

CITY OF JEFFERSON
Regular Council Meeting
January 26, 2017
6:30pm

COUNCILORS PRESENT: Walt Perry, Bob Burns, Cyndie Hightower, Brad Cheney, Stan Neal, Dave Beyerl, Mike Myers
COUNCILORS ABSENT: None
STAFF PRESENT: Sarah Cook, City Recorder; Jeff Buskirk, Public Works Director, Christy Monson of Speer Hoyt; Sgt. Don Parise, MCSO

- I. **COUNCIL MEETING CALL TO ORDER** – Mayor Hightower called the meeting to order at 6:30pm and led in the flag salute.

- II. **OLD BUSINESS**
 - 2.1 City Council Training with Christy Monson of Speer Hoyt Law Firm

Christy Monson introduced herself and provided background, where she indicated she had worked as the League of Oregon Cities legal counsel for quite some time and now represented 22 Cities in Oregon and a number of Fire Depts. She had sat on the ethics commission boards as well and her focus was good governance, employment and labor laws, ethics, personnel, and franchises. Speer Hoyt Law Firm only worked with local governments and her main goal was when people in City government are in the role making decisions, that they have enough knowledge that some alarms go off to remind them of the laws to keep their city protected. She explained that she was committed because they were, and she respected the fact that each of them took the time to run for Council and serve their community. Christy wanted to protect each of them from liability, as bad decisions could cost their personal pocket books. Moving through the slides she went on to talk about the various layers of law, noting that state law did not automatically trump city law, as cities had their own organic laws, but state could pre-empt city law, by telling them what “not” to do. She also spoke on the interlinked partnerships with governances, noting that her client was the City. She had to think what was best for the City as a whole, not any individual Councilor or staff member.

Ms. Monson went on to speak about the difference in Ordinances and Resolutions, noting Ordinances were passed that generally affected larger groups of people, were primarily permanent, and the largest source of power the City had. Resolutions mainly expressed feelings on policy, approves contracts and such, and were more temporary in nature. Often times Council will set policy with staff’s assistance, such as personnel policies. In addition, there were Council rules, which were sort of a “how to” for the City Council to reference and work from. For the Council to wield their power and make ideas happen, they must first know their tools: Charter limits, statutes, Council rules, and what their role was. She noted the importance of checking with staff before moving forward on new ideas; see if it’s already been researched or attempted before; learn their pitfalls and successes; communicate.

Christy gave extreme caution in regards to serial meetings, which were conducted online via email or other electronic messaging where Councilor A and B talk about something, but then one of them shares their ideas or conclusions with Councilor C and so on. She explained how those online discussions, deliberations and decisions were to take place in open public meetings and each could be held accountable for evading public meetings law, noting Lane County was in hot water over similar circumstances and personal charges

were being filed, in which case the City's insurance would not protect them. She reminded the Council that there was no individual power for a Councilor or Mayor. They could not direct City resources, staff, or speak to the press on an issue unless delegated by a majority of Council, among other things. The Council's power was in the numbers; act, discuss and decide as a body; when one stepped outside the scope of their authority was where liability would come into play. She explained they had great protections as a City Council; the City had their back when acting within the scope of proper authority; protected by tort claims and several immunities, but as soon as one violated that, the protections go away and it would become personal liability. She further explained the immunities offered to public officials and used an example of a City making a decision about spending money to remedy a landslide near a road, where the City acknowledged the need for it and the best option to do it; however, they could not afford that option, so they went with option b. When those discussions and decisions of weighing costs and balances are made publicly it provided the City with discretionary immunity from a suit if a landslide did occur.

Calling for questions to that point, Councilor Bob Burns asked, in relation to ethics, if there was a difference between conflict of interest; an ethics problem or a different problem? Christy responded that in Oregon, conflicts of interests was an actual ethics law, and by that she didn't mean values and morals. She was talking about a very specific set of rules in state statute that indicate what a public official can and cannot do, noting that they often surrounded financial interests of the public official.

