

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
AUGUST 13, 2009

MEMBERS PRESENT:

Lon Kellstrom Mayor
Bill Merrill Council President
Sharlene Weed Councilor
Pat Thompson Councilor
Jerry Bogart Councilor

STAFF PRESENT:

Eileen Stein City Manager
Steve Bryant City Attorney
Eric Porter Comm. Dev. Director
Brad Grimm Public Works Director
Kathy Nelson City Recorder

ABSENT:

Lisa Young Finance Director

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE

The meeting was called to order by Mayor Kellstrom at 7:00 p.m.

II. VISITOR COMMUNICATIONS

Mayor Kellstrom introduced Toshiki Ibaragi, an exchange student visiting from Toyota City, Japan staying with the Cyrus family of Sisters. He stated that Toshiki brought a letter of introduction from Kohei Suzuki, Mayor of Toyota City and a souvenir guide book of Toyota City. In exchange Mayor Kellstrom sent a letter back to Mayor Suzuki enlightening him on the beauty of Sisters, the many activities that abound and welcoming him to visit. **Mayor Kellstrom** welcomed Toshiki, stating it was a pleasure to have such a fine young man visit Sisters.

III. CONSENT AGENDA

A. Minutes

1. June 25, 2009 – Workshop
2. July 02, 2009 – Quarterly Workshop with County Commissioners
3. July 16, 2009 – Workshop
4. July 23, 2009 – Regular Meeting

B. Bills to Approve

1. August Accounts Payable

Councilor Merrill moved to approve the consent agenda. Councilor Weed seconded the motion. The motion carried unanimously.

IV. ACCOUNTS PAYABLE NOT ON THE CONSENT AGENDA

A. August Accounts Payable

There were no accounts payable not on the consent agenda.

V. STAFF REPORTS

A. Eileen Stein, City Manager

Manager Stein stated she is expecting the memorandum of understanding (MOU) for the Deschutes Water Alliance to be forthcoming. She stated the MOU as well as an overview of the endangered species act (ESA) risk assessment the City recently received will be workshopped with the Council in the near future.

Manager Stein reported a contractor has been identified for the Timbercreek Bridge and work will begin soon. She reported that staff will meet tomorrow with representatives from the Timbercreek and Creekside homeowner associations (HOA) to discuss traffic concerns. Both neighborhoods have expressed apprehension on the amount of traffic that might travel through their neighborhoods after the bridge opens.

Councilor Weed asked about the MOU from the Deschutes County Sheriff's Department mentioned in Manager Stein staff report. **Manager Stein** stated the MOU related to Municipal Code enforcement will also be reviewed in a future workshop with the Council.

B. Lisa Young, Finance Director

Manager Stein asked if, in Director Young's absence, she could answer any questions on her staff report. **Councilor Weed** asked if a new sweep agreement with Bank of the Cascades was needed. **Manager Stein** stated the situation is being monitored to determine if there is a need to increase the amount the City holds in its sweep agreement with the bank to insure maximum returns for the City.

VI. COUNCIL BUSINESS

A. Discussion and Consideration of a Motion to Endorse a Change of Ownership for the Liquor License at Sisters Market and Eatery

Councilor Merrill moved to adopt endorse a change of ownership for the liquor license at Sisters Market and Eatery. **Councilor Weed** seconded the motion.

City Recorder Nelson introduced Charles and Tamara Bunker, new owners of the Sisters Market and Eatery, to answer questions for the Council.

Councilor Merrill welcomed the Bunkers to the City. **Mayor Kellstrom** asked how long they had owned the market. **Mr. Bunker** stated they had purchased the market two weeks prior.

The motion carried unanimously.

B. Public Comment and Second Reading of Ordinance No. 388: AN ORDINANCE OF THE CITY OF SISTERS IMPOSING A BUSINESS LICENSE TAX ON MOTOR VEHICLE FUEL DEALERS

Manager Stein provided key points on funding needs for street maintenance as follows:

- Street system condition assessment shows the need to increase the level of street maintenance at this time;
- The General Fund cannot continue to support the Street Fund and meet other City priorities;
- With the additional income a fuel tax will provide, the subsidy from the General Fund will be much less;
- The new state fuel tax will only add \$38,000 a year to Street Fund revenue when fully implemented;
- A three cent fuel tax will raise \$126,000 a year and only cost the average driver \$21 a year, whereas a street maintenance utility fee will cost city utility customers \$114 a year;
- Public Works full-time equivalent (FTE) did not change with the refuse franchise to High Country Disposal but remained at 1.45 FTE;
- Deferring street maintenance by four years will increase costs an additional \$1.3 million dollars.

