

1 Depoe Bay City Council
2 Regular Meeting
3 Tuesday, April 20, 2004 - 7:00 PM
4 Depoe Bay City Hall
5

6
7 PRESENT: Mayor B. Silver, J. White, P. Taunton, A. Brown, G. Romans (arr 7:05),
8 J. Brown, M. Lavery
9

10 STAFF: City Recorder P. Murray, City Field Superintendent T. Owings, City Attorney
11 D. Gordon, Recording Secretary S. Fox
12
13

14 I. PLEDGE OF ALLEGIANCE

15 Mayor Silver called for all to stand for the Pledge of Allegiance.
16

17 II. CALL TO ORDER

18 Mayor Silver called the meeting to order and established a quorum at 7:00 PM.
19

20 III. APPROVE MINUTES: April 6, 2004 Executive Session and Regular Meeting
21

22 Motion 1: Alice Brown moved to approve the minutes of the April 6, 2004 Executive Session
23 and Regular Meeting as written. Lavery seconded the motion.
24

25 Mayor Silver said it was moved and seconded, and called for discussion. There was none.
26

27 Vote: Motion 1 passed.

28 Ayes: White, Taunton, Alice Brown, Silver, Jack Brown, Lavery
29

30 IV. ACCOUNTS PAYABLE

31 Tabled until Councilor Romans arrived.
32

33 V. PUBLIC INPUT

34 There was no public input
35

36 VI. NEW BUSINESS

37 A. Interview Applicants for City Commissions and Committees
38 Economic Business Development Committee Resident applicant Donald Sinnema, and
39 Budget Committee applicant Peggy Leoni were present and came forward to tell about
40 themselves and why they were interested in participating.
41

42 B. Appointments to Fill Vacancies on City Commissions and Committees
43 Ballots were filled out, signed, and handed in. Murray tallied the votes (copy of ballot attached
44 to original of these minutes) and announced the results. The vote to appoint Sinnema and
45 Leoni to their respective committees was unanimous.
46

1 Motion 2: Jack Brown moved to accept the canvass of votes and appoint Donald Sinnema to
2 the Economic Business Development Committee as a Resident Member, and Peggy Leoni to
3 the Budget Committee. Taunton seconded the motion.

4
5 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

6
7 Vote: Motion 2 passed.

8 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

9
10 IV. ACCOUNTS PAYABLE

11
12 Motion 3: Romans moved to pay the accounts payable. Alice Brown seconded the motion.

13
14 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

15
16 Vote: Motion 3 passed.

17 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

18
19 C. Application for OLCC License – Ardella Gandy’s Wine & Gifts

20 Motion 4: Lavery moved to approve the application for an OLCC license for Ardella Gandy
21 Wine & Gifts. Taunton seconded the motion.

22
23 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

24
25 Vote: Motion 4 passed.

26 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

27
28 D. OLCC License Renewals

29 Murray reported that OLCC has sent a list of current licenses that will expire July 1, and the
30 City has three response options: 1) to provide a written recommendation, 2) to make a written
31 request for additional time to make a decision, or 3) to take no action, which would be
32 processed as a favorable recommendation.

33
34 Motion 5: Lavery moved to take no action on OLCC license renewals. Alice Brown seconded
35 the motion.

36
37 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

38
39 Vote: Motion 5 passed.

40 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

41
42 E. Request for Support: Lincoln County Health & Human Services Grant Application for
43 Development of a Federally Qualified Health Center

44 Motion 6: Jack Brown moved to support the Lincoln County Health & Human Services Grant
45 Application for Development of a Federally Qualified Health Center. Lavery seconded the
46 motion.

1 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor clarified
2 that the support was not financial. The Mayor will write a letter of support.

3
4 Vote: Motion 3 passed.

5 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

6
7 F. Pay Request #3 – City Hall ADA Improvements Project

8 Murray reported that the pay request (copy attached to original of these minutes) is the final
9 pay request, and that it included two change orders totaling \$936: a change to the roof line
10 and modification of electrical as required by code. The total pay request was for \$5,576. She
11 recommended approval be contingent upon verification of final labor standards paperwork
12 being completed.

