent and Protect from Harm. He said Mark and Andrea Ylen, Rich Roven, and James Myrick provided clear examples of what it means to protect others and what it means to be a caring and responsible citizen. He thanked them for acting unselfishly and making a difference in other people's lives by their actions.

Konopa thanked the award recipients for being wonderful citizens and helping people in need.

PROCLAMATION

Arbor Week

Konopa read the proclamation in the agenda packet.

SCHEDULED BUSINESS

Communication

Albany named as Tree City USA for the 20<sup>th</sup> consecutive year/Arbor Week activities.

Bayard McLeod, Forest Management Technician for the Oregon Department of Forestry, presented the City with an award in honor of being named Tree City USA for 20 consecutive years.

Recreation Programs Supervisor Rick Barnett highlighted activities occurring during Arbor Week including the Sawing for Schools Program and a tree giveaway at the March 26 Farmers' Market. He said what is done now with urban forestry will impact future generations. He thanked Natural Resources temporary employee Meghan Chuites and Park Maintenance II Wayde Burrese for their work on this project. Konopa asked about a news release. Management Assistant/Public Information Officer Marilyn Smith said a news release has been distributed.

Konopa mentioned that the *Albany Democrat-Herald* wrote a wonderful article about the Sawing for Schools Program.

South Albany High School Woodshop Teacher Chava Neuhaus expressed her appreciation for the Sawing for Schools and Lumber to Legacy Programs. She said both programs have greatly benefited her students. She thanked Barnett, Chuites, and Burrese for their work to make these programs possible. Students had an opportunity to make chairs from white oak trees from the Lowe's site in Albany. She said the chairs will be auctioned off in the fall. She said Oregon Freeze Dry donated trees they had cut down on their property. She said numerous people in the community have donated trees to the program which is greatly appreciated. She thanked Justin McMinds, owner of WoodMinds LLC, who has volunteered many hours by being a part of the Sawing for Schools Program which teaches kids to use the mill to create lumber. She thanked the City Tree Commission and Mark Azevedo for supporting the schools and woodworking.

Konopa thanked Neuhaus. She also thanked Azevedo for all of his work on the Tree Commission.

Second Reading of Ordinance

Declaring a moratorium on medical marijuana facilities and declaring an emergency.

Konopa said public comment was taken on this issue two weeks ago, and tonight's meeting is just for taking action on the ordinance. She said, there is a second ordinance regarding zoning regulations over medical marijuana dispensaries. She asked the audience to refrain from clapping during the process.

City Attorney Jim Delapoer read the ordinance for the second time in title only: AN ORDINANCE OF THE CITY OF ALBANY, OREGON, DECLARING A MORATORIUM ON MEDICAL MARIJUANA FACILITIES AND DECLARING AN EMERGENCY.

MOTION: Councilor Bessie Johnson made a motion to adopt the ordinance; Councilor Rich Kellum seconded the motion.

Kellum said he has been in business for 30 years. He explained that business changes all the time and his business is different now from what it was when he first started. He thinks this issue is about people being faced with having to do things they don't want to do. He said Canna Kitchen didn't want to operate as a dispensary because of the cost. He said it was pointed out that they could sell their services to dispensaries, but they didn't want to do that. Kellum said he suggested Canna Kitchen move to Benton County, but they didn't want to do that. He said the State and Federal government look at medical marijuana in different ways; federal law supersedes state and local law. He said the Council is left with a dilemma. If the City allows dispensaries, we are going against the federal government. Kellum read the oath of office he made when he was sworn in as a City Councilor. He said he made an oath and he is going to keep it and will vote for a moratorium.

Johnson said she also requested a copy of her oath of office. She said the Council can't pick and choose which laws to obey, and that is supposed to be true for all elected officials. She said 99 percent of the citizens she has spoken to say they want a moratorium. She said the departments that will be handling issues should be consulted. She feels that a moratorium would be the best decision for Albany right now. She doesn't know what will happen in the future; but at this point, she has to stick with her oath.

