

City of Rainier
Regular Council Meeting Minutes
April 2, 2012
7:00 PM
Rainier City Hall
106 West “B” Street

Council President Phil Butcher called the meeting to order at 7:03 PM.

Council Present: Phil Butcher, William Vilardi, David Sills, James Bradfield, Sloan Nelson, Scott Cooper and Mike Avent.

Council Absent: Mayor Jerry Cole.

City Staff Present: Debbie Dudley, Dan Foultnr, Gregg Griffith.

City Attorney Present: Stephen D. Petersen

Flag Salute:

Agenda Additions/Deletions:

Addition – Atty. Petersen requested the USG Agreement be added to the agenda. Nelson moved, Avent 2nd, to add the USG Agreement to the agenda, **motion passed unanimously**. Butcher added it as “h” to unfinished business on the agenda.

Mayor’s Address: None.

Visitor Comments: None.

Unfinished Business:

- a. Approve March 19, 2012 Regular Meeting Minutes – Nelson moved, Cooper 2nd, to approve the minutes, **motion passed unanimously**.
- b. View Street Update – No change, Foultnr stated they were waiting for dryer weather.
- c. “B” Street Update – Nelson moved, Vilardi 2nd, to approve the intergovernmental agreement for right of way services US 30/ “B” Street Bike Pedestrian Improvements contract amendment agreement #26637 pending final legal approval. Bradfield clarified the agreement is to put together the information so they can collect the final data on cost. Dudley added ODOT will be charge of the acquisition and the City will work with them. **The motion passed with Sills abstaining.**
- d. “C” Street Slippage Update – Dudley reported no change, the contractor is keeping the tarps on until the weather breaks. Nelson and Avent expressed concern with the sidewalk stability and Foultnr said he would look into it. Bradfield said Foultnr and a lot of people are aware that the slippage issue is just not right there.

- e. Council Training Update – Dudley stated she talked with several other cities and they have expressed interest in shared training. Now it is a matter of defining the scope of the training and asked Council to let her know specific areas of interest. She will work with Vernonia and Columbia City to put something together to minimize the cost. Bradfield said he wanted to discuss training areas with Dudley.
- f. Discuss Parking During Little League Season – Nelson stated there is no update since he, Cooper and Chief Griffith haven't had a chance to get together for discussion.
- g. Pocket Park Update – Nelson said it is moving along and the group has continually met to work through the process, more donations, and the planting is tentatively scheduled for June 2nd, and it is going to happen.
- h. USG Agreement – Nelson moved, Cooper 2nd, to authorize the Mayor to sign the full and final settlement agreement with U.S. Gypsum and also the confession of judgment agreement. Avent asked Petersen if he had any last minute thoughts and Petersen said no because it doesn't obligate the City. **The motion passed unanimously.**

New Business:

- a. Reminder for Public Officials to file the SEI – Dudley reminded Council they had until April 16th because the 15th is on a Sunday that it is imperative they get those filed.
- b. Approve the Agreement with Payne Reforestation for Herbicide Application – Vilardi moved, Avent 2nd, to approve the agreement with Payne Reforestation not to exceed \$3,075.00. Nelson said since the City has a licensed person on staff that does that kind of work he would like to have him look at it and maybe have some cost savings. Dudley said this is by hand. Nelson asked if they could make a motion to approve it pending it is a savings to us versus doing it in house. The motion failed. Nelson moved, Avent 2nd, to approve the agreement with Payne Reforestation for Herbicide Application after consultation with public works as long as they are the cheaper source we will use them. Bradfield asked how big of an area we are talking about. Nelson said we are approving it to do it the best way possible. Butcher asked Dudley to reread the motion. Dudley stated the motion was to contract with Payne Reforestation unless our public works individuals can do it more economically and efficiently, otherwise we will move ahead with Payne Reforestation. **The motion passed unanimously.**
- c. Consider Recommending the Granting of a Liquor License for El Tapatio – Cooper moved, Avent 2nd, to grant a liquor license to El Tapatio for the Rainier Days in the Park Beer Garden. Nelson asked Chief Griffith that they are asking to do what virtually has happened in the past except they are adding hard alcohol to the mix and was Chief Griffith comfortable with the request. Chief Griffith said he was comfortable based on El Tapatio's management during the Days in the Park event.

