

CITY OF ALBANY
CITY COUNCIL WORK SESSION
Council Chambers
Monday, February 8, 2016
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: Mayor Sharon Konopa and Councilors Rich Kellum, Ray Kopczynski, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson.

Councilors absent: None.

BUSINESS FROM THE PUBLIC

None.

MUNICIPAL COURT ANNUAL REPORT AND JUDGE'S CONTRACT REVIEW

Municipal Court Judge Robert Scott presented his annual report. He said that compared to a lot of other years, last year was a fairly unremarkable year for Municipal Court. The court has had years where the caseload fluctuated by several thousand cases, and this year was only a slight decrease of about 428 cases. The decrease was slightly larger with traffic cases than with criminal cases; and there was no significant impact on the workload or finances. Municipal Court took in slightly more money than was spent this year, even though the caseload was down.

Scott explained that some things did increase; contempt proceedings and warrants were up significantly as a result either of people not following through with their court orders or simply not appearing. He had a meeting recently with City Attorneys Sean Kidd and Jim Delapoer about how to deal with repeat offenders – a small group in the community that is causing most of the problems. He feels that given the limitations on what the City can follow through with, it's difficult to be able to enforce the laws. Scott explained that some of those repeat offenders simply don't care what the consequences are. Most people end up doing 30 days in jail for contempt of court; and once released, they go right back to doing what they were doing before. Some of them are simply irresponsible. Some of them don't have the skills, knowledge, resources, or good fortune to be able to take care of what they need to do. He added that mental health plays a huge part and communities don't have the resources to deal with mental health issues on the level that is really needed.

Scott told the Council about a woman that appeared before him after being arrested for trespassing at Monteith Park and spending five nights in jail. Deputies tried to release her and she simply would not leave the jail. Deputies gave Scott a heads up about the situation and he ended up dismissing the case since she had been sitting in jail for that long. He said he hesitated to do that because now she becomes an issue for the police; but she was not a danger to herself or others, so she could not be committed. He touched briefly on the mental health issues faced by our community and explained that it would cost over \$100,000 per year to keep someone at the state mental hospital and in this woman's case, even if she were committed, the hospital feels it probably wouldn't help. He said we have several people like that in the community.

Scott noted that the City's share of revenue is up by \$30,000, which isn't as high as it could be because expenses are also up. He is not involved in the budget process at all but he does review the expenditures and two things always stand out to him: the court always seems to spend more than budgeted on prisoner expenses and court-appointed attorney expenses. He explained that if a person has a possible jail sentence, they are entitled to a court-appointed attorney; and he couldn't think of an instance when someone asked for a court-appointed attorney and he was able to deny their request because he could show they had sufficient funds to cover their own attorney expenses. He said these attorneys charge about one-fifth of what their normal hourly rate would be; so they are essentially doing the work pro bono, barely covering their overhead.

Scott pointed out that Senior Court Clerk Mary Stankey retired last summer as our longest City employee. September Ridgeway has taken over her position and he feels she is doing a fantastic job and that the transition has gone very smoothly. He mentioned that the court has lost several great clerks in recent years, a couple of those because of pay and benefits; but they have a new clerk starting tomorrow who is fluent in Spanish, which staff is thrilled about. He added that they have people every day come to the court who don't speak English and this will make a huge difference in being able to help them.

City Attorney Jim Delapoer commented that as someone who's been practicing in Municipal Court for almost four decades, he believes it is exceptional to have a court that is able to run in the black, to have a system that is not a significant economic drain year after year on the City. He believes a lot of that is because of how Judge Scott runs the court. There are very few jury trials that actually go to jury trial, people ask for a trial, but then it ends up being waived because there's a general consensus that they're going to get a very fair shake with Judge Scott. Delapoer

explained that Municipal Court is not a court of record, no one is transcribing what happens, and therefore anyone who is convicted has the right to request a retrial. He said we don't have even one case per year that requests to be retried, because people feel like they get a fair trial. He said it's not an accident that the court is running efficiently.

Councilor Bessie Johnson asked whether the new clerk who speaks Spanish fluently would receive differential pay for that skill. City Manager Wes Hare explained that the City does offer differential pay for employees who speak a second language.

