

City of Phoenix
City Council Executive Session/Meeting
Public Works Office
1000 S. "B" Street
Monday, April 21, 2014

DRAFT

CALL TO ORDER

Mayor Jeff Bellah called the Executive Session of the City Council to order on Monday, April 21, 2014 at 5:45 p.m. in the Public Works Office.

ROLL CALL

PRESENT: Bruce Sophie, Carolyn Bartell, Karen Jones, Terry Helfrich, Chris Luz, Stan Bartell, Jeff Bellah

Staff Present: Steve Dahl, City Manager/Recorder
J. Ryan Kirchoff, City Attorney

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

Discussion followed and no decisions were made. Executive Session recessed at 6:30 p.m.

CALL TO ORDER

Mayor Jeff Bellah called the regular meeting of the City Council to order on Monday, April 21, 2014 at 6:30 p.m. in the Public Works Office.

ROLL CALL

PRESENT: Stan Bartell, Bruce Sophie, Carolyn Bartell, Karen Jones, Terry Helfrich, Chris Luz, Jeff Bellah

Staff Present: Steve Dahl, City Manager/Recorder
Janette Boothe, Deputy City Recorder
Steve Weber, Finance Director
Derek Bowker, Chief of Police
J. Ryan Kirchoff, City Attorney

PLEDGE OF ALLEGIANCE

MAYOR’S COMMENTS:

Mayor Bellah announced County Commissioner Don Skundrick is in attendance. He announced the executive session was held to update the new attorney on a couple of issues that hold the possibility of litigation in the future. He explained the first issue is related to HB 3460 and the other is regarding recovering overcharges from the Medford Water Commission (MWC).

He commented the Parks Commission is planning to use Blue Heron Park for events this summer, as well as some interest from other parties. He added that the high school has more involvement in City events scheduled for this year.

PRESENTATIONS:

ODOT – Update of Interchange by Gary Lemming and Dick Leever. Mr. Lemming came forward with a slide presentation to outline the progress made thus far and the proposed schedule for future construction. He began with the announcement the excavation along the freeway is delayed due to the rain forecasted in the weather. He added he is hopeful this construction will begin in the latter part of the week and the construction will limit a section of the freeway just north of the Phoenix exit on the I-5 South to one lane for approximately 25 days. He further detailed the scheduled construction as he took questions from council. Mr. Leever noted the gas station is scheduled to open in June and Dutch Bros Coffee is set to open within the first couple weeks of May. Additionally, Mr. Leever explained the contractor is set to patch up all of the holes covered by steel plates in the roadway within a couple of weeks.

URBAN RENEWAL UPDATE WITH BOARD MEMBER:

Mayor Bellah explained Marla Cates was unable to attend the meeting and inquired whether any of the liaisons would like to give an update. Councilor Luz gave a brief update on the items of discussion at the prior Urban Renewal meeting. Councilor Jones added specific information regarding the timeline that was discussed regarding the market hall and the steering committee.

CONSENT CALENDAR:

- 1) Approval of the Minutes of the April 1, 2014 Special City Council Meeting.
- 2) Approval of the Minutes of the April 3, 2014 Special City Council Meeting.
- 3) Approval of the Minutes of the March 17, 2014 Regular City Council Meeting.
- 4) Acknowledgement of Approved Minutes from Planning Commission.
- 5) Reconfirming the appointment of Chris Henry to the Urban Renewal Board. Mayor Bellah asked for item 5 to be pulled from the consent calendar. **MOVED BY JONES, SECONDED BY C. BARTELL, TO APPROVE THE CONSENT CALENDAR ITEMS 1 THROUGH 4.** There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

Mayor Bellah pulled the reconfirmation of Chris Henry to the Urban Renewal Board to discuss the item separately and to offer the opportunity for Mr. Henry to address council. He further explained the Council did not formally accept a resignation from Mr. Henry and with consensus,

he would formally restate Mr. Henry's position on the board. **MOVED BY SOPHIE, SECONDED BY JONES, TO REAFFIRM CHRIS HENRY'S APPOINTMENT TO THE URBAN RENEWAL BOARD.**

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

ORDINANCES:

First Reading of an Ordinance Declaring a Moratorium on Medical Marijuana within the City Limits. Mayor Bellah announced he prepared a handout for Council review to provide options regarding medical marijuana facilities. He went on to briefly outline four different options, as follows:

- Option 1 – Take no additional actions and allow the current four month moratorium to proceed as planned and end on August 3, 2014.
- Option 2 – Extend the moratorium with a new ordinance for any period of time up to May 1, 2015.
- Option 3 – Pass a total ban on MMFs.
- Option 4 – Pass a partial moratorium that either restricts location or grants one or more businesses a temporary provisional license with restrictions and city oversight mechanisms. This would be a negotiated contract that could include clauses such as limits on maximum product or cash on hand; graduated security requirements; child access restrictions; allowed city inspections; educational responsibility; and, financial reimbursement for city time and coverage.

