

1 Depoe Bay City Council
2 Regular Meeting
3 Tuesday, March 3, 2015 - 7:00 PM
4 Depoe Bay City Hall

5
6 PRESENT: Mayor A.J. Mattila, J. Fisher-Brown, R. Gambino, J. Grant, S. Olsen, S. Sparks, K. Wyatt

7
8 STAFF: City Recorder P. Murray, City Superintendent B. Weidner, City Planner L. Lewis,
9 Recording Secretary E. LuMaye

10

11 I. PLEDGE OF ALLEGIANCE

12 Mayor Mattila called for all to stand for the Pledge of Allegiance.

13

14 II. CALL TO ORDER

15 Mayor Mattila opened the meeting at 7:02 PM and established a quorum.

16

17 III. APPROVE MINUTES: February 17, 2015 Regular Meeting

18 Motion 1: Fisher-Brown moved to approve the minutes from the meeting of February 17. Gambino
19 seconded the motion.

20

21 Mayor Mattila said it was moved and seconded and called for the question.

22

23 Vote: Motion 1 passed.

24 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

25

26 IV. ACCOUNTS PAYABLE

27 Motion 2: Gambino moved to approve Accounts Payable as presented. Olsen seconded the motion.

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29 Mayor Mattila said it was moved and seconded, and