

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

November 24, 2020

The minutes of the proceedings of a City Council and Urban Renewal work session of the City of Coos Bay, Coos County, Oregon, held at 5:30 pm in the City Hall Council Chambers, 500 Central Avenue, Coos Bay, Oregon.

Those Attending

Those present were Mayor Joe Benetti and Councilors Lucinda DiNovo, Stephanie Kilmer, Phil Marler, Carmen Matthews, and Rob Miles. Councilor Drew Farmer was absent. City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Finance Director Nichole Rutherford, Deputy Finance Director Melissa Olson, Public Works and Community Development Director Jim Hossley, City Engineer Jennifer Wirsing, Resident Project Representative Jan Kerbo, Contract Administration Specialist Rishia Mitchell, and Police Chief Gary McCullough. City staff attending remotely by teleconference was Library Director Sami Pierson.

Flag Salute

Mayor Benetti opened the meeting and led the council and assembly in the salute to the flag.

Public Comments

No public comments were made and no comments were provided online.

Review of the Following Council/URA Agenda for December 1, 2020

Discussion of Proposed Façade Improvement Grant for 247 South 2nd Street – 7-Devils Brewery

Public Works and Community Development Director Jim Hossley stated the applicant Carmen Matthews requested a Façade Improvement Grant for \$11,841 from the Urban Renewal Agency (Agency) fiscal year 2020-2021 (FY21) budget. The requested funds would be used to construct a patio cover on the south side of Seven Devils Brewery located at 247 South 2nd Street. The patio cover would enhance customer outdoor dining with rain and sun protection and provide a pedestrian scale architectural improvement. The Façade Improvement Program currently provided a 50/50 grant match for eligible projects, requiring three bids for project construction. The applicant requested an exception to the three-bid requirement. The Design Assistance Team (DAT) reviewed the project and recommended approval as submitted. Councilor Matthews stated he would not vote on the grant as it was his property, but would answer any questions and shared it would be a permanent structure, add nice architectural detail and liveliness to the building, would be useful in summer and winter, and would address a need through the pandemic.

Discussion of Lot Line Adjustment Between 710 16th Avenue and City Property

Public Works and Community Development Director Jim Hossley stated Mike Traufler, 710 16th Avenue in Eastside, requested City Council consider allowing him to acquire approximately 2,000 square feet of city owned property adjacent to his, out of concern with slope failure adjacent to the easterly side of his property; continued failure could adversely affect the deck and home foundation. The slope was part of a steep ravine on one-acre of undeveloped city property dedicated to the public as park space, as part of the plat of Vanderhoop's Addition. The property was primarily a steep ravine and would be challenging to develop as a park. Mr. Traufler would like to stabilize the slope to protect his property which would require installation of permanent infrastructure on the city's property. He would like to do a property line adjustment (PLA) to acquire the necessary city property for installing the infrastructure. He would need approximately 20 feet x 100 feet (2,000 square feet) along the northerly half of his east property line. Staff recommended Mr. Traufler be responsible for all expenses related to the PLA, plus \$500 for property acquisition. Should Council agree to the PLA, direct staff and petitioner to move forward with the PLA process at the applicant's expense.

Mike Traufler stated after clearing out brush to start the project he discovered additional property than in the original proposal would be needed to stabilize the slope properly. After speaking to a neighbor, they agreed to swap 40 feet of land for access to the property, but requested additional property from the city. Mr. Traufler provided documentation, photos, and a map of the property to Council. City Manager Rodger Craddock stated staff was unsure as to how the city became owners of the property, was platted in 1977, and was not sure what it could be used for due to the slope. Council discussed various options for the property and consensus for staff to review what would be most advantageous to the city, along with, advising on which agencies would need permitting for the project.

