

**CITY OF HUBBARD
CITY COUNCIL MEETING MINUTES
JULY 12, 2016**

CALL TO ORDER: The Hubbard City Council meeting was called to order by Mayor Jim Yonally at 6:30 p.m. at the Hubbard City Hall, 3720 2nd Street, Hubbard.

FLAG SALUTE: Mayor Jim Yonally led the group in reciting the Pledge of Allegiance.

City Council Present: Jim Yonally, Matt Kennedy, Angie Wheatcroft, Shannon Schmidt, Barbara Ruiz.

Staff Present: Director of Administration/City Recorder Vickie Nogle, MMC; Public Works Superintendent Jaime Estrada; Senior Accounting Specialist Kari Kurtz; City Attorney Ashley Driscoll, Berry Elsner & Hammond; City Planner Renata Wakeley, MWVCOG.

Mayor Jim Yonally added item 9(C) Approval of Amendment to June 29, 1999, Agreement for Professional Services between the City of Hubbard and AKS Engineering and Forestry.

WORK SESSION/OPEN HOUSE

DRAFT AMENDMENTS OF BUSINESS LICENSES AND REGULATIONS.

Mayor Jim Yonally gave a brief reason of why the City Council is looking at amending the current Business Registration Code. J. Yonally stated a business owner registered with the City as doing one kind of business, but the City was questioned as to the exact type of business at that particular location as it may not have been in compliance. J. Yonally said the City Council looked at surrounding and comparable cities regulations and have mostly used the City of Woodburn's language in the proposed draft amendment. J. Yonally continued this is a work session to make any other amendments to the proposal.

Art Graham, Morgenthaler & Graham, 3122 Schmidt Lane, Hubbard, stated he is confused why the City wants to amend the current Code and wants more of an explanation. A. Graham feels some of the changes are open ended.

City Councilor Angie Wheatcroft said there is a business across the street that put down on their application they were doing one thing but in fact what they were doing was not legal. A. Wheatcroft stated the problem the City has is the Police are unable to do enforcement because the City has a business registration and not a business licensing code. A. Wheatcroft said if there is a business in town doing something illegal, the Police need to be able to enforce those types of situations.

A. Graham said it looks like a new executive function for the Director of Admin/City Recorder was created. A. Graham stated he believes the proposed draft that the new executive function allows that person the power to create without limited oversight new and/or unknown regulations at any time.

City Councilor Angie Wheatcroft said the City Council discussed that at the last meeting, in the proposed draft there are appeal processes that would come before the City Council.

A. Graham stated in regard to the appeal process, it only allows the business owner to appeal to the City Council. A. Graham said it exists outside of the Courts of law which limit the business owner's legal regress. A. Graham stated these kinds of amendments make him feel uncomfortable. A. Graham read Sections 5.01.094(2) and (3) of the proposed draft amendment. A. Graham said to him this means there is no further regress for business owners as you are unable to go to court and say you disagree with the determination. A. Graham referred to section 5.01.050(1) of the proposed draft amendment, in regard to conducting an investigation of the applicants request, including permission to enter property, as he feels this is a problem in terms of the investigation because it can be conducted by anyone without regard of qualification or experience, it's open ended. A. Graham continued there is an additional problem with investigation and entering the building; A Graham referred to U.S. Supreme Court Case "*See vs. Seattle (1967);*" A. Graham stated you must have reasonable cause and you must have a warrant to enter the building as well as probable cause to conduct an investigation. A. Graham said if the City was to create a board that consists of members of the business community and City Council to create rules and regulations, then there would be full cooperation of the business community. A. Graham said a less limited appeals process and an evidentiary hearing makes it an open forum for everyone.

Dan Estes, 2862 Walnut Court, Hubbard, stated he is in support of the proposed ordinance and understands why the City is looking at amending the Code. D. Estes said he knows the City had no recourse in regard to the two businesses that disregarded the regulations and laws. D. Estes stated he feels the Police should be able to address these kinds of circumstances and supports the intention of the draft proposed amended ordinance. D. Estes continued to say, however, he completely supports what Arthur Graham said previously. D. Estes stated businesses need certainty but they also need to abide by the laws and have proper recourse. D. Estes continued to say it is unreasonable to expect a business to surrender constitutional rights. D. Estes said A. Graham brought up some good points and hopes the City Council will consider them.

Merle Stutzman, Voget Meats, 2930 E Street, Hubbard, stated he shares a lot of the same concerns as previously mentioned. M. Stutzman said he is bothered by the fact a business in town violated the law in an egregious manner and law enforcement officers were unable to do anything because that business was not licensed. M. Stutzman continued to say there are codes and laws on the books that have enforcement built into them and if violated, they can be enforced. M. Stutzman said his concern with the proposed draft ordinance is there is a major change from assisting fire and police to regulating business. M. Stutzman reiterated his concerns with the proposed draft ordinance are as mentioned previously, inspection, investigation, and rights of privacy.