Councilor Floyd Collins said in 2010, voters had the opportunity to consider allowing medical marijuana dispensaries and the answer statewide was no. He said after the election failed, the legislature got involved, along with some lobbyists, and made a mess of things. He believes there is some level of appropriate use of medical marijuana, but the system has been abused and needs correcting. He doesn't think Albany needs to be on the leading edge and there are alternative methods for people who have legitimate medical marijuana needs. He hopes that everyone can join in to address the abuse of the system.

Councilor Dick Olsen said he has been asking people what they think of the moratorium. He said many don't know the whole story about marijuana. He respects his physicians so he asked them what they thought of the moratorium and both his physicians said they were against it.

VOTE: The motion failed 3-4 with Coburn, Kopczynski, Olsen, and Konopa voting no.

Konopa said she voted no because she would like to consider the ordinances with regulations. If one of the ordinances isn't approved, she will ask that this ordinance be reconsidered. She said her main concern is keeping dispensaries out of neighborhoods. She would also like to have an additional level of inspection of dispensaries if the police department sees fit.

Delapoer said the Council directed him to prepare ordinances [see agenda file] that have additional regulations. The first ordinance states that dispensaries can't be sited, in addition to state law requirements, within 300 feet of an authorized residential use. He said, if you have a mixed-use zone, the dispensary can't be located within 300 feet of where a residential use could lawfully occur. He said the other aspect is to establish a fee to assist with helping to recover additional costs that law enforcement may occur as a result of this. He said there is a blank on the ordinance and if a motion is made, to also include a dollar amount. He said the ordinance that states "No Industrial Exception" would apply without the exemption discussed at the previous meeting. He said Council is not forced to choose either of the ordinances. Council can direct him to bring a different ordinance back with other regulations and clarifications. He said it would be helpful to have the process complete by May 1.

Collins said in the State statute it refers to delegation to local governments for implementation of reasonable restrictions. He said he didn't see anything that defined reasonable restrictions. He asked, if we don't know what it is, are we assuming a risk if we adopt something with that definition? Delapoer said it would have been helpful if the legislature would have been clear about what a reasonable and unreasonable restriction is. He thinks a distance restriction would probably be sustained. He said an industrial and commercial zone distinction might be more difficult to defend if challenged.

Councilor Ray Kopczynski said the key term is "if challenged." Delapoer said many laws have existed several years without being challenged. He said it is easier to defend an ordinance that doesn't make a distinction based on industrial or commercial.

Konopa asked if the Council wanted to consider one of ordinances.

#### First Reading of Ordinances

##### Prohibited within 300 feet of residential use ordinance.

MOTION: Kopczynski moved to have a first reading of the ordinance in title only and to add a \$150 annual permit fee.

Delapoer read the ordinance, which included the prohibition within 300 feet of residential use phrase, for the first time in title only: AN ORDINANCE OF THE CITY OF ALBANY, OREGON, IMPOSING LOCAL RESTRICTIONS ON MEDICAL MARIJUANA FACILITIES AND DECLARING AN EMERGENCY.

MOTION: Councilor Bill Coburn moved to have a second reading of the ordinance in title only.

VOTE: The motion failed 3-3, with Collins, Johnson, and Kellum voting no.

Konopa explained that a second reading can only be done if the vote is unanimous.

Collins said, if we don't read the alternative ordinances for the first time in title only tonight, Council wouldn't have the opportunity to refer back to the moratorium question because of time limitations. He said, procedurally, we would be better off to have both alternative ordinances read a first time in title only tonight. Konopa agreed. Coburn said he thinks the other procedure is that the ordinance could be amended and then amendments could be voted on. Collins said that is true, but then you wouldn't have the opportunity before May 1 to reconsider the moratorium question. Delapoer said there is no harm taking a first reading of both ordinances. He recommends the Council take this matter up at the next Work Session for discussion so they have time to pursue any option. He asked if he could read the second ordinance in title only. Konopa asked him to read the other ordinance.

Delapoer read the ordinance, which included the prohibition within 300 feet of residential use and no industrial exception phrase, for the first time in title only: AN ORDINANCE OF THE CITY OF ALBANY, OREGON, IMPOSING LOCAL RESTRICTIONS ON MEDICAL MARIJUANA FACILITIES AND DECLARING AN EMERGENCY.