13
14 Motion 7: Lavery moved to approve Pay Request #3 for the City Hall ADA Improvement
15 Project's final payment of \$5,576, contingent upon final labor standards paperwork being
16 completed and turned in to City Hall. Taunton seconded the motion.

17
18 G. Proclamation for the Month of May 2004 as the Month of Mental Health Awareness in
19 Oregon – Oregon Mental Health Counselors Assoc.

20 Murray read the proclamation (copy attached to original of these minutes) into the record.

21
22 Motion 8: Lavery moved to approve the Proclamation for the Month of May 2004 as the Month
23 of Mental Health Awareness in Oregon. Alice Brown seconded the motion.

24
25 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

26
27 Vote: Motion 8 passed.

28 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

29
30 H. Bay Street Utilities & Paving

31 Owings updated his report from the last meeting. A \$10,000 expenditure should cover paving
32 of Bay Street from Conway to Hwy 101, and installation of a 4" conduit. Money is in the Street
33 Fund budget.

34
35 Motion 9: Lavery moved to direct Staff to work with all parties necessary to pave Bay Street
36 from Conway to Hwy 101, including installation of conduit, not to exceed \$10,000. Taunton
37 seconded the motion.

38
39 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor clarified
40 that the money is in this year's budget.

41
42 Vote: Motion 9 passed.

43 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

44
45 VII. UNFINISHED BUSINESS

46 A. Kid Zone Garden Project – Braly Avenue

1 There was brief discussion regarding the proposed license agreement drafted by the City
2 Attorney. A question was raised regarding an appropriate amount of aggregate insurance,
3 which was determined to be \$300,000. It was noted that Kid Zone has liability insurance in the
4 amount of \$1,000,000.

5
6 Motion 10: Alice Brown moved to approve the draft agreement with Kid Zone and Neighbors
7 Against Drugs with the addition of aggregate liability not less than \$300,000, to be dated April
8 20, 2004, and to authorize the Mayor to sign the agreement. Lavery seconded the motion.

9
10 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

11
12 Vote: Motion 10 passed.

13 Ayes: White, Alice Brown, Silver, Romans, Lavery

14 Abstain: Jack Brown, Taunton

15
16 B. Painter (Park) Building Lease Agreement

17 Motion 11: Lavery moved to accept the lease agreement with Bay Street Crab Company, with
18 a stipulation that the City be allowed to use building electricity for Christmas tree lighting
19 during the Christmas holiday season, not to exceed four weeks, and subject to an acceptable
20 credit review. Commencement date will be based on agreement between Mr. Wechter, the
21 City, and the current tenant. Alice Brown seconded the motion.

22
23 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor clarified
24 that this lease agreement was discussed in Executive Session.

25
26 Vote: Motion 11 passed.

27 Ayes: Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

28 Abstain: White

29
30 C. Response to ODOT: Speed Zone Recommendation – Traffic Safety Commission (TSC)
31 Recommendation

32 Councilor Lavery provided additional information on the TSC recommendation: Based on the
33 results of a 10-year analysis of that stretch of road being an average of one accident per year,
34 ODOT felt there was no justification to proceed, except to move the 45 MPH speed sign to the
35 south city limits, and the TSC voted to agree. ODOT will put up “congestion” signs at the north
36 and south ends of Whale Cove Inn.

37
38 Motion 12: Lavery moved to accept the TSC’s recommendation and authorize the Mayor to
39 sign the response. Taunton seconded the motion.

40
41 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

42
43 Vote: Motion 12 passed.

44 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

45
46 D. Staff Report: Ordinance Review Relating to City Commission and Committee Liaisons
47

1 Motion 13: White moved to direct Staff to draft ordinances with suggested changes as outlined
2 in Murray's April 15, 2004 report regarding various commissions and committees (copy
3 attached to original of these minutes).

4

5 Mayor Silver said it was moved and seconded, and called for discussion.

6

7 Amendment: Lavery amended the motion to allow the Traffic Safety Commission to remain as
8 it is. Jack Brown seconded the amendment.