Moving on to talk on Public Meetings, Christy indicated they had to be open, noticed, available to the public and executive sessions could only be held if the purpose was listed in the statute. All meetings of a governing body for which a quorum was required in order to make a decision, to deliberate toward a decision on any matter, constituted a public meeting. As for electronic meetings; the world we lived in now, but be aware of red flags: hitting "reply all" in an email constituted a meeting and she cautioned against it. Further, she suggested not even doing it if there were only two Councilors communicating because they didn't know if the other Councilor was forwarding emails on to another party. She clarified that it was ok for Councilors to talk and for one Councilor to email another, but to be cognizant that the messages aren't being passed around, creating a string of communication. Councilor Myers indicated the Council had wrestled with how best to disseminate information to the public without a local newspaper. Attorney Monson indicated the only requirement was that notices had to be posted in a reasonable place that will inform the public of the date, time and topics to be discussed; there was no requirement to use a newspaper. She was not a big fan of cities having an official Facebook page or other internet presence because it created a public forum, which could become a freedom of speech issue, not to mention it would be subject to public records retention laws, where the data would have to be stored for a number of years, monitored, etc. Councilor Burns asked if it was appropriate for a Councilor to express a policy opinion on Facebook, to which Christy said sure, and reminded him of the Council rules that indicated they would all get along after a vote was made and cautioned him to be careful not to separate oneself. She also noted they could not express opinions about anything discussed in executive session or that was confidential. They could not divulge anything that could harm the City in the long run, because they were the City. Christy Monson provided further clarification to Councilor Perry on the possible violations of public meeting laws when conducting business electronically, outside of an open, posted meeting, noting again that discussions and decisions must be handled in the open for all of the public to be made aware of how they came to a conclusion.

Councilor Myers spoke about guidance received from the City Attorney from time to time and always with the disclaimer at the bottom. He confirmed his understanding that he could read it, but beyond that it was to stay private and not be discussed. Christy noted that was exactly right and that if she or another attorney wrote a memo to the City, and one Councilor leaked the info, that Councilor could create a situation that might cost or harm the City in some way. In that case, they were acting outside of his/her

scope of authority because an individual Councilor did not have the authority to waive the attorney/client privilege of the City. Mayor Hightower confirmed it was ok if they received an email from the lawyer, who also shared it with the City Recorder, and she then sends it out to the Council. Christy confirmed that was the normal and expected process, yes. She indicated it was best to assume any correspondence from the lawyers should be considered privileged information and must stay in house. Councilor Neal questioned the process of getting individual advice from another attorney or ethics laws if needed. Attorney Monson explained it was her job to represent the Council as a whole, but she couldn't assist them individually with personal needs. She suggested they each make a very conscious effort to identify which "hat" they were wearing for each and every decision, whether it be a City Councilor, or employer, or other personal matter, but to be very aware of their role with every decision. Another piece of advice she offered was for them to start use formalities when addressing each other, not first names.

Getting back to her slides, Christy quickly wrapped up executive session general rules: no final decisions; no voting while in executive session. The media was allowed if they were of an organizational institutional media, but could not report on the subject discussed. Also, related to public meetings, Christy noted realistic agendas should be kept so meetings don't get bogged down; keep formalities; keep rules simple, don't get carried away with Roberts Rules of Order. Also, public participation does not mean public conversation, noting some places allowed their audience to run the show. She also suggested the Mayor re-state the motion made when calling for the question as about 30% of the time when a motion is made, there are various different interpretations of what the person meant.

Moving into the subject of ethics, Christy said simply, don't use your position for personal or financial gain. She explained the "but for test" and how it applied. The best way to resolve an ethics issue was simply to not use your position in that way, recuse yourself and move on. If you are unsure and proceed anyway, one could be liable for damages, fines, reported in the paper, etc. Some exceptions included reimbursements, awards, and gifts limited to \$50 per year, per interested giver. She provided the lengthy list of who was a defined relative, which included immediate family, spouse and their immediate family, step kids, adopted, in-laws, grandparents, and so on. Councilor Neal confirmed that if given a gift valued more than the \$50 limit, they could give it to the City, to which Christy agreed as long as there was a paper trail.

Conflicts of Interests: Christy spoke on the two different kinds, actual and potential. An actual conflict WILL or WOULD result in a financial benefit or detriment to them, a relative, or any business they are associated with because of an action, decision, or recommendation you made. A potential conflict is something that COULD or MIGHT happen. She provided an example of a park being built near a Councilors house; it could raise or lower their property values so a potential conflict should be declared. Attorney Monson went on to talk about "when in doubt, shout it out", meaning that they should state the nature of the conflict and do it before discussing or voting on the matter, do it on record, and do it at every meeting, noting that was the first step. If it was an *actual* conflict, the next step is to "shut up", meaning you cannot participate in discussions or debates and cannot vote. Christy did indicate there were some exceptions to the rules, but she would never suggest relying on them, noting it was not any place a Councilor wanted to find themselves. She felt if a Councilor had a potential conflict, they could get rid of the problem just by announcing it and getting on record that they did so; however, treating it like an actual conflict would avoid appearance of propriety; you refrain from voting or discussing and it solved a lot of problems; frankly, she said, there was not a lot of votes that any one person was direly needed for anyway. If there was, you weigh your benefits and consider keeping yourself out of hot water because it was not worth it. She spoke on other conflict issues: Quasi-judicial, which was acting a bit like a judge. It was not a legislative decision because it did not affect large groups of people, only one land or property owner. When dealing with land