Delapoer said both options can be considered for a second reading at the next Work Session. Konopa asked if everyone will be available on April 21. All Council members will be in attendance. Kopczynski clarified that they will be discussing both of these ordinances at the next Work Session and then bringing one, both, or

none to the next regular City Council meeting. Olsen said the Council should decide tonight which one of the ordinances will be read a second time at the Council meeting and discuss it at the Work Session so we know which one of these we are going to decide on. Coburn said it is appropriate to discuss these at the Work Session and have a decision there moving forward into the Council meeting. Delapoer said you have the legal flexibility and the time to decide at the Work Session or the Council meeting. Konopa said Council still has the option to read the ordinance for a second time. Collins said assuming there is no support for either of the ordinances, there would still be time to reconsider the moratorium ordinance.

Konopa said the Council will be discussing this at the April 21, 2014, Work Session and it may be considered for final action at the April 23, 2014, City Council meeting.

#### Business from the Public

Greg Betchel, 978 Ferry Street SW, thanked the Council for their prudent decisions. He said he understands that the term reasonable restriction is legal speak for anything that doesn't get challenged. He knows the City Council will come up with reasonable restrictions and make the right decisions.

#### First Reading of Ordinance

DC-03-13, amending Ordinance No. 4441, which adopted the City of Albany Development Code and Zoning Map by amending the Development Code text related to economic development, home businesses, planned developments, and signs, and adopting findings and declaring an emergency.

Coburn said he contacted Albany Chamber of Commerce President Janet Steele and she indicated that she didn't have a problem with the changes and acknowledged it to be a good first step and that there is a lot more work to do. He said he would have to agree that it is a good start; there are more things they can do to make the community more business-friendly and business-ready. He thinks it was a good effort and a lot of time was put into the process. He said he would be in favor of the ordinance.

Konopa said there were several conversations that came forward about getting in-depth with certain code issues but it would have taken so much more staff time. She said they didn't have the staff time to do a full review. She said the group tried to work on the pressing issues.

City Manager Wes Hare said we have been operating with limited staff in the Community Development department for a lengthy period of time. He said planning staff is trying to just keep their heads above water. There has been increased development activity in the City and most of staff's effort is going into current everyday planning. He said in the past, the goal was to review the land development code once a year, but it may be a while before we are able to do that again.

Kellum said he sees three options listed on the green sheet [see agenda file] for the motion. He asked, do we have to do all or one listed on the green sheet or can we modify the motion? Coburn asked if Council can just adopt the ordinance in the packet. Kellum said he would vote against it. He said it is discriminatory against small businesses in neighborhoods. He said if there are going to be noise restrictions; it should be applied to whoever's making the noise, not dependent on it being a business. Konopa asked if a first and second reading has already been done. Planner II Anne Catlin said the discussion was tabled after the second reading.

Coburn said he has a right to live in a quiet neighborhood. He said in-home businesses could potentially make noise seven days a week all year long. He said his issue is that it would be disturbing his peace and citizens have a right to have it quiet in their neighborhoods. Coburn said the potential for a home business is the ongoing noise.

Delapoer said, it is important to realize that we are trying to determine the characteristics of businesses that might be okay in residential zones. In industrial and commercial zones, you will have folks doing industrial-type things. He said, we are trying to come up with a list of characteristics we would look at to decide what types of industries wouldn't generally be offensive in residential areas. He said noise was one of the standards considered.

Konopa said she has been in her home for 37 years and has had to deal with neighbors coming and going. She said one neighbor used a nail gun all of the time and it can be disrupting when it is a constant noise.

Public Works and Community Development Director Mark Shepard said these are allowances for someone to be able to run a business in a residential zone. He said the existing code language already addresses noise. It states there cannot be any offensive noise. He said what staff has tried to do with the code is develop some measurable standards so someone's complaint can be addressed. He said, this language allows more use in residential areas than what our current code language allows. Kellum said it doesn't. He said 60 decibels is what the code language states. He said that means people can't do anything except have a conversation.

Konopa said her neighborhood is surrounded by industry. She said several years ago, Oremet replaced a piece of machinery. She said she heard a high-pitched sound from the new machinery, so the police

department used a decibel meter and found that it was over 55 decibels. She said it was the constant high-pitched sound. She said Oremet was wonderful about it and put a muffler on the machinery to fix the problem. She said it is the constant sound that can be very irritating. Kellum said what the Council is saying to the community is, we aren't business-friendly if you are a little guy. He said this is more restrictive. Konopa said it isn't; we are also looking out for neighborhoods. She said there has to be a balance.

