

CITY OF ALBANY
CITY COUNCIL WORK SESSION
Council Chambers
Monday, October 12, 2015
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:00 p.m.

ROLL CALL

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

Councilors absent: None.

BUSINESS FROM THE PUBLIC

None.

STORMWATER PERMITTING UPDATE

Utility Services Manager Mark Yeager recapped previous discussions with the Council on this issue. He said he is on the Advisory Committee for Oregon's Department of Environmental Quality (DEQ). The DEQ is in the process of moving from eight types of individual permits to a single general permit. The City of Albany is concerned about the development process for the single permit, but the DEQ is not responding to the City's concerns. The draft permit is about 70 pages long. The DEQ wants to release the permit for public comment in December or January and have it finalized by spring of 2016. Albany is working with other communities to try to get the DEQ to respond to concerns about the new permit.

Councilor Ray Kopczynski said storm water is important in a lot of areas, not just Albany.

Councilor Rich Kellum asked when we will know for certain what the permit requires. The City will have to set up regulations in the Development Code to require people to take care of their own storm water. Yeager said yes, there will be some Code changes, but the City probably won't be regulating individual properties. The usual strategy is to develop best management practices reflecting the community's concerns. He thinks we will know before this time next year. Kellum said he is concerned that those who do storm water right will still have to pay the same fees as those who don't. Responsible people do it before it's regulated, and then those who do it by directive get a financial break from the government. Yeager said he understands the concerns.

Councilor Bessie Johnson asked if the DEQ is considering regulations cities already have on the books, like our recent Code changes for construction runoff. Yeager said it's hard for us to know that. Many communities with individual permits have done things that will be in the general permit. We're developing our programs based on what we know about what other communities have done.

Councilor Floyd Collins asked if the DEQ is relying on best management practices as opposed to numeric standards. Yeager said numeric limits have been litigated in the past, and at this point, it does not appear that the DEQ will be including numeric limits in the proposed general permit.

STAFFING REQUESTS

Interim Public Works Engineering and Community Development Director Jeff Blaine asked the Council for authorization to restore two staff positions, one in Community Development and one in Engineering. The departments have made efficiencies and reorganized workloads for several years but now have too much demand to be able to meet requirements. The Building Division is down about eight full-time employees (FTE) from 2008. Staff did not bring the request earlier because Building Official Gary Stutzman wanted to be sure that building activity would continue. The division has averaged 800 inspections per month over the last three months, a 20 percent increase over the last two years. Stutzman has been doing a building inspector's job for some time, as well as the Building Official's job. He is worried about losing good staff to burnout. He would like to restore a building inspector position, which would be covered by permit revenues.

Kellum said he agrees. It looks like there will be enough building for a while to sustain the position, so we wouldn't have to lay off a recent hire. Collins asked if the low staffing has affected service to contractors. Blaine said yes. The division uses one to three temporary employees now at different times of day to fill the gaps in trained staff. Kopczynski asked if the new e-permit system is helping with workload. Blaine said yes. He would have made this request sooner if not for the new system.

Blaine explained the need for another engineering FTE. The Engineering Division has more projects and more regulations than 15 years ago, but three less staff. The regulatory affairs and master planning group is down one FTE from historic levels, resulting in other workgroups taking on projects that would have traditionally been done by this

workgroup. Staff is requesting authorization to add one FTE to this workgroup. The work is important because of the increasing need for regulatory compliance, and the City needs to hire a very well-qualified person. This is also an opportunity to do succession planning. Yeager has worked for the City for 34 years, and his retirement will create a huge gap in the division. Blaine proposes to hire a well-qualified person at the Engineering Manager level on an interim basis, to succeed Yeager when he retires. The plan addresses short- and long-term needs with one additional FTE. Public Works permit and rate revenues would cover the cost of the new FTE. Engineering is already spending 40-50% of this position's cost on a temporary employee.

Johnson asked what would happen to the Engineering Manager position when the new hire moved into Yeager's position. Blaine said the vacated position would be downgraded to Civil Engineer III, in line with the long-term needs of the workgroup. Johnson said she's in favor of hiring both the Building and Engineering positions. She commended the departments for doing the work they've done for as long as they have.

MOTION: Kopczynski moved to direct Blaine to move forward with both staffing requests. Johnson seconded the motion, which passed 6-0.

SPRING HILL AND QUARRY ROUNDABOUT

Blaine reminded the Council of their August meeting with the Benton County Commissioners. Since then, Benton County staff have considered the issue and don't believe they are able to make the changes needed to keep the roundabout as a permanent structure. They want the City to remove it as originally planned, but have procedural concerns with the motion that was made at the joint meeting, which was to consider retaining the roundabout. Benton County has asked the City Council to repeal its motion from that joint meeting.

