

REGULAR MEETING MINUTES  
SISTERS CITY COUNCIL  
520 E. CASCADE AVENUE  
FEBRUARY 26, 2015

**MEMBERS PRESENT:**

Chris Frye Mayor  
McKibben Womack Council President  
Wendy Holzman Councilor  
Nancy Connolly Councilor

**ABSENT:**

David Asson Councilor

**STAFF PRESENT:**

Andrew Gorayeb City Manager  
Steve Bryant City Attorney  
Paul Bertagna PW Director  
Pauline Hardie CDD Director  
Kathy Nelson City Recorder

**ABSENT:**

Lynne Fujita-Conrads Finance Officer

**I. CALL TO ORDER/PLEDGE OF ALLEGIANCE**

The meeting was called to order by Mayor Frye at 7:09 p.m.

**II. VISITOR COMMUNICATION**

Mayor Frye requested that speakers limit their comments to three minutes.

**Bob Norman, 16000 Foothill Lane, Sisters, OR 97759**

Mr. Norman stated he had sent an email to all the Council members on February 17<sup>th</sup> requesting they review the flawed process related to the approval of a food cart at Eurosports. He reported he received an email response from Councilor Asson and Councilor Womack and found the response from Councilor Womack troublesome. He stated Councilor Womack described recent changes on how staff would process Type II applications and how land use decision notification to the Council would be handled. Councilor Womack also relayed the Council had looked into the matter and found the decision had been handled in an appropriate manner. Councilor Womack had questioned why Mr. Norman was concerned with the process for this particular application when he had not been concerned with the previous nine Type II application processes. Mr. Norman stated Councilor Womack obviously didn't understand his concern was not related to the applicant and it was not a personal attack against Mr. Boyd, but rather against the process. He stated he didn't mind if Mr. Boyd was approved for the food carts as long as the process was not flawed. He stated from the citizens perspective when a current or former city official was involved in an application and was granted permission to move forward with the minimal amount of attention given as required by law, it did not seem appropriate. He stated whenever a city official was involved, the matter should be given extra scrutiny to eliminate any question of preferential treatment. He summarized it was very important to deliberate on the real issue which was the process.

**Lynne Dorsey, 67200 Sage Ranch Drive, Sisters, OR 97759**

Ms. Dorsey stated she agreed with everything Mr. Norman had just stated. She stated it wasn't a matter of whether the city should or shouldn't have food carts. She stated it was a complicated issue and most community members had never even had the opportunity to

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consider food carts prior to the application being approved. She stated she felt it required a great deal more research and input as well as a specific definition as to what constituted a food cart in order to have the issue resolved. She stated instead, it appeared the door was opened slightly by someone in a position of power whose business could benefit and then slammed shut. She stated the lack of process seemed to occur in a hurry behind closed doors and did not instill trust in the city. She recommended the decision be withdrawn and have the applicant go through a more thorough process.

**Mike Rankin, 1602 W. Hall Avenue, Sisters, OR 97759**

**Mr. Rankin** stated he was concerned the issue was being brought up by a lot of people that reside outside city limits. He stated if the people were not paying city taxes, it was not their issue and they should let it go.

**Ed Protas, 575 S. Oak Street, Sisters, OR 97759**

**Mr. Protas** handed in a petition with 130 signatures asking for a public hearing on the matter of allowing food carts in the city. He stated staff made mistakes in its decision of the food cart application, both procedurally and in interpretation of the City's code. He stated if common sense did not convince the City of its error, the letter from Attorney Michael Peterkin should. He stated Mr. Peterkin identified a remedy that was legally and politically sound for a decision that had been made by someone that did not have the authority to make such a decision. He stated the City might feel it has a tough path but it had everything it needed to make the right decision. He stated the Council had made no formal declaration surrounding the decision and how it would proceed and it was his hope they would this evening by sending the application back for a more comprehensive process.

**Mike Morgan (as read by Ed Protas) 15920 Pilot Drive, Sisters, OR 97759**

**Mr. Morgan** stated at the end of the workshop of February 19, City Manager Goraeyb stated he had spoken with City Attorney Bryant about the opinion letter from Attorney Michael Peterkin. Manager Goraeyb reported City Attorney Bryant had stated Mr. Peterkin might have been looking at the issue from a different perspective and perhaps was unaware of certain facts. He asked that City Attorney Bryant respond to the following questions;

1. What perspective did City Attorney Bryant come from and how was it different from Mr. Peterkin's?
2. What facts was Attorney Peterkin unaware of and how were they relevant?
3. Why did City Attorney Bryant's letter not include anything related to the Development Code's definition of the review requirements by staff and the Planning Commission as it relates to a Type II decision?