(City Councilor Barb Ruiz arrived at 6:50 p.m.)

City Councilor Angie Wheatcroft stated this has been an ongoing problem the City was working on but the Police was unable to do anything.

Mayor Jim Yonally stated new State Marijuana laws have come out as the District Attorney's Office was not going to prosecute until the State has modifications in the law to better deal with

the issues. J. Yonally said the City would like to have something at the local level in place so there will be the ability to enforce the ones that are not complying.

M. Stutzman stated if it is an issue with marijuana; why not address that instead of regulating all of the businesses.

Mayor Jim Yonally said the City has also been working on the marijuana issue over the past several months. J. Yonally stated it is being referred to the voters if they want to allow it in the City.

City Councilor Angie Wheatcroft said the issue wasn't all about marijuana.

City Council Matt Kennedy said he wants to address the term "illegal." M. Kennedy stated the Police have the right, and are authorized in the State of Oregon, to arrest or prosecute illegal activity. M. Kennedy continued to say the activity in question is something that local people are not comfortable with, and the business in question, the business owner offered to come before the City Council and Planning Commission to discuss their operation. M. Kennedy stated if they are doing a criminal act, the Police can in-fact, get a warrant and arrest people for doing criminal activity. M. Kennedy said this is more of a local municipal code violation not a State wide law that is being broken. M. Kennedy stated it may be an illegal operation as determined by the local codes but not a breaking of the law and that is the limitation with the Police Department. M. Kennedy said the draft proposed Ordinance would give the Police more authority to regulate business rather than enforce the law. M. Kennedy said it gives the Police a tool to start doing more enforcement at the local level as they already have the authority to do criminal investigations.

City Attorney Ashley Driscoll stated she would like to do a full legal review as she hasn't had an opportunity to review the proposed draft Business Registration Ordinance. A. Driscoll continued to say what City Councilor Kennedy said is correct. A. Driscoll said the Police have all the powers to enforce the criminal laws but if you have laws over and above that which are part of your city Code, you need to have an enforcement mechanism within the city Code. A. Driscoll stated that is her understanding of what the City is trying to do with the draft proposed Business Registration Ordinance to add an enforcement mechanism and regulation on top of what the State laws require. A. Driscoll continued there are different ways to achieve this. One is business regulation and there are things we can talk about which would include risks and liabilities etc. and the city can also take a look at the nuisance code. To answer the question about the fourth amendment, the fourth amendment does apply; however, if you consent to enter such as applying for a building permit, then you are going to consent to have the City/County come look at your facility. A. Driscoll stated if you go through an abatement procedure you can usually obtain an administrative warrant if there is a substantial imminent violation of the City's Code if there is a substantial risk to the health and safety of the community. A. Driscoll said again she would like to review the proposed draft as it does appear to be similar to what other cities are using but it doesn't mean it is up to date in the law.

A. Graham wanted City Attorney Ashley Driscoll to review the U.S. Supreme Court Case "*See vs. Seattle (1967)*).

Mayor Jim Yonally agreed about the idea of having a Board that consists of the City Council members and Business Owner. J. Yonally said the proposed document talks about appealing to the City Council.

A. Driscoll stated the proposed appeal process is a pretty common appeal process when you talk about city Code violations. A. Driscoll continued to say just because you are having an evidentiary hearing in front of the City Council doesn't foreclose bringing a claim in Civil Court if you otherwise have a claim. A. Driscoll continued as the process would be very similar to a Land Use hearing where the City Council makes the final determination. A. Driscoll stated we can look at adding more concrete criteria which will be easier for the Council to apply if it does come to an appeal.

City Councilor Matt Kennedy stated he was involved in this process when there was a determination to adopt the Business Registration. M. Kennedy said he is not necessarily a proponent of this but will be a part of the process.

There was a consensus of the City Council for the City Attorney to review the proposed draft Business Registration amendment and bring it back at a 6:30 p.m. work session at the August 9, 2016, City Council meeting. *[Due to scheduling this was later scheduled to the September 13, 2016, City Council meeting]*

CALENDAR OF ORDINANCES.

ORDINANCE NO. 349-2016. AN ORDINANCE AMENDING THE CITY OF HUBBARD ZONING MAP IN THE COMMERCIAL CENTER OF HUBBARD. City Councilor Matt Kennedy stated there has been some misunderstanding out in the community about this zone change and he would like some clarification.

City Councilor Shannon Schmidt stated she was able to get her questions answered by City Councilor Matt Kennedy and Director of Administration / City Recorder Vickie Nogle.

City Councilor Barbara Ruiz stated she didn't have any questions.

