

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

July 14, 2015

Adjourned Meeting

COUNCILORS PRESENT:

Ron Lundbom, Mayor
Steve Schuette, Council President
Louis Provencher, Councilor
Donn Willey, Councilor
Paul Smith, Councilor
Gregg Haberly, Councilor
Lisa Weigum, Councilor

COUNCILORS ABSENT:

STAFF PRESENT:

Peggy Gray, City Manager
Lance Woodcock, Public Works Director
Richard Gray, Police Chief
Valerie Luttrell, Dispatch Manager

GUESTS PRESENT:

Rob Raschio, 106 SW 4th Ave, 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 June 23, 2015

The minutes of the June 23, 2015 adjourned meeting were included in the agenda packets and were presented for the Council's approval.

Councilor Donn Willey made a motion to approve the minutes of June 23, 2015 as presented. Councilor Paul Smith seconded the motion, the motion passed unanimously.

Agenda Item No. 3 - Appearance of Interested Citizens

Mayor Lundbom welcomed those in attendance and asked everyone to please sign in. Mayor Lundbom introduced Rob Raschio, who resides at 106 SW 4th Ave., John Day. Mr. Raschio stated the reason he

was here was because his house was affected by the vapor fumes issue that was handled by the EPA and now by the Oregon DEQ. Mr. Raschio wanted to express his concern to the City Council over the amount of notification that the citizens were given about this vapor plume and it's progression through our community. His understanding in talking to people that the USDA building was affected back in February this year with a very heavy odor that was so strong that people were having migraines. They called in a consultant and vented that building. The plume cloud then started to move downstream from the USDA building. His wife and he started smelling the odor in late April, Mr. Raschio noted that he has a seven year old and a two year old child and they were being exposed to the fumes. They initially thought it might be their oil furnace and called the local furnace guy. Mr. Raschio stated the furnace guy told him that there have been complaints from different properties up from them for an extended period of time starting in February. Mr. Raschio stated that was never communicated to them and that this moving plume could be moving into their house and invading their space for a better part of a month and a half. Then the EPA and the DEQ came out and then they learned what the chemicals were and they learned how to handle the situation in their home.

Mr. Raschio stated he was concerned there were members of the city, county and federal government that knew about this plume and didn't identify it to the community so they could be aware of its impending nature and be ready to address it immediately to make sure that our children were safe. He was just here to ask City Council to consider its protocols regarding these types of environmental situations and to make sure that the public knows as quickly as it can for potential dangers to its children and its properties.

Councilor Gregg Haberly stated his wife's house was probably one of the most effected houses in that area and he didn't think that anybody really knew what was going on because they looked into some issues and couldn't prove anything was up. He stated he was going to stick up for the government agencies in this situation. Mr. Raschio stated he said from the people he spoke to and the furnace guy that it was clear that this was affecting people's properties and it was moving from the USDA building into private residences. Mr. Raschio also stated that he was the first person to call the press and to tell them that it was happening; ultimately Scotta McCallister wrote an article (based on his information) in the local newspaper that spurred the EPA coming out and further investigation. He didn't think that government reacted quickly enough and efficiently enough to take care of the immediate response to protect the citizens of this community.

Public Works Director Lance Woodcock stated Mr. Raschio called the City about the odors. PWD Woodcock stated he and Public Works Foreman Monte Legg went to his residence and it wasn't in our sewers, we could smell it around there but the City can't control what is in the ground.

City Manager Gray stated the first she heard about it was when Rob called dispatch to report the odor. The next day the City contacted USDA's contractor and met with them to discuss the issue. City Manager Gray stated she contacted our insurance company and our city attorney to discuss the issue. City Manager Gray stated our insurance company (CIS) informed us that this is not the city's responsibility as it is on private property and they would not cover the City in this situation; City Manager Gray also stated City Attorney Jeremy Green agreed with the insurance company and stated it was a state issue. City Manager Gray said the City started a conversation with Oregon DEQ who contacted the EPA and the EPA was here within 48 hours.

Dispatch Manager Valerie Luttrell confirmed that Mr. Raschio was the first person who contacted the City and that the first we knew anything about the situation.