Mayor Kellstrom opened the public comment period to anyone wishing to address the Council on Ordinance No. 388.

Steve Rodgers, 16435 Suntime Lane, Sisters, OR, 97759

Mr. Rodgers stated he and his wife are the owners of the Chevron Gas Station in Sisters and he is concerned that a fuel tax will put him at a competitive disadvantage. He stated he is concerned that Sisters residents will go to Bend to purchase gas. He stated he understands that the City needs money for street maintenance but asked the Council to wait an additional four years until after the State's moratorium on local fuel taxes has passed and then put a fuel tax to a vote of the people. He stated that if the community passes the vote at that time he will feel more accepting of the tax since he feels it will indicate that residents will still support local gas stations.

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
AUGUST 13, 2009

Paul Romaine, Attorney representing the Oregon Petroleum Association

Mr. Romaine stated the petroleum association has always supported a state wide fuel tax. He stated it is the best way and reasonable way to fund road repairs. He stated the concern is not the amount of the tax but rather that some nearby cities will not have a fuel tax. He stated that although that fuel tax might not be reflected in the street cost it does increase the cost of doing business in order for those stations with a local fuel tax to stay competitive.

Mr. Romaine stated the City will be missing a significant segment of road users such as large trucks. He stated the state gas tax triggers the weigh/mile tax increase on trucks and trucks will not be paying for road maintenance.

Mr. Romaine stated the legislature passed the increased state gas tax with a moratorium. He stated that although the petroleum association advocated for a larger tax amount to make the state competitive with the State of Washington, it was the trucking industry and Automobile Association of America (AAA) that dictated the amount the tax would be raised.

Mr. Romaine stated that if the City passes the fuel tax, a referendum will be filed in the morning and with only 109 signatures needed to refer the ordinance it will be accomplished easily. He stated that once the signatures are collected the fuel tax will not be able to be voted upon until March 2010 and even if it were to pass, it will miss the deadline of September 27, 2009 by which it must be enacted. He stated the Legislative Counsel supports his interpretation of what constitutes the enactment date. He noted that it will likely not be an issue anyway as when a gas tax goes to a vote, it historically fails unless it is for a specific project. He stated the City will be forced to hold an expensive election in March for naught. He recommended the Council not force a vote at this time.

Mike Morgan, 15925 Pilot Drive, Sisters, OR 97759

Mr. Morgan stated he has researched this issue at length and he is concerned. He stated he is seeing some numbers presented this evening on the financial need that he has not seen previously and if they are correct, the City has not sold its position to the community. He stated he heard on the news that the Council has already taken a straw poll and made a decision on the issue which he characterized as an insult to the community since the Council should be listening to anyone wishing to speak on the matter prior to making a decision.

Mr. Morgan stated he has exchanged numerous emails with staff, the City Attorney and councilors regarding the legality of issuing the fuel tax without voter approval. He stated the fuel tax is not a license tax but a sales tax and the Council does not have the authority to impose such a tax without a vote of the electorate. He stated that in emails, City Attorney

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
AUGUST 13, 2009

Bryant has not addressed what document provides the Council with the authority to impose such a tax. He stated that in the City of Madras, its City Charter specifically allows it's Council to impose such a tax but the City of Sisters charter does not. He stated the Council does not have the power to create law and levy taxes. He stated that if the Council exercises this fuel tax it will be an unlawful act as the City Charter delegates the powers of the Council.

Virginia Lindsey, 108 N. Wheeler, Sisters, OR 97759

Mrs. Lindsey stated she had some thoughts to share since she wrote a letter that was published in the Nugget Newspaper, opposing the fuel tax. She stated that now that she has become fully informed she realizes how atrocious the street maintenance tax for Sisters citizens would be compared to a fuel tax. She stated she supports the City desire to guard its reserve and contingency funds and that the City has always been financially prudent. She stated she has changed her mind and is in support of the gas tax.

Mayor Kellstrom closed the public comment period.

Councilor Merrill moved for the second reading, by title only, of Ordinance No. 388 imposing a business license tax on motor vehicle dealers. **Councilor Thompson** seconded the motion. The motion carried unanimously.

