

CITY OF ALBANY  
CITY COUNCIL  
Council Chambers  
Wednesday, December 2, 2015  
7:15 p.m.

MINUTES

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge of allegiance to the flag.

ROLL CALL

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

Councilors absent: None.

SCHEDULED BUSINESS

Communication

Accepting Kristin Richardson's resignation from the Planning Commission.

MOTION: Councilor Bessie Johnson moved to accept Kristin Richardson's resignation. Councilor Ray Kopczynski seconded the motion, which passed 6-0.

Business from the Public

Patty Louisiana, 1175 SW Timian, Corvallis, thanked the City Council for assisting with the Veterans Day Parade. She gave details about the parade. The parade started on time, and she praised the Albany Police Department for their work opening the streets after the parade. She mentioned Rear Admiral Nancy Norton, who has a family connection in Albany. The parade is a community affair and spectators are as much part of the parade as those marching. She said she is honored to put it together. She presented a plaque to the Albany City Council for their participation. She said next year will be the parade's 65th year.

Tom Cordier, 2240 NW Park Terrace, said he talked to Admiral Norton about Teledyne Wah Chang's history in the nuclear Navy. He mentioned Admiral Vincent dePoix, former president of Wah Chang and the first commanding officer of the USS Enterprise, the first nuclear-powered aircraft carrier. Admiral Norton said she served on the Enterprise. Her brother, who was with her, knows the connection with Wah Chang and promised to give her more than Cordier's thumbnail sketch.

First Reading of Ordinance

Declaring a ban on recreational marijuana producers, recreational marijuana processors, recreational marijuana wholesalers, and/or recreational marijuana retailers.

City Attorney Jim Delapoer read the Ordinance for the first time in title only.

MOTION: Johnson moved to have the Ordinance read a second time in title only and Councilor Rich Kellum seconded. The motion failed 4 - 2, with Councilors Dick Olsen and Ray Kopczynski voting no. It takes a unanimous vote of the Council for a second reading in the same meeting. This item will come back to the next Council meeting.

Adoption of Resolutions

1) Amending the South Santiam Enterprise Zone boundary.

John Pascone, 435 W First Avenue, representing Albany-Millersburg Economic District (AMEDC) said that some years ago, Albany was allowed to put some of its enterprise zone into Lebanon's space. A previous legislature increased Albany's enterprise zone allowance from 12 to 15 square miles. Now, a food processor is hoping to co-locate with Sno Temp. There is some Greater Albany Public Schools (GAPS) property for sale across the street that may be rezoned industrial. This is what prompted the proposed change.

MOTION: Kellum moved to adopt the Resolution. Kopczynski seconded the motion. The motion passed 6-0, and was designated Resolution No. 6465.

2) Authorizing a farm lease of South Albany Community Park to Ehrlich Farms, LLC.

MOTION: Councilor Floyd Collins moved to adopt the Resolution and Kellum seconded it. The motion passed 6-0 and was designated Resolution No. 6466.

Collins reminded the Council that the lease is a continuation. Parks has never used the land, so they lease it back to the farmer. This is just continuing that practice and receiving revenue on a regular basis.

3) Amending downtown parking restrictions.

MOTION: Kellum moved to adopt the Resolution and Kopczynski seconded it. The motion passed 6-0, and was designated Resolution No. 6467.

Matilda Novak, 3383 Summerhill Place NW, thanked the Council for the opportunity to speak. She said there were others present also to represent the downtown area. She said the Councilors should have received an e-mail from her sister Kay-Marie Novak. Novak read from the e-mail about Crandall's parking presentation. The perception that there is no parking downtown is affecting businesses, whether or not it is accurate. Former regular Novak's customers say they haven't been in recently because of a lack of parking. One group of elderly people had to walk three blocks to the restaurant because there was nowhere for their bus to park. Novak's has tour buses scheduled this spring and summer; she asked, where will they park? The more popular downtown becomes, the more important parking will become.

Kellum said it would help to have a map of downtown parking. Konopa said such a map would be helpful to show downtown customers that it isn't that much farther to walk to downtown businesses than it is to walk other distances, like through the parking lot at Safeway. From Safeway's door to the end of their parking lot is about 300 feet, the same as from Novak's door to Broadalbin Street. From Costco to the middle of their parking lot is about 500 feet. So, it is perception. She would like to work out an agreement with the owners of the old Post Office building to use their parking at night and on weekends.

