

GLADSTONE REGULAR CITY COUNCIL MEETING MINUTES of February 11, 2014

ROLL CALL

The following city officials answered the roll call: Mayor Wade Byers and Councilors Hal Busch, Ray Jaren, Thomas Mersereau, Lendon Nelson, and Neal Reisner.

ABSENT: Kari Martinez

STAFF

Pete Boyce, City Administrator; Rhonda Bremmeyer, Senior Center Director; Mike Funk, Fire Marshall; Irene Green, Library Director; Jeff Jolley, Gladstone Police Department; Wayne Lawrence, Police Sergeant; Heather Martin, City Counsel; Stan Monte, Fire Chief; Jolene Morishita, Assistant City Administrator; Jim Pryde, Police Chief; and Scott Tabor, Public Works Director.

Mayor Byers led the flag salute.

BUSINESS FROM THE AUDIENCE – None

Ken Yielding, 7000 Oakridge Drive stated he was here to discuss the proposal for the change of the zoning for the Gladstone dog park. He asked the Council to postpone the February 18th Planning Commission vote for changing the zoning law from the current R-7.2 to the open space. He would like time to get a licensed residential appraiser to review the current value of his home with and without the dog park. The dog park is on a residential zoned lot which is not allowed within the guidelines of the City of Gladstone. He feels it would be important for the City to review the design of the dog park and its location next to his home. A 30-foot fence from the property line would still be less than 50 feet from his bedroom window. Twelve trees on that end of the lot would be like fire hydrants lining the fence. When the dog park was open there was an impact of traffic, the noise and the smell. The gate was never closed and people were in the dog park until 1:00 a.m.

Mr. Yielding was asked to attend the Planning Commission meeting on this issue. The Planning Commission will make a decision on this issue.

Rose Johnson, 5480 Abernathy Court agrees with Mr. Yielding. They went to the last Planning Commission meeting and were not allowed to speak. There was no site development or site study done to see if this was the most suitable place in town for a dog park.

CONSENT AGENDA

Item(s) Removed from the agenda:

2. Request to Purchase Two New Patrol Vehicles

Councilor Nelson moved and Councilor Reisner seconded a motion to approve Consent Agenda items:

1. Approval of January 7, 2014 and January 14, 2014 Minutes
3. Appoint Yvonne McNeil to Traffic Safety Commission
4. Payment of January Claims

Motion carried unanimously.

2. Request to Purchase Two New Patrol Vehicles. Councilor Jaren noted the selected vehicles are Ford Explorers. Ford also has turbo-charged engines available and he wondered if the Police Department has looked at the utility of selecting an eco-boost engine versus a standard one. Also whether they considered the use of winter tires or are they not a higher speed rating for police work. Answer: Jim Pryde, Chief of Police stated they considered the eco-boost on the model they selected; however they found that it adds to the expense. He was concerned that what is added to the motor mechanical issues might surface down the road. Research has shown that the V-6 has plenty of power, pretty quick and does not need the eco-boost. Travis Hill stated the difference with the eco-boost as far as miles per gallon with all the police equipment that the vehicle is loaded with is very minimal.

*Councilor Jaren moved and Councilor Nelson seconded a motion to approve of Item 2, Request to Purchase Two New Patrol Vehicles as presented.
Motion carried unanimously.*

CORRESPONDENCE – None.

REGULAR AGENDA

5. Expense Report for Sewer Lateral Repair at 170 W. Arlington Street/Set Date for Hearing. City Administrator Boyce reported the City became aware of the leaking sewer lateral and contacted the owner Rochelle Davis. The City, to eliminate a health hazard, went in and fixed the lateral after Ms. Davis indicated she was unable to finance the repair. According to Code the City Administrator is required to submit an expense report to City Council. The total expense is \$5,957.19. City Council is to set a hearing date where anyone affected by the expense can submit in writing to the City Administrator an objection to the expense report. At the hearing, City Council will consider the report and any objections that are filed and make a final determination. After Council makes a final determination there will be 60 days to repay the City the expenses incurred. If expenses are not paid within that timeframe, a lien would be put on the property. Staff suggested Council consider the hearing be held at the March 11th Council meeting.