City Attorney Bryant gave the second reading of Ordinance No. 388 by title only.

Councilor Merrill moved to adopt Ordinance No. 388 imposing a business license tax on motor vehicle dealers. **Councilor Thompson** seconded the motion.

Councilor Thompson asked City Attorney Bryant if the Council approves the ordinance and it is referred, with the question of time frame and the likelihood the final decision will be made in court, it appears passing the ordinance is the only way to get to a vote of the people in a timely manner. **City Attorney Bryant** stated if enough signatures are collected to refer the matter, either before or after a vote of the people, it will likely end up being decided in a court somewhere in Oregon.

Councilor Thompson stated that although he doesn't like the situation the City was dealt by the legislation and economy, he doesn't feel the City can look the other way. He stated the City is in good financial shape from past growth but that situation has changed. He stated he doesn't want to put the City in the position of having to impose a street maintenance fee on its citizens or cut back on city services or staff. He stated he supports the ordinance as it provides the fastest way to get the matter to a vote of the people.

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
AUGUST 13, 2009

Councilor Merrill stated there are four issues surrounding the matter of a fuel tax; lawyers, fairness, waiting, and competitiveness. He stated that with regard to the first issue he has read all of Mr. Morgan's and City Attorney Bryant's emails, and evaluated, researched and talked with others about them. He likened the situation to being a juror on a case and stated that after all the "evidence" has been given, he is still in agreement with the City Attorney that the City has a right to impose the fuel tax without a vote. He assured Mr. Morgan he had given his statements serious consideration.

Councilor Merrill stated he doesn't consider the fuel tax a business license or a gas tax but rather a user fee based on the amount a person uses the roads. He stated since the user fee is based on use, it is the fairest way to tax as it doesn't restrict the fee to just city residents, but to all who use our roads. He stated that users of the roads have an obligation to pay for the roads regardless of where they live. He stated to impose a street maintenance fee would be very unfair and difficult to justify as there are different uses by each household in Sisters but everyone would end up paying the same amount on their utility bill. He asked if a large commercial account, such as Ray's Food Place, should pay the same fee as a small commercial account such as Sisters Market or if a senior on a fixed income who only drives to church on Sunday should pay the same as a house with three drivers where the cars are in constant use.

Councilor Merrill stated that since 49% of General Fund revenue comes from property tax, regardless of how much you drive, everyone is already paying for road maintenance through their property tax. He stated residents would be paying a street maintenance fee twice if they owned a second home in Sisters or owned a house and a business in Sisters.

Councilor Merrill stated that with regard to the weigh/mile issue that Mr. Romaine brought up the heavy trucks going through Sisters are on a state highway and as such their levy is paid to the State, not the City. He stated the State is responsible for caring for Highway 20/Cascade Avenue but the big ruts on the road indicate it is not the highest priority.

Councilor Merrill stated that on July 30th he drove around to see the price of gas at all the gas stations in Sisters. He reported they ranged from a low of \$2.68 a gallon to a high of \$2.76 a gallon with an average price of \$2.71 a gallon. He stated that there were vehicles fueling at every station including an RV at the station charging the highest price. He reported on the average price of surrounding cities which were all lower than the average price in Sisters. He performed a similar test on August 5th and found the average price in Sisters to be \$2.78 a gallon with the average price in surrounding cities still lower. He stated he has concluded that price is not the determining factor but rather the quality of service one receives. He stated that Sisters has never been competitive with Bend and it is not cost effective to drive to Bend to fill up. He stated the City is also not competitive with

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
AUGUST 13, 2009

Redmond and yet the stations continue to be busy. He stated he doesn't think a three cent tax will make a measureable difference to the buying habits of drivers.

Councilor Merrill stated that two years ago when the Council discussed the possibility of a fuel tax it was only for two cents a gallon. He stated within the last four years the cost to construct per lane mile has more than doubled. He stated he doesn't know when the recession will end but he is certain the cost for maintenance will only get more expensive. He stated the Council has an obligation to do what is best for the community.

Councilor Merrill stated an editorial in the Nugget Newspaper this week stated the City should wait four years yet the week prior, the editorial stated it is not good stewardship to defer road maintenance and have it cost more if the City waits. **Councilor Merrill** stated he would much rather pay three cents a gallon now as opposed to what the cost might be if the City waits four years.

