

**CITY OF JOHN DAY
CITY COUNCIL MINUTES
JOHN DAY, OREGON**

October 28, 2014

Adjourned Meeting

COUNCILORS PRESENT:

Ron Lundbom, Mayor
Steve Schuette, Council President
Paul Smith, Councilor
Don Caldwell, Councilor
Donn Willey, Councilor

COUNCILORS ABSENT:

STAFF PRESENT:

Peggy Gray, City Manager
David Holland, Public Works Director
Richard Gray, Police Chief
Damon Rand, Police Sergeant
Ron Smith, Fire Chief

GUESTS PRESENT:

Gregg Haberly, 195 Ford Rd., John Day
Louis Provencher, 211 NW 4th, John Day
Lisa Weigum, 480 Ferguson Rd., John Day

Agenda Item No. 1 – Open and Note Attendance

The John Day City Council meeting opened at 7:00 p.m. Mayor Ron Lundbom noted that all Councilors were present.

Agenda Item No. 2 – Approval of City Council Minutes of September 9, 2014

The minutes of the September 9, 2014 adjourned meeting were included in the agenda packets and were presented for the Council's approval.

Councilor Don Caldwell made a motion that the minutes of September 9, 2014 be approved as presented; Councilor Steve Schuette seconded the motion. The motion passed unanimously.

Agenda Item No. 3 - Appearance of Interested Citizens

Mayor Ron Lundbom welcomed those in attendance and asked everyone to please sign in. He asked if there were any additional items that anyone would like to add to the agenda. There were none presented.

Agenda Item No. 4 – Presentation of Employee Recognition Certificate

Mayor Lundbom presented Police Chief Richard Gray an employee recognition certificate for 10 years of dedicated service to the City of John Day and the John Day Police Department.

Agenda Item No. 5 – Discuss for Adoption Ordinance No. 14-162-03, an Ordinance of the City of John Day Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products

City Manager Gray gave the background regarding the development of Ordinance No. 14-162-03. On October 2, 2014 she forwarded an electronic message from City Attorney Jeremy Green to the John Day City Council regarding Measure 91- Local Marijuana Taxing Ordinance. Measure 91 (known as the Oregon Legalized Marijuana Initiative and also as the Control, Regulation, and Taxation of marijuana and Industrial Hemp Act of 2014) is on the November 4, 2014 statewide ballot. The following consists of a few initiative highlights:

- The initiative legalizes recreational marijuana for persons age 21 and older, allowing possession of up to eight ounces of “dried” marijuana and up to four marijuana plants.
- The initiative permits the manufacture and sale of marijuana subject to state licensing, regulation, and taxation.
- OLCC will be tasked with regulating marijuana sales.
- According to Section 42, the state will have the exclusive right to tax marijuana. Section 58 provides that the provisions of the measure supersede and repeal inconsistent municipal charters and ordinances.
- Section 84 provides that the measure will take effect 30 days after it is approved by the voters.

City Attorney Green noted there had been significant discussion among municipal attorneys concerning whether cities should impose their own local tax on marijuana. Mr. Green cited a few cities that had recently presented this issue to their councils; some cities decided to impose a tax while other cities have decided not to impose a tax.

City Attorney Green stated each city will have to decide for itself whether to enact a local tax. He explained the time to do so is now; if the measure passes, Section 42 will prohibit municipalities from enacting a local tax ordinance (which may or may not withstand legal scrutiny). City Attorney Green stated if we are interested in pursuing the taxing ordinance, prudence suggests that the ordinance be adopted this month (before the November 4th general election).

Upon receiving the Council’s comments; it was the general consensus of the John Day City Council to pursue enacting a local marijuana tax and it was decided to present a draft template for the Marijuana Tax Ordinance at our October 14, 2014 for council discussion. However, due to a lack of a quorum the October 14, 2014 John Day City Council meeting was canceled.

