

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, September 9, 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

Daniel Mize, Boy Scout Troop 3, 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

Business from the Public

Request for after-hours construction work in accordance with Albany Municipal Code 7.08.050(5).

Nicholas Pennington, Robinson Construction, is working on the Lowe's project. He said they did not understand that they were violating the noise ordinance. They have had 3-4 cement pours that started at 4:00 a.m. which disrupted the neighbors. Pennington said Robinson Construction has reached out to the neighbors and have shifted their wash-outs and lights in a manner that they think will appease them. They are requesting that the Council allow them to continue the cement pours Friday and Saturday of this week, and Monday through Saturday of next week. On Saturday, they would be done with all the concrete pours before 7:00 a.m.

Councilor Rich Kellum asked what issues the neighbors had. Pennington said after they pour, the trucks use a clean out area. It was at the front of the building, but they have relocated it to the back so that the building shields the sound. The back-up beepers on the trucks are loud and the light is also a concern. They have changed the lights, but there will still be truck traffic and back-up beepers at the rear of the building.

Kellum asked if the neighbors are satisfied. Pennington said overall, they have been understanding. City Manager Wes Hare said they had one complaint, which was that the person did not want to be awakened early in the morning by the noise. Pennington said he believes they spoke to that person and that the person is satisfied with the changes.

Councilor Bill Coburn said he is inclined to vote no on this request, because 4:00 a.m. seems too early. He wonders if they can compromise somehow and pour at 5:00 or 5:30 a.m. Pennington said they can do that on Saturday, but not on the other days due to the demand for concrete and the difficulty in getting trucks. Actually, they like to pour at 2:00 or 3:00 a.m., so they feel they are already pushing it back. They don't pour on Sundays.

Kellum said other businesses don't get to start construction that early. He thinks there might be other options and said there is more than one company selling concrete.

Councilor Ray Kopczynski said it is a matter of scale. There is so much being poured in a relatively short timeframe, that he thinks it would be better to get it done and over with. It would be disruptive, but only for a week or so.

Councilor Bessie Johnson said it needs to be done, and given the scale, a little over a week is a reasonable request. She supports giving the waiver.

Konopa asked if anyone recalls what was done for Costco. Hare said they did grant a waiver to Costco and Walmart to pour early. There is a precedent for allowing early concrete pours. Discussion followed. Pennington said they have addressed all of the neighbors who they are aware had issues with the early pours.

MOTION: Councilor Floyd Collins moved to approve an exception to AMC 7.08.050(5), by allowing concrete pouring to begin at 4:00 a.m. on Monday through Friday and to begin at 6:00 a.m. on Saturday, through September 19, 2015. Johnson seconded the motion and it passed 4-2, with Kellum and Coburn voting no.

Chuck Kratch, 1720 Ferguson Drive NW, said there was a letter to the Editor in the *Democrat-Herald* this morning that mirrors his opinion about the roundabout in North Albany. The article stated that the Albany City Councilors and Benton County Commissioners had a joint meeting three weeks ago. The article said that most people like the roundabout. He canvassed the neighborhoods and asked what people thought. He has a petition of

165 signatures. Kratch said that the primary comment was that it was good for the purpose it served, but now that the need has passed, they want it removed. Kratch plans to visit Benton County Commissioners next and present them with the petition. He doesn't think the roundabout is useful anymore and people are driving faster through it. He is aware it is outside the Council's jurisdiction, but he praised them for setting aside funds for its removal.

Kratch read the heading on the petition: "We the undersigned wish to express our opinion that the Springhill-Quarry roundabout in North Albany be removed and not replaced. We believe that the Springhill-Quarry intersection does not warrant the addition of an expensive roundabout as this intersection has a very low accident rate and good visibility."

Kratch said thank you to City staff for cleaning up the sight problems on Quarry Road and Springhill Drive; he said they did a good job.

Konopa asked Kratch if he came across any residents that said they did like the roundabout. Kratch said 11 people really liked it and felt it should stay because the reduced size forced people to slow down. Discussion followed.

Collins asked, if Benton County decides to have us remove it, are there other traffic calming techniques that could be used to slow traffic down? Acting Public Works Engineering and Community Development Director Jeff Blaine said it is a difficult location because of the speed of the road itself. Speed bumps wouldn't be appropriate. There are some rumble strips north of the roundabout, but they are not aggressive. However, the more aggressive the rumble strip means the louder it is for the neighbors. Staff has not looked into other alternatives yet.

Collins said before this project he got several complaints, particularly about loaded log trucks doing 50 mph instead of 40 mph. He said, if we remove the roundabout, the speed will elevate again all the way down to the railroad tracks where they would be forced to slow down. There are several homes and driveways along Springhill Drive. If we remove the roundabout, we will be back to the same problem. He wonders if there is a way to mitigate the speed by using traffic calming or speed reduction on permanent basis. Kratch said the neighbors agreed that they don't like the speed of vehicles on Springhill Drive. Discussion followed.