Tim Benfield, 220 Second Avenue SW, said he thinks Konopa's example of the Costco parking lot is misleading. Most people try to park closer to Costco than the middle of the parking lot. Has an idea for diagonal parking. He proposed "bulbins" in the sidewalk: removing some of the sidewalk width to make room for pull-in parking, but leaving the width where trees are planted. He also asked if the City needs park benches on Second Avenue. A lot of them aren't being used.

Angela Childs, 35845 SW Riverside Drive, Albany, said she owns Mother Goose Resale. People from other businesses park in her customer spots using free passes. The residents in the apartments above her park in her spots because they get a \$5 residential pass. People who work downtown pay \$20 for a pass. She doesn't see why people who bring business downtown should have to pay more in order to work downtown. Her customers who are pregnant and those with young children do not want to walk three blocks to her shop. She said something needs to be done.

Konopa said Parkwise and the Albany Downtown Association (ADA) regulate parking downtown. The City Council doesn't have any kind of control over parking. As the ADA liaison, Konopa offered to bring it to their attention and see if they will review the fees.

Matilda Novak said that Childs' business is on Third Avenue, which is being looked at along with Second Avenue. The two of them represent several more businesses tonight. She asked the City Council to understand that even though there are only a few of them present, they speak on behalf of many other business owners.

Tina Ramirez, 530 10th Avenue SW, said she has a business on Second Avenue. She thinks that there is a way to have angled parking and still keep the trees, by using the parking spots next to trees as handicapped parking.

Mike Gornic, representing Fun Zone at 223 Second Avenue SW, said he agrees with Benfield about reducing the width of sidewalks to have angled parking on both sides of the street. He also has customers with small kids. When they are getting the kids out of car seats on the traffic side, there is a lane of traffic right next to them. Angled parking would help them out. Downtown Albany is going to have a carousel and is becoming more family-friendly, so this is something to think about.

Konopa said the Council will consider this as part of their streetscape work, including the question of diagonal parking. They will also talk to the old Post Office building owners to try to acquire the empty parking lot.

Adoption of Consent Calendar

- 1) Approval of Minutes
  - a) September 9, 2015, Regular Session minutes.
  - b) September 23, 2015, Regular Session minutes.
- 2) Executing a quitclaim deed to Lowes HIW, Inc.

RES. NO. 6468

MOTION: Kopczynski moved to adopt the Consent Calendar as presented and Kellum seconded it. The motion passed 6-0.

BUSINESS FROM THE COUNCIL

Johnson mentioned the Linn County Victim Impact Panel Tree of Remembrance Ceremony. She said the ceremony was appropriate and moving. The group just hung their 100<sup>th</sup> ornament for people killed by drunken drivers. She said Albany Police Sergeant Robert Hayes told her afterwards that there hasn't been a City Councilor there before. The ceremony was very short but well worth going to, so she asked other Councilors to consider going next year.

Kellum asked if the City knows which areas set aside inside the Urban Growth Boundary (UGB) are going to be restricted because of wetlands. He asked, have we studied how much is actually available so that later, if someone needs a certain acreage, we can answer their questions? City Manager Wes Hare said yes, we have a local wetland inventory. The problem is that not every wetland piece gets on the inventory. As an example, he named the Oak Street Apartments, where a complaint brought in the Division of State Lands (DSL), who deemed it wetlands and triggered expensive remediation costs. So yes, we have an idea where wetlands are inside the city limits. But one could also safely assume that almost anything on the valley floor may have wetlands. The City worked with the Council of Governments (COG) to have some of the major industrial sites delineated, and some property owners have done their own. Potential buyers have expressed interest in the property known as the Brandis property, and it needs a further delineation in order to determine its value. Delineations are expensive, and short of doing delineation on every property, Hare said, we won't know for certain.

Kellum said, if we have land outside the city limits but inside the UGB, we should change the city limits so we have more potentially buildable land available to make up for what we are losing to wetland. Hare said, we are being proactive by participating in the COG to resolve wetlands issues before they occur. We are hoping to look for grant money to develop our own wetlands bank for mitigation. The City hasn't looked at expanding the UGB or annexing property into the City.