Director of Administration/City Recorder Vickie Nogle stated there is a correction to the map Exhibit (B).

City Planner Renata Wakeley, MWVCOG, stated Ordinance 349-2016 an ordinance amending the City of Hubbard Zoning Map in the Commercial Center of Hubbard. R. Wakeley said this is regarding rezoning some property from Residential-Commercial (RC) rezoned to Commercial (C), and some Industrial (I) rezoned to Industrial Commercial (IC) to bring them in line with the City's Comprehensive Plan. R. Wakeley said the City Council held a Public Hearing June 14, 2016, in which the Council directed staff to prepare Ordinance 349-2016. R. Wakeley stated she has two corrections; the first correction is Exhibit "B" as three of the five properties that did not want to be rezoned at the property owners request should have been shown on the map as Highway Commercial which is an overlay zone of the Residential Commercial zone (*R11467; R11464; R11457*).

City Councilor Matt Kennedy asked what the Highway Commercial Overlay zone allows.

R. Wakely said some of those properties that abut Pacific Highway 99E are in the Highway Commercial Overlay zone and there are certain design standards that are in the Development Code.

Director of Administration/City Recorder Vickie Nogle stated in the Residential Commercial districts the Residential is the primary use and limited Commercial use. V. Nogle said it is her understanding with the Highway Overlay zone they have the same types of uses other Commercial zones are allowed.

R. Wakeley said the second correction is on Exhibit “A” which is the Staff Report that came before the City Council and at the top it says “City of Hubbard Planning Commission” but should say “City of Hubbard City Council.”

MSA/City Councilor Matt Kennedy/City Councilor Angie Wheatcroft moved to read Ordinance No. 349-2016 by title only for the first reading. City Council Angie Wheatcroft, City Councilor Barb Ruiz, City Councilor Shannon Schmidt, City Councilor Matt Kennedy, and Mayor Jim Yonally were in favor. Motion passed.

Mayor Jim Yonally read Ordinance No. 349-2016 by title only for the first reading.

MSA/City Councilor City Councilor Matt Kennedy/City Councilor Angie Wheatcroft moved to read Ordinance No. 349-2016 by title only for the second reading. City Council Angie Wheatcroft, City Councilor Barb Ruiz, City Councilor Shannon Schmidt, City Councilor Matt Kennedy, and Mayor Jim Yonally were in favor. Motion passed.

Mayor Jim Yonally read Ordinance No. 349-2016 by title only for the Second reading.

MSA/City Councilor Angie Wheatcroft/City Councilor Shannon Schmidt moved to adopt Ordinance No. 349-2016 as amended. City Council Angie Wheatcroft, City Councilor Shannon Schmidt, and Mayor Jim Yonally were in favor. City Councilor Matt Kennedy abstained as he has affected property in the area. City Councilor Barb Ruiz opposed. Motion passed.

CALENDAR OF ORDINANCES.

ORDINANCE NO. 350-2016. AN ORDINANCE OF THE CITY OF HUBBARD REPEALING ORDINANCE 341-2014 AND IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE.

MSA/City Councilor Angie Wheatcroft/City Councilor Shannon Schmidt moved to read Ordinance No. 350-2016 by title only for the first reading. City Council Angie Wheatcroft, City Councilor Barb Ruiz, City Councilor Shannon Schmidt, City Councilor Matt Kennedy, and Mayor Jim Yonally were in favor. Motion passed.

Mayor Jim Yonally read Ordinance No. 350-2016 by title only for the first reading.

MSA/City Councilor Matt Kennedy/City Councilor Angie Wheatcroft moved to read Ordinance No. 350-2016 by title only for the second reading. City Council Angie Wheatcroft, City Councilor Barb Ruiz, City Councilor Shannon Schmidt, City Councilor Matt Kennedy and Mayor Jim Yonally were in favor. Motion passed.

Mayor Jim Yonally read Ordinance No. 350-2016 by title only for the second reading.

MSA/ City Councilor Angie Wheatcroft/City Councilor Barb Ruiz moved to adopt Ordinance No. 350-2016. City Council Angie Wheatcroft, City Councilor Barb Ruiz, City Councilor Shannon Schmidt, City Councilor Matt Kennedy, and Mayor Jim Yonally were in favor. Motion passed.

RESOLUTION NO 614-2016. A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF HUBBARD THE QUESTION OF IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER WITHIN THE CITY IN THE EVENT THE MARIJUANA FACILITIES ARE ALLOWED TO ESTABLISH IN HUBBARD. City Attorney Ashley Driscoll explained the adoption of Ordinance 350-2016 imposes the tax; Resolution 614-2016 refers the tax to the voters.