Councilor Weed stated that no one wants to defer road maintenance acknowledging that is not the way to go, but stated she has not seen anything to convince her that the General Fund can't continue to support the Street Fund for at least four more years. She stated it is not the time to add an additional tax now as people are hurting financially and even adding the seemingly small amount of the tax is not a good idea. She stated she agrees that a gas tax is the most equitable way to fund road maintenance. She stated she feels that if the ordinance is referred it will fail now but in the future if people realize the difference in cost to residents between a fuel tax and street maintenance user fee, it will be passed.

Councilor Weed asked City Attorney Bryant if the City has the authority to pass a gas tax as Mr. Morgan claims they do not. **City Attorney Bryant** replied that he had spoken at length with the Mayor and Council President about the matter and had even offered to create a memo for the remaining Council members about that point. He stated there is no prohibition in the City Charter to issue the fuel tax and the Oregon Supreme Court supports that a local government has the right to determine the kind of taxes it deems appropriate for its city.

Councilor Bogart stated the fuel tax is a fair and equitable way to fund road maintenance. He stated that in looking where the money will come from he has determined that approximately 80% to 85% of the revenue will come from residents outside city limits. He stated the City is increasingly being asked to produce more work with less revenue. He stated he would be interested in having the Council consider a property tax credit to residents to offset the tax for City residents. He asked Mr. Rodgers if he would be satisfied to have the tax go to a vote right away and **Mr. Rodgers** stated he would as he just wants the matter to go to a vote.

As there were no further comments **Mayor Kellstrom** called for the vote.

*The motion carried with a vote of four to one with **Councilor Weed** opposing Ordinance No. 388.*

C. Discussion and Consideration of Resolution No. 2009-20: A RESOLUTION APPROVING A NOTICE OF CITY MEASURE ELECTION AUTHORIZING ANNEXATION OF 4.0 ACRES (FIRE TRAINING FACILITY) TO THE CITY OF SISTERS

***Councilor Merrill** moved to adopt Resolution No 2009-20 approving a notice of city measure election authorizing annexation of 4.0 acres to the City of Sisters for the Fire Training Facility. **Councilor Weed** seconded the motion. The motion carried unanimously.*

VII. OTHER BUSINESS

Councilor Weed asked who is responsible for having the Timbercreek Bridge built. **Manager Stein** stated that the nine lots in Phase 6 of Timbercreek were acquired by Columbia Community Bank and the bank is responsible for having the bridge completed. She stated the bank will be approaching Mr. Forbes for a financial contribution but not the City.

VIII. MAYOR/COUNCILOR BUSINESS

A. Committee Reports

Councilor Weed reported on a conversation she had with Deb Price of Oregon Housing and Community Services (OHCS) about funds that are available for weatherization and home rehabilitation. She stated she is interested in setting up a meeting with staff, interested Council members and other interested agencies to determine how to access the funds and inform residents of its availability. She stated that Neighbor Impact has a majority of the funds but if they are not interested in administering those funds for Sisters, there is a way for Sisters to apply for the funds on its own. She stated she also spoke with Jim Long, Bend's Affordable Housing Manager, and he wants to sit in on the meeting also.

Councilor Thompson stated Neighbor Impact had requested that cities get the word out to potential clients at a Central Oregon Intergovernmental Council (COIC) board meeting earlier in the year. He suggested that a notice in city services bills informing people on the funds might prompt someone to apply or encourage them to help someone else in need of the funds to apply that might not otherwise do so. He stated he was told it is a simple process that can be handled over the phone. **Councilor Bogart** reported that since the funds are American

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
AUGUST 13, 2009

Recovery and Reinvestment Act (ARRA) funds there is a requirement for prevailing wage which reduces the number of projects that can be performed because of the higher cost involved. He stated it is hanging up the process for not just Oregon but many states.

Councilor Weed reported that \$9 million dollars for the Neighborhood Stabilization Plan 2 (NSP2) that Jim Long applied for on behalf of Central Oregon cities will likely not be available until January 2010. She stated the funds, when received, will be targeted for purchasing bank owned properties.

Manager Stein stated that in her absence she would have Community Development Director Porter follow-up and be involved in any meetings to discuss the weatherization and rehab funds.

IX. ADJOURN – 8:03 p.m.

Respectfully submitted,

Kathy Nelson, City Recorder

Lon Kellstrom, Mayor