Gary Miller, 69592 Lake Drive, Sisters, OR 97759

**Mr. Miller** stated he wanted to echo the disappointment others had voiced in not receiving any comments or discussion from the Council on the many questions that have been raised. He stated he did not agree it was an issue only for those living within city limits as many business and property owners did live outside city limits and had a stake in what happens within the city. He stated giving equal status to a mobile food cart and a restaurant without notice, concern and discussion was a huge policy change. He stated it was a delicate issue and it needed serious contemplation.

Melissa Ward, 251 E. Cascade Avenue, Sisters, OR 97759

**Ms. Ward** stated she had written a letter of objection to food carts during the review process. She stated when she discovered it was the former Mayor, she felt it represented a conflict of interest. She stated if there was a hint of conflict of interest the matter should have been vetted before any decision was issued. She stated the process that occurred had a hole in it and the Council needed to understand there were many people afraid to voice their opinions. She asked the Council to consider the legal and community aspects of the issue and satisfy everyone's concern there had been appropriate due process.

### III. CONSENT AGENDA

#### A. Minutes

1. January 22, 2015 – Regular Meeting
2. February 12, 2015 – Regular Meeting

#### B. Bills to Approve

1. February Accounts Payable

*Councilor Womack moved to approve the consent agenda including the additional page of account payable. Councilor Holzman seconded the motion. The motion carried unanimously.*

### IV. STAFF REPORTS

- #### A. Deschutes County Sheriff's Office

### V. COUNCIL BUSINESS

- #### A. **Discussion and Consideration of a Motion** to Approve a Sewer Deferral Agreement with Darren Dickerhoof for Huckleberry Coffee Kiosk located at Three Winds Shopping Center

This item was pulled. **Manager Gorayeb** explained that Mr. Dickerhoof had decided to move forward with a lot line adjustment instead so the kiosk could hook up with the sewer

line at Takodas Restaurant as opposed to installing a tank for grey water at the kiosk when he realized the two processes would take the same amount of time.

## VI. CONTRACT REVIEW BOARD

- A. Discussion and Consideration of a Motion to Approve a Construction Contract with Alex Hodge Incorporated in the Amount of \$48,240 for the Hood Avenue and Ash Street Parking and Pedestrian Improvements, Waive a Minor Deficiencies in the Bid Documents and Authorize the City Manager to Sign the Contract**

**Mayor Frye** opened the Contract Review Board.

**Director Bertagna** explained the project was to include construction of Americans with Disabilities Act (ADA) compliant sidewalks, curb ramps, parking, drainage and pavement marking improvements. He stated the City had applied for and been awarded a Special City Allotment grant from the Oregon Department of Transportation (ODOT) for the project. He reported the grant would cover the costs for the entire project

***Councilor Womack** moved to approve a construction contract with Alex Hodge Incorporated in the Amount of \$48,240 for the Hood Avenue and Ash Street parking and pedestrian improvements, waive a minor deficiency in the bid documents and authorize the City Manager to sign the contract. **Councilor Holzman** seconded the motion. The motion carried unanimously.*

**Mayor Frye** closed the Contract Review Board

## VII. OTHER BUSINESS

- A. Planning Commission Appointment**

The **Mayor** and **Council** discussed the merits of the two candidates that applied. **Mayor Frye** appointed Chuck Humphreys to the Planning Commission. **Councilor Holzman** concurred. **Councilor Womack** and **Councilor Connolly** did not concur and the appointment did not stand. **Mayor Frye** appointed Roy Dean to the Planning Commission. The **Council** concurred.

- B. Urban Forestry Board Appointment**

**Mayor Frye** appointed Patrick Burke to the Urban Forestry Board. The **Council** concurred.

## VIII. MAYOR/COUNCILOR BUSINESS

### *URA Grants*

**Councilor Womack** stated he had heard from a number of business owners wanting to apply for urban renewal grants and requesting an extension of the February 27<sup>th</sup> deadline. He stated many business owners had expressed the need for additional time to complete the application process. He suggested extending the deadline to March 13<sup>th</sup>. **City Attorney Bryant** explained the grants were related to Urban Renewal Agency (URA) business and approval of the extension could be scheduled next week at an URA meeting.