On October 8, 2014 City Manager Gray forwarded City Attorney Jeremy Green’s draft template for the Marijuana Tax Ordinance and Marijuana Tax Resolution via email to the John Day City Council for the Council’s review and comments. At that time City Manager Gray requested the Council to please review the materials Jeremy had prepared and to please send your comments to her and only to her and not to discuss this issue with their fellow city councilors. Once the comments were received, she would compile the information with City Attorney Jeremy Green and present a final document at the October 28, 2014 council meeting.

On October 13, 2014 City Attorney Jeremy Green sent a memorandum concerning Measure 91 and local marijuana tax legislation which was forwarded directly to the John Day City Council. A copy of the memorandum was included in the council packets.

On October 20, 2014, the City of John Day’s Marijuana Tax Ordinance and accompanying resolution was forwarded to the John Day City Council. Based upon the City Council’s comments, the resolution establishes a tax rate for medical marijuana at 5% of the gross taxable sale amount paid to the seller of marijuana and/or marijuana infused products by a registry identification cardholder. It also establishes a tax rate of 10% of the gross taxable sale amount paid to the seller of marijuana and/or marijuana-infused products by any person who is not purchasing marijuana under the Oregon Medical Marijuana Program.

City Manager Gray asked if anyone had any questions regarding the Ordinance. Councilor Steve Schuette had concerns taxing medical marijuana when the owners of the dispensaries were not suppose to be making a profit and only getting back the money it costs them to make it. Councilor Donn Willey asked if there was provision in the ordinance that would allow the Council to increase tax in the future. City Manager Gray stated the ordinance allows the tax rate to be set by resolution of the Council; the amount of tax will be based on the seller’s gross taxable sales and will be established from time to time by resolution of the city council.

Councilor Steve Schuette moved to allow Mayor Lundbom read Ordinance No. 14-162-03 by title only. Councilor Don Caldwell seconded the motion, the motion passed unanimously.

Mayor Lundbom read Ordinance No. 14-162-03 by title only as follows:

Ordinance 14-162-03, an ordinance of the City of John Day establishing a tax on the sale of marijuana and marijuana-infused products.

Councilor Steve Schuette moved to adopt Ordinance No. 14-162-03. Councilor Don Caldwell seconded the motion, the motion passed unanimously by a vote of 5 for and 0 against.

Agenda Item No. 6 – Discuss for Adoption Resolution No. 14-730-16, a Resolution of the John Day City Council Establishing Tax Rates for the Sale of Marijuana and Marijuana-Infused Products within the City of John Day

City Manager Gray stated Resolution No. 14-730-16 is a resolution to establish tax rates for the sale of marijuana and marijuana-infused products within the City of John Day as authorized by Ordinance No. 14-162-03; specifically Section 4. Tax Imposed which states “There is hereby levied and will be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined under this Ordinance. The amount of tax will be based on the seller’s gross taxable sales and will be established from time to time by resolution of the city council.”

The two sections of Resolution No. 14-730-16 that establishes the tax rates are as follows:

2. Pursuant to Section 4 of the Ordinance, the City Council establishes a tax rate of five percent (5%) of the gross taxable sale amount paid to the seller of marijuana and/or marijuana-infused products by a registry identification cardholder.

3. Pursuant to Section 4 of the Ordinance, the City Council establishes a tax rate of ten percent (10%) of the gross taxable sale amount paid to the seller of marijuana and/or marijuana-infused products by any person who is not purchasing marijuana under the Oregon Medical Marijuana Program.

The above percentages were established based upon the City Councilor's comments after reviewing the materials sent by City Attorney Jeremy Green. As of October 13, 2014, 19 Oregon cities have adopted local marijuana tax legislation (ordinances). As set forth in Exhibit B of City Attorney Jeremy Green's memorandum dated October 13, 2014; most of these cities have imposed a tax of 10% on recreational marijuana and 0% or 5% tax on medical marijuana. City Attorney Jeremy Green recommended the John Day City Council consider following the statewide local marijuana tax data.