Johnson also wanted to clarify whether Scott felt that the court clerks they've lost recently were because the City had been under paying those employees. Scott explained that one employee said she had made more money working as a pharmacy clerk at a grocery store than she did in the court office. After just shy of a year working for the court, one of her former customers, from when she worked at the pharmacy, offered her a job that she couldn't refuse. Another employee went to work for the District Attorney's Office in Corvallis and was offered more pay there as well.

Johnson questioned why parking violations were up this year by almost one-third. Scott said that he'll see maybe five parking tickets per year and it's almost always someone who shows up and wants to speak with him. He said that if there are five of them, usually four are dismissed; it's a very small number. Johnson said she appreciates how Judge Scott runs his office because she's never heard anything negative about the court.

Discussion followed related to mental health issues in Albany and the surrounding communities. Councilor Rich Kellum suggested that there could be better coordination between the City and Linn County on this issue. Konopa asked Judge Scott if he's noticed whether some of these routine offenders are from other parts of Linn County, not just Albany. She said there's a transitional housing facility that has come to the attention of the Code Enforcement group and when she met with the facility, they said that a lot of those residents are from other parts of Linn County. Scott said he doesn't pay particular attention to someone's address. He may ask them if they have housing, but he doesn't ask where; he mostly pays attention to the charge on the ticket.

STORMWATER UTILITY DISCUSSION

Public Works Engineering and Community Development Director Jeff Blaine recapped discussions that took place throughout 2015 during a series of presentations reviewing stormwater issues, which included: regulations the City is going to be faced with and the challenges they will present; ongoing maintenance costs that will be required as part of managing the utility; and significant costs for repairing failing infrastructure, which the City does not currently have funds in place for. He said that a lot of challenges lay ahead of Albany and they will all require funds to address them. The last presentation series was concluded in November 2015 with direction from Council to begin the process to develop a stormwater utility. He said that this presentation is the first in what may be a series of discussions, if Council directs staff to proceed.

Utility Services Manager Mark Yeager explained that the purpose of this meeting is to begin the process and discussion to try to understand the steps that are necessary in the formation of a stormwater utility. He said the goal is to understand what's involved by looking at some of the key success factors in developing a stormwater utility, as many other communities in Oregon have done. The presenters will go through a sample rate calculation and then talk about next steps, should Council want to continue down this road. Yeager explained that the City currently makes some limited stormwater improvements as part of street projects but other than that, improvements are not made because there are no available funds. For what limited stormwater activities are done, the City uses two sources of revenue: Wastewater personnel, funded by sewer rates, and some Street personnel, funded by gas taxes.

Shaun Pigott, Shaun Pigott Associates, LLC., Bend, introduced himself. He has over 30 years of experience with public finance in the areas of water resource (specifically with rate development), System Development Charge (SDC) studies, as well as capital planning and financing. In the early 1980s, he became involved with establishing stormwater utilities in Oregon, as well as nationally, and has helped over 20 cities across Oregon and the United States develop utilities.

Deb Galardi, Galardi Rothstein Group, Portland, introduced herself. She has been working on utility rates and charges for about 25 years, many years with the City of Albany. She has helped to develop water and wastewater utilities for Albany and most recently, she was before the Council to assist with transportation funding issues. Galardi explained that she and Pigott have worked extensively together, most recently to develop and phase in the stormwater utility charges that just took effect in Salem.

Pigott and Galardi gave a PowerPoint presentation (see agenda file).

Pigott stated that every community faces a puzzle in figuring out how the pieces fit together; but the pieces tend to be common among all communities in Oregon. He said it's a question of what it takes to run the system and the financial plan to support it, which then gets into the legal framework. He explained that there is a significant amount of precedence in Oregon, as well as nationally, related to the viability and legality of stormwater utilities. Each community is unique in how a utility is designed, how a rate structure is established, and what customer classes are going to be appropriate. Pigott gave further explanation relating to the provisions in the Oregon statute that allow for a stormwater utility, as well as the process of using a formation ordinance to create the utility. This would be followed by a resolution to establish a system and structure for rates, which would include customer classes and what rates or provisions would be provided.