9

10 Mayor Silver said it was moved and seconded, and called for discussion. Concerns were
11 expressed regarding maintaining consistency in guidelines for all commissions and
12 committees.

13

14 Vote: Amendment to Motion 13 failed.

15 Ayes: Taunton, Jack Brown, Lavery

16 Noes: White, Alice Brown, Silver, Romans

17

18 Vote: Original Motion 13 passed.

19 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

20

21 Motion 14: Alice Brown moved to direct Staff to have the draft ordinance ready for review at
22 the May 4, 2004 regular Council meeting. Lavery seconded the motion.

23

24 Mayor Silver said it was moved and seconded, and called for discussion.

25

26 Amendment: Jack Brown moved to amend the date to the May 18 regular Council meeting,
27 due to Budget Committee activity. Romans seconded the motion

28

29 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

30

31 Vote: Amendment to Motion 14 passed.

32 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

33

34 Vote: Original Motion 14, as amended, passed.

35 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

36

37 VIII. CORRESPONDENCE

38 There was one item of correspondence: a letter from Tim Harmons, President of Tradewinds
39 Charters (copy attached to original of these minutes). There was discussion regarding the
40 possibility of potential liability implied in the letter and the reasons behind the City's decision to
41 not take over responsibility for the sidewalks. Hearing no objection, Staff was directed to draft
42 a letter to Tradewinds telling them the City is taking no action and feels it is an issue between
43 Tradewinds and ODOT.

44

45 IX. LIAISON OFFICERS' REPORTS

46 White and Taunton had no report.

47

1 Alice Brown reported that Parks Commission will meet tomorrow at 5:30.

2
3 Jack Brown reported that the Harbor Commission met and discussed the following three
4 concerns: 1) sea wall stabilization project, 2) the dredging project, and 3) the fuel dock project.
5 He deferred to Owings' Staff Report for updates.

6
7 Romans reported the Economic Business Development Committee will meet May 3.

8
9 Lavery reported the Traffic Safety Commission welcomed John O'Brien as their newest
10 member, and appointed him Vice Chairman. They discussed the radar trailer and its
11 placement, a grant for new radar equipment, and speed recommendations. Lavery and Bill
12 Sachs met with Owings to further discuss the grant.

13
14 X. CITY STAFF REPORT

15 Owings reviewed his written report (copy attached to original of these minutes). Items updated
16 included the ADA Bathroom and Ramp Project at City Hall, Seawall Stabilization Project, and
17 the Pirate Cove Sidewalk Project. He commended Councilor Lavery, Andrew Baldwin, Jerry
18 Stokes, and Michael Ronkin for their contributions to making the sidewalk project happen.
19 Mayor Silver will write a letter of thanks to these individuals.

20
21 Mayor Silver announced there was an action item from the 6 PM Executive Session.

22
23 Motion 15: Alice Brown moved to direct Staff to pursue property acquisition as discussed in
24 the Executive Session earlier this evening. Lavery seconded the motion.

25
26 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

27
28 Vote: Motion 15 passed.

29 Ayes: Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

30 Abstain: White

31
32 Murray reported 1) The first Budget Committee meeting will be held at 7 PM on Tuesday,
33 April 27 in Council Chambers. 2) An appeal has been filed on her determination to grant a
34 City business license to Joseph Bartosz, and she requested the Council set a date for the
35 hearing, noting the time frame required for notification of the hearing.

36
37 Motion 16: Lavery moved to schedule the appeal hearing for determination to grant a City
38 business license for the May 18 regular Council meeting. Taunton seconded the motion.

39
40 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

41
42 Vote: Motion 16 passed.

43 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

44 Gordon reported on the items he was directed to research: 1) the March 11 special meeting on
45 natural resources and a draft of Comprehensive Plan text amendments, and 2) email
46 exchanges and whether the exchange constituted a public meeting, and what components of
47 those exchanges would constitute a public record.