Councilor Reisner moved and Councilor Nelson seconded a motion to hold the Sewer Lateral Repair hearing at the March 11th Council meeting.

Rochelle Davis, 170 W. Arlington Street stated she purchased the house 14 months ago. She is here tonight because the City Administrator has been very nice. Ms. Davis reported she and her family (son and daughter with a disability) has been sick for about a year because of the sewer problem and they didn't have the money to have the problem repaired. Mr. Boyce gave her 10 days to leave the residents as it was going to be claimed unlivable but she has nowhere to go. The City repaired the leak. She was told the cost of the repair, but was not informed that there would be attorney fees and City fees added. When she received the bill of \$5,957.19 she was concerned. She talked with an attorney that the seller of the house did not disclose the sewer problems and he indicated that the City and Attorney fees were too much. She had her soil tested by an environmentalist to determine if this is the reason her family has been sick the last year. She is waiting for those results and if it comes back that the soil is the problem of their

sickness the attorney will take her case and dispute the City and Attorney fees. Her only income is social security and disability. She was referred to the County for help with the repair; however she says she was unable to get anyone to help her.

Motion carried unanimously.

6. Recommendations from Traffic Safety Commission to (a) Purchase and Install Personal Activated Crosswalk Flashing Signs for Oatfield Road at Ridgeway Drive and (b) Send Letter to Oregon Department of Transportation Requesting Reduced Speed Limit on McLoughlin Blvd. City Administrator Boyce reported this agenda item was to notify Council of what transpired at the Traffic Safety meeting. Staff has gotten a quote on such a sign but intend on soliciting two more. There are application forms to fill out for the request to send a letter to Oregon Department of Transportation to reduce the speed limit to 30 mph on McLoughlin. He would like to get the forms and fill them out for Council review at the March 11th Council meeting. Council can take a formal action at that time.

Councilor Jaren voiced concern about the intersection of Strawberry and 82nd Drive. There are three ways to get to the east side of the freeway: Roots Road, Strawberry and down by 82nd. He asked if staff could ask Traffic Safety to see if this intersection can be reviewed.

7. Ordinance 1445 Amending Chapter 5.04 of the Gladstone Municipal Code Regarding Business License Fee Calculations. Mayor Byers asked Assistant City Administrator Morishita to read Ordinance No. 1445 by title only. The Ordinance was read.

Councilor Nelson moved and Councilor Busch seconded a motion for first reading of Ordinance No. 1445.

Roll: Councilor Jaren: Yes; Councilor Mersereau: Yes; Councilor Nelson: Yes; Councilor Busch, Yes; Councilor Reisner: Yes; Mayor Byers: Yes.

The motion carried 6-0.

Mayor Byers asked that the Assistant City Administrator Morishita to read the Ordinance by title only for the second time. The Ordinance was read.

Councilor Nelson moved and councilor Bush seconded a motion to approve Ordinance 1445, an Ordinance Amending Chapter 5.04 Regarding Business License Fee Calculations to the Municipal Code.

Discussion among Councilors: It was noted that the date at the bottom of the document should be changed to February 2014.

Roll: Councilor Jaren: Yes; Councilor Mersereau: Yes; Councilor Nelson: Yes; Councilor Busch: Yes; Councilor Reisner: Yes; Mayor Byers: Yes.

The motion carried 6-0.

Motion carried unanimously.

8. Second Reading of Ordinance 1442 – Adding a New Chapter 12.22 Regarding Special Events to the Gladstone Municipal Code. Mayor Byers asked Assistant City Administrator Morishita to read Ordinance No. 1442 by title only. The Ordinance was read.

Councilor Nelson moved and Councilor Busch seconded a motion for the adoption of Ordinance No. 1442, An Ordinance Adding a New Chapter 12.22 Regarding Special Events to the Gladstone Municipal Code.

Discussion among Councilors: Councilor Reisner stated he voted no at last month's Council meeting because the people of Gladstone needed to have a chance to review this Ordinance so it was not adopted in one night. He appreciates the fact that the School District was added under the exemptions.