Councilor Steve Schuette asked if this tax could include the bong and pipes that they sell. City Manager Gray stated she didn't think so; however, she would ask City Attorney Jeremy Green and get back to him.

Councilor Steve Schuette moved to adopt Resolution No. 14-730-16. Councilor Donn Willey seconded the motion, the passed unanimously.

Agenda Item No. 7 – Discuss for Adoption Resolution No. 14-731-17, a Resolution to Declare Account Uncollectible and Take off the Books as Receivable

City Manager Gray explained that Resolution No. 14-731-17 is a resolution to declare an account uncollectible and take it off the books as a receivable and turns it over to the collection agency. She explained this account was a renter and that the account was opened prior to updating our Water Use Regulations Ordinance.

Councilor Donn Willey moved to adopt Resolution No. 14-731-17. Councilor Don Caldwell seconded the motion, the motion passed unanimously.

Agenda Item No. 8 – Review and Award Contract for Geotechnical Services for the John Day Fire Station Replacement Project

City Manager Gray stated the City of John Day is seeking the professional services of an experienced geotechnical firm to provide soils investigations and resulting recommendations required to successfully complete all phases for the John Day Fire Station Replacement Project, in accordance with the City of John Day and Grant County requirements.

The City of John Day Public Contracts Regulations under 1-13-8 B; Public Improvement Contract, subsection 1(b) Non-transportation Public Improvements Up To One Hundred Thousand Dollars may be awarded using an informal solicitation for quotes. In order to expedite the process, it was decided to send out the RFP as soon as possible. Once proposals were received and reviewed; staff would bring a recommendation to the City Council for review and award the contract.

On October 2, 2014 City Manager Gray electronically sent the attached RFP to nine qualified firms seeking geotechnical services for the John Day Fire Station Replacement Project. The original intent was to have the proposals received by October 9, 2014 and reviewed prior to the October 14, 2014 city council meeting in order for the John Day City Council to award the contract. However, due to a lack of a quorum the October 14, 2014 council meeting was canceled.

On October 10, 2014 City Manager Gray electronically sent out a revised RFP to the same nine qualified firms extending the deadline to October 22, 2014 and (in an effort to reduce costs) informed the firms that with 48 hour notice, the City of John Day will provide locates and be available to excavate test pits. It was noted that the revised RFP replaced and superseded the original RFP that was previously sent out on October 2, 2014.

The City of John Day received proposals for Geotechnical Services from the following four firms:

- Carlson Geotechnical (CGT), Bend, OR
- Materials Testing & Inspection (MTI), Boise, ID
- GN Northern, Inc., Hermiston, OR
- Professional Service Industries, Inc. (PSI)

City Manager Gray presented a spreadsheet detailing the results of the proposals that were received as follows:

<u>Name/Address</u>	<u>Not-to-Exceed (NTE)</u> <u>A. i, ii, iii, iv</u>	<u>Construction Observation & Testing</u> <u>B.</u>
<u>GN Northern, Inc.</u> 722 N. 16th Ave, Suite 31 Yakima, WA 98902 Branch Office in Hermiston, OR	\$4,800	Unable to provide an NTE budget for construction observation and testing at this time. After design plans and a construction schedule is developed by the general contractor, they will provide a NTE budget. They included a unit fee schedule for testing and special inspections services.
<u>Materials Testing & Inspection (MTI)</u> Headquarters located in Boise, ID Regional location in Ontario, OR	\$5,800	same as above
<u>Carlson Geotechnical</u> 7185 SW Sandburg Street, Suite 110 Tigard, OR 97223	\$10,450	\$9,803.15
<u>Professional Service Industries (PSI)</u> 6032 N. Cutter Circle #480	\$11,135	\$4,830

Portland, OR 97217

Public Works Director David Holland reviewed the proposals with Engineer Joe Hitz; Joe discussed the proposals with Pinnacle Architect. Dave and Joe recommended the City go with the low bidder; Pinnacle Architect said both GN Northern and Materials Testing & Inspection are good firms and they would work with either firm. Public Works Director David Holland noted that all the firm's unit fee schedule for testing and special inspection services which were pretty much in line with the other proposals.