Konopa invited members of the audience to speak under "Business from the Public" for this item.

Ray Hilts, 2748 Foxglove Loop SE, said he has a friend who lives on the cul-de-sac. His dishes rattle as heavy vehicles drive by. Lights shine into his bedroom. Traffic on Quarry Road is back to normal, so he hopes the Council will approve removal of roundabout.

Tom Cordier, 2240 NW Park Terrace, lives up the hill from the intersection, and uses it every day. He likes the roundabout. The keys to its success are that the trees and shrubs have been cut back to allow better visibility, and the speed limit is reduced. He encouraged the Council to make the roundabout permanent as is, so that trucks can drive over it if necessary. Kellum asked, if the speed limit stayed the same and the brush was kept trimmed back, would that do the same thing the roundabout does? Cordier said yes.

James Hatfield, 1025 Umatilla Court SW, spoke to the earlier storm water discussion. He has been having stormwater problems and hears that the City doesn't have a separate stormwater budget available to make the types of modifications he thinks need to be done. Konopa said the Council has discussed for many years whether to impose a stormwater utility fee as allowed by the state. They will be looking at the issue again. City Manager Wes Hare said the City has included some money for stormwater in the regular sewer utility budget. He thinks most small cities don't have a stormwater utility. Hatfield said most cities this size do have one.

Konopa asked Hatfield about the issue on his property. Hatfield said a culvert at the back of his property floods. It affects him and his neighbors. Some of them are affected worse than he is. The whole area needs culverts but because there isn't a budget for it, it may never happen. Konopa explained that in a new development, every property pays for its own drainage. But with infill, it's hard to assess properties fairly for improvements that should have happened earlier. There are many areas like this in the City. We need to take care of them by a master plan. Hatfield said when he has a problem, he calls the emergency number, which is expensive. Konopa thanked him for bringing this to the Council's attention.

In regards to the roundabout, Kopczynski said he doesn't use it much but hasn't had any problem with it. It was designed on purpose so that trucks can drive over it. He asked, since we have to defer to Benton County, what about the money we budgeted for taking it out? Blaine confirmed that the decision is entirely Benton County's. Removing it is in the project budget and in the contract.

Kopczynski asked why Benton County is asking the Council for input. Hare said he thinks they're trying to be good neighbors. The joint meeting suggested that the roundabout was working, and that it should stay. Benton County says if it stays it will require a major investment, and they have a petition from neighbors asking that it be removed. They don't want to simply overrule the Council, so they are asking the Council to withdraw its motion. Collins said he agrees with Cordier, but has had calls from neighbors in favor of reduced speed on Spring Hill and improved traffic safety. The State will probably not keep the reduced speed limits on Spring Hill. He asked Benton County if there's another traffic-calming device that could be used, and County staff said they weren't aware of any but that it hadn't been evaluated.

Blaine said there are other concerns if the roundabout stays. There are very limited pedestrian opportunities there. Pedestrians don't have a clear view of traffic, and it isn't safe. There is also a power pole that is very close to the travel lane that might need to be relocated. Before the detour there were problems with south-bound drivers going too fast. The detour and the increase in traffic volume reduced the speed problem. One consideration in making the intersection safe would be whether, without the detour, speeding would increase again.

Kellum said he thinks Benton County won't pay to keep the roundabout, so if we want to keep it, we would need to spend the money, with no guarantee that ODOT would be willing to keep the reduced speed limit.

Councilor Bill Coburn expressed frustration. Both the roundabout and the next item on the agenda were designed to be temporary and so didn't have to go through all the design and impact studies. They both work, but if we want to consider having them permanently, they have to be redesigned. This is government at its worst. He wondered if it would be possible to put a moratorium on the projects' removal and study them for a year.

Councilor Dick Olsen asked if the state would allow a stop sign on Spring Hill Drive. Blaine said he doesn't know, but will ask Transportation Systems Analyst Ron Irish to look into it. Collins said it's Benton County that would have to approve stop signs. He said if the roundabout is working, he doesn't want to spend money to remove it. Hare said the problem is that a large number of residents are strongly opposed to it, and Benton County's opinion is that it has safety issues as constructed.

Blaine said, since Benton County wants it removed, he would like direction from the Council tonight to remove it. Delaying approval could result in contractor delays and increased costs. Coburn asked if the City would incur liability by leaving the roundabout there, since it isn't built to standard. City Attorney Jim Delapoer said yes. A City usually has discretionary immunity based on an engineer's opinion that the structure is safe. But Blaine has mentioned safety concerns. If someone were hurt, the City could be sued, but might not lose. Hare said the weakness is that this was never intended to be permanent or constructed to permanent standards.