Roll: Councilor Jaren: Yes; Councilor Mersereau: Yes; Councilor Nelson: Yes; Councilor Busch, Yes; Councilor Reisner: Yes; Mayor Byers: Yes.
The motion carried 6-0.

9. Second Reading of Ordinance 1443, Adopting a New Chapter 5.60 of the Gladstone Municipal Code Regarding Permit Requirements for Security Alarm Systems. Mayor Byers asked Assistant City Administrator Morishita to read Ordinance No. 1443 by title only. The Ordinance was read.

Councilor Nelson moved and Councilor Jaren seconded a motion to approve Ordinance 1443, An Ordinance Adopting a New Chapter 5.60 of the Gladstone Municipal Code Regarding Permit Requirements for Security Alarm Systems.

Discussion among Councilors: Councilor Jaren asked if the Police Chief who will be the representative from the Police Department. Answer: Police Chief Pryde introduced Sergeant Jolley. Sergeant Jolley reported stated at this time they are looking to have their records person do the administrative aspects should there be an enforcement or ordinance specialist.

Councilor Reisner stated he understood that the Police Department only accepts cash in exact change. Will this policy change with adoption of this ordinance. Answer: Sergeant Jolley stated he will work with the City with their pay system and how they receive an intake of funds.

Councilor Reisner asked if there is a mechanism to deal with an appeal if the Alarm Coordinator is not satisfied with a decision. Answer: Sergeant Jolley stated he believes there is a provision in the Ordinance indicating that the Chief serves as the hearing officer. If there is a violation of an ordinance and was cited, the issue would go before the Judge.

Sergeant Jolley was asked if this ordinance applied to every home alarm system. Answer: Sergeant Jolley stated that there was an added provision for persons 65 years of age or older are exempt from paying the annual permit fee. They do however have to pay for false alarm fees.

Councilor Reisner asked if the school district could also be exempt from paying fees/fines. Answer: The school district has an emergency list and if no one can be contacted on that list the police department is called.

Roll: Councilor Jaren: Yes; Councilor Mersereau: Yes; Councilor Nelson: Yes; Councilor Busch: Yes; Councilor Reisner: Yes; Mayor Byers: Yes.

The motion carried 6-0.

10. Ordinance 1444, Adopting a New Chapter 15.32 of the Gladstone Municipal Code Regarding Maintenance of Private Fire Hydrants and Usage of Public Fire Hydrants. Mayor Byers asked Assistant City Administrator Morishita to read Ordinance No. 1444 by title only. The Ordinance was read.

Councilor Nelson moved and Councilor Busch seconded a motion for the first reading of Ordinance 1444.

Discussion among Councilors: Councilor Jaren noted there is a 30-day requirement for the repair. He asked if because of their importance they should be repaired more quickly. When hydrants are tested, what are they tested for? Answer: Fire Marshall Mike Funk replied the hydrants are tested for flow, not broken, ability for flow, and that all valves are open. The 30-day language is mostly patterned legally after other jurisdictions. There are about 50 hydrants on private property and about 200 on public property.

It was asked how many hydrants are currently out of service. Answer: Fire Marshall Funk stated when they find one that is not operable, Scott Tabor, Director of Public Works gets them repaired quickly.

When the private property owner has a repair, do they send the City a copy of the receipt to verify the work has been done? Answer: Fire Marshall Funk stated currently they don't because the Fire Department has been testing all of the hydrants. When a hydrant on private property is tested the owner must agree to hold the City harmless as they can hire a company to do the testing.

What kind of notification has gone out to let residents know this 30-day requirement is being discussed. Answer: Fire Marshall Funk stated he doesn't believe anything has been sent out. His intention was that in April or May notifications would go out to private hydrant owners that they are responsible for maintenance and repair of hydrants.

If the private owner has repair work by a company and a receipt is submitted, will the Fire Department do another inspection? Answer: Fire Marshall Funk said no, the company would be required to be licensed and bonded.

Public Comments: Pat McMahon, 175 W. Berkeley thinks the ordinance is being pieced together. If the City adopted the International Fire Code, it is clear how fire hydrants are supposed to be inspected by the property owner. Why not adopt the International Fire Code. The Fire Department he works for does not inspect private fire hydrants; that is the responsibility of the private landowner. The City Attorney should look at using the International

Fire Code as the newest code. He asked Council to table this issue and revisit using the most current version of the International Fire Code.