Discuss Transition Plan for City Managed Operations and Maintenance of the Collection System

Public Works and Community Development Director Jim Hossley stated at the October 27, 2020 work session, staff presented the operations and maintenance wastewater contractor's (Jacobs) amendment for the current fiscal year ending (FYE) 2021. Due to the significant increase in the contractor's fee, the City had been investigating taking over the responsibility of operations and maintenance of the sewer system. Council directed staff to prepare a transition plan for the collection portion of the sewer system. Council felt that Jacobs might be more successful in operating and managing the treatment portion of the system without the added responsibility of the collection system. A large portion of this transition work was completed earlier this year by Mark Walter of Waterdude Solutions. At the January 14, 2020 work session, Mr. Walter presented to Council his finding of Jacobs performance along with three options for the City to consider: work with Jacobs to revamp the current contract and correct the deficiencies identified in the audit, terminate Jacobs and procure another wastewater operation and maintenance contractor, or terminate Jacobs and perform operation and maintenance duties in house. At that work session, Council directed staff to pursue Option 1. To date, Amendment 3 had been revamped but as

discussed at the October work session there were challenges with the amendment (significant increase in fee, agreement may not be effective and may be difficult to manage/implement, etc.).

Mr. Walter presented the draft transition plan for Council consideration including staffing, timeline, budget estimations, and transition support. Should Council pursue this plan, the goal would be to formally take over the responsibility of operations and maintenance of the collection system on July 1, 2021. Budget impacts to take over the operations and maintenance of the collection system would primarily impact the FYE 2022 budget. City staff would work with Donovan Enterprises (City's rate consultant) regarding budget impacts, if any. It was anticipated this would not increase the forecasted 6.5% increase in wastewater rates, but it may have the potential to decrease capital improvement projects for the current fiscal year. City staff reviewed Wastewater Fund 3 (FYE 2021) and determined this fund would be able to cover the costs associated with Mr. Walter working with the City to implement the transition plan. Council discussion ensued with concern for the budget and if the City would be able to take over operation and management if Jacobs wished to terminate the contract. Mayor Benetti stated regardless of the budget implications this was fiscally impacting our city staff now. City Manager Rodger Craddock stated there were discussions with Mr. Walter and the transition plan could be expanded if the City took over all aspects. City Engineer Jennifer Wirsing stated Jacobs stated they would help with any transition the City decided on to implement and the cost for Jacobs to continue was the same as it would cost for the City to take over operations and management.

Presentation of a Fats, Oil and Grease (FOG) Reduction Program

Public Works and Community Development Director Jim Hossley stated FOG stands for Fats, Oil and Grease, all of which have negative impacts on the sanitary sewer system. FOG includes animal and vegetable fats, as well as, oils used to cook and prepare food. Food Service Establishments (FSEs) use large volumes of FOG. When fats, oils, and grease are flushed down sinks, drains, or toilets, it could cause problems for the FSEs, as well as, the City's sewer system. These blockages gradually restricted the flow of wastewater in the FSEs laterals, and deposit grease into the public sewer main which could lead to sewage back-ups causing a sanitary sewer overflow (SSO), extra maintenance at pump stations, and increase treatment costs at the plants. City Council directed staff to develop a FOG reduction program. The City contracted with Susanna Littell of the Littell Consultancy Group to help with this development.

Susanna Littell, presented the work done to date and highlighted the review of the Oregon Building Code Division's current FOG reduction program implementations, three FOG reduction program implementation strategies, with pros and cons, the City could implement, and program limitations. The three strategies follow the good, better and best options for the implementation to be in stages should Council choose to do so. Strategy One implements the FOG Program with a focus on: element one requiring FSEs to implement FOG Program Kitchen Best Management Practices (BMPs) and maintain documentation related to staff education outreach training and element two establishing and requiring proper waste management/documentation practices by the FSE and their waste haulers. Strategy Two implements the FOG Program with focus on all elements of strategy one plus element three establishing and requiring the FSE's waste management

documentation to be sent/shared with the City for tracking and element four establishing and requiring FSEs to comply with effective FOG source control measures. Strategy Three implements the FOG Program with focus on all elements of strategy two plus element five providing the City enforcement tools to address noncompliance and element six providing the City with the ability to assess cost recovery fees.