use decisions, Christy noted they could not be biased or have pre-conceived decisions, as they were affecting that one person's property rights. She indicated again that they would not regret erring on the side of caution because if any of them were found to have violated ethics laws, the City's liability insurance, including CIS, would not protect them individually. Councilor Neal posed the idea of contacting the ethics commission to obtain a written statement from them about conflicts of interest and wondered if that would provide some kind of protection if he was unsure about a conflict. Christy recommended talking with City staff and City attorney's first, and not relying solely on advice from the ethics commission because they were politically appointed people; not lawyers, and did not know all the laws.

Christy Monson touched on the City's rules, noting they were much the same as what she had just taught in that it regulated conduct, censors, breaking confidentiality, set quorum. She pointed out Section 21, which stated that each Council member shall be entitled to vote when present at regular or special meeting, except when members had a conflict of interest. So, the rules state they could vote unless they had a conflict. She encouraged them to look at what past practice was, noting Council could create higher standards than the law, they just couldn't go below it. She touched on the section pertaining to communication with staff, noting every city had them because if every Councilor had the authority to contact staff and the attorney, or constantly request documents, staff's time would be largely taken up, work would be delayed and legal bills would be high, not to mention individual Councilors didn't have authority to expend City funds.

Questions:

Councilor Burns, referencing section 21 of the Council rules, in matters of potential conflicts, he asked clarified that if he declared the potential, he could still discuss and vote, and with an actual conflict, he must declare it, but could not discuss or vote. Christy indicated he was correct and suggested that if he was riding that line and was not entirely certain, she highly suggested declaring it an actual and steering away from it altogether. Councilor Cheney asked whose authority it was to makes that decision, to which the attorney explained the only time there would be an issue was if somebody filed a complaint with the Ethics Board about it. Councilor Cheney noted that receiving the go ahead from the Ethics Board in advance would be best.

Attorney Monson wondered about their views on their requirements to vote and if abstentions were allowed. She indicated they were beginning to recommend to their clients that they not abstain from voting, because, while some votes could be tough, they were there to do a job, which included making decisions. Councilor Perry asked about abstaining as a result of not being able to give a fair assessment. Ms. Monson reminded him he was allowed to have an opinion and could always vote no if he felt that way and wanted to make that stand, unless it was a quasi-judicial decision, which required an open mind and an unbiased decision because it affected one person's liberty rights.

Councilor Myers, referred to section 12 of the Council rules regarding matters of urgency requested to be on the agenda, noting that formal action on the topic must be deferred to the next agenda. Christy agreed and offered some clarification. With no further questions, Christy concluded the training session and thanked the Mayor and Council for having her.

Break: 7:56pm; Reconvene: 8:05pm

III. NEW BUSINESS

3.1 Street Closure & Event Support Request Re: Library Groundbreaking

Councilor Beyerl moved to approve the street closure request. Councilor Perry seconded. All in favor: Ayes – 6, Opposed – 0. **APPROVED.**

3.2 Resolution# 1014, Declaring a Public Nuisance Located at 420 3rd St., Jefferson, OR and Ordering Abatement Procedures

Councilor Beyerl moved to approve staff's recommendation and adopt the resolution. Councilor Myers seconded. Discussion: In response to Councilor Burns' question, the City Recorder provided an update, noting the home was occupied by squatters, it was bank owned and all notices had been ignored. All in favor: Ayes – 6, Opposed – 0. **APPROVED.**

IV. DISCUSSION/INFORMATION

4.1 Charter Billing Update – FYI

V. CONSENT AGENDA

Councilor Perry moved to approve the consent agenda. Councilor Beyerl seconded. Discussion: Councilor Myers asked for further explanation on the Church St. bio-swale work noted in the Public Works monthly report. Jeff Buskirk explained it was for the storm water TMDL and also because the pipe was put in the 40's or 50's and was starting to breakdown. All in favor: Ayes – 6, Opposed – 0. **APPROVED.**

VI. COMMITTEE/DEPARTMENT UPDATES

Library – stay within budget by end of year; Library was broken into, nothing of value was taken; burglars left clothes behind; met members of the board, an enjoyable meeting; volunteered to help Librarian to get more active in providing Hispanic materials. Linda Baker provided an update on the robbery: the culprits were caught when their 3-yr old sibling tattled on them. A public apology would be coming as well as some community service.