Bradfield asked Chief Griffith if there have been much in the way of alcohol related issues and Chief Griffith replied that the businesses themselves have helped people be more responsible in the past few years and would let the Council know next year if there were problems this year. **The motion passed unanimously.**

- d. Consider a Request from the VFW Post 1909 for Lighting Assistance on a Flag Pole at Neer City Road by the Water Tank. Roger Ege addressed the Council who represents the Veterans of Foreign Wars and annually they try to do a community service project and six years ago they decided to put a 35' flag pole by the water tower at the K of P cemetery. Ege said trying to go up there and take the flag up and down all the time isn't feasible so they are requesting the City allow them to have the electricity to light the flag pole and keep the flag lit and up all the time, they will take care of replacing the flags and the only thing it will cost the city is the power, and they will furnish the lights for it. Ege said if Columbia River PUD has to bring in the power the VFW pay the monthly charge it is prohibitive. Nelson asked Ege if his group would be paying for the electrician and Ege said they would pay and clarified that the request to the City was to only pay the light bill and the VFW would do the maintenance on the poles. Ege said that was correct. Roger said a light can be put on the water tower and shine it on the flag but it would be better to put it on the base of the flag pole up with a switch so they could do the maintenance on it. Nelson moved, Aven 2nd, to approve the request by Post 1909 for a lighting system. Ege said he would bring a new 6 x 12 flag for the City Park and he would drop it by City Hall this Friday. **The motion passed unanimously.**
- e. Consider a Request by Joe Schwab, of the Columbia County Chapter of Coastal Conservation Association to use the Park for an Event. Joe Schwab distributed a handout regarding CCA and explained they are a nationwide organization dedicated to reestablishing fish runs and in Columbia County they have approximately 400 members and state-wide about 4,000. Schwab said one of the things they wanted to do this summer is have a barbecue and he understands the park has to stay open to the public and that is fine because the public is welcome to come and participate and they plan on having a small fishing derby. Schwab said they are also going to sponsor a wounded warrior day and the first request he put in was November. Schwab said he is requesting the far end of the park closest to the boat ramp for the event and he is going to encourage the members that are close by to take their boats somewhere else and park them after they are done fishing. Schwab said they want to use the city park to have a small picnic and gathering, anticipating no more than 150 people. Dudley clarified with Schwab that July 21st is the preferred requested date. Dudley said the only consideration is the liability insurance and Schwab said they are 501C3 and they do have liability insurance and whatever they need as far as additional insured they will provide and do cleanup after the event. Nelson moved, Aven 2nd, to approve the park event working with public works and the police department to make sure the site is going to work, provide the clean up and to provide insurance to show the City as additional insured, **the motion passed unanimously.**

- f. Consider a Request by Nick Clark to Override City ORS 943 and Issue a Business License to Open a Medical Marijuana Dispensary. Butcher referred to Petersen who stated he was asked to review Clark's request to and his recommendation is to deny the request because it violates the City's ordinance and state and federal law. Petersen referred to the February 12, 2012 from S. Amanda Marshall, United States Attorney, District of Oregon and he discussed this matter with the Columbia County District Attorney's office and was advised that if this was going on they would prosecute, they advised Petersen that right now there are two prosecutions pending in Washington County so it makes no sense for Rainier to override state and federal laws. Petersen stated his legal opinion is that the request is a very easy denial. Nick Clark said he came to the City about two weeks ago for a permit and was denied it an Oregon State Judge already ruled that cities and states do not have authority to uphold federal law so with that his attorney is going to come down and talk to the Council before it becomes a heated battle. Clark said he thinks it is great that Astoria is working really well, there are over 900 patients in Columbia County right now and they need safe access and that will be denied to them if the Council does not allow it and he thinks that is not good. Clark said that right now there are over 400 in Clatsop County and it is growing every day. Clark referred to Mike Mullins and Butcher stated the comments need to be limited to two or three minutes and discuss the legality of the issue and not the medical benefits. Mullins said that legality wise they understand and he has been an ADA consultant with the American Disabilities Act and has helped Council implement and do compliance with the law and he would like to approach the council as a friendly consultant at this point and would rather work with the Council than bring their attorneys in. Mullins said there are already cities thinking about this and if you say no they would rather not bring the attorneys in and they are concerned about the City's mismanagement and the City's compliance with the state law and would like the City to work with them on codes and zoning. Petersen asked which law and Mullins said with the rights to the citizens of OMA that can't be overridden. Mullins said cities are already trying this in Oregon are finding out they are having the ACLU have to face them, there is an issue with cities and want to work something out and be in compliance, work with the cities so there is a situation where they can work together to find a permanent solution and make sure that everyone is comfortable. Sills stated that the Council has received legal advice from the City Attorney who has received legal advice from his legal advice and the City has documentation and letter stating this is not a smart thing to do. Sills asked Mullins how much budget he had. Mullins said he would like to sit down and talk about this in the future and medical marijuana may be legal this year, they have two candidates, the AG running on a marijuana platform, they have the Clatsop County Sheriff running on a marijuana platform and they are fully those people, there are many candidates in Oregon, they have a legalization bill on the ballot this year and things are changing, the City needs to think about their future, cities have that obligation, they don't want to place the City in a bad position, they would rather work with them. Avent said wouldn't it be prudent to take it up with the District Attorney