Johnson said the decision is Benton County's decision. Why not let them make the decision and accept the liability?

MOTION: Kellum moved to rescind the City Council's original support for the roundabout. Johnson seconded the motion.

Collins suggested adding to the motion a request that Benton County evaluate north-south stop signs and a permanent reduction in speed on Spring Hill Drive. Delapoer suggested keeping the first motion and then making a second motion.

VOTE: The motion to rescind the City Council's original support for the roundabout passed 5-1, with Kopczynski voting no.

MOTION: Collins moved to ask Benton County to find traffic-calming up to and including stop signs and a permanent reduction in speed. Olsen seconded the motion, which passed 6-0.

DUAL LEFT-TURN LANES HWY 20 AND SPRING HILL DRIVE

Ray Hilts, 2748 Foxglove Loop SE, said he likes the dual left-turn lanes. Most of the traffic is in the left-hand left-turn lane because that's what people are used to. That lane backs up past Hickory Street. Using the right-hand left-turn lane is easier. He is in favor of leaving it as is.

Tom Cordier, 2240 NW Park Terrace, also spoke in favor. He understands that the state is agreeable to keeping the two left-turn lanes but concerned about trucks coming south on Spring Hill Drive and the excessive slope of the road on Highway 20. The state thinks Albany won't police the trucks to make sure they use Hickory Street instead. Signs are posted, but he's seen trucks stay in the left lane. A condition for keeping the two lanes has to be that all trucks must use Hickory Street, but how will the City enforce that?

Blaine said he hasn't had a chance yet to talk to Irish about his meeting with the state. Irish and Benton County both feel there is little chance of getting ODOT to leave the dual lefts, given their concerns about compliance and the issue of trucks turning over. Those are realistic concerns. ODOT will require the City to submit studies in support of any request to keep the dual left-turn lanes. He said the City has three options: let the left-turn lanes be removed without pursuing permanent changes; try to complete studies before they have to be removed; or let ODOT require their removal, get more complete information, and then decide whether to ask ODOT to install dual lefts permanently.

Collins said he's frustrated. ODOT designed that intersection years ago, knowing that trucks came down Spring Hill. Now they're asking the City to do \$20,000 worth of evaluation to fix what ODOT created. He likes the dual left turn, but thinks it's not possible to make the big trucks do what is safe. He would like a discussion of how to fix the problem, with ODOT participating.

Coburn asked if ODOT would agree with leaving the dual left-turn if the detour was also left. Blaine said initially they appeared open to it, but in further discussion they have said they want studies made and at two levels of ODOT. So even if the City did the studies, there would still be a chance it wouldn't get approved. Coburn asked if the City can fight ODOT on it. Blaine said he thinks it would be better to let the lanes expire with the project and pursue it after the project ends. There isn't enough time for the City to evaluate it before ODOT wants it put back the way it was. Coburn said he is also frustrated. Blaine said he believes ODOT is concerned about a decrease in compliance with signage on the detour since the project was completed. Irish says he's seen the same thing. ODOT is concerned about the real risk of a truck tipping over.

MOTION: Johnson moved to let the dual left-turn lanes revert to a single left-turn lane and then work with ODOT to see if there's a solution. Kopczynski seconded the motion.

Collins suggested letting ODOT know that time constraints, not support of the single lane, are the reasons for this action. Coburn asked, even if there was time, where would we get the money? Collins asked why the City would pay for it? Benton County owns the road.

VOTE: the motion passed 4-2, with Olsen and Kellum voting no.

ONE PERCENT FOR ART

Delapoer called the Council's attention to the ordinance in the agenda packet prepared by Delapoer following the Council's direction. He pointed out the changes made. He said that, although it seems like a lot of changes, the purpose is to conform to the practice the Council has discussed as desirable. Management Assistant/Public Information Officer Marilyn Smith said that the last word in the ordinance should be "constraints," not "restraints." Coburn asked Delapoer if the Ordinance would come back on the September 14, 2015, agenda. He'd rather wait and see it again in two weeks.

Collins said he objects to the last sentence of 2.96.010(1) relating to funds from third parties. He thought the Council had decided against "only" and "not." Konopa said the Council actually didn't vote on this. Delapoer asked if the Council wants the percentage to be based on gifts and grants, which would increase the amount. Collins said no. The Council discussed the possible effects on potential donors of leaving grants and gifts in the calculation.