Pigott explained that in all litigation cases, the process of using a utility has been substantiated. He said that what the courts seem to be looking at is whether charges are to support a dedicated funding source, i.e. that revenues are dedicated to a certain function; that there is some measure of quality; and what is the quantitative measure for determining the billing amount (parcel size, impervious service, or other). A case specific to Oregon was the Roseburg decision in 1993. The City of Roseburg was challenged by the school district as well as some other businesses. The tax court ruled that this was a tax and not a service charge. The case then went to the Supreme Court which held that the tax court had erred, and that it was, in fact, a stormwater utility fee and not a tax. The decision relied on two variables: controllable and avoidable. Controllable being whether there is some function of credits – if a customer does something to modify their contribution to the system, can they reduce their billing. Avoidable being, in those instances that a customer is not contributing anything to the stormwater utility, they are not paying for services.

Galardi explained that should Council choose to move forward, there are four primary steps that Cities have to go through to begin implementing these charges: implement local code changes, develop a funding plan, develop a rate structure, and develop internal systems to support billing and tracking revenues and expenditures. Additionally, it is important to have an implementation plan, to tell the public what you plan to do and why. She explained that the requirements for funding sources are operation and maintenance and capital costs, not unlike the requirements for water and wastewater. As far as a capital improvement plan, many cities are already behind when they implement these utilities, so it will be a matter of determining what existing deficiencies will be addressed initially and at what pace other improvements will be made. She stated that by and large, like water and wastewater systems, it will be service charges that will support the utility.

Pigott briefly reviewed the history of approaches to rate structure and to establishing stormwater utilities. The current approach tends to focus on impervious surface area. He explained that impervious surface area for residential lots does not tend to vary much, not enough to commit staff time and costs to measuring those surfaces. Generally, residential lots will be grouped as one and the measurement of impervious surfaces is reserved for commercial or industrial properties.

Pigott recapped the three major items that will need to be addressed: public education and outreach, billing and financial systems that need to be in place to incorporate charges, and rate structure development.

Councilor Floyd Collins asked how the utility would handle the example of lots in North Albany that either do not have any measurable runoff or they run off to county facilities. Pigott stated that this would speak to the credit program, for which conditions are to be established, and it's the conditions for those credits that will be unique to how Albany sets up their program.

Councilor Bill Coburn asked what the timeframe would be to accomplish the steps listed on the presentation slide titled "Steps for Adoption." Pigott explained that this varies between communities but they set up a utility in Bend and it was about a 14-month process. He added that as Council goes through some next steps in defining the legal authority and the revenue approach to the program, they will be in a better position to judge the timeframe.

Yeager believes adoption to implementation is likely to take around 18 months but that it will depend on what Council chooses for a public involvement process, and if Council does the majority of the work, or uses some other process.

Johnson said she needs to have a sense of how much it is going to cost customers. She asked, what is the dollar amount that Bend is charging to a single-family residence, for example? Pigott explained that in Bend, they charge a rate of \$4.00 per "equivalent residential unit" (ERU), so a single-family residence would pay \$4.00.

Konopa asked whether every single-family residence would pay the same amount regardless of lot size. Pigott advised that it is possible to create tiers within each individual category, such as by lot size, but it is best to stay away from measuring every residential lot because of the administrative costs associated with that. Additionally, if you create different tiers within the residential category, you have to be able to demonstrate that as the lot size increases, the impervious surface size also tends to increase.

Yeager gave the example of the wastewater utility, which has three different commercial/industrial classes, which are based on discharge strength. He added that it is not parcel size that is significant, it is impervious surface area. He feels it is important to balance the complexity of the rate structure. More complex is certainly fairer, but you have to balance that out with increased administrative costs associated with a highly complex structure. Yeager stated that what staff needs to know is whether Council wants to proceed with establishing a stormwater utility.

Kellum's concern is the state permitting process and when Council will know how much money the City needs to move forward with this utility. Yeager explained that the state is now in the process of creating a new permit structure for communities the size of Albany, changing from an individual permit to a general permit structure. The state has said that they will roll out their draft around April 2016, at which time they're going to seek some informal input, and then going to roll out their formal draft in July 2016 for public comment, with adoption taking effect in October 2016. Once the state has adopted the new plan, Albany will be required to apply for a permit. Kellum wants to make sure that Albany is ready when this requirement goes into effect, and wants to ensure that it is made clear what options people have to reduce their stormwater output and see a reduction in their bill. Yeager replied that

those are all things that come back to the discussions related to a development of the utility and the guidance Council gives to staff to begin trying to shape what will become the rate structure.