and start there so as long as they are sitting on the side line trying to make an intelligent decision for the community and getting advice from the person who prosecutes in the County that they would be breaking the law if they do that. Avent asked if that wouldn't be the way to start with. Mullins said they have done so and remember to remember that folks like to make money in their careers and we can throw it that direction and again that would not be him (Mullins) talking to them if they are so emphatic about their position. Avent says it seems like that's where the legal battle should start. Mullins said they are not breaking any laws and they are going to be proving that in Washington County and proving that in other places, the laws are forming and because there isn't a regulated law at this point doesn't mean anyone has broken any laws. Avent clarified Mullins said he just said he was going to be proving that in Washington County and Mullins said that as far as this is a clear path issue that is correct. Sills stated that he is not interested in being the cutting edge city and if it is state law that is a whole different conversation and right now it is not state law. Sills said he agrees that states and governments are going to need to take a serious look at like many other issues. Mullins referred to information he had distributed and Dudley pointed out it was for Washington County. Butcher stated we are not here to debate. Nelson agreed with Avent by stating it seems to him that they should go to the folks that are doing the prosecution and you are wrong by telling the cities it wrong information. Butcher said the city takes no position on the validity of medical marijuana, we are not here to debate the medicinal claims for the sale or dispensing of marijuana, it is against the City ordinance due to federal law. Jennifer Valley with Stoney Girl Gardens stated they are consultants to Nick Clark and they believe there is a first amendment issue with their right to assemble and stay here as well as, they have seen what has happened in other communities, over \$500,000.00 has been spent fighting this all the way to the Supreme Court, Washington County spent well over \$500,000.00 fighting their way to the Supreme Court, policy is changing at every level and one of first time they came to the Council they asked the Council to ask the State of legislation and what they need is for them to remove the words not for consideration from our Oregon Medical Marijuana Act so the cities can provide legislation, zoning and regulation. Valley said at this point because there are no regulations she's had people from California telling her there are no rules and that's not how we operate, they believe they act in full compliance with all Oregon rules and regulations, the federal policy is that as long as you are following the state rules and regulations that they do not feel it is prudent to waste federal resources and they are not some giant grow with thousands of plants and millions of dollars, they are a bunch of sick people with small gardens specifically and exactly what the federal government has stated they are not going to go after, they have just as much right to assemble together at private clubs, they have the same rights as any other citizen.

Tim Pate from Portland, Oregon has been on the Oregon Medical Marijuana program for 12 years and for the last five years he has been the event coordinator for Hemstock in Portland and for the past 18 years he has been involved with the Seattle

Hemp Fest as well. Pate said he has had over 25 surgeries and has pain everyday and many citizens are the same. Pate said Seattle said it made it a low priority because they are just common citizens and the real issue is how to move forward because the fight has come to their door, the Council can't deny that because your citizens are asking for it so he is here to support Nick Clark and the Council because he loves Roberts Rules of Order. Pate requested Council consider changing the law.

Clark said it has been proved in Court that what Council is doing by holding up the law has been ruled and over turned and he doesn't think we need that fight and should work together, make this work and positive for the community, it has been positive in Astoria, El Tap was broken into and the video surveillance at his store got those people and if Council denies him he thinks it is going to hurt the community worse. Clark said if it goes through him it stays off the streets, just like opening up a liquor store, kids are still driving on alcohol, domestic violence still up on alcohol and most of these calls are not on pot they are on alcohol. Clark added this is going to be a great thing as it is in Astoria, Council could talk to the police chief there, they have responded to numerous of his alarm calls but other than that things have been good so make this good for the community.