Councilor Steve Schuette moved to allow City Manager Gray and City Attorney Jeremy Green to enter into contract/negotiations for Geotechnical Services with GN Northern, Inc. Councilor Donn Willey seconded the motion, the motion passed unanimously.

Agenda Item No. 9 – Discuss Request from Timber Truckers Parade Committee

City Manager Gray stated each year the Timber Truckers Parade Committee asks for a donation from the City of John Day for their Timber Truckers Light Parade. This year's event is scheduled for Saturday, December 13, 2014.

City Manager Gray stated in previous year's the City donated \$100 for the Driver's Award. It is a good family event and recommended the Council donate \$100 again this year.

Councilor Donn Willey moved to donate \$100 to the Timber Truckers Light Parade. Councilor Don Caldwell seconded the motion, the motion passed unanimously.

Agenda Item No. 10 – Discuss Rescheduling the November 11, 2014 Regular City Council Meeting because of Veterans Day Holiday; Canceling the November 25, 2014 Council Meeting Because of the Thanksgiving Holiday and the December 23, 2014 Meeting because of the Christmas Holiday

City Manager Gray stated the next regular meeting of the John Day City Council is scheduled on Tuesday, November 11, 2014 which is also Veterans Day, an official city holiday. She asked the City Council if they would consider rescheduling the date of the Council meeting to Tuesday, November 18, 2014. City Manager Gray also stated that it has been the past practice of the John Day City Council to cancel the 2nd council meeting of the month in November and December due to the Thanksgiving and Christmas Holidays.

It was the consensus of the City Council to move the November 11, 2014 council meeting to November 18, 2014 due to the Veterans Day Holiday; and to cancel the November 25, 2014 and the December 23, 2014 council meetings due to the holiday season.

Agenda Item No. 11 – Discuss Quote to Bore Crossing for new Fire Station

Public Works Director David Holland informed the Council that he has been working with Joe Hitz on utilities for the new fire station. One of the things that came up was where to run the power to the new fire station. As with the downtown street project, we are trying to eliminate as much overhead utility lines as we can and we would really like to go underground with the new fire station.

Dave informed the City Council that we have borers currently in town working on our street project. He said the City could potentially save money if we could use them to bore underground while they are here, thus savings the cost of mobilization. Dave presented an email with a quote from Jim DeSantis of DeSantis Directional Drilling (firm currently doing the boring for our street project). Dave stated he asked for a quote for power and telephone (OTEC, CenturyLink, and Oregon Telephone); the quote is to bore for five conduits to run under the highway (Hwy. 395/S. Canyon Blvd.) versus going overhead.

The quote was to bore and pull back 4-2", and 1-1.25" for power and telephone, approx. 80 lf crossing S. Canyon Blvd, at north end of property. The City provides entry and exit pits as required, pothole existing utilities to cross, pothole restoration, poly conduit, traffic control if needed and call in locates.

Due to the rocky ground conditions, they require a minimum payment of \$2,000. If they are successful it will be \$4,900, to pull back 4-2" and 1- 1.25" poly conduit.

Public Works Director Dave Holland informed the Council that he thought now is a good time to do this as it will save mobilization costs by doing it while they are in town. Once the conduit is pulled, we will bury the conduit and it will be there when we get ready to start the project. He has cleared it with OTEC, Oregon Telephone and CenturyLink; he has also worked with Joe Hitz on the project.

Councilor Donn Willey asked if he was going to have to take out part of the sidewalk on the west side to dig the hole for the bore. Dave responded that he would take out part of the sidewalk on the west side by the pole; it will not be replaced and will remain gravel because we will have to get back into that hole whenever the project begins next year.