Mayor Lundbom asked Mr. Raschio, what government person knew about it. Mr. Raschio stated that is just what he heard through people he has spoken with and the Undersheriff, he stated he did call the City

but didn't get a response back so he asked the Undersheriff take a look at his house. City Manager Gray explained we were trying to figure out what to do as and apologized for not getting back to him sooner.

Mr. Raschio stated he appreciated the work the EPA did and the Oregon DEQ is continuing doing. He just thought the City should have known the plume at the USDA building would be moving and he would have like to have known in advance that it was coming at him so that he could have taken better care of his children. Mr. Raschio stated he felt a certain level of discomfort with the fact that his 7 year old and 2 year old were exposed to it as long as they were before they knew what it was and he felt it was appropriate for him to come and tell the City Council about it.

Mayor Lundbom thanked Mr. Raschio for coming.

Agenda Item No. 4 – Discuss for Signature Funding Agreement with Trust Management Services, LLC

City Manager Gray stated the City of John Day applied for and received a Trust Management Services, LLC grant of \$9,170 to purchase and install meeting room equipment in the new fire station's community room.

The specific equipment to be purchased includes 12 eight-foot banquet tables, 96 folding metal chairs, storage carts for tables and chairs, one professional-quality Epson projector, one media cart with built-in outlet and 20-foot power cable, and one 150 inch ceiling-mounted screen. However, City Manager Gray stated when she met with Mary Bird of Trust Management Services; Mary stated that if the City wants to substitute any items (including kitchen appliances) we could, we would have to send them an itemized invoice showing our purchase.

Councilor Louis Provencher had concerns that about cost overruns what if the community room can't be built because of expenses. City Manager Gray stated the community room is included in the base bid, so it will be built.

Mayor Lundbom asked for a motion.

Councilor Donn Willey moved to allow Mayor Lundbom to sign the Funding Agreement in the amount of \$9,170 with Trust Management Services. Councilor Steve Schuette seconded the motion, the motion passed unanimously.

Agenda Item No. 5 – Discuss HB 3400 – Measure 91 Local Opt Out Option

City Manager Gray stated earlier that day she sent an email to all of the City Councilors explaining HB 3400 that was adopted by Governor Kate Brown written by City Attorney Jeremy Green as follows:

Summary

In 2014, Oregon voters approved Ballot Measure 91. Ballot Measure 91 permits the recreational sale and use of marijuana. On June 30, 2015, Governor Kate Brown signed HB 3400 into law. HB 3400 makes a few significant modifications to Measure 91. HB 3400 took effect upon its passage (June 30, 2015).

1. HB 3400 requires that the Oregon Liquor Control Commission create a seed-to-sale tracking system for recreational marijuana. HB 3400 sets limits on the size of recreational grow site canopies.

2. Under HB 3400, the Oregon Health Authority must create a database to track the production, processing, and transfer of medical marijuana. Further, the bill limits the number of plants allowable under the OMMA at individual grow sites within city limits zoned for residential use and at all other sites. The bill also establishes standards for testing laboratories and requires the OHA and OLCC to create package and labeling regulations.

3. Importantly for cities, HB 3400 contains a “local option” that permits cities to prohibit marijuana operations. Specifically, a city council located in a county in which no less than 55 percent of votes cast were in opposition to Measure 91 may adopt an ordinance that prohibits the establishment of one or more of the following in the area subject to the city’s jurisdiction: (a) marijuana processing sites; (b) medical marijuana dispensaries; (c) marijuana producers; (d) marijuana processors; (e) marijuana wholesalers; and/or (f) marijuana retailers. This “opt out ordinance” must be adopted no later than 180 days after the effective date of the Act - that is by December 27, 2015 (180 days from June 30, 2015).