Sills asked Clark if he intends on upholding the law and Clark said he did and Sills said hypothetically the Council is not going to issue a business license, we are not going to condone your business then what. Clark said that after talking to his attorney already he would give his attorney a call and proceed, it has already been proved in the Court that the City has already lost and Council cannot uphold federal, it's not your duty so therefore he doesn't want to go there, you have a young Mayor there and you guys can read so we would fight it. Sills for clarification asked Clark if the Council says we would like your business not to be in our city limits you are going to force us to have your business within our city limits. Clark said he is not your drug dealer, he is the guy with a business right here on the front street, doesn't have anything to be ashamed of, you can't come into his club without a card so if you are under age, well under age doesn't matter it's whether or not you have a card or not so if you don't have the card you don't get in, we have everything under surveillance, everything is checked, we are computerized, we check all the time to make sure cards are valid so he has a very good reputation around Oregon if you call around in some of the different areas he is very well liked, he has a doctor that comes in, he is looking at getting a medicating masseuse to come in, he's putting on Astoria's first hemp festival that will bring in thousands, there is a head coordinator for it and they are looking at doing great things for Astoria and he would like to come in and do the same thing and provide great service to the community and for the patients. Sills said so your answer is yes and Nick said yes it is. Valley added it is a first amendment issue because everyone in this club has a disability and they have the same rights to be members of the community as any other citizen. Cooper asked if there was anyone in the audience that actually lives in Rainier that is in support of this and Bonnie Burnham said she does not live in city limits but has lived here all her life and so does

her family. Bradfield asked if the distribution of medical marijuana is available at this time in facilities in Portland and Clark said that was correct and in Astoria. Bradfield asked if this is a licensed harvesting and someone said marijuana has been moved from schedule 1 to schedule 2 in this state. Bradfield said that as a citizen, as a father and as a grandfather he has a problem with compromising and as a human being he asks himself everyday according to his conduct if he speeds is he compromising something, if he goes out on the highway and he is not looking out for somebody else he is putting their lives in jeopardy, where he works is very dangerous and everything he does has a severe impact on someone else and he is not blaming fate, there are elements in marijuana that have legitimate medical uses, it reduces nausea, it is giving people the ability to keep food down, there is a legitimate reason for that but there is a legitimate process to at some point just like the elements in some of the other medical elements that we use every day that doctors use with skill and prudence to keep us level, sedate us for surgery but these are elements that if they are abused they have severe consequences and marijuana if it is not used for legitimate reasons is a compromise and when you open that door to a compromise there is not anyone that he knows who has ended up at the extreme end of drug addiction, drug abuse and all of the other bad things that happen in society that didn't start with one problem. Bradfield said as a citizen he wants them to understand his convictions, he is not willing to compromise; he believes the victimization is the allowance to a compromise that he is unwilling to make. Bradfield said there will be a process to extract the elements from marijuana that will end up as a legitimate drug and until that happens he is not willing to compromise. Nelson said he doesn't think that the Council is the legal battle, Council is being told by everybody that this is not an option we have available to give this to you, we're being told by everybody above us that this is illegal and you are not allowed to do that, he feels like we're not the partners you need to spar with, you need to spar with the people that make that decision that are at a much higher level than the Council. Avent said with him it is not an issue of use and the point is they have met with them two meetings ago and it is our city attorney who is recommending that we could potentially be in litigation from the D.A. and the State so we have to make a decision that best preserves this community and if something changes at the State level he would implore them to come back again and at that level they need the direction from the prosecuting attorney and the City's attorney to say you guys are in violation of that because these are the people hired to protect them and represent them. Cooper said he is looking at a letter from the District Attorney from Oregon saying don't do it. Cooper said we are not here to change the law and as Nelson said the battle is with people higher up and our ability is to uphold our statute and laws. Mullins said you cannot uphold federal law. Cooper said they will uphold that law. Vilaridi moved, Sills 2nd, to deny the business license. Dudley clarified the motion by stating the motion is to not override the City's ORS 943 and to deny the business license, **the motion passed unanimously.**

Ege stated he forgot to mention that on May 1st they are going to start collecting flags that need to be disposed of and they need the far end of the park where there is no grass to burn them and the fire department has already given them the permission to burn but they need the okay. Nelson suggested having a receptacle at City Hall for people who want to dispose of their flags and Ege said he would do that. Ege said usually they have people set up at the park on Saturdays to collect them, they will start collecting them on May 1st and on June 14th they will do the burning ceremony at the park and they will put it in the Clatskanie Chief also. Nelson requested the receptacle be in the office.