Next steps included obtaining Council input on strategy and elements wanted to move forward with, develop and submit draft FOG Program policy language (ordinance, resolution, and/or BMPs) for City staff review, provide an overview of draft policy elements/requirements back to Council for feedback and input, submit final policy to City staff for review, City staff meet with Local Restaurant Association and Waste Haulers to review policy, and final policy adoption by Council. Council asked staff for their recommendation. City Engineer Jennifer Wirsing stated the strategy one (good option) was already in place, just not formalized. Ms. Wirsing suggested starting there and, in a year, have Council review and decide if they wanted to expand to phase in other options. Council discussed requiring documentation from businesses when they renew their business license yearly and inspections, but to be sensitive to costs to businesses during the pandemic struggle. Ms. Wirsing stated because this wasn't maintained in-house the city didn't have numbers for the impact on staff. Council consensus to have staff move forward with Strategy One.

Discussion Regarding Jacobs' Amendment 3 for the Operation & Maintenance of the Wastewater System

City Engineer Jennifer Wirsing stated in late 2019, the City contracted with Mark Walter of Waterdude Solutions to evaluate the City's wastewater system operation and maintenance contractor (Jacobs). The investigation determined Jacobs' service level was below acceptable levels in areas such as meeting budget projections, NPDES permit compliance, biosolids disposal, collections system maintenance, and staffing. In fact, in the previous three audits the City performed, it was observed that in many areas of the contract Jacobs was not meeting their obligations. As a result of these findings, City staff directed Mr. Walter to investigate the City's options: continue with existing contractor (Jacobs), transition to a different contractor, or City self-perform the wastewater system operation and maintenance duties. On January 14, 2020 Mr. Walter presented findings to Council, each of which had pros and cons. The Council directed staff to craft an agreement for fiscal year ending (FYE) 2021, otherwise known as Amendment 3, which addressed the performance deficiencies identified in the City's audits.

While the contract generally defines the contractor's responsibilities, it was clear this language was no longer effective with Jacobs. As such, Council directed staff to focus on the following items: provision for a rebate to the City if Jacobs had unfilled positions, provide better benefits and training to their employees to encourage longevity of employment with Jacobs, provide punitive damages when contract obligations were not met, provide a plan increasing storage for sludge lagoon and punitive damages if plan objectives not met, improve language placing the responsibility of maintaining the wastewater asset on the contractor, and punitive damages for permit exceedances due to operational error. Staff coordinated with Jacobs' representative,

Efrain Rodriguez, for several months regarding the revision to Amendment 3 with the goal of trying to negotiate a fair amendment that met the objectives of Council's direction. Staff approached negotiations based on a letter dated January 31, 2020, documenting both staff and Council's concerns. While the negotiations have resolved some of the items in the letter, there are still several items that either had been requested to defer to Amendment 4 (such as the collection cleaning program) or had not been agreed to, such as the punitive (or liquidated) damages for unmet contractual obligations related to the deliverables. Furthermore, there was no agreement on language which held Jacobs responsible to budget and manage the wastewater asset. With all this going on, the plants were still not consistently meeting permit. There might be some instances where the reasons for permit exceedances were out of operator control, but staff felt strongly the majority of the exceedances were preventable.

At last month's meeting, staff reported to Council that Jacobs had provided a management team who had shown expertise in wastewater treatment, the likes of which had not been observed in several years. Recently staff was informed a key person in this management team resigned. Also, the existing management team, to staff's knowledge, would not be long-term, but rather temporary until management positions could be filled permanently. As documented in the audits, there were concerns with the excessive turn-over in management Jacobs had experienced, along with the employee/operator turnover. A positive action taken over this last year was hiring an outside contractor, at their expense, to haul offsite a large volume of sludge from the lagoon. They also expended a significant amount of in-house man hours hauling and land applying biosolids to local farms. While capacity in the lagoon was still diminished compared to historical capacity, last summer's efforts gave the City the capacity needed to avoid an emergency removal. Jacobs also expended numerous hours reducing the work orders city staff generates as a result of sewer investigations for capital improvement projects, locates for sewer laterals, sinkhole investigations, etc. Until recently Jacobs had over 40 outstanding work orders and some of them were over a year old. This list had been reduced significantly and was now at manageable levels.