Catlin clarified that there is already code language addressing offensive noise. She said that can be hard for staff to measure. She said the proposed language is specific to noise at or past the property line sustained for more than ten minutes. This recommendation came from a small business owner who testified in support of the proposed amendments. She said there is an allowance to exceed the measurable standard through the conditional use process.

City Manager Wes Hare said, this standard makes a more precise standard and is less restrictive than what we have now. He said it creates more opportunities for small businesses to operate out of their homes.

Collins asked, how many noise complaints have there been in the last two years? Catlin said staff gets about 20 complaints a year, but she doesn't have the information in front of her in regards to how many of those are specific to noise. Collins said when you look at a residential district, there are expected variations. He said as a small business grows, they move to commercial zones. Having a small business in a residential zone is a privilege, not a right. He said he sees it as a relaxation of the existing language. Council can always come back and amend the ordinance again. He said over time, we will find where the problems are.

Konopa asked what the difference is between the options listed on the green paper. Hare said, if the Council's plan is to adopt the Business-Ready Task Force recommendations, you would simply move to adopt the ordinance as shown in the packet.

MOTION: Collins moved to adopt the Ordinance and Exhibits as presented; Coburn seconded. The vote passed 5-1 with Kellum voting no. ORD. NO. 5832

#### Adoption of Consent Calendar

- 1) Approval of Minutes
  - a) February 12, 2014, City Council Regular Session.
  - b) February 24, 2014, City Council Work Session.
- 2) Approving an extended property tax abatement agreement between Linn County, a cosponsor of the South Santiam Enterprise Zone, and Selmet, Inc. RES. NO. 6314
- 3) Accepting a dedication deed from the Greater Albany Public School District. RES. NO. 6315
- 4) Accepting an easement from Hayden Homes, LLC. RES. NO. 6316
- 5) Approving 2013-2014 funding allocations for two Community Development Block Grant programs.

Kopczynski asked for Item 1a) to be removed for discussion. Collins asked for Item 2) to be removed for discussion. Coburn asked for Item 4) to be removed for discussion.

MOTION: Coburn moved to adopt the Consent Calendar as presented with Items 1a), 2), and 4) removed for discussion. Olsen seconded the motion and it passed 6-0.

As to Item 1a), Kopczynski asked about the status of the bottle redemption center. Economic Development and Urban Renewal Director Kate Porsche said she has talked to Stephanie Markus and wrote her letter. She said she has identified a number of properties that might work for a location for the redemption center in Albany. She said they are working together and keeping the dialogue open. Coburn asked if the building on the southwest corner of Queen Avenue and Geary Street is an option. Porsche said that building is a little larger than what the company is looking for, but it is on the list. She said other properties being considered include the old Safeway site, Western Tool Supply, and the old Mark Thomas Motors site. Konopa asked about the bowling alley. Porsche said that site is a little too large and expensive. She spoke to the realtors today and the price has just been lowered on that property.

As to Item 2), Collins asked that items pertaining to property tax abatement agreements aren't listed on the Consent Calendar because they are of great significance. He asked Albany-Millersburg Economic Development Corporation Director John Pascone to speak about the 180 new jobs this agreement will bring to the community.

Pascone said staff has been working with local companies for quite a while and there have been four enterprise zone applications after a couple of years of work; one of those being Selmet, Inc. He said Selmet, Inc., isn't in Albany, but it's in Linn County and many Albany residents work there. Selmet is planning a \$25 million dollar expansion over the next several years. He said the metals casting and aerospace industry looks very bright, and the 180 jobs figure is a minimum. He said these are family-wage jobs, and many employees will be paid over \$54,000 a year.

Collins said this is important; we get the secondary effect of having 180 new jobs created in the community. He said Albany will benefit from this expansion, and it meets one of the Strategic Plan goals to seek new

employment opportunities for the community. He said this is a great example of many people working hard over several years and working with private industry. Konopa said working with the existing industries has been a great benefit. She asked when the expansion is expected to be completed. Pascone said it is a five-year project.