Alan Harrison complimented the Council for showing such integrity and high regard for the City and if somebody wants a fight he is sure there are businesses that would pull together and help the Council and he is sorry the people he wanted to hear that left.

Staff Reports:

Foultner – stated they are still working with DEQ for the water rights and a new application permit process, updating the permit for the wastewater treatment plant, working with Consultant Scott Shulda on those permits, just received a quote for centrifuge maintenance at the wastewater plant and the scheduled maintenance is every two years but that was set up when we were running biosolids on the centrifuge two or three days a week and we are about a year and a half behind because we have been running it five days a week since it opened up because of our septic hauling and that is a top priority and as far as being able to accept septic we have to get on top of that, starting tomorrow all new signs will be installed on the east side of town and signs for the west side of town have been ordered, finished repainting the curb and gutter on West “C” Street and West “B” Street and cut the overgrown ivy, almost done trimming in the park and get the park ready for the Easter Egg Hunt, it has been an uphill battle but we are gaining. Nelson added that potholes got filled also. Foultner said they have more asphalt ordered for the potholes. Butcher said the follow-up on the water rights are important and sometimes they take time to process and Foultner added they have in the last month pushing hard on that and Dudley added that on that particular permit they have until October 31, 2013. Butcher said injunctions can be filed against cities and that is why it is imperative. Foultner and Dudley added they are utilizing Shulda and Gibbs & Olsen for this matter.

Chief Griffith – congratulated the public works crew for all the work they have been doing all over town and he hasn’t seen them for years and sees positive changes and is working on 2011 Annual Report and should have it to Council by the next meeting.

Dudley – the financial report and budget information from her staff report was discussed in at the work session, she congratulated the office staff, police department and public works staff in doing an excellent job and it is encouraging to see positive environment and positive attitudes.

Council Reports:

Sills – nothing to report.

Vilardi – likes all the positive energy now being produced and things getting done.

Nelson – noticed all the positive work getting done and it is because of the crew they have and added the Council did vote not to renew a license per the ordinance and obviously the police department and the legal advice it sounds like we are going to have a new business whether a business license is issued or not and hopefully amongst this group they can get together and figure out what is the next step. Dudley said it is clearly defined in the ordinance.

Bradfield – he and his wife walk a lot around town and they have seen a lot of the positive changes and all the work is noticed. Bradfield said some things were presented in the packet and some of the work done on parking issues and he would like to review them again. Bradfield said he exposed himself earlier because he considered it a threat because like it or not they were threatening us and do what they want to do and if we don't agree with them they are going to make us pay so bring it on, he doesn't believe in what they are doing is right and the tactics used he takes personal. Bradfield said what they want to accomplish to benefit the ill people or people in pain there is a legitimate process that will take a path and this is not the path and in his opinion these are drug dealers using a different path and he feels strongly what they represent. Petersen said if they move forward it will not cost the city any money because the district attorney has already said to let them know and Griffith said he would let them know.

Avent – agreed with the other councilors on the public works crew and the work they have done and reminded everyone of the City/County Dinner Meeting tomorrow night. Avent clarified with Dudley that the Port is using City Hall for their strategic plan on the 4th that is open to the public.

Cooper – Complimented the police department and public works and thanked everyone who showed up tonight in support of the Council and the position Council took.

Dudley mentioned there is a clean-up day on May 5th and she and Foultnier, the county and Hudson Garbage will be meeting to discuss it.

Nelson added the Columbia River Fire & Rescue is having some budget issues and on the 10th they are going to be meeting to discuss possible reductions of staff and budget issues and it could potentially affect our community.

Butcher – the budget committee and council workshop is April 9th at 6:00 PM, 6:00 PM tomorrow the City/County Dinner Meeting, Regular Council Meeting April 16th at 7:00 PM, City of Rainier Annual Clean-up Day May 5th from 9AM to 3:00 PM with a presentation on May the 7th at the work session. Butcher said it was a pleasure running the meeting tonight and the Council voted unanimously on everything and added it is a win-win situation.

Executive Session convened at 8:08 pm.

ORS 192.660(2)(h) Consult with counsel concerning legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Convened Regular Meeting and adjourned at 8:17 P.M.

Council President Phil Butcher

Debra Dudley, City Administrator, Finance
Director and City Recorder