1
2 He noted several points in his report: 1) The Planning Commission made a point of making a
3 complete record of what was discussed. 2) He did not consider the March 11 meeting to be
4 illegal because according to people who were there, nobody left between the first adjournment
5 and the reconvening. 3) Items can legally be added to an agenda during a meeting, but this
6 should not be a matter of practice. 4) People who choose to not attend a public meeting take
7 the risk that they may not be able to participate in discussion of items not appearing on the
8 agenda. 5) All emails relating to the Findings of Fact on the Allyn application have been
9 printed out and are a part of the record. These records do not reflect an ongoing debate or
10 heavy exchange of information – things that would be indicative of a public meeting. 6)
11 Statutes clearly allow electronic and telephonic meetings as long as the public has access to
12 see or listen to what's transpiring. The public does not have to be allowed to participate. 7)
13 Anything that comes into City Hall via email is a public record unless it's exempt from
14 disclosure by law. 8) Emails between private parties, even if they're members of a public
15 body, are not public record.

16
17 The following points were noted during discussion between Gordon, and the audience and
18 Councilors: 1) A body that has authority to make recommendations to a public body on policy
19 or administration is a governing body. Any governing body may hold executive sessions, but
20 only for purposes defined by statute. 2) It is not uncommon for a tape to start moments after a
21 meeting is convened. 3) If some Commissioners receive information through a number of
22 emails and Commissioners who don't have email don't know about them or get the
23 information, it's a communication problem, but it isn't illegal. 4) Caution should be used before
24 adopting a policy that nothing can be discussed that is not listed on an agenda, because
25 issues will arise that need to be addressed. 5) If non-agenda items are discussed
26 spontaneously at a meeting that meets public meeting law guidelines, but if public officials
27 plan to discuss non-agenda items, that would be circumventing the purpose of public meetings
28 and public notice, and would be in violation of the spirit of public meeting law. 6) There is no
29 statute that says what has to be on an agenda for a special meeting or workshop. 7) When
30 people communicate on a private basis about a quasi-judicial issue that will come before the
31 Planning Commission, they are required to declare ex-parte contact; but not if it is a legislative
32 issue. 8) Discussion in a public meeting should be about legitimate public issues, not issues
33 such as somebody's marriage. Issues discussed at the March 11 meeting included issues
34 about the Planning Commission's role, function, and resources – all legitimate public issues.
35 They also discussed untrue statements being made by the *Beacon*, and needing to defend
36 themselves against this. The City Attorney and City Staff don't defend people with respect to
37 private issues such as reputation. If someone's reputation has been insulted illegally, there are
38 civil recourses. 9) It was acceptable for a Planning Commissioner to assist a liaison officer in
39 accurately reporting Commission concerns to the City Council because it did not involve
40 anything concerning the upcoming Allyn appeal. 10) If a public official makes slanderous or
41 libelous statements, it does not put the City at risk unless the City knows about it and
42 condones it. 11) Council Rules were developed to identify what the City was doing at that
43 point in time, as a guideline for future administrations.

44
45 Gordon indicated he would provide a written version of his oral report, and that he would be
46 responding to the records request within the next week.

47

1 XII. COUNCIL COMMENTS

2 Taunton expressed thanks to everyone who attended the Fleet of Flowers fundraising dinner.

3
4 Alice Brown said that what's printed in newspapers isn't necessarily true, and suggested
5 people keep in mind that through freedom of the press, the media is free to express opinions.
6 She also encouraged people to attend the May 9 Community Hall event, Gardening Through
7 the Ages.

8
9 White said May 22 is the second annual CASAC (Court Appointed Special Advocacy for
10 Children) sponsored Beach Ball. There will be a band from Salem and a seafood buffet. He
11 would like to see Depoe Bay represented at a table, which can be purchased by a group at a
12 cost of \$240. CASAC is federally mandated but is funded by donations.

13
14 XII. ADJOURN

15 There being no further business, the meeting was adjourned at 9:42 PM.

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20

21 _____
Mayor Bruce R. Silver

22

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24

25

26 _____

Silver Fox, Recording Secretary