Mayor Bellah expressed he and Councilor Sophie met with Andrea Adams to discuss possible scenarios for restrictions to be placed on the facility that can be enforced. He detailed the different types of restrictions that were discussed. He expressed his interest in the 4th option, as it would give the City more local control and would allow for a test period, so that after a year if all the measures have been met, then the City has the authority to allow another year of operation. He added he is concerned that Council will not move forward with dealing with MMFs if a moratorium is placed on them for a year.

Councilor Jones noted she appreciated the time and effort that Council has completed thus far to discover the appropriate course of action and she is in favor of option 4. Councilor S. Bartell and Luz mentioned they would like to hear from the public before deliberating on the topic.

Nate Shinn, Phoenix, expressed he has lived in Phoenix for the past 18 years and enjoyed the conservative nature of this small town and he would like to see it continue. He asked for a ban on MMFs or at the very least a moratorium for a year so that Council may work through everything necessary to benefit the City.

Andrea Adams, Talent, expressed her gratitude for Mayor Bellah and Councilor Sophie taking the time to meet with her. She further reiterated her readiness to work with the City, adding that she has a renewed willingness to work with Council. She further added she is grateful for the four options the Mayor has presented rather than just one.

Councilor Sophie suggested part of the education process on behalf of Ms. Adams is explaining to the downtown businesses about medical marijuana and the type of facility she is operating, as many business owners have expressed apprehension towards this type of business.

Councilor S. Bartell requested Attorney Kirchoff express the overview he gave during executive session regarding the City's position and options. Attorney Kirchoff expressed this is a once in a lifetime legal moment that consists of conflict in laws that have been brewing for some time. He added federal law is conflicting with Oregon's law regarding marijuana. He further added that there are things that can be done within the executive branch, outside of congress to resolve this issue, by declassifying marijuana from the category that triggers the conflict. He further gave background into the position the City is in now regarding the laws that have passed within Oregon regarding medical marijuana. He further argued that it is fair to say that the federal law is clear, no matter what side you are on. He went on to articulate that adding to the confusion of the conflict with federal law, there is a conflict with the legislation regarding the State and local law concerning restrictions, land use, and enforcement. Attorney Kirchoff further explained that the Oregon Health Authority is currently in the rule making process, which will carry on for some time. He added that once this process is complete the regulations will be outlined to make it much easier for local government to comply with; however, if the City attempts to regulate MMFs right now at any level it will be potentially be affected by the trailing State legislation.

Councilor C. Bartell expressed her support for a one year moratorium to allow time for Council to assess the situation and make the right decision. Councilor S. Bartell addressed option four by stating his concern for being legally liable for the missteps of The Greenery if the business operates under the City's regulations. He further expressed his concern for the monument task for staff to construct a formulated agreement and to enforce the agreement. Further discussion followed. Councilor Helfrich commented that he would like to see the City meeting halfway with the MMFs and he feels option four should be explored further. Councilor Jones expressed her desire to support being a pioneer City and move forward with working with MMFs. Councilor S. Bartell reiterated his position of option 2. Additional discussion followed, as Councilor Sophie noted that the moratorium does not need to take the full year; however, this decision should not be a rushed decision and he supports option 2 for this reason.

As discussion progressed, Councilor C. Bartell inquired of Attorney Kirchoff whether parts of the contractual agreement suggested in option 4 could be argued later by either party if the State does not have some of the regulations that the agreement stipulates. Attorney Kirchoff responded that the City can choose to do nothing, as a court probably would not require a City to issue a business license should the City decide to ban MMFs within the City limits. He added that another scenario is that Councilor C. Bartell's question is warranted, it is possible that an agreement can be determined as overreaching or insufficient and may not be enforceable in part. Additionally, he noted that the City could not be held liable for simply issuing a business license to an entity and the entity is found to be operating improperly; however, it is possible to find

fault with the City if they are attempting to regulate the business and fail to reduce some type of foreseeable risk. He added that the potential of these types of issues can be avoided with a one year moratorium.

Discussion followed, as Councilor Luz noted that the location of the facility is the most voiced concern from the public he has interviewed, not whether it is regulated. Council continued to debate which option would best serve the City. As discussion progressed, Attorney Kirchoff outlined the options before Council and added that if this matter went to court, he does not feel the court would force the City to allow medical marijuana facilities within the City of Phoenix whether or not the City had a moratorium in place. Additional discussion followed regarding the legal options for the City and the framework involved. **MOVED BY HELFRICH, TO PASS A PARTIAL MORATORIUM.** The motion failed, as there was not a second. Further discussion followed, as Attorney Kirchoff noted that a partial moratorium would not be appropriate. Councilor Jones inquired about what happens to the facility operating while violating the moratorium. The City Attorney replied the facility is currently violating the moratorium and the Council can decide to enforce the legal action regarding the facility for violating both State and Federal law. **MOVED BY LUZ, SECONDED BY SOPHIE, TO HOLD THE FIRST READING OF AN ORDINANCE DECLARING A MORATORIUM ON MEDICAL MARIJUANA FACILITIES WITHIN THE CITY LIMITS.**

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich
MOTION APPROVED WITH SIX AYES

Mayor Bellah recessed the meeting for a 5 minute break at 8:23 p.m.