Planning – no new info

Chamber – no new info

Building comm – no new info

LAC – no new info

MPO – selection of officers, Dave Beyerl selected as Vice Chair; talked about dept of transportation smaller projects; left a map with Sarah Cook that showed their areas of priority in Linn-Benton area and around the MPO; approved budget for planning for a transit bus barn in Albany, but still need funds to build it; approved change to the STP (service transportation plan) rating system and changed it to STPBGP, adding "block grant program"; no meeting next month; met with ODOT rep, who indicated she'd make a point to meet with Jefferson for a tour.

Fire Board – met with Fire Chief; received education on fire district; fire bond probably will not come in May, as they were not ready to present it to the public; will be looking into the Emergency Operation Plan

School Board – evaluations of Superintendent were held in exec session

FOL – "Whether or Not coming January 28th", a disc golf fundraiser; Groundbreaking was March 23rd at 5:30pm just before Council meeting

Parks & Rec – still going through process of hiring new Director; so many elementary and middle school participants there was no time available at either gym for any other activity

MWACT – no new info

VII. VISITORS

Nathan Hightower came forward and referenced information provided by the City's engineers during the December Council meeting relating to the water system requirements of EPA. It was his understanding, after having many conversations around it, that it was not necessary for the turbidity level to be met according to the EPA, for which he indicated he'd spoken with, and provided contact information for others that wanted to inquire. He explained there was a maximum contaminant level goal; however, it was not enforced and according to the City's 2015 CCR report, all max contaminant levels had been met by current processes used. Public Works Director, Jeff Buskirk explained the period of time the plant produced water under capacity; when citizens began using a lot of water to fill pools, wash cars and water lawns during the summer. Usually, after they received their first bill they cut back some; however, the reason the City stayed in compliance was because they had to shut the plant off and rely on the reservoir until they could meet the turbidity standard of .30 again. He further explained, there were often times the plant would function at .03 or .04; however, it had to perform at that level all the time, which it was incapable of doing. The plant was set up so that when it went above a turbidity level of .30 it shut off and tries to adjust chemicals and it was that "babysitting" that had kept the City in compliance. The new plant would not only treat the water to the best standards, but would also increase the water gallons so they wouldn't have to worry about shutting down during times of excessive consumption.

Dani Daniels, PO Box 515 Jefferson, J4J treasurer – read a prepared statement about the money the City had set aside for new water treatment plant and confirmed amounts. Public Works Director, Jeff Buskirk indicated they had started planning about 20 years ago, for this time and the original plan was to add on 2 more cells, which would cost about \$2million. Ms. Daniel's indicated she'd reviewed the budget online and was concerned that although there was a capacity issue, there was no foreseeable water quality issue for a minimum of 20 more years and no real issue with water production for at least 50 weeks out of the year, so she questioned why the City was setting aside so much money per year for a new plant when there was a very real need for police services. She noted the City Recorder had responded to Facebook posts about the cost of deputies, indicating the City did not have the added funds necessary to add more coverage, yet there was \$1.7 million set aside for a new plant. She felt the cries for more police were falling on deaf ears and that it seemed the money being set aside for expansion of water and sewer systems was to accommodate annexation. Councilor Beyerl explained the money being set aside for sewer and water projects could not, by law, be used for police coverage, as it was dedicated money for those purposes only. Another point nobody had mentioned was the age of the water treatment plant; 30 years old, virtually impossible to find parts for anymore. Jeff Buskirk expanded on the matter, explaining that when a home was built in town, a sewer and water system development charge (SDC) is paid and those dollars are strictly to be spent on expanding and improving those systems. Nathan Hightower attempted to jump in but was interrupted by Nancy Hamby making a point of order; that he needed to be held to the same standards and state his name and address for record. Mayor Hightower confirmed and he provided his address of 664 High Ct.