### *Susan Cobb Letter*

**Councilor Connolly** asked how the Council would be responding to the letter from Susan Cobb and whether there was a process for acknowledging correspondence. **Mayor Frye** replied there was no formal process and typically when discussing letters received, one Council member would volunteer to reach out to the party. **Councilor Connolly** replied she would respond to Ms. Cobb.

### *Community Mental Health Forum*

**Councilor Connolly** reported there was a community mental health forum for students and families scheduled for March 12<sup>th</sup> at 6:00 p.m. The **Council** decided to bring attention to the forum by including the information in their next community newsletter.

### *Website Redesign*

**City Recorder Nelson** reported she was still collecting comments from citizens regarding the Beta website and incorporating changes proposed by the Council. She stated the old website was scheduled to go down and the new website brought up on March 9<sup>th</sup>.

### *Creekside Campground*

**Councilor Connolly** asked for an update on the meeting Councilor Womack and City Parks Advisory Board (CPAB) Chair Liam Hughes had with neighbors surrounding the park. **Councilor Womack** reported they had met with neighbors but the CPAB had not met again to discuss that meeting.

### *Community Development Director (CDD) and Planning Associate Recruitment*

**Manager Gorayeb** reported a candidate for the Director position had unanimously been identified. He stated Human Resources was in the midst of performing the background and references check. He noted the candidate was extremely qualified. He stated it was hoped the candidate could begin on Monday. He stated with regard to the Planning Associate, two strong candidates had been identified but the plan was to wait until the new CDD began and provide that individual the opportunity to weigh in before making a final decision.

### *Community Assets Committee (CAC) Budget*

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**Mayor Frye** stated the CAC was looking for approval to expend funds for a community survey and upcoming community assets education event scheduled for April. He stated the CAC was requesting approximately \$3,000 of Community Action Team of Sisters (CATS) funds that are held by the City for expenditures of this nature related to community visioning. The **Council** was supportive of allowing the expenditure of CATS funds.

*Food Carts*

**Mayor Frye** stated the areas of concern surrounding the food cart issue could be summarized as follows:

- Process
- Conflict of Interest
- Notification
- Interpretation of the Development Code

**Mayor Frye** requested City Attorney Bryant address the issue of conflict of interest that was brought up. He asked if, since the Council had been discussing the issue of business licensing for several months, had it created a conflict of interest for former Mayor Boyd.

**City Attorney Bryant** explained a conflict of interest could not exist unless an action had provided a particular benefit or avoidance of detriment to the former mayor, such as waiving the fee for the application, or processing the application in advance of others received prior to his. He asserted staff had taken a great deal of time to come to its decision and when the Council had been discussing business licensing, it was related to an entire class of people and not Mr. Boyd as an individual. He confirmed it did not constitute a conflict of interest.

**Councilor Holzman** also noted the Council had not voted to make any changes to business licenses so far. **City Attorney Bryant** added any future decision the Council made would have no bearing on this application anyway. He stated in the application, food carts were proposed not as a transient merchant but rather a business that would obtain at least a one year lease and be required to obtain a regular business license.

**Mayor Frye** asked what the process would be if a food cart didn't follow the regulations for the license. **City Attorney Bryant** replied code enforcement for by the business license owner and applicant would apply. **Councilor Womack** asked how code enforcement issues were dealt with. **Director Hardie** replied in most cases businesses were not aware they are out of compliance and once staff performed a site visit. Staff would work with the business in order to bring them into compliance voluntarily. **Councilor Connolly** questioned what would happen if the food cart owner decided they were not making money after a few months and left, and another food cart owner came in and the same happened on several occasions. **City Attorney Bryant** replied the original food cart owner would need to go through a process to terminate their lease with the property owner and that was no different than a brick and mortar businesses that closed down after a few months. He stated one of the conditions of approval was the requirement for the food cart owner to sign a lease.

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**Mayor Frye** asked for a description of the noticing requirements for a Type II decision. **City Attorney Bryant** explained the initial notice was posted to the property and sent to property owners within 250 feet of the project. He noted due to clerical errors on the notice, it was sent out an additional two times. **Director Hardie** confirmed the initial notice stated the Planning Commission had received the application as opposed to the Community Development Department and the second notice listed an incorrect day. **City Attorney Bryant** explained once the decision had been made, the decision was posted on the property. **Mayor Frye** asked if the City was allowed to treat applicants differently just because they were in a position of power. **City Attorney Bryant** replied the City could not require the applicant to do anything more or differently than any other applicant. He specified all applicants needed to be treated the same and go through the same process.