NEW BUSINESS:

- 1) Selection of Auditor. Mr. Weber came forward to explain the process for the RFPs and the reason for selecting Wall & Wall, PC. Further discussion followed, as Mr. Weber took questions from Council. **MOVED BY SOPHIE, SECONDED BY JONES, TO AUTHORIZE THE CITY MANAGER/RECORDER AND THE CITY ATTORNEY TO DRAW UP A CONTRACT WITH WALL & WALL, PC, FOR A 3-YEAR PERIOD, BEGINNING WITH FY 2013-2014, FOR AUDITING SERVICES FOR THE CITY.**

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich
MOTION APPROVED WITH SIX AYES

- 2) Financial Report for Quarter Ending March 31, 2014. Mr. Weber expressed he is pleased with where the City stands financially after the third quarter. He further expressed the City has had some involved issues the City did not plan for; however, City staff has managed to maintain expenditure levels within the budgeted amounts for each of the funds. Additional discussion followed, as Mr. Weber noted the operations of the City has an outcome of a surplus for the fiscal year.

EXTENSION OF MEETING:

MOVED BY SOPHIE, SECONDED BY JONES, TO EXTEND THE MEETING UNTIL 9:30 P.M. There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Chris Luz, Helfrich, Sophie, C. Bartell, Jones and S. Bartell

MOTION APPROVED WITH SIX AYES

Further discussion followed, as Mr. Dahl expressed his gratitude for Mr. Weber and Chief Bowker's performance, as he noted they make his job easier. Additional discussion followed regarding the upcoming budget.

- 3) Removal of the Development Requirement for the Agreement which relates to the Rose Court property on North Rose Street. Mr. Dahl noted the property for sale is the Brookside Apartments, as he explained staff has reviewed the requirements and feels the requirements have been met. Further discussion followed. **MOVED BY LUZ, SECONDED BY JONES, TO REMOVE THE DEVELOPMENT REQUIREMENT FOR THE ROSE COURT PROPERTY ON NORTH ROSE STREET AS THE TERMS AND CONDITIONS OF THE AGREEMENT AND ADDENDUMS HAVE ALL BEEN MET AND THE DEVELOPMENT WORK HAS BEEN COMPLETED.**

ROLL CALL VOTE AS FOLLOWS:

Ayes: Chris Luz, Helfrich, Sophie, C. Bartell, Jones and S. Bartell

MOTION APPROVED WITH SIX AYES

- 4) Consideration of Contract with J. Ryan Kirchoff for the City Attorney Position. Mayor Bellah noted the contract did not mention paralegal services. Attorney Kirchoff expressed this language could be added to the contract. **MOVED BY C. BARTELL, SECONDED BY S. BARTELL, TO AUTHORIZE THE MAYOR AND CITY MANAGER TO SIGN THE AGREEMENT FOR CITY ATTORNEY SERVICES WITH J. RYAN KIRCHOFF.**

ROLL CALL VOTE AS FOLLOWS:

Ayes: Chris Luz, Helfrich, Sophie, C. Bartell, Jones and S. Bartell

MOTION APPROVED WITH SIX AYES

STAFF REPORTS:

1) City Attorney's Report:

- a) Mayor Bellah directed City staff and attorney to move forward with the process of recovering the amount of funds due the City from the Medford Water Commission regarding the overcharges from the water meter failure to operate correctly. Further discussion followed regarding the City's water rights and possible attorney fees.

2) City Manager's Report:

- a) Mr. Dahl expressed that RVS is appealing to the Supreme Court the decision to require payment of franchise fees to the City of Phoenix.
b) He reviewed the updated issue tracking log as he took questions from Council.

COUNCIL ITEMS, COMMENTS/REPORTS:

- 1) Councilor S. Bartell expressed his appreciation to Council and Staff for their dedication to do good work.
- 2) Councilor C. Bartell announced the Rotary Club is holding a cleanup day at Blue Heron Park.
- 3) Councilor Jones announced the Green Bag Project received approximately 3200 pounds of food. She further announced Sandy Wine is donating \$500 to the Phoenix Food Pantry.
- 4) Councilor Sophie announced on June 11, 2014 there will be a LOC meeting in Central Point.
- 5) Mayor Bellah noted an uptick in citations recently and requested Chief Bowker to extend his gratitude for their service.

The meeting adjourned at 9:28 p.m.

Respectfully submitted,

Attest:

Janette Boothe
Deputy City Recorder

Steve Dahl
City Manager/Recorder