Councilor Ray Kopczynski agrees with Kellum that it would be ideal to have a finite deadline for implementing the utility so that Council can plan accordingly. He has concerns about waiting and having to make last minute decisions, or rushing to judgment too soon when they really have plenty of time to consider the issues.

Blaine explained that there are a lot of different cost drivers at play, one of them being the regulatory requirement, but also general operations and maintenance activities that we're not doing now; trying to replace pipes that are failing, or trying to anticipate where pipes are going to fail and replace them in advance, much like with water and wastewater systems. Blaine stated that if Council is looking for a deadline, they could use the regulatory timeline. Blaine would like to see Council work through this process by the end of the calendar year, given that they've already spent an entire year working through all aspects of this in great detail with staff.

Konopa added that Council has been deferring this issue for 20 years, knowing that it was something they would have to implement at some point but hesitated to because of costs, and now the infrastructure is even worse.

Kellum reiterated that he feels it is unreasonable to start charging people just so that they can ready for what the state is going to implement. He feels they need to know when the state will implement their requirements so that Albany can be ready, have things in place, and then Council can implement the utility once required to by the state.

Yeager stated that if Council needs a specific date, they could use October 2016 because that's when the regulatory requirements will go into place; and this process, should Council choose to move forward, is going to take every bit of that time. Yeager feels they are already behind schedule, based on the October date. Collins clarified that the October date is when the state is anticipating adoption of the ruling. Yeager explained that the state has said October is when the program would become effective, at which time Albany would be required to apply. Collins pointed out that the application process will take some time; the timeline certainly needs to be expedient but they don't have to be scared off by the October 1 deadline.

Blaine would like to move the program development and implementation schedule discussion to the March 7, 2016, Council Work Session. He commented that there are several different regulatory instruments we can point to that are driving the requirement to establish the utility.

Collins asked if the current cost accounting shows a breakdown of how much is being pulled from the Street and Wastewater Funds for stormwater activities. He would like to know what we will be doing with those funds, if they're no longer subsidizing stormwater.

There was a consensus to move forward with the process to establish a utility. Collins commented that he appreciates Pigott's explanation and examples of the courts affirming the legality of a stormwater utility and that contrary to public opinion and editorials, this is not a rain tax; it is based on usage. Pigott added that there are upwards of 60 communities in Oregon that now have a stormwater utility.

LEVY RENEWAL DISCUSSION

Delapoer explained that City staff has been working to put a renewal of the Public Safety Levy before the voters. Past practice has been to use an ordinance as the legal vehicle to place something on the ballot. Staff has researched this issue and determined that a resolution is likely sufficient to place something on the ballot; but it is his personal preference, when it comes to something like this, to take the more formal approach, which would be an ordinance. He said the issue is that Council has expressed a real reluctance over the past several months to use an emergency clause. The emergency in this case is that the ordinance must go into effect in a timely manner. Delapoer said that if Council is not going to be comfortable with the emergency clause on the ordinance, he would like for them to say so and then the resolution will be brought forward for adoption. He feels the consequences of someone raising a challenge are too high for Council not to go with the most formal of processes, but he would rather bring forward something they will all vote for.

Kellum is uncomfortable with the emergency clause and would like to see them adopt the resolution. Konopa said the emergency clause is needed because deadlines are looming and they have to have voters' pamphlets turned in within four to five weeks, which requires a measure number. Coburn and Councilor Dick Olsen said they have no issue with the emergency clause in this case.

Delapoer reiterated that he prefers the most conservative course pertaining to financial matters. He explained that if a Councilor is going to vote against the ordinance, simply because they don't like the emergency clause, then that's going to delay the second reading to the next Council meeting. If the Council is not comfortable with the ordinance, he would like to know that so he can go with the resolution and this won't become an issue. Staff cannot identify a hard and fast rule that they are required to do an ordinance, but since he cannot envision how the City could ever be challenged for using the more formal of the two processes, he would prefer it.

Discussion followed related to when the current levy expires and the previous direction Council has given staff for the timing of when to bring renewals before the voters. There was a majority agreement to go ahead with the first reading of the ordinance at this meeting.