Hare suggested leaving the ordinance as written tonight, given that the Council wanted more time to consider it. Delapoer suggested deleting the sentence altogether. The Council would keep their ability to decide.

MOTION: Collins moved to delete the last sentence in 2.96.010(1) from the ordinance. Kellum seconded the motion, including changing "restraints" to "constraints." The motion passed 4-0, with Olsen and Johnson voting no.

The rewritten ordinance will be on the agenda for the October 28, 2015, meeting.

RECREATIONAL MARIJUANA

Ed Melvin, 1024 Calapooia St SW, said he understands that recreational marijuana sales would bring extra income to the City. Konopa said, only very little. The state tax is 25 percent; 17 percent of that is distributed among 240 cities, based on the number of dispensaries in the city. The revenue must be used in certain ways. Enforcement will cost more than the money we receive. Melvin said some people would disagree with that.

Melvin said he called Konopa last week looking for information. He thought the extra money would help to erase Call-A-Ride's (CAR) two-dollar one-way transportation fee. He said it's unfair to use property tax for this. Property taxes also pay for police, fire, and parks and recreation services. If someone with a disability wanted to go to River Rhythms, it would cost \$4 to get there and back. Konopa said she had suggested in their phone conversation that he call Disability Services. He said he called CAR and left information after-hours, but never got a call back the next day. He said he mentioned a doctor's appointment, but had to walk home, which was very hazardous for him. He thinks marijuana income should be used to provide services for people with disabilities. It's unfair for him to pay property taxes to get a ride. The recreational marijuana resolution should be passed. He said Konopa told him in their phone conversation that she'd bring up the issue of disabilities. Konopa said she will bring it up at the meeting Wednesday, October 14, since there was not time tonight. She advised him to call Disability Services, and if they don't return his call in a week, to call her (Konopa) again.

Rhea Graham, 1440 Lawnridge Street SW, said her business has three full-time employees and no police calls. She needs to renew her lease. She has no interest in recreational sales. She thinks the Council is mad at her and her business and is punishing other owners because of that. She hopes the Council will embrace the huge revenue that will come.

Jane Bason, 1870 Beca Court SE, said that Konopa's comment as quoted in the newspaper was offensive. Konopa said the comment was taken out of context. There were some errors in the story. Bason said Oregon citizens passed Measure 91, but the Council is going to change some of the rules. She lives with fibromyalgia, and Graham has helped her with her medical marijuana. She said there is no excuse for not renewing Graham's lease. Konopa said the Council is not closing down any medical marijuana facilities and in fact has supported them. Graham's lease is between her and her landlord.

Cindy Etzel, 15241 Skelton Road SE, Jefferson, said that she serves veterans, many of whom use medical marijuana. They need the Council's help for access. Recreational marijuana is no different from beer, wine, or scotch. She urged the Council not to "play god" to the people who need marijuana. Konopa clarified that she and the Council voted for medical marijuana dispensaries.

June Buechting, 2487 40th Avenue SE, asked the Council to let adults make their own choices about recreational use of any form of marijuana.

Tom Cordier said he understands that the law passed by the voters allows communities to make certain decisions on their own. He's hearing today that the people of the state passed a law and the City Council is changing it. That's not true. The Council is allowed to place certain restrictions, and it's complicated. Using marijuana is not the same as drinking wine or beer. Alcohol is metabolized faster. The effects are not the same. He hears people say, we all want our kids to grow up in a great community, and we already have alcohol and drug abuse, so why not marijuana? That fails the test of

logic. He is glad that the Council is struggling with the issue. He wants to go on record in favor of every kind of restraint the Council can come up with.

Konopa said she has heard over and over that the Council needs to accept recreational marijuana because the measure was approved. Measures sometimes pass but don't get implemented; for example, Measure 47, which was corrected by Measure 50. Also Measure 37, which would have destroyed land use. The state passed a corrective measure later. The state is trying to come up with solid rules to implement this measure.

Dan Schutte, 522 36th Court SW, said he was at the recent City Council meeting where the vote was 4-2. He has looked at data in Albany, and says that vote didn't represent the people. He said federal law says certain authorities may refuse to perform any duties because marijuana use is still prohibited by federal law. But you can't use the federal law as an excuse for not doing what state law says. The people have spoken and the Council isn't hearing them.