4. Exemptions from the local option prohibition are provided for medical marijuana dispensaries and processing sites if certain conditions are satisfied. In particular, the following dispensaries/processing sites are exempt from the local option prohibition:

a. Any medical marijuana dispensary or processing site that (a) was registered with the appropriate authority on or before the adoption of the local option prohibition ordinance, and (b) successfully completed the applicable land use application process.

b. Any dispensary that has registered or applied to be registered prior to July 1, 2015 and has successfully completed the applicable land use application process (this exemption does not apply if OHA has revoked the dispensary’s registration).

c. Any processing site if (a) the site’s PRF (person responsible for medical marijuana facility) or individual applying for PRF status was registered on or before July 1, 2015, and (b) such person has completed the applicable land use application process (this exemption does not apply if OHA has revoked the processing site’s registration).

5. The bill provides for a referral process pursuant to which cities may refer an opt-out measure to their electors at the next statewide general election. There is no 180-day requirement for the governing body to adopt the ordinance to refer to the electors. Similar to the opt out ordinance, this ordinance may seek to prohibit any of the following: (a) marijuana processing sites; (b) medical marijuana dispensaries; (c) marijuana producers; (d) marijuana processors; (e) marijuana wholesalers; and/or (f) marijuana retailers. Please note that the exemptions described above for medical marijuana processors and processing sites (under paragraph 4 above) apply if the identified conditions are satisfied.

6. Although the bill vests the sole authority to tax or impose fees on medical or recreational marijuana with the Legislative Assembly, it does provide that cities may establish a tax on marijuana sold by retailers. However, the tax must be approved by the electors of the city at the next statewide election and may not exceed 3%. If a city imposes a prohibition on marijuana operations, it may not impose a tax or fee on marijuana production or processing or the sale of marijuana products.

7. HB 3400 allows a city council to adopt reasonable regulations on growers, processors, wholesalers, and retailers. The regulations may include the following: (a) conditions concerning the manner in which a marijuana producer, processor, or wholesaler is licensed; (b) limitations on the hours during which a licensed retailer may operate; (c) conditions concerning the manner in which a retailer may sell marijuana items; (d) requirements relating to the public’s access to marijuana businesses; and/or (e) limitations on where a marijuana business may be located. These regulations must be consistent with the city’s comprehensive plan, zoning ordinances, and public health and safety laws.

Action Items

If a city elects to either impose a prohibition on marijuana businesses or impose a tax on marijuana sold by retailers it must follow certain requirements. The respective requirements are set forth below:

Local Option for Qualifying Cities

1. A “qualifying city” means a city located in a county in which not less than 55 percent of votes cast in the county were in opposition to Measure 91.
2. The council of a “qualifying city” may adopt an ordinance prohibiting marijuana operations by December 27, 2015.
3. If the council adopts an ordinance prohibiting marijuana operations, it must provide the text of the ordinance to (a) OHA if the ordinance concerns a medical marijuana dispensary or processing site, or (b) OLCC if the ordinance concerns a premises for which a license has been issued under Measure 91.

Local Option by Referral to Electors

1. A council may adopt an ordinance prohibiting marijuana operations to be referred to the electors.
2. If the council adopts an ordinance prohibiting marijuana operations, it must provide the text of the ordinance to (a) OHA if the ordinance concerns a medical marijuana dispensary or processing site, or (b) OLCC if the ordinance concerns a premises for which a license has been issued under Measure 91.
3. The measure will be submitted to the electors of the city for approval at the next statewide general election (November 8, 2016).

Local Option Tax

1. A council may adopt an ordinance to be referred to the electors that imposes a tax or fee on the sale of marijuana items that are sold within the city’s jurisdiction.
2. If the council adopts such an ordinance, the council will refer the measure to the electors for approval at the statewide general election on November 8, 2016.
3. The ordinance may not impose a tax or fee greater than 3%.

City Manager Gray informed the Council that Grant County voted in opposition to Measure 91 by 64.8% as such, the City of John Day may adopt an ordinance that prohibits the establishment of one or more of the following in the area subject to the city’s jurisdiction: (a) marijuana processing sites; (b) medical

marijuana dispensaries; (c) marijuana producers; (d) marijuana processors; (e) marijuana wholesalers; and/or (f) marijuana retailers. This “opt out ordinance” must be adopted no later than 180 days after the effective date of the Act - that is by December 27, 2015 (180 days from June 30, 2015).