As to Item 4), Coburn asked why the property requires more room for a pedestrian ramp. Shepard said it is likely because of the geometry of the intersection. He said a little more room was needed in order to meet the Americans with Disabilities Act requirements. Coburn asked if this is unique to this property or if it will be a pattern throughout the city. Shepard believes it won't be a pattern.

MOTION: Coburn moved to adopt Items 1a), 2), and 4) and Olsen seconded it. The motion passed 6-0.

## Report

### Modifying the Water Avenue Streetscape Plan.

Shepard said that the adoption of the modification is required prior to staff being able to grant the developer's request to amend the land use approval for PD-01-02.

MOTION: Kopczynski made a motion to adopt the modification as presented; Kellum seconded. The motion passed 6-0. RES. NO. 6317

## BUSINESS FROM THE COUNCIL

Olsen thanked the street department for cleaning out the grate at the end of the canal near his home.

Johnson said another person resigned from the Public Safety Facilities Review Committee (PSFRC) and asked if there was a reason why. Hare said the person who resigned was Dr. Haggerty and it was due to taking on additional duties at work. Johnson asked if they are being replaced. Hare said the group decided not to replace him because it is a large enough group.

Delapoe said, on the dais is a property motion document [see agenda file] regarding the Wastewater Treatment Plant and Talking Water Gardens. He would like the Council to adopt this motion. He said staff is trying to explore all of the issues and doesn't want to have a situation where we get into statute of limitations issues. He said this motion will authorize the City Manager to take actions he deems advisable following consultation with legal counsel, and protect the City's property interest in any and all claims against third parties stemming in any manner from any infrastructure projects which have not performed as projected. He said this includes engagement of outside counsel and technical experts and the execution of documents to protect City claims from the statute of limitation defenses. He said staff will report back to the Council in six months with information and the action being taken.

Kellum made a motion to adopt the action listed in the document; Collins seconded the motion and it passed 6-0.

Hare said at the PSFRC meeting last night, the group recommended beginning the process of moving forward with engaging an architect for a proposed new fire station. He plans to have staff begin the Request For Proposal (RFP) process for hiring an architect. No award would happen until the Council reviews it. Kopczynski said he wondered, after reading the article in the *Albany Democrat-Herald*, how the architect will function if the Committee is still discussing the size of the building. Hare said the article was a bit misleading. He said there wasn't a complete agreement on the size, but they generally thought it would fall between 25,000-29,000 square feet.

Coburn asked what the cost estimate is for the renderings. Hare said he doesn't know; he said during early discussions they had mentioned \$200,000, but that is high for just the renderings. Coburn said one of the ideas discussed was design-build and it does keep construction costs down. He said we are shooting ourselves in the foot because of the expense of the renderings. He wondered if there is a fixed amount that can be spent without going out for a bid and talk to a local architect for renderings. Hare said he believes that is something that can be done. He said that whatever the PSFRC decides will have to come back to the Council for review. Shepard said design-build would still require an architect to start some sort of design. Coburn said Good Samaritan went through a similar process and used a design-build for the hospice facility. Hare said a lot of the work was done by ZCS in doing the programming. He said the missing piece is how those elements will be put together in the form of a building.

Konopa asked if the RFP will include a piece relating to citizen participation over what the design will be to make sure historical elements will be included. Hare said it would have some level of public input.

Kopczynski asked about Lebanon and the Canal. Hare said he recently met with the Lebanon City Manager. He said Albany Public Works is putting together a tour of the Canal.

Smith said the Big Pickup is scheduled for Saturday, May 17. This year, the focus area will be the Broadway neighborhood and West Albany. She said it would be great to have some greeters onsite to help direct people. Kopczynski volunteered to be on Dumpster duty.

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Shepard said next Monday night is the training for land-use processes. This will be a joint meeting with the Landmarks Advisory Commission, Planning Commission, and City Council. Konopa asked if the meeting could be postponed because of a vacancy on the Planning Commission. Delapoer said he would like the meeting to be postponed as well. Shepard said the meeting will be postponed for a few weeks.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:04 p.m.

Respectfully submitted by,

Reviewed by,

Diana Eilers  
Administrative Assistant I

Wes Hare  
City Manager