Discussion continued on where to set the transformer, Fire Chief Ron Smith stated they are currently working on the design and they don't know where that would be at this time. City Manager Gray stated the City would be supplying the conduit; the cost for the conduit is \$344. Fire Chief Ron Smith stated the borers are here, move in and set up time always cost you more money. Councilor Donn Willey stated he thought it would be wise use of time and money. City Manager Gray noted since the bid is for under \$5,000, the City does not have to go out for competitive bid for this project.

Mayor Lundbom noted in the quote, he states to give it our best effort at trying to get across the street. Mayor Lundbom asked if that was going to be a problem getting across. Public Works Director Dave Holland noted that the borers were having problems getting across in our street project, running into big rocks etc.; however, he didn't think they would have any issues at this location as he has already dug the holes for him and he knows what is underneath the street.

Councilor Donn Willey moved to accept the quote with DeSantis Directional Drilling, Inc. (DDD) to bore crossing for the new fire station. Councilor Steve Schuette seconded the motion, the motion passed unanimously.

Agenda Item No. 12 – Other Business and Upcoming Meetings

1. LOC Bulletins were given to the City Council.
2. Letter from Clay Johnson was included in the council packets.
3. Electronic messages from Yvette Rhodes of the Ford Family Foundation were in included in the council packets. It was noted that the City of John Day has made it to Stage 2 of their application

process for our community room grant application (\$200,000 request); the next step is to assign our request with a meeting of their board in February 2015 and a site visit.

4. Public Works Director Dave Holland updated the City Council regarding the construction of the new sand shed.
5. City Manager Gray stated the request for proposals (RFP) for the Construction Manager/General Contractor (CM/GC) for the new fire station project have been sent out. Proposals are due by November 19, 2014 with interviews to be scheduled on Dec. 1, 2014. We anticipate breaking ground March 2015 with construction completed by October 2015.
6. Fire Chief Ron Smith stated the ESD fire was the last big fire they had. He picked up a military surplus 6x6 5 ton; they are going to build a brush rig for the Rural Fire Department. He said burn season is open, with the weather we've had he is comfortable if people want to burn in the afternoon. He reminded the council that people still need to call in and have a burn permit.
7. City Manager Gray stated she has been contacted by Judy Krutsinger; Judy and Ansel want to donate a parcel of land below the airport reservoir to the City of John Day. The parcel is approximately 4+ acres of land, the City's waterline runs through it up to the reservoir. Last winter the waterline broke and caused some erosion issues, they said they would like to donate the land to the City. City Manager Gray stated she ordered a Preliminary Title Report; the city attorney has reviewed all the easements and exceptions included in the report and has no concerns with the property and we are comfortable that the title is clean. City Attorney Jeremy Green stated we would need a donation agreement, a donation deed, and a council resolution approving those documents. The Krutsinger's would like to have this transaction completed before the end of the year; she stated the City would pay for the preparation of the documents. Councilor Donn Willey asked what is the City's advantage for having that piece of land. Public Works Director Holland stated that lot is directly below our reservoir; high pressure water lines caused some pretty good erosion with the waterline break last winter. If someone had purchased that lot and built a house, the City would have been responsible for the damage to their property. Having ownership of the property could keep us out of some potential future liability issues. He also stated a lot of our utilities run through that lot, by having ownership of the property we won't have to worry about staying within our easement while doing maintenance work. In the long run it will benefit the City. It was the consensus of the Council to proceed with the transaction with Judy and Ansel Krutsinger.

Adjourn

There being no further business before the Council, Councilor Donn Willey made a motion to adjourn the meeting. Councilor Don Caldwell seconded the motion and the motion passed unanimously. The meeting was adjourned at 7:37 p.m.

Respectfully Submitted:

Peggy Gray
City Manager

ACCEPTED BY THE CITY COUNCIL, NOVEMBER 18, 2014.

Mayor Ron Lundbom