City Manager Gray confirmed with the City Council that as of July 1, 2015 the City has no licensed medical marijuana dispensary or processing site located within the city limits of John Day.

Councilor Louis Provencher stated the City could go out for a vote of the public if they chose to.

Councilor Donn Willey asked if HB 3400 protects the City in court; City Manager Gray stated yes because it’s legislation.

Councilor Paul Smith asked if there has been any opposition to HB 3400. Councilor Lisa Weigum stated during the drafting of HB 3400 in the Legislative session there was a lot of deliberation and opposition. Councilor Paul Smith asked about the medical marijuana time, place and manner regulations ordinance, would that be repealed if the City chose to opt out and could the City just opt out on just the recreational marijuana and keep the medical marijuana TPM ordinance.

City Manager Gray responded that the City could opt out on both medical and recreational or they could opt out on just recreational and keep the medical marijuana TPM in place. She informed the council that if they do opt out on both, the City would not receive any state tax revenue on marijuana.

Councilor Gregg Haberly asked about the amount of taxes that could be received by the City. City Manager Gray responded stating that City Attorney Jeremy Green stated he thought the tax for the City or John Day would be minimal; however, he suggested that the City might want him to research that further to see what the tax consequence could be prior to opting out.

Councilor Lisa Weigum stated the last discussion she heard about how the taxes were going to be distributed was by density so the more dispensaries you have the more you get back. She explained that for a rural community, even if we allow a recreational marijuana retail outlet here, it would be small. The more dispensaries a city has, the more taxes they will receive.

Councilor Louis Provencher asked if the State was looking at in the short-term allowing the medical marijuana dispensaries to sell recreational marijuana; Councilor Lisa Weigum stated that did pass starting October 1, 2015. Councilor Paul Smith stated the reason for that was to counter the black market.

Mayor Lundbom stated does it make sense to opt out now or wait and asked for the Councilor’s opinion. Councilor Provencher stated you don’t have to opt out of all six items, you can choose which ones you want to opt out of. He stated on medical marijuana, the council could continue with the TPM ordinance they have already adopted and opt out of the other five items.

City Manager Gray stated you can choose any or all the six items or you can refer it back to the voters but HB 3400 allows the Council to opt out by ordinance. She also said she believed the voters already had spoken. Councilor Weigum reminded the Council that since 1998 marijuana initiatives have been on the ballot and every time they have failed miserably in Grant County, consistently people voted against it including medicinal marijuana.

Mayor Lundbom asked each Councilor for their opinion. Councilor Weigum stated her vision for John Day does not include having a medical or retail dispensary in an area where tourists can see. Mayor Lundbom stated it’s here; we just don’t need to sell it. Councilor Haberly stated people would be shocked how much marijuana is here in John Day. Councilor Weigum responded stating that people can consume

it all they want; she did not think the City needs any facility selling it in any capacity - medicinal or not. Councilor Schuette agreed. Police Chief Richard Gray agreed, it is on the street. Councilor Provencher stated people can now grow it in their homes.

Councilor Schuette stated it was his understanding that Prairie City and Canyon City took no action on it. It's not like people can't get it if they want it.

Councilor Donn Willey stated he was in favor of opting out of both. Councilor Louis Provencher stated he was in favor of opting out of recreational only. Councilor Paul Smith was looking at the 3% tax that we could impose above the state that would come directly to the City. Councilor Weigum's concern was that dispensaries now have the green light to sell concentrates and that is a whole different ballgame. They're 90% THC, it's bad news and that's the stuff that is on the market for them to sell. Councilor Weigum stated we're talking about engineered stuff. The way you get concentrates is similar to how you cook meth and there has been an increase of explosions in Colorado and Washington. Councilor Weigum stated this is just some stuff that she personally does not want to deal with it in our community.

Mayor Lundbom stated he is thinking about opting out on both. With our time, place and manner restrictions we really don't have a place to sell it anyway. He does not think we should open the door for it. Mayor Lundbom stated he heard that in Washington they netted 90 million dollars in profits. Councilor Weigum explained that Washington is taxing at every level, Oregon is taxing differently, Oregon is taxing the seed portion, she stated Oregon is at the lowest taxing level and they did that on purpose so that the growers, retailers and processors can make money. Mayor Lundbom stated that number also included sales tax.