Konopa said we do have quite a bit of inventory inside the city limits, including the Pepsi property at 250 acres, the Henshaw property at 100 acres, and the Brandis property. Any land we add will take away from interest in the PepsiCo property. Collins said that before wetlands became a big issue, the City had a buildable inventory of a certain number of acres, a 20-year supply. When you superimpose wetlands on them, it reduces the buildable acreage. When you do the delineation, it reduces it more. McMinnville has been trying to change their UGB for over 15 years to make up for losing buildable inventory. It's taken them that long just to get it in front of the Land Conservation and Development Commission (LCDC). The issue goes back to Senate Bill 100. If you want to protect farms and forest, you build inside your UGB. If you want to protect wetlands, you have to push out your UGB to make up the loss. He thinks the League of Oregon Cities (LOC) needs to push the issue with the legislature.

Hare said the LOC did get some reforms and revisions of the UGB expansion process through the last session, though they didn't solve the problem. Woodburn and McMinnville have spent years trying to change their UGB.

Kopczynski said he voted no on the first reading of the ordinance that declared a ban on recreational marijuana producers. He said he thought the six options that City Attorney Sean Kidd presented would be just the starting point, but he believes it was obvious that the City Council intended to decide on the option he thinks is the worst of those presented. He thought there must be another way to bring the Council back to a compromise. He looked through the City Charter and Albany Municipal Code (AMC), and thought he found a way to force the issue. He asked Hare, City staff, and the City Attorneys, who told him it was a tool with some ugly ramifications. He suggested other compromises, but got no positive response, so he is left with one tool. He said that when the item comes back to the next meeting, he plans to abstain during the vote.

Konopa said compromise is subjective. She will weigh in on abstention when it's her turn.

Collins said the Councilors are elected by the public to make choices and to vote. If there is a conflict of interest, declaring that conflict and not voting is reasonable. He said, abstaining is neglecting our duty as public officials. To abstain blocks the democratic process. One person can hold the City Council hostage with a vote. He doesn't think that is what the country or the City of Albany is built on.

Konopa said she agrees with Collins. She and Kopczynski and the City Attorney have discussed this. Kopczynski can abstain and there would not be enough votes to take action. She asked if the City Council would like to consider asking staff to bring back an ordinance that would change the AMC to identify what abstention means.

Delapoer explained that under the City Charter, four affirmative votes are required to take any action. The Mayor only votes to break a tie. Under the Charter, the Council can adopt rules that supplement the Charter. The AMC says that unless a member states that he or she is not voting, his or her silence equals a yes vote. If a Council member states

that he or she is abstaining, the vote is not counted for or against the proposition. If Kopczynski abstains, there will be no tie. The Mayor cannot vote, so the adoption of the ordinance is blocked. This provision is in an ordinance, not the Charter, so the Council can direct Delapoer to prepare an ordinance stating that an abstention would count as a vote against the proposition. There would be a three-three tie, and the Mayor would vote to break the tie.

Konopa said this could happen on other issues too, not just this one. She would hate to see abstention used in the future with, for example, a budget issue. She wants to prevent this happening for future Councils also.

Collins said he believes the rule that limits the Mayor to voting only in case of a tie only applies only to the City Council. Most other City groups only require a majority vote of a quorum. Delapoer said that is correct, and most other cities don't have the same restriction, either. If the Mayor is absent, the Council President conducts the meeting and votes. Collins asked what Robert's Rules say. Delapoer said Robert's Rules says that silence is usually counted as a yes vote and a speaking abstention as a no vote. The Albany Council is guided by Roberts Rules, but its actions are not rendered invalid if they don't comply with Robert's Rules. Even if the Council were under Robert's Rules, you could vote to suspend them.

Johnson asked if Delapoer's proposed ordinance would only deal with the word "abstain". Delapoer said it would not change the four-member vote and the Mayor voting in case of a tie, because those are in the Charter. But the Charter does not address abstentions, so they can be addressed in an ordinance. He said the proposed ordinance would amend Ordinance No. 5778, which was codified in AMC 2.04.060, by striking seven words: "~~is not considered either for or against~~"; and adding four words: "...**shall be deemed a vote against**..." This is the least amount of change that will accomplish the purpose. It would still be consistent with the Charter because there would still be four actual votes for any proposition.