Kratch did not submit the petition for the record because he will be taking it to Benton County.

Second Reading of Ordinance

CP-01-15, amending the Comprehensive Plan text of the Transportation System Plan (TSP) to remove portions of Timber Ridge Avenue and Somerset streets from the TSP project list (projects L15 & L19), and install traffic signals at the Knox Butte/Clover Ridge Road intersection and the Knox Butte/Goldfish Farm Road intersection.

City Attorney Sean Kidd read the ordinance for the second time in title only: AN ORDINANCE AMENDING ORDINANCE NO. 4447, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN AND MAP, BY AMENDING THE ALBANY COMPREHENSIVE PLAN TEXT OF THE TRANSPORTATION SYSTEM PLAN, AND ADOPTING FINDINGS.

MOTION: Coburn moved to adopt the ordinance and Kellum seconded it.

Councilor Dick Olsen said it is a shame to lose the connectivity between the adjoining neighborhoods and the schools. He said an article in the *WeShare* blog noted that mortality rate for cyclists increased dramatically over the last 30 years. Olsen said there seems to be a continuing move towards less connectivity for folks to ride bikes and walk safely and within walking distance. He thinks it is a shame to cancel these two streets, but he realizes that we don't have the money to build the bridge or improve the streets. He said, perhaps we should do more with Local Improvement Districts or System Development Charges. He will vote for the motion because he doesn't see any alternative.

Collins said he will also be voting for the ordinance, but pointed out that this is another example of the conflict of multiple purposes between federal and state jurisdictions. When Senate Bill 100 was passed in the 1970s, the concept of urban growth to save farm and forest land was a laudable objective. Then Environmental Protection Agency (EPA) started regulating wetlands, and now we have wetlands inside the Urban Growth Boundary (UGB) which weren't contemplated when Senate Bill 100 was formulated. So, we have to mitigate the wetlands, accommodate the densities which means we will have to expand the UGB sooner and impact farm and forest land, and as it applies to this, comply with the wetland issues, which is really counter to sound transportation planning. At some point, the state and federal agencies have to come to grips with competing priorities. Collins said the city of McMinnville has been trying to expand their UGB for 17 years. Newberg has also been trying to expand their UGB since they are out of buildable land because of the wetlands inside their UGB. Albany experienced the wetland issue with the PepsiCo project, and the South Albany Area Plan (SAAP) also had wetland limitations. It is already getting more and more complicated in order to comply, and then the Land Conservation and Development Commission (LCDC) said we can't break the UGB because we haven't demonstrated the full need. Collins reported that he attended the Governor's Solution Team and presented this dilemma. It has implications to the local area. Wetlands mitigation is impacting our Transportation System Plan

(TSP), driving up the costs of streets and housing, and it impacts how streets are routed. They need to come up with compatible policies so that the community is better served.

VOTE: A vote was taken on the motion to adopt the ordinance and it passed 6-0 and was designated Ordinance No. 5856.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) August 10, 2015, Work Session minutes.
- 2) Accepting a 20-foot wide sanitary sewer easement as part of the Autozone Development Project.

RES. NO. 6452

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

Award of Bid

WL-15-04, College Park Drive Water Line.

Blaine said that the bids were opened on August 18, 2015. There were four bids ranging from \$575,000 to \$646,000, which put this above the Engineer's estimate and the project budget. Blaine recommends they award the bid to the lowest bidder, Trenchline of Corvallis, for \$574,775. Kopczynski asked if this bid, along with other bids that are also coming in higher than expected, is indicative of rising costs of construction or if the estimations were off. Blaine said that Engineering Manager Staci Belcastro gave a presentation that explained the issue: material prices are on the rise, the budgets are put together 16-17 months prior to bid so the market can change, there is a lot of work going on for the private side so contractors are less aggressive and bidding higher now, and the City is always behind the market a bit because we are always looking at past bids to do the estimates. Blaine said when the market went down, our estimates came in high; so we lowered our estimates, and then the market picked back up resulting in low Engineer's estimates. Kopczynski is concerned that the bids might come in high for the new police and fire stations.

MOTION: Collins moved to award the contract in the amount of \$574,775 to Trench Line Excavation and Kopczynski seconded the motion.

Collins said Blaine is correct and that part of the issue is the timing of the bid. He encouraged staff to work out a schedule that would get the City's major projects out to bid during the competitive bid season. He thinks this is a high for water line. Blaine said they provided an extremely gracious bidding period and there are 135 water services on this short segment of water line. The poor pavement condition and the abnormally high number of services to work on dictated the cost. Collins asked, have we considered having a contractor put in the mainline and then have the City install the services? Blaine said they have discussed that in the past, but not recently. Staffing during the installation season would become a challenge. Discussion followed.

