

November 16, 2015
6:00 P.M.
Newport, Oregon

The Newport City Council met on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Engler, Busby, Swanson, Sawyer, and Saelens were present. Roumagoux was excused.

Staff present was City Manager Nebel, City Recorder Hawker, City Attorney Rich, Community Development Director Tokos, Public Works Director Gross, Police Chief Miranda, and Parks and Recreation Director Protiva.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

Proclamation - Tree City USA - Annual Tree Planting. Busby proclaimed November 18, 2015 as Arbor Day in the City of Newport. Nancy Steinberg, from the Parks and Recreation Advisory Committee, accepted the proclamation.

Recognition of Completion of Community Emergency Response Team (C.E.R.T) Certification. Sawyer made a PowerPoint presentation on Central Coast CERT. He presented certificates of completion of the C.E.R.T. program to: Laura Bohlender, Peter Benjamin, Joe Frechette, Dianne Eckstein, Tracy Bohne, Carol Fisher, Crystal Fleming, Vicki Kish, Rick Masotto, Frank Miller, Willie Mortimer, Jane McWilliams, Elizabeth Golden, Rodney Loose, Valerie Koehn, Donald Teigen, Acia Woods, and Sharon Ray.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of City Council minutes from the special meeting, executive session, work session, and regular meeting of November 2, 2015.

MOTION was made by Engler, seconded by Allen, to approve the consent calendar with changes to the minutes as noted by Allen and Engler. The motion carried unanimously in a voice vote.

PUBLIC HEARING

Public Hearing and Possible Adoption of Ordinance No. 2089 Amending the Business License Code to Include Recreational Marijuana. Hawker introduced the agenda item. Nebel reported that for the past couple of years, cities and counties have dealt with various issues relating to both medical and recreational marijuana sales within the

state. He reviewed the following key dates and events that have occurred during the past two years:

March 1, 2014, HB 3460 became effective allowing medical marijuana dispensaries to sell medical marijuana as regulated by the Oregon Health Authority (OHA);

April 7, 2014, Council approved Ordinance No. 2063, which established a moratorium on the creation of medical marijuana dispensaries in the city in accordance with SB 1531 to evaluate rules that had not yet been issued by the Oregon Health Authority on these sales;

July 21, 2014, after reviewing published OHA rules, Council adopted Ordinance No. 2069 repealing the temporary moratorium, and allowing medical marijuana facilities in the city through a business license endorsement requiring those facilities to meet various local regulations;

October 21, 2014, Council adopted Ordinance No. 2071 establishing a tax on recreational marijuana, with the amount to be determined by resolution;

November 2014, Oregon voters approved the legalization of recreational marijuana;

July 2015, the last of the bills regulating the growing, processing, wholesale and retail sales of recreational marijuana were signed by the governor;

August 3, 2015, Council discussed various options and approaches to addressing the production, manufacture, wholesaling, and sales of recreational marijuana in the city;

August 17, 2015, Council held a public hearing on recreational marijuana, and expressed support to allow commercial activity relating to recreational marijuana in the city, citing the popular vote in Lincoln County, in 2014, to allow these sales, and Council referred the question of how to regulate recreational marijuana to the Planning Commission for review and recommendation;

August 31, 2015, a City Council work session was held to evaluate various approaches going forward; the OLCC issued draft rules to help evaluate the options going forward at this time;

September 8, 2015, Ordinance No. 2085 was approved by Council allowing medical marijuana dispensaries to sell recreational marijuana on a limited basis in accordance with state law, and OHA adopted rules, through December 2016;

October 1, 2015, recreational sales of marijuana were initiated from medical dispensaries in Newport;

October 22, 2015, OLCC adopts temporary administrative rules outlining how they intend to regulate recreational marijuana facilities in the state;

October 26, 2015, the Planning Commission considered the options at a work session and recommended that Council amend the city's business license code to require a business license endorsement for recreational marijuana facilities consistent with what was previously put into place for medical marijuana dispensaries

November 2, 2015, Council held a work session to review the findings and recommendations from the Planning Commission on regulating recreational marijuana activities in the city; also on November 2, 2015, Council provided administrative direction on how to handle a request for a land use compatibility statement from applicants to OLCC for various types of licenses that will be issued regarding recreational marijuana. Council directed staff to receive, time and date stamp, and hold any Land Use Compatibility (LUC) statements until local regulations become effective in the city;

November 16, 2015, Council will hold a public hearing and consider adoption of Ordinance No. 2089 which establishes business license endorsement standards for recreational marijuana facilities.