City Attorney Martin reported this ordinance came about because the City's insurance company wanted the City to implement some regulations. They looked at information from other jurisdiction's codes on fire hydrants. If there are parts that are not working or the Council wants to change parts of the Ordinance, it can be done.

Councilor Nelson moved and Councilor Busch seconded a motion to approve Ordinance 1444, An Ordinance Adopting a New Chapter 15.32 of the Gladstone Municipal Code Regarding Maintenance of Private Fire Hydrants and Usage of Public Fire Hydrants.

*Roll: Councilor Jaren: No; Councilor Mersereau: No; Councilor Nelson: No; Councilor Busch: No; Councilor Reisner: No; Mayor Byers: No.
The motion failed 6-0.*

11. Ordinance 1446, Adopting Gladstone Municipal Code Chapter 9.09 Requiring Compliance with the U.S. Controlled Substances Act and Amending Chapter 5.04 Business License Provisions and Declaring an Emergency. Mayor Byers asked Assistant City Administrator Morishita to read Ordinance No. 1446 by title only. The Ordinance was read.

Councilor Jaren moved and Councilor Busch seconded a motion for the first reading by title only to approve Ordinance 1446, An Ordinance Adopting Gladstone Municipal Code Chapter 9.09 Requiring Compliance with the U.S. Controlled Substances Act and Amending Chapter 5.04 Business License Provisions and Declaring an Emergency.

City Attorney Martin reported per Council's request at their last meeting for an Ordinance that creates a new stand alone provision in the code that requires all facilities that are located in the City to be in compliance with the U.S. Federal Controlled Substances Act. State Bill 31 is a bill that states that local governments are not pre-empted from prohibiting, restricting or regulating medical marijuana dispensaries. There was a public hearing today on that bill and a worksession scheduled for tomorrow.

This ordinance will be a ban on the dispensaries everywhere in Gladstone when it goes into effect. As discussed at the last meeting Council wanted to look into options to regulate dispensaries. The Planning Commission has it on their agenda to begin discussion at their February 18th meeting.

Discussion among Council: Councilor Mersereau asked for confirmation that this is a temporary ban. Answer: City Attorney Martin stated she did not include a time so the Council has time to look at the options and make a decision. Mayor Byers stated the Council can change an ordinance at any time.

Councilor Mersereau asked if there has been contact with the current open dispensary that is not dispensing marijuana. Answer: Police Chief Pryde reported the enforcement officer has made contact with the gentleman on site and had a conversation about their operation. He was

informed that there is no product on-site, they are not engaged in sales, and are going by the law that may go into effect.

Councilor Reisner noted he did not remember discussing this ordinance as an emergency. Mayor Byers stated declaring an emergency was part of the timing at the advice of the City Attorney.

Public Comments: Shiloh Wilson, 825 E. Berkeley, proposed business owner stated he is here to answer questions. He is more than willing and wants to be a helpful member of the community. All they are asking for is a fair shake. There is a lot of misinformation and fear now and he understands the change is difficult. He invited Council to come out to the shop as they begin to open up to take a look at what they have done in preparation of opening as they are able to get licensing. They chose Gladstone because they love the community and feel it is a great place to live and they wouldn't want to do anything to damage that.

It was asked if a person comes in with a card and they are dispensed with what they require, can that person go to another dispensary and acquire more. How does that work? Answer: Mr. Wilson stated the way it works under the new guidelines, they have to very closely track every gram of medicine that comes in, goes out, who it came from, and what patient it came from and who it goes out to. That is across the entire state; they have allowed the dispensary to come out into the light and be regulated. There is a timeframe as to when a person can get product and when he can get more. It is regulated. If it becomes an issue enforcement officers can come and find out how much product is being given. The only ground rules they do not have is whether or not municipalities can specifically ban dispensaries for cannabis. At their facility they hope to teach how to grow their own medicine. Each patient is allowed to grow six mature adult plants on their own and if they have excess that is what comes to the dispensaries.