VOTE: A vote was taken on the motion and it passed 6-0.

Report

Designating a Voting Delegate and Alternate for the 2015 League of Oregon Cities (LOC) Conference.

There was discussion about who would be attending the LOC Conference.

MOTION: Coburn moved to appoint Mayor Sharon Konopa as the voting delegate and City Attorney Sean Kidd as the alternate. Collins seconded the motion and it passed 6-0.

Approval of Agreement

Benton County Intergovernmental Agreement (IGA) for Jurisdictional Road Transfer.

Chris Bailey said that this replaces the existing IGA that describes which jurisdiction is responsible for roads. It benefits the county by reducing the number of miles of roads they have to maintain and it benefits the City by clarifying jurisdictional issues that come up with citizens in North Albany and simplifying processes. Bailey said the City Council has seen this twice already and recommends that the Council approve the IGA.

MOTION: Kopczynski moved to approve the agreement as presented. Coburn seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Kellum spoke about medical marijuana facilities. He said when certain medical facility owners came to the Council to testify, they said it was medicine. Kellum pointed out that when he said it appears that some people get Oregon Medical Marijuana Program (OMMP) cards just to get "high", that those testifying assured the City Council that that is not the

case; and that they don't want to deal with those people, that they just want to deal with people who need marijuana for medical reasons. The law now allows cities to prohibit recreational marijuana from being sold in medical marijuana facilities as of October 1, 2015. Kellum said, we do not have setbacks established for recreational marijuana, and I think we would all agree that the people who go to those places to get medicine are not the same folks that go to get it in order to get high. He said, we haven't dealt with that piece yet. He wants to not allow medical dispensaries to sell recreational marijuana until January, when they can apply to the Oregon Liquor Control Commission (OLCC). Kellum said, they told us that they were not interested in selling recreational, and if they were being truthful then there should be no problem. Kellum thinks they are two separate products, or two separate groups of people. He said, we don't want to jump in with both feet. Canna Kitchen said in the paper that they don't want to sell recreational; but they could change their mind tomorrow, and there is a house right next to them. In Measure 91 there is a 1,000 foot setback from schools. Discussion followed about schools and setbacks.

Kellum said there is an ordinance available to cities that starts the process of temporarily limiting sales of recreational marijuana from medical facilities.

Coburn said he doesn't understand Kellum's comment about regulation on setbacks. Coburn's understanding of the City Attorney's explanation is that the rules and regulations that are in place for medical also apply to recreational. Kellum said that as it currently stands, Canna Kitchen, for example, could choose to sell recreational marijuana in a residential neighborhood.

Konopa said that in order to accommodate Canna Kitchen, the Council exempted industrial from the 300-foot setback. She said, we now have four medical marijuana facilities in industrial zones and one is directly across the street from residential. Canna Kitchen is right next door to residential. Does the Council want to see recreational in the same areas? Discussion followed.

Kellum said his point is that if the Council wants to do something with the setbacks, they need to do it by January 1. If they don't, recreational can be sold on October 1, regardless of whether the Council thinks it is a good idea or not. Kellum said, the people who came before the Council already said they don't want to sell recreational, so now the Council just needs to make up their mind. Making a decision will also be helpful to the people who are thinking about starting a new business; they need to know what the rules will be, before spending a lot of money to start a business.

Konopa said there is a medical marijuana facility that has located in industrial zoning and has opened up a smoking lounge. If it was 300 feet from residential, she doesn't think they would be permitted in that location.

Collins asked Kidd if during a previous work session, he had said that a smoking lounge for recreational will be a violation of the law. Kidd said that in his conversation with OLCC and the Oregon Health Authority, in regards to the specific property Konopa is referring to, they said their position is that that would be consuming marijuana in a public place, which is prohibited by law. The OLCC has not seen a challenge to it yet and nothing has been litigated to date, but Kidd said that it is their position that a smoking lounge in that area would be illegal. They also stressed, and Kidd agrees, that the business is risking their medical license to distribute medical marijuana, and that if they are found to be in violation they will lose their license.

Collins said he worked through the packet of information that Kidd provided a few weeks ago. Collins asked, absent sending the issue to the ballot in November 2016, recreational marijuana will be allowed in January. Kidd said yes; the OLCC will start accepting applications and issuing licenses as early as January 4, 2016. So now, effective October 1, 2015, medical marijuana facilities are going to be allowed to sell recreational marijuana all the way through December 31, 2016. The OLCC's intent is to allow the recreational facilities to get licensed and established. The City Council could regulate time, place, and manner restrictions on recreational facilities that are different than medical facilities if they choose to do so; and if that is the case, it would give the Council time to decide what they want to do. Kidd said he does agree that if they do that, they should do it before January 1, so they can put businesses or potential businesses on notice, because once the OLCC gets an application they will contact the City to make sure the location is properly zoned. The City would have a 21-day window to respond to OLCC. Kidd said an ordinance could prohibit medical facilities from selling recreational marijuana; otherwise, they can sell it legally beginning October 1, 2015.