City Attorney Sean Kidd said there will be issues with taxes. Banks are still leery of accepting money from marijuana sales, which are still a violation of federal law. There are concerns about how cities can collect tax revenues. No taxes will be collected on sales of recreational marijuana from medical dispensaries until January. At that point there will be a 25% tax on early sales, which will be allocated to local governments based on population. After 2016, the tax allocation will be based on the number of licenses issued by a community. Banning early sales does not prohibit a city from sharing tax revenue before 2016. But banning recreational facilities would stop the possibility of receiving any revenue.

Kidd asked what the Council would like as far as time, place, and manner direction. Nothing the Council will pass will have any effect on existing medical marijuana dispensaries selling medical marijuana. The Council can pass an ordinance to ban recreational facilities and new medical facilities. In that case, the City wouldn't get early-sales tax revenues. The ordinance would go on the Albany ballot in November of 2016. In effect, the ordinance would put a moratorium on recreational facilities in Albany. The OLCC will not issue licenses in any city that is in the process of banning recreational sales. The first question for the Council is: do they want to ban recreational marijuana facilities? If the answer is yes, then they don't need time, place, and manner regulations. If the answer is no, then this is a good time to consider time, place, and manner regulations. A lot of the OLCC's draft rules don't pertain to cities. Measure 91 gave cities the opportunity to decide how to regulate the law.

Kellum asked if use of marijuana tax money would be restricted. Kidd said yes. Marijuana tax revenue has to be used for enforcement of marijuana issues. Olsen asked if that included buying police cars? Kidd said yes. Olsen asked if all of the City's marijuana revenue would have to be used for law enforcement. Kidd said no. There was discussion of possible rules relating to taxing recreational marijuana.

Kopczynski said we need solid rules and we have to follow them, and the rules will come out of the OLCC. Allowing medical dispensaries to sell recreational marijuana early could give us a good idea of whether our regulations are effective. He hasn't heard of any infractions in any community, which proves that recreational sales are working well. Our problem is how to come up with reasonable time, place, and manner regulations to allow it to go forward. Since Albany did vote in favor of Measure 91, why not participate? The rules will always be changing. If we wait until they're perfect, nothing will happen.

Konopa said we still need a solid base to start from. Half of our community is opposed to marijuana. Waiting until the Oregon Liquor Control Commission (OLCC) has adopted their rules allows us to do our due diligence. Kidd suggested that the Council consider whether they want to simply ban recreational facilities. If so, they need to do it before the OLCC begins issuing licenses in January. Kellum asked, why not allow recreational facilities in a certain time, place, and manner, and then vote on it in 2016? Kidd said in order to go to a vote, the Council first has to adopt an ordinance to ban the facilities.

Delapoer said the City doesn't have any flexibility with the state. If the Council decides to put the question of a ban to the voters, no licenses will be issued until after the vote. If the Council decides not to put it to a vote, then recreational sales will be allowed. Kidd said the Council already voted to ban early recreational sales at medical dispensaries. But beginning in January, the state will accept applications to open recreational facilities in Albany. Then the state will ask the City for a Letter of Compliance on the applicant's properties. The City will have 21 days to reply. The state probably won't issue licenses until late summer or early fall, but we need to have regulations in place to evaluate compliance before the state starts responding to applications.

Delapoer said the City Attorneys won't act without direction. The question is, does the Council want to put banning recreational facilities to a public vote in November? This would be effectively taking a neutral position. Kidd reminded the Council that they need to pass an ordinance banning recreational facilities in order to put it on the ballot. Delapoer said Measure 91 had many facets. The only aspect the City can say anything about is whether there can be recreational facilities in Albany. Kidd added that the City has the ability to ban growing, or processing, or new medical facilities, all subject to voters' approval. Konopa asked, if the Council passed an ordinance banning recreational marijuana sales, and then made Development Code changes, could the Council rescind not going to the voters? Kidd said the Council can rescind its ban on recreational facilities. Coburn asked if the Council could vote to allow early recreational sales at medical facilities and still put a ban on all marijuana sales on the ballot. Kidd said yes. The Council could rescind the ban on early sales and then pass an ordinance to ban all marijuana facilities. If they banned sales now, the City would lose tax revenues effective immediately.

The Council decided by consensus to discuss the issue again at their Wednesday, October 14, 2015, meeting.

Albany City Council Work Session
October 12, 2015

Konopa reminded the Council that there are now three issues carried over to that meeting: fireworks concerns, Melvin's disability issue, and rail noise.

PUBLIC SAFETY FACILITIES UPDATE

There was none, because of the length of the meeting.

COUNCILOR COMMENTS

None.

CITY MANAGER REPORT

None.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:52 p.m.

Respectfully submitted,

Reviewed by,

Allison Liesse
Accounting Specialist

Stewart Taylor
Finance Director