Mayor Byers stated the City Attorney has advised Council until everything is known regarding this state legislation, they should adopt this ordinance. As the City knows the outcome of the legislation, then they will change this ordinance.

City Attorney Martin stated she advised the Council that if they want to regulate it in any way, because of the laws going into effect on March 1st, they would have to take action before March 1st. The Council has indicated they would like to regulate it and that means they have to go through the land use process. However they decide to limit it, to certain zones in the City or one or two zones in the City that is their decision.

Mr. Wilson stated he feels he is not welcome, no matter the help he is giving patients without public comment from anyone. Mayor Byers stated they want to have all the information before they make a decision. Legislature has not decided.

Paul Schmidt, 599 NE 22nd Avenue stated he is a retired law enforcement officer with 34 years of service. He retired from the Drug Enforcement Administration as the Assistant Special Agent in Charge. He was responsible for Oregon and southern counties of Washington State. He retired in 2010 and went back to the State of Colorado to care for his parents that were aging and having problems. While he was there, with his background the state came to him and asked if he would come out and help out with the implementation of their new medical marijuana

enforcement division. It worked out with his siblings and he was able to take the job. He was agent in charge of all the enforcement operations in the State of Colorado for five offices and the roll out of their medical marijuana enforcement program. After 18 months he returned home to Canby with his wife and they cared for her mother who is 91. His background with cannabis is extensive. As a young agent in the 80's he was undercover, he cultivated cannabis, he distributed cannabis, set up indoor grows, did diversion on power, etc. Now with the House Bill 3460 the Oregon Health Authority has asked him to participate on their rules committee. He volunteered and worked on that committee. The committee was set up on January 15; when you say you have had no time, that is right, you mean you have had no time to look at the implementation of the rules from the Oregon Health Authority. There was a change last week and the rules are still not out in temporary form. The final rules will not be out until summer. The March 3rd date is for all those who want to apply. The applying process is for registration or an application for a license to open up a marijuana facility here in the state. The work dispensary is used inter-medically with facility. On March 3rd the application process starts with the Oregon Health Authority. With that process any potential owner or person responsible for the facility will fill out a full application, along with \$4,000 of which \$500 is refundable if the process is not passed. This is all unknown. The City of Beaverton had a similar council meeting and their City Attorney advised them to sit back and allow this to come and do nothing. They chose to do a moratorium on receiving any business applications for six months while they review the process, see where House Bill 3460 really comes out, how it is applied along with the rules from the Oregon Health Authority.

Mr. Schmidt stated the Council are in the role of trying to manipulate and understand the state law and state statute, the Oregon Health Authority rules, and how they affect Gladstone and how best to save the public interest, patient interest, and safety. It was the intent of the authors of this bill was not to prohibit medical marijuana facilities from establishing themselves in a local jurisdiction, but allowing the local jurisdictions to implement if it was a city municipality by ordinance, if it was an open unincorporated area in the county, a county resolution or a county ordinance to address the concerns of the local community. In addition to the Health Authority rules, and the application of 3460, they were hoping to find the compromise between them. A lot of people have taken the role to ban them; it can be changed at any time. He feels the best approach, an approach that may be within the cannabis industry really look for is just the opportunity to present themselves to people. Society is changing and cannabis is being brought out into the light. A Cannabis business council has put out better regulations, better rules, education and training. There is no way a patient can go to one facility and get product and then go to another facility and get product; that is being tracked. Cannabis is a brand new emerging industry.

Merle Thomas, 40497 Grays Road, Clackamas stated he is looking at opening a dispensary; he has invested \$80,000. He finds that HB 3460 that was passed August 14th last year has had time to be revisited. He has put everything he owns into this. He is strongly against pharmaceuticals. He is an ex-service member as well and suffers from PTSD and he has met a lot of people his age and older that don't want to be treated like a drug dealer or druggie because they don't want to use pharmaceuticals. They destroy your body and are much more dangerous. His location is at the farthest edge of town in Gladstone. The state has set in security measures in these facilities that would amaze people to make sure they are community friendly. He offered his time and facility for the Council to come and be introduced to the entire program. His facility

looks like a doctor's office. The patient he wants coming to him to get their medicine also want to go to a discrete location where people say they were seen going to the pot shop. He is asking that Council be open-minded.