Kopczynski said he doesn't want to treat them differently than any establishment that sells alcohol; and if an action does, then he will be against it. Olsen agreed.

Kidd said he was asked to draft an ordinance, which is available on the dais (see agenda file). This ordinance only prohibits medical facilities from selling recreational marijuana on October 1, 2015. Collins said the ordinance does not affect recreational marijuana other than prohibits the early sale in October. Kidd said that is correct. Discussion followed.

Kidd read the ordinance for the first time in title only: AN ORDINANCE OF THE CITY OF ALBANY DECLARING A BAN ON THE SALE OF RECREATIONAL MARIJUANA BY MEDICAL MARIJUANA DISPENSARIES AND DECLARING AN EMERGENCY.

MOTION: Coburn moved to read the ordinance a second time in title only and Johnson seconded it. The motion failed 4-2, with Olsen and 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 September 23, 2015, meeting.

Kopczynski asked why this ordinance had an emergency clause. Kidd said in this particular case the emergency clause was added because otherwise the ordinance would be effective in 30 days, and they would miss the October 1 deadline. It would be better for medical facilities to know beforehand what is allowed, as opposed to beginning to sell it on October 1 and then have it prohibited after that date.

Olsen asked how they will distinguish between medical and recreational sales. Kidd said the medical would be obtained with an OMMP card. Kidd said his understanding is that it is not difficult to obtain an OMMP card, and that it can be done online. The OMMP card also allows the patient to get more product, whereas recreational users will only be allowed a half ounce per day per person once it becomes legal to sell. Discussion followed.

Hare explained that under the current law a patient can't buy marijuana from a dispensary; rather they buy it from a grower which can be arranged by the dispensary. The new state law that goes into effect on October 1 makes it so that dispensaries are no longer just dispensaries; they would be sales outlets where anyone over the age of 21 could buy it for their personal consumption. If the Council passes the ordinance, it would prevent that from happening, and we would wait until January to find out what the OLCC rules are for the sale of recreational marijuana. Hare explained that if a community doesn't want to allow recreational marijuana, then their City Council has the option of referring to the November 2016 ballot the question of recreational marijuana. Hare said, any city can refer to their voters the question of a ban on the sale of recreational marijuana. Cities in counties that had a 55% vote on Measure 91 can have their local governing body ban it without referring it to the voters. Kellum said, we were at 52%. Hare said that last year the City passed an ordinance that does not allow either recreational or medical marijuana to be located within 300 feet of a residential zone unless they are located in an industrial zone.

Kellum pointed out that Albany is not the only City Council talking about this. There are lots of other cities that have already banned the sale of recreational. Kidd said there are a good number of cities banning the sale of recreational marijuana being sold through medical facilities, and there are more scheduled this month to be voted on before October 1. Kopczynski said the OLCC publishes a list every week and there are about 25 cities and counties across the state so far that have passed an ordinance. Discussion followed as to whether this represented a large or small number.

Collins said that regardless of this ordinance, we need to decide if we want to modify the time, place, and manner standards of recreational marijuana starting January 2016. Albany has regulations for within 300 feet of residential already in place; the state has it prohibited within 1,000 feet of schools. He asked, if the state sees fit to protect schools, should Albany consider other places kids congregate, such as daycare centers and boys and girls clubs? Collins wants this to be a topic of a work session.

Kopczynski said that realistically, there wouldn't be a retail license granted until mid-2016. Kidd said it depends on how many applications the OLCC receives and how fast they can process them. Cities have 21 days to respond to OLCC's inquiries regarding zoning and land use. Kellum said, in all fairness, they should know what they want to do as of January 1 so that folks know what to expect in terms of potential business opportunities. Johnson agreed.

Konopa said this item will come back to the September 23, 2015, Regular Session.

Kopczynski said that the terms will be expiring soon for some of the Community Development Block Grant (CDBG) Committee members. Konopa provided some history of how the CDBG appointments were made. The CDBG members do not want to be interviewed in a public forum for this volunteer position, so changes need to be made to the ordinance.

Finance Director Stewart Taylor reported that he got a letter from Albany Millersburg Economic Corporation (AMEDC) President John Pascone (see agenda file). AMEDC wants to expand the enterprise zone to accommodate the expansion of a current business and to accommodate a new business. Taylor said a resolution will come to a future meeting.

NEXT MEETING DATE: Work Session: September 21, 2015, and Regular Session: September 23, 2015

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:17 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC
City Clerk

Wes Hare
City Manager