At the November 2, 2015, work session, Council reviewed the Planning Commission's evaluation of this issue and expressed general concurrence with the approach to handle any local regulations at the local level through a business license endorsement for recreational marijuana activities. Nebel stated that this would mirror the process that Council previously adopted for medical marijuana, and would give the Police Department the same types of enforcement tools currently in place for medical marijuana as those that may be required by the OLCC. He added that the Planning Commission also recommended that Council include a thousand foot spacing requirement for retail sales outlets for recreational marijuana. He noted that this would avoid a clustering of these types of businesses in any particular part of the city. He stated that it is the staff recommendation that Council consider any medical marijuana dispensary selling recreational marijuana, as a recreational outlet as it relates to the spacing requirements. He noted that as long as the recreational outlet is legally able to sell recreational marijuana under the OHA rules through December 2016, or converts prior to the expiration of this temporary provision, then no other recreational facilities would be able to locate within 1,000 feet of that dispensary. He added that if the dispensary chooses not to obtain an OLCC license after they no longer have the right to sell recreational marijuana as a medical dispensary, then another business could locate within that 1,000 foot radius.

Nebel reported that under state law, medical marijuana dispensaries and recreational retail stores cannot be housed in the same facility, and if a medical marijuana dispensary does not sell recreational marijuana, then a recreational facility could be located within 1,000 feet of that medical dispensary.

Nebel reported that the packet contains a map showing the various radii from schools, daycares, preschools, Head Start, and other facilities. He noted that under

the medical marijuana dispensary rules, schools are specifically defined as elementary and secondary schools. He added that based on the recommendation from the Planning Commission, that same definition is incorporated in Ordinance No. 2089. He stated that if Council wants to broaden the definition of schools, based on the recommendation from the Police Chief, then schools will need to be defined to include such things as preschools, daycares, and other similar activities. He noted that having a separate definition for medical and recreational marijuana retail outlets could create some confusion. He added that he supports the Planning Commission's suggestion to utilize the same definition that is provided by state law for medical dispensaries for recreational retail outlets as well.

Nebel reported that there is one additional area that Council needs to address related to whether Council wishes to enact the three percent local tax on the sale of marijuana products sold in the city. He stated that Council will need to act on this matter prior to the November 2016 general election, and if Council opts to impose the tax, the voters will decide that issue in November of next year. He noted that if approved then, the city would begin collecting a three percent tax on recreational marijuana sales.

Busby opened the public hearing at 6:37 P.M., and called for public comment. There were no comments, and Busby closed the public hearing at 6:38 P.M.

Allen asked where the school reference was incorporated into the code. Tokos noted that applicants have to provide a license from the state in order to get a registration. He added that when a business applies for a business license, the state has already vetted the applicant for the 1,000 foot school perimeter requirement. Nebel stated that OLCC has a 1,000 foot rule for schools. Allen asked whether OLCC and OHA use the same definition for schools, and Tokos reported that the definitions are not identical, but achieve the same objective. Allen asked whether some establishments, currently in radii, would be adversely impacted if the definition of schools was changed. Tokos reported that one of four would be within 1,000 feet of a pre-school. Nebel stated that if the city has a different definition for schools, it would have to be handled through the business license mechanism. Allen reiterated concern over adversely affecting an established business.