Delapoer read the ordinance for the first time in title only. This item will come back for a second reading at the February 10, 2016, City Council Meeting. If the ordinance is not passed by Council at that meeting, a resolution will be available for adoption.

Delapoer feels it sends a bad message to voters by placing something on the ballot that is not a unanimous vote of the Council. He would hate for that action to be misconstrued because a Councilor voted against the ordinance purely because of the emergency clause, and not because they're against the substantive measure. Konopa reiterated that Council is facing a crucial deadline and the emergency clause is needed.

Johnson said she is sorry that the City has to go this route to finance Police and Fire services and feels it is sad to have to beg for money every five years to fund these absolutely necessary services. Konopa agreed and said it's unfortunate that the city can only do a five-year levy. She said there was a bill that went to the legislature to extend that to ten years but it didn't end up passing; ten years would have made things a lot easier on municipalities and counties.

COUNCILOR COMMENTS

Collins explained that information related to House Bill (HB) 4086, which will extend unemployment benefits to workers involved in lockouts for extended periods of time, can be found in the packet.

MOTION: Collins moved for the Council to authorize the Mayor to send a letter in support of HB 4086 and Johnson seconded.

Kellum is opposed to this bill, not because he doesn't support the people working at Oremet, but because he feels it is inappropriate for employees in this case to benefit from unemployment, which is funded by the employer, not the employee. He added that use of those employer-paid funds will cause a rate increase for the employer and he feels that this is the Council taking sides and showing direct support to the people on strike. He said that the company is using a lockout, which is the exact same thing as a strike only the other direction. Johnson responded that it's not the same thing, the employees are willing to work, but the employer locked them out. Kellum pointed out that a strike is when the employer is willing to employ people and the employees are not willing to work. He feels this sends a message to anyone who is looking at Albany that we take sides. Johnson stated that there have been other national instances when unemployment benefits have been extended. She doesn't believe they are taking sides; they're supporting the people in the community. Kellum argued that it's the company's money, not the employees. Coburn said that if this bill passes, he can't say what the financial impact would be to Oremet, the money will come from the state unemployment pool. Kellum said that the bottom line is that the company's rate will go up with more people are drawing unemployment.

VOTE: A vote was taken on the motion and it passed 5-1, with Kellum voting no.

Coburn said that it has been discussed a few times for Council to receive a raise but it has never passed. He feels it is warranted, given rising costs, and plans to propose a \$20.00 per month raise. He would like staff to have information available on what the current rate is and how long it has been at that amount. He feels this is a token amount, but a step in the right direction. He believes citizens would be very surprised to know that Councilors only receive \$100.00 per month plus a stipend for a computer.

Konopa said she was surprised at the lack of support the last time this was considered. Kellum pointed out the number of hours Councilors spend getting ready for meetings, attending meetings, etc. He said he looked at one month as an example and it worked out to being paid around \$1.14 per hour. Delapoer explained that the amount was never intended to be compensation for the work Councilors do, it was largely intended to be a stipend for costs. As IRS rules changed, it became easier, rather than giving Councilors a cash stipend, to report it as income; and if they kept track of expenses, they could write off all of that income.

Johnson agrees that this would be appropriate, as cost of living has certainly gone up. Konopa explained that the last time this was changed was when it was necessary for Councilors to all be on the internet, but since then, even the cost of just internet service has gone up dramatically.

Olsen added that he appreciates Representative Andy Olson's support of the workers assisted by HB 4086.

City Attorney Sean Kidd advised the Council that he is looking into the question of whether they can implement a tax on marijuana while there is currently a ban in place. He said that originally they had discussed putting both questions on the ballot, but he's not sure they can do that so long as the ban is in place, which will be going to the voters for approval. Hare asked whether the tax could be adopted contingently. Kidd is working on this issue along with discussions with Planning and other departments related to time, place, and manner restrictions. Konopa said we also need to be looking at zoning.

Blaine informed the Council that an item will be brought to the next Council meeting for building permit fees. He said this is a housekeeping item and will not change what customers see at the counter or on their bills.

CITY MANAGER REPORT

Albany City Council Work Session
February 8, 2016

None.

ADJOURNMENT

There being no other business, the meeting was adjourned at 5:50 p.m.

Respectfully submitted,

Holly Roten
Administrative Assistant I

Reviewed by,

Wes Hare
City Manager