**Mayor Frye** asked if the way the application was processed incorporated a change in policy. **City Attorney Bryant** replied the Development Code had remained the same and that anyone else that had come in with the same type of application would have gone through the same process. He reported staff had researched eating and drinking establishments extensively, and given the nature of the duration of the businesses, deemed them to be consistent with the current Code language. **Mayor Frye** asked if the Code addressed food carts specifically and **City Attorney Bryant** replied it did not.

**Mayor Frye** stated Attorney Peterkin asserted the Council was required to send the matter to the Planning Commission to be heard and asked whether that was the case. **City Attorney Bryant** replied the Council was not required to send the matter to the Planning Commission but noted the Development Code was being amended to make certain all staff decisions would be sent to the Planning Commission and Council in the future. **Councilor Connolly** asked if it was a problem that Planner Porter had marked the box that indicated he had sent the decision to the Planning Commission. **City Attorney Bryant** replied it was his understanding the 'cc' on the letter was in error as Planner Porter had been using a template and merely forgotten to delete the mark. He stated Planner Porter never had any intention of sending the decision to the Planning Commission and it did not change the fact there had been no appeal during the appeal period. **Councilor Holzman** confirmed that the decision, per the City's Code, was not required to be sent to the Planning Commission and **City Attorney Bryant** replied that was correct.

**Councilor Connolly** noted five of the seven people that spoke earlier had concerns relating to the process under which the decision had been made. She stated Councilor Asson's letter with suggestions discussed that several opponents had suggested getting a third party opinion and that Councilor Asson had agreed with that suggestion.

***Councilor Connolly** moved to discuss voting as to whether the City should seek a third party opinion.*

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**Councilor Holzman** stated she did not feel ready to move forward with a vote on the matter as there had not been adequate discussion. She stated she felt the Council should consider how to move forward with future decision and did not see how it could consider opening up a conversation on a final decision. **Councilor Womack** stated he agreed it was not an option to consider. He stated the Council had a right to interpret its Code and had been doing so consistently since it was amended in 2010. He stated the Planning Commission would take up a general discussion on food carts in the future.

**Mayor Frye** noted the motion had died through lack of a second by another Council member.

**Mayor Frye** stated he felt the City had already received three opinions; from Mr. Boyd's attorney, from Attorney Peterkin and from the City's own attorney. He stated City Attorney Bryant worked for the City and had the City's best interest at heart and that was sufficient in his opinion. **Councilor Connolly** replied she felt that for the sake of the community's trust of the City, it would be worth the cost. She stated she felt it would also help address the process concerns. **Councilor Holzman** stated she felt it was important to look at best practices but noted this was an approved application and was concerned with the legal ramifications if the City chose to reopen the decision. **Mayor Frye** stated he agreed the Council could not unwind a final decision without opening the City to a lawsuit. **City Attorney Bryant** replied the Council could not do so as there was nothing in State law that gave the Council the authority to do so. He stated the decision could not be changed or reopened without some consequence to the City, which would likely be the applicant suing the City for damages. **Mayor Frye** asked what the City's likelihood of losing a case of this nature would be and **City Attorney Bryant** replied there was a high probability the City would lose. He added it would likely not be covered by the City's insurance either since the Council did not have the authority to reconsider or change a final decision.

**Councilor Connolly** asked about the comments made related to ethics. **City Attorney Bryant** replied if someone felt an ethics violation had occurred, they could file a complaint with the Oregon Government Ethics Commission (OGEC) and OGEC would investigate the allegation.

**Councilor Holzman** summarized the City had followed its own Code with regard to the decision and as a public official she would be unwilling to open the City to a potential lawsuit. **Mayor Frye** stated he felt the same, especially since it could open the City to so much liability. He stated he appreciated everyone that commented and wanted to address concerns raised by the public. He stated there were two issues; the current approved decision and how future applications should be handled. **Councilor Connolly** encouraged volunteers to consider stepping up and participating for the City boards, commissions and committees in order to effect change.

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**Mayor Frye** summarized that the City did not have any legal authority to change the decision relating to the food cart but could look to changes for processing future applications and decisions.

**IX. ADJOURN** –8:35 p.m.

Respectfully submitted,

  
Kathy Nelson, City Recorder

  
Chris Frye Mayor