Swanson stated that she is in favor of including pre-schools into the 1,000 foot requirement. Allen noted that he had thought about what Swanson said at the last meeting, and is concerned about the impact on businesses established under the current rules. Swanson stated that she would like to look at how close to day care centers these businesses would be located. Saelens noted that the Newport Montessori School would not be covered under the state's current definition. Allen asked whether changing the rules for business licenses would only adversely impact one business at this time. He asked whether there would be an opportunity to grandfather the existing license. Rich noted that if you expand the definition of school, those concentric rings get bigger. He noted that a buffer zone of 900 feet or 850 feet would work, and could be imposed rather than 1,000 feet. He added that the goal was to be consistent with state rules. Busby stated that the definition of school needed to be considered. Saelens asked whether the recommendation is to forward this issue to a subcommittee. Nebel reported that the 1,000 foot issue was addressed by the Planning Commission, and the recommendation was to be consistent with the state's medical and recreational marijuana rules. It was asked whether there was any

urgency regarding action on the ordinance at this meeting. Tokos reported that the ordinance could safely be put over to the December 7 meeting, but that it would not be advisable to continue it further as the OLCC will begin accepting applications in January, and the rules should be in place at that time. Allen noted that he has not been talking about creating different buffers for medical and recreational marijuana sellers, but changing the buffer to apply to both in order to be consistent. Nebel noted that he did not recall how the state law dealt with educational circles, or whether the city has latitude. Tokos stated that the city has latitude, and that the Planning Commission and City Council agreed to adhere to the OHA definition. Swanson asked whether the matter could be referred back to staff to figure out whether pre-schools, daycares, etc. could be included. Nebel stated that staff could bring back information on that issue. Busby asked whether there is a consensus of Council to refer this issue to staff regarding distance, what constitutes a school, and the impact of one business being adversely impacted. Tokos noted that staff can follow up with the state, adding that schools are established periodically at various locations, and it is unclear how that impacts existing medical or recreational marijuana licenses. It was the consensus of Council to refer the issue back to staff for additional information related to the definition of schools and distance requirements from schools, for both types of marijuana vendors. Nebel noted that potentially there could be a 1,000 foot requirement for schools, and another requirement for daycare facilities.

CITY MANAGER'S REPORT

Consideration of an Extension of the Lease of the City's Seafood Processing Plant to Bornstein Seafoods. Hawker introduced the agenda item. Nebel reported that the lease that the city currently has with Bornstein Seafoods will expire on December 31, 2015. He stated that he, Rich, and Tokos met with representatives of Bornstein Seafoods, Inc. to discuss the lease. He noted that Bornstein's is interested in discussing longer term options with the city as it relates to the long-term use of this facility. He noted that the lease for this facility for the next 12 months will increase from \$4,794.15 per month to \$7,500 per month. Bornstein will continue to be responsible for maintenance of existing improvements in accordance with the lease terms.

MOTION was made by Engler, seconded by Saelens, by order of the Newport City Council, to authorize the City Manager to extend Bornstein Seafood's lease of city-owned property, located at 813 SW Bay Boulevard, for a period of one (1) year, because doing so is in the public interest. The new expiration date for the lease will be December 31, 2016. The motion carried unanimously in a voice vote.

Report on First Quarter Financials. Hawker introduced the agenda item. Nebel reported that the packet contains a report from Murzynsky regarding the status of revenues and expenditures through the first quarter of the fiscal year. He stated that the report outlines budget amendments that have been previously approved by Council, and provides a fund-by-fund analysis of the status of that fund as of the first quarter of the year. He noted that as a general rule of thumb, operations that have even expenditures throughout the course of the year should be at approximately 25% of budget at this point in the fiscal year.

Nebel reported that this report is followed by the detailed report showing revenues and expenditures for operational units of the city. He stated that expenditures appear to be running on track with the budget as it has been amended, and no further adjustments are recommended at this time.

Nebel reported that Murzynsky will have an amendment to adjust the various compiled outlay projects to reflect actual expenditures through June 30, 2015, and carry over unused funds in the Fiscal Year 2015/2016.

Busby stated that this report shows excellent progress. He noted that it is unclear which projects are ahead or behind to date. Murzynsky stated that it is his goal to have the capital project report for Council on a monthly basis. It was noted that there have not been expenditures on some capital projects, and the revenues are mostly in the beginning fund balance. He added that money has yet to be transferred from the various funds. It was agreed that project reports will help clarify the city's financial status.