Keith Rude, 510 Delores, Director of J4J - referred back to the Jan. 12th worksession where a citizen presented Council with a resolution on the annexation issue and had asked the Council to review and discuss the proposed resolution. He questioned what had transpired with it in the last two weeks and wondered if it would be voted on that night. Councilor Burns explained that they'd just been advised by the City Attorney that he could not personally speak toward the resolution; and/or it would be dangerous for him to comment on it so he was not going to act on it one way or the other. Councilor Burns was not completely sure if it was a potential or actual conflict, but indicated he was not going to go there; however, he would be consulting his own legal counsel. He was prepared to talk with the Council about what they

were to do going forward with Ordinance 695, indicating is concern with SB1573 and how they should go from there. He felt it needed to be talked about and while he fully appreciated the position of the incumbent Mayors, it was his personal interest to restore citizen rights to vote on matters of annexations. Mr. Rude commented that he voted for all the new members and expected them to support the community. Councilor Cheney indicated that he anticipated the conflict and had been in contact with the Ethics Commission about it, noting he had a presentation prepared for the meeting, but now that he went through the training, he was not going to present it. Councilor Neal announced that he had also contacted an attorney and the Ethics Commission and was told that it was such a complicated situation, they could not give him an immediate response, so he was waiting to hear more from them as well.

Councilor Perry commented that as a City Councilor, he took an oath and he lived by it. He further pointed out to Keith Rude that the statement he made, only addressing the new members of the Council, excluded the sitting members. Mr. Rude replied that he had no use for any of them.

Chris Giffin, 107 Main St. – directed her statement to Sgt. Parise in regards to crime statistics, noting she understood crime had gone down quite a bit across the country and wondered if local stats indicated the same for Jefferson. She felt there would always be betty crimes and Jefferson was not unique in that sense. Sgt. Parise indicated he didn't have numbers in front of him to speak specifically on it but was aware of the fluctuation, depending on people actually calling things in, failing to report, etc. He stated he was not against more police, and knew they needed it, but did not see the urgency.

David Coulombe, City of Corvallis attorney and representing J4J – commented that he was a City Attorney and had sat in on the Councilors training session and wanted to offer some unsolicited advice. He thought the training was very basic and seemed pointed specifically to the Council rules and policies set by the Council. The idea of treating a potential conflict as an actual concerned him and he reminded the Council that their staff and attorneys worked for them and would continue to support old decisions, rules or past practices until something different was put into place and told them they needed to vote and take action if they wanted something different. Specifically, in regards to the resolution that had been presented, Mr. Coulombe noted it took a new path and they needed to let their staff know. Speaking on the subject of bias, he went on to explain one couldn't have the type that could render their decision void, but you could continue, as the bar for bias was very high and they shouldn't let bias scare them. As J4J's attorney, he wanted to emphasize those points and be there for them if they had any questions. He noted there was a hearing the following day at Marion County Circuit Court with respect to the form of judgement and they were still awaiting the LUBA decision. Having no final judgement from Marion County or LUBA yet, he indicated there was still time for the Council to take action on Ordinance# 695 and that it was not too late to change the course if they wanted to, and further expressed the urgency that the longer they waited to take a political stand the more difficult it could be.

Linda Baker, 1287 Filbert St. – called a point of order regarding the previous speaker and questioned if he was representing the City of Corvallis, and if he was not, he needed to state his name and address for the record. Mr. Coulombe was called back into the Council Chambers and clarified he was representing J4J and stated his residence address of 474 NW Amanda Pl. Corvallis, OR.

VIII. COUNCIL COMMENTS

Councilor Burns requested they hold a discussion about how to work around the issue of SB1573 on the next regular Council agenda. He moved that they add it to the agenda for the next regular Council meeting as open discussion on the possibilities of re-establishing the vote of the people on matters of annexation

and boundary changes. Councilor Cheney seconded. Discussion: Councilor Burns wanted to discuss SB1573 as it related to Jefferson and the future. Councilor Cheney indicated he would have a resolution to present to the Council at that time. All of them were in favor of bringing the subject back to the February regular meeting.

IX. CALENDAR CHANGES – none

X. ADJOURNMENT

Councilor Beyerl moved to adjourn. Walt Perry seconded. Discussion: Councilor Burns asked if others were aware of SB114, which was currently in committee, and removed the most onerous parts of 1573. As much as the other Councilors indicated they disliked SB1573, he offered a letter that he hoped the entire Council would sign. Councilor Myers said the legislative body would be the appropriate forum to approach the inequities of SB1573 and he'd like to see the letter. Councilor Cheney indicated the new senate bills could be voted on in February, so the whole thing might resolve itself. Councilor Perry reminded them of City Day at the Capital and highly recommended they attend if anybody was able to as it was very educational. All in favor: Ayes – 6, Opposed – 0. Meeting adjourned at 9pm.

MINUTES APPROVED this 23rd day of February, 2017.

Cyndie Hightower, Mayor

ATTEST:

Sarah Cook, City Recorder