Kopczynski said trying to do this, instead of coming to some sort of compromise, is an effort to accomplish a full ban on recreational sales and a vote in November. He feels he has been boxed into a corner. He found a tool to get back to square one, but rather than work through to a compromise, we're trying to figure out how to thwart the process.

Kellum said allowing medical facilities to sell recreational marijuana puts marijuana right next to a bunch of kids and that is not compromise. He said, right now, we have a system where we count the number of heads, and we win or we lose. He said Kopczynski is talking about winning at any cost. Kellum doesn't think that is why the Council was put in these chairs. He asked, who does Kopczynski's all-or-nothing system ask us to trust? The medical marijuana people? Kellum gave examples of broken trust and asked, how do you trust people who do those things?

Collins said he understands Kopczynski's argument, and he is not concerned with the content, but rather with the process by which this Council makes future decisions. There will be a long-term effect on the way the Council makes decisions. There will be different Councilors making different decisions on different issues. He asked, if we have the ability to circumvent our duty to vote, then why are we here? Whether one side wins or loses on this issue isn't the most important piece of this discussion. It's the fundamental piece of how we operate in a democratic process and the impact of that to the future.

Kopczynski said he still has not heard someone offer a palatable compromise. He said that until someone does, he's boxed into a corner.

Konopa suggested reviewing the abstention issue after finishing the Development Code changes. Kopczynski said that is not a compromise.

Councilor Bill Coburn said it's clear to him that both sides of the issue are political maneuvering. The bigger picture is that we need to change the City Charter. We could change it to make a simple majority all that's required to allow a measure to pass, and/or allow the Mayor to vote. In many cities the mayor votes on every issue. Even if someone abstains the Council could get four votes. It would be a better solution and it could go to the May Primary election.

Collins said that he was on the losing end of a 4-2 vote on the issue of medical marijuana. He didn't abstain and say there was no compromise; and the medical marijuana was allowed. He believes this vote on recreational marijuana is the same issue as that one. Kopczynski has separated the issues, and Collins doesn't agree with that.

Konopa said the situation reminds her of the recent discussion about the art ordinance. Collins was on the losing end of that vote, and there was no compromise taken. When you make a decision and vote, if you are on the losing end, you move on. That's what this City Council has done for two decades.

Hare said the question before the Council is whether or not you believe there should be a mechanism for a minority of the Council to defeat the will of the majority of the Council, independent of what the issue is. Delapoer's ordinance closes one loophole, but still leaves an opening. The only way to close that opening is to change the Charter to require only a majority of a quorum.

Olsen said he has been on the City Council for twenty-five years. He's found over time that a more conservative approach is often the best, particularly when you want to change something. If a minority of the Council feels strongly that changing something is the wrong way to go, then he thinks change is a bad thing. If an ordinance comes up changing the Council rules that allow an abstention to count as an absence, he will vote against it.

Johnson said she has been outvoted before; it is the democratic way. It disturbs her that they have to consider an ordinance like this. She doesn't understand why Kopczynski can't accept that the majority rules. She doesn't want to see this unrest, because this Council has been gracious when they don't win and will either try to change it or accept it. She said, we don't retaliate and use tactics to get our way; that is not what we were elected to do. We are adults. She said, if you don't get the vote you want, you have to accept it and move on.

Konopa said this evening's discussion is a prime example of the divisiveness of the marijuana issue. It's all the more reason to take it to the voters and let them decide. It has been suggested that seven people shouldn't be making this decision, so let the voters decide in the November election.

MOTION: Kellum moved to direct the City Attorney to prepare an ordinance amending AMC 2.04.060 to prevent an abstention from blocking a Mayor's vote to break a tie. Johnson seconded the motion and it passed 4-3 with Olsen, Kopczynski, and Coburn voting no.

Hare discussed the items on the December 7, 2015, and December 9, 2015, Council meeting agendas. The Council agreed to cancel the December 9, 2015, meeting, and to move the start time on Monday, December 7, 2015, to 7:15 p.m. The agenda will include the ordinance regarding abstentions and also the second reading of the ordinance declaring a ban on recreational marijuana producers.

NEXT MEETING DATE: Work Session: January 11, 2016; and Regular Sessions: December 7, 2015

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:39 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC  
City Clerk

Wes Hare  
City Manager