City staff was concerned that in an effort to tighten the terms of the agreement, it had turned into a very prescriptive agreement that may not be effective. The old agreement was more performance based where the focus was the outcome (i.e. operating and maintaining the wastewater asset at industry standard levels), which for many years worked for both parties. It was very difficult to write a contract which included every single scope of work and enforceable consequences when the scope was not met. Another concern was the significant cost increase of over 30% from FYE 2020. The reasons cited by Jacobs was additional testing and additional full-time employees (FTE). When questioned why additional FTEs were required, Jacobs indicated the new Waste Water Treatment Plant 2 needed more labor hours due "more technical plant with more things to monitor". Jacobs contends the "more advanced a facility (was) resulted in more labor needs". Jacobs engineers had previously stated this facility would be more automated and thus may result in less labor required to operate it. Efrain Rodriguez, Jacobs Vice President, who staff have been negotiating Amendment 3 with stated the old contracts did not account for costs or (necessary) level of effort required to run a wastewater asset such as Coos Bay's. Mr. Rodriguez further stated that this Amendment 3 was a realignment of the true costs for the service required by the City. Staff had repeatedly told Mr. Rodriguez a 30% increase would

be very difficult to get approved. Mr. Rodriguez understood the sensitivity of this issue and was exploring some ideas internally to give a one-time credit to reduce the 30% increase to a more manageable increase but no approvals had been given by Jacobs' leadership at this time.

City staff identified two options to consider. First option, the original contract had provisions if both parties cannot agree on a fee increase, it defaulted to an increase based on the average Consumer Price Index from December of the prior year to December of the current year. This value typically fell between 3-4%. If this option was chosen, it was anticipated Jacobs would terminate the contract and the City would have to implement a transition plan to take over the sewer system both collections and the treatment plants. Second option, accept the approximately 30% increase, roughly \$500,000, and work with Jacobs on a transition plan to take over the collections systems on July 1, 2020.

Efrain Rodriguez presented information on recent accomplishments, targeted focus on permit compliance improvement, proposed amendment content summary, proposed pricing increase details, and next steps. Mr. Rodriguez stated he respected Council decision, but Jacobs preferred and was trying to demonstrate their commitment in continuing to work together to provide services to the city. Jacobs recognized many things needed to be fixed and were running at a loss, but were hoping to recover some costs and the price increase would be retroactive for the current fiscal year which would include realignment of the scope and resources provided. Mr. Rodriguez stated no padding was included in the increase and believed even if Jacobs did not incur the cost for a service, the City would incur the same cost for the service. Council discussion ensued and stated concern over the price increase with no accountability and continued issues. Council consensus to obtain more information on what the cost would be to close out the contract, propose a more agreeable price increase, and staff recommendation for moving forward.

Other Business

Mayor Benetti stated there was a proposal for a homeless camp within our community and asked how Council wanted to proceed. City Manager Rodger Craddock stated the Homeless Workgroup would probably not meet until January 2021 and suggested having a presentation at the next council work session on December 22, 2020, to provide parameters for the Homeless Workgroup to review at their next meeting and make a recommendation back to Council. Council consensus to proceed as suggested.

City Manager Craddock stated City staff worked on the request for quotes for the Coos History Museum Plaza, the History Museum Board of Trustees reviewed and approved, and there was a request for three members to represent the Urban Renewal Agency on the committee, Councilor Matthews and Councilor DiNovo volunteered to be on the committee along with one City staff member.

Adjourn

There being no further business to come before the council, Mayor Benetti adjourned the work session. The next regular council meeting was scheduled for December 1, 2020 in the council chambers at city hall. These minutes were approved as presented by City Council on December 15, 2020.



Joe Benetti, Mayor

Nichole Rutherford

Attest: _____
Nichole Rutherford, City Recorder