Mayor Lundbom stated he hears that the consensus is to start the process to opt out; however, he wanted to wait to hear what the other cities are doing and maybe we can split the cost of the ordinance with the other cities as we have done in the past.

Councilor Schuette stated he has a problem with waiting, what if a person comes in and applies for a medical marijuana dispensary. Do we have to process that application if we haven't adopted an opt out ordinance at the time of the application. City Manager Gray stated she would ask City Attorney Jeremy Green that question and get back to the Council.

Councilor Steve Schuette moved to opt out on both medical and recreational marijuana in the City of John Day and move forward with an opt out ordinance (repealing the TPM medical marijuana ordinance). Councilor Donn Willey seconded the motion. The motion passed by a vote of 6 – 1.

Agenda Item No. 6 – Other Business and Upcoming Meetings

1. LOC Bulletins were included in the Council packets.
2. A training opportunity for Water & Wastewater Infrastructure in Klamath Falls and Newport was discussed. Public Works Director Lance Woodcock informed the Council that the City of Canby is replacing their bar screens at their wastewater treatment plant and said they would give us their old bar screen (1995) and it should be here this week. PWD Woodcock stated we will have to build a structure for it but it should be minimal and we will need to have some engineering done.

3. Mayor Lundbom informed the Council that the League of Oregon Cities annual conference will be held in Bend this year. He stated he was going and invited any other Councilors that wanted to attend.
4. Mayor Lundbom stated we should hear about the status of our grant application with Meyer Memorial Trust next week. City Manager Gray stated she would let the Council know as soon as she hears from them.
5. Dispatch Manager Valerie Luttrell gave a report on the activities of her department as follows:
Dispatch Fiscal Year 2014-2015
 - Police 5,449
 - Ambulance 454
 - Fire 400
 - Other 853 (other mental health, DHS, Public Works, ODFW)
 - Total calls 7,156

Police Chief Richard Gray gave a report on the activities of his department as follows:

- JDPD Fiscal Year 2014-2015
- Total Fiscal Calls 2,424
 - Cases 349
 - Arrests & CLC 105
 - Citations 92
 - Warnings 90

Police Chief Gray reported that out of the 2,424 calls, 449 were in Prairie City, resulting in 9 arrests, 34 citations and 35 warnings. He also informed the Council that Officer Tyler Smith will graduate from the DPSST Academy on Friday, July 17th.

6. City Manager Gray presented the John Day Fire Station base bid estimates to the City Council and updated the Council on the subcontractor bids that were due July 2nd (extended from the June 30th deadline by addendum). City Manager Gray stated she, Mayor Lundbom and Public Works Director Lance Woodcock met with Jeff Deswert of Kirby Nagelhout to discuss the bid process on Friday, July 10th. Mayor Lundbom stated he had all his questions answered and was satisfied with the subcontractor bid process. City Manager Gray stated the base bid estimate (with no alternatives) came in at \$1,507,837. Another meeting to discuss alternatives was scheduled for the next day.
7. Mayor Lundbom updated the Council on the Oregon DEQ meeting held on Friday, July 10, 2015 regarding the vapor issue. Fact Sheet #5 was presented to the Council.
8. Mayor Lundbom stated he received a complaint about the sidewalk approaches in front of the 123, Kings and Chester's Thriftway. Public Works Director Lance Woodcock stated he would check into it.
9. Mayor Lundbom informed the Council that he will be attending the Mayor's Conference in Cottage Grove at the end of the month.

Adjourn

There being no further business before the Council, Councilor Donn Willey made a motion to adjourn the meeting. Councilor Steve Schuette seconded the motion and the motion passed unanimously. The meeting was adjourned at 8:20 p.m.

Respectfully Submitted:

Peggy Gray
City Manager

ACCEPTED BY THE CITY COUNCIL, JULY 28, 2015

Mayor Ron Lundbom