Mayor Byers asked Assistant City Administrator Morishita to read Ordinance 1446 by title only. It was read.

It was asked what the requirements for an application to the state are; having a business license from a local jurisdiction? Answer: Paul Schmidt, 599 NE 22nd Avenue stated the state is moving forward under their statute under the Oregon Health Authority rules. When an application is made, it says you are registered as a business with the state and it asks are you applying for a business license for operation within the jurisdiction. That will not preclude the state from issuing them the registration for their medical marijuana facility. If they meet the criteria and their background and the fingerprint check, they will get a registration from the state. The question now is what happens if I operate within the city limits. The state says they are registered and are operating, what is the recourse the City has against the operation of the business. The state is not going to preclude the registration for the application because they don't have a business license issued by the jurisdiction in which they are in.

It was asked if there is a process where the state will contact the local jurisdiction to inform them of a registration in their City. Answer: Paul Schmidt stated that HB 3460, the authors and the way it was drafted, the intent was to allow the local authority to be able to be more restrictive and add ordinances and/or county resolutions to further protect the interest of the community. It was never meant to prohibit.

It was asked how long a application to register with the state would take. Answer: Paul Schmidt stated it may take two weeks or it may take two months. The biggest unknown on timeframe is on the background check.

Roll: Councilor Jaren: Yes; Councilor Mersereau: Yes; Councilor Nelson: Yes; Councilor Busch: Abstain; Councilor Reisner: Yes; Mayor Byers: Yes.

The motion carried 5-0 with one abstention; Councilor Busch was absent for the January 28th Council discussion on this issue.

Mayor Byers asked Assistant City Administrator Morishita to read Ordinance 1446 by title only for the second time. The Ordinance was read.

Councilor Nelson moved and Councilor Jaren seconded a motion to approve Ordinance 1446, An Ordinance Adopting Gladstone Municipal Code Chapter 9.09 Requiring Compliance with the U.S. Controlled Substance Act and Amending Chapter 5.94 Business License Provisions and Declaring an Emergency.

Councilor Reisner noted the Municipal Code, Section 35(2) states there needs to be a unanimous vote of council members present. With Councilor Busch's abstention would that prevent Council going forward? City Attorney Martin stated her interpretation is that Councilor Busch technically did not vote yes or no. That is how she has interpreted it in the past.

Roll: Councilor Jaren: **Yes**; Councilor Mersereau: **Yes**; Councilor Nelson: **Yes**; Councilor Busch: **Abstain**; Councilor Reisner: **Yes**; Mayor Byers: **Yes**.

Motion passes 5-0 with one abstention; Councilor Busch abstained because he was absent at the January 28th Council meeting.

BUSINESS FROM THE COUNCIL

Councilor Mersereau reported he attended the Fire Department meeting. It was a good meeting. The department is looking for grants to receive funds for the Fire Department.

Councilor Mersereau reported he attended the Library Advisory Committee. It went from 7:00 p.m. to 9:00 p.m. There were approximately 33 out of 36 of the applicants were in attendance. Communication was good, a lot of questions were asked and staff is in the process of gathering information on three issues: (1) Is Gladstone and Oak Grove going to consolidate; (2) Location; and (3) Funding method. He feels the goal of five meetings is optimistic. The group worked in a positive manner.

Mayor Byers announced:

- Senior Center is having their Valentine Luncheon on February 12, 2014.
- Mrs. Zaffrea passed away yesterday.
- Kiwanis is having a breakfast Saturday, February 15th at the Senior Center. He encouraged people to come out and support their service club.
- The County Board changed their minds and approved the AMR contract.

Mayor Byers adjourned the Council Meeting into Executive Session 192.660(2)(i) to review and evaluate the employment related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing. The Council will not be coming back into open session.

The next City Council meeting was adjourned to February 25, 2014, at 7:00 p.m.

Approved by the Mayor this 11 day of March, 2014.

Wade Byers
Mayor

Attest:
J. Minni
Assistant City Administrator