Report on Parks and Recreation Fee Increases for 2016. Hawker introduced the agenda item. Nebel reported that Resolution No. 3656 provides that an annual increase in user fees be adjusted in accordance with the Bureau of Labor Statistics Consumer Price Index for Urban Consumers on January 1 of each year. He recommended that, due to the implementation of a comprehensive fee schedule, the Parks and Recreation fee schedule be adjusted to a fiscal year as well. He stated that in order to do that, Council could either implement the CPI cost of living increase for January 1, 2016, and then a second rate adjustment in conjunction with the budget process effective July 1, or continue the existing fees for an additional six months and then adjust the fees on July 1 using the 18-month CPI as part of the overall comprehensive fee schedule that will be reviewed at budget time. He added that with all of the construction activities going on with the pool and the inconveniences that will be created for users of the recreation center, it is his opinion that we should hold off on making any adjustments until the fiscal year fee schedule is approved on July 1, 2016. He stated that since Resolution No. 3656 calls for a calendar year adjustment in recreation fees, and with the establishment of the comprehensive fee schedule, he believes it would be appropriate for Council to approve a resolution maintaining the current rates through June 30, 2016, at which time fees for recreational services will be established by the comprehensive fee schedule.

MOTION was made by Saelens, seconded by Sawyer, to adopt Resolution No. 3730, a resolution continuing the fees established for the 2015 calendar year for the Recreation Center and Swimming Pool through June 30, 2016. The motion carried unanimously in a voice vote.

Report on the Nye Beach Town Hall Meeting on November 30, 2015. Hawker introduced the agenda item. Nebel reported on November 30, the City Council has scheduled a Town Hall meeting focused on the Nye Beach area. He stated that the meeting will be held at the Performing Arts Center at 6:00 P.M. He added that the packet contains a tentative agenda for this meeting. It was suggested that someone check in with Greg Morrow to find out whether he is interested in providing an update on the former laundry location.

REPORT FROM MAYOR AND COUNCIL

Busby reported that he attended a recent meeting of the Airport Committee. He stated that the RFP for airport operations has been issued, and a bidder's conference has been scheduled for December 8.

Engler congratulated Nebel on his ICMA Credentialed Manager status, and his rave reviews from ICMA.

Engler reported that the Nye Beach Merchants Association met recently, and that the banner auction was a big success. She noted that this fundraiser raised more than \$6,500 for children's art programs and Art Fridays. She distributed a flyer on the programs.

Engler reported that the Library Advisory Board met recently. She noted that topics addressed included fundraising; the recent installation of security gates; and the Polar Express movies for elementary school children.

Allen requested that the portion of the November 2, 2015 minutes, related to the Percent for the Arts Program discussion, be shared with the Public Arts Committee at its upcoming meeting.

Swanson reported that she attended a recent open house at the Lincoln County adult behavioral and addiction health center. She noted that it is an impressive facility.

Saelens reported that he attended the Bicycle/Pedestrian Advisory Committee meeting last week.

Saelens noted that he will be unable to attend the Parks and Recreation Advisory Committee this week.

Saelens reported that he received a federal court jury summons, and that this service will be two days monthly for 18 months. He stated that due to this summons, he may need to be excused from meetings occasionally.

Sawyer reported that he attended the recent Samaritan House fundraiser at the Chalet Restaurant, adding that it raised more than \$1,100.

EXECUTIVE SESSION

Consideration of Holding an Executive Session Pursuant to ORS 192.660(2)(d) for Labor Negotiations for the Newport Employee's Association (NEA) and the Newport Police Association (NPA). Hawker introduced the agenda item. Nebel requested that the Council hold an executive session at the end of the regular meeting for an update on negotiations with the Newport Employees Association (NEA) and the Newport Police Association (NPA). He reported that no action is recommended on either of these contracts at this time.

Busby reported that the City Council will be meeting in executive session, and the televised portion of tonight's proceedings will end at this time.

MOTION was made by Allen, seconded by Sawyer, to enter into executive session, pursuant to ORS 192.660(2)(d) to discuss labor negotiations for the Newport Employee's Association (NEA) and the Newport Police Association (NPA) contracts. The motion carried unanimously and Council entered executive session at 7:22 P.M.

MOTION was made by Engler, seconded by Sawyer, to adjourn the executive session and return to the regular meeting. The executive session adjourned at 8:06 P.M.

ADJOURNMENT

Having no further business, the meeting adjourned at 8:07 P.M.

Margaret M. Hawker, City Recorder

Ralph Busby, Council President