MSA/City Councilor Matt Kennedy/City Councilor Angie Wheatcroft moved to adopt Resolution No. 614-2016. City Council Angie Wheatcroft, City Councilor Barb Ruiz, City Councilor Shannon Schmidt, City Councilor Matt Kennedy, and Mayor Jim Yonally were in favor. Motion passed.

COMMUNITY REPORTS

A. MARION E CARL VETERANS MEMORIAL. Linda Kleczynski, 2409 A Street, Hubbard, informed the City Council they have separated from the Hubbard Parks Improvement Committee and created their own non-profit organization, which is only for the Marion E. Carl Veterans Memorial, and are proceeding forward to obtain their own federal tax identification (501C3). L. Kleczynski said they have Board members as she introduced Doug Cowley as the President and she is the Secretary/Treasurer.

The City Council thanked L. Kleczynski for all of her hard work and time she has put in over the past several years while serving on the Hubbard Parks Improvement Committee.

APPEARANCE OF INTERESTED CITIZENS. None.

MAYOR’S PRESENTATIONS, AND/OR COUNCIL’S PRESENTATIONS. Mayor Jim Yonally requested the City Council complete the League of Oregon Cities (LOC) survey from the LOC Board of Directors and turn it back into him as he would compile the answers and submit it back to LOC.

City Council Angie Wheatcroft wanted to tell the Officers that were present how much the City appreciates them.

STAFF REPORTS.

ADMINISTRATIVE DEPARTMENT – Director of Administration/City Recorder V. Nogle, MMC. Director of Administration/City Recorder Vickie Nogle reported an addition to her report of the request for temporary City Hall hours of business due to staffing levels as a copy of the memo has been provided.

There was a consensus of the City Council to allow for the temporary City Hall hours as presented.

City Council Angie Wheatcroft thanked Senior Accounting Specialist Kari Kurtz for all of her hard work.

Mayor Jim Yonally asked if August 15, 2016, was the deadline for submittal of signatures for the election packet to be eligible for the November 8, 2016, election.

V. Nogle replied that is correct August 15, 2016, is the deadline for submittal of signatures.

Senior Accounting Specialist Kari Kurtz had nothing to add to her report.

POLICE DEPARTMENT – Police Chief Dave Dryden. Police Chief Dave Dryden was not present.

PUBLIC WORKS DEPARTMENT. Public Works Superintendent Jaime Estrada pointed out item number three of the report as they did hire a new employee July 5, 2016.

City Councilor Matt Kennedy stated they Rivenes Park restroom grant was awarded.

Public Works Superintendent Jaime Estrada said they hoped to be working on that project next year but a lot of it depends on paperwork processing.

Mayor Jim Yonally asked if Public Works could schedule to weed around City Hall sometime in the near future.

CONSENT AGENDA.

A) **APPROVAL OF THE JUNE 14, 2016, CITY COUNCIL MEETING MINUTES.**

B) **APPROVAL OF OREGON CHILD DEVELOPMENT COALITION RIVENES PARK USE APPLICATION AUGUST 12, 2016, AT 8:00 A.M. TO 5:00 P.M.**

C) **APPROVAL OF AMENDMENT TO JUNE 29, 1999, AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HUBBARD AND AKS ENGINEERING AND FORESTRY.** MSA/City Councilor Matt Kennedy/City Councilor Angie Wheatcroft moved to approve the Consent Agenda with the addition of item “9(C).” City Councilor Angie Wheatcroft, City Councilor Shannon Schmidt, City Councilor Barbara Ruiz, City Councilor Matt Kennedy, and Mayor Yonally were in favor. Motion passed.

APPROVAL OF THE APRIL AND JUNE 2016 CHECK REGISTER REPORT.

MSA/City Councilor Angie Wheatcroft/City Councilor Shannon Schmidt moved to approve the check register reports as presented. City Councilor Angie Wheatcroft, City Councilor Shannon Schmidt, City Councilor Matt Kennedy, and Mayor Yonally were in favor. City Councilor Barbara Ruiz abstained from voting due to a conflict of interest as her father is the owner of the Shell gas station that she is employed.

OTHER CITY BUSINESS. There was none.

ADJOURNMENT - (NEXT REGULAR CITY COUNCIL MEETING IS TUESDAY, AUGUST 9, 2016, AT 7:00 P.M)

MSA/ City Councilor Matt Kennedy/City Councilor Angie Wheatcroft moved to adjourn the meeting. City Councilor Angie Wheatcroft, City Councilor Shannon Schmidt, City Councilor Barbara Ruiz, City Councilor Matt Kennedy, and Mayor Yonally were in favor. Motion passed. Meeting adjourned at 7:28 p.m.



Mayor Jim Yonally

ATTEST:



Vickie L. Nogle, MMC,
Director of Administration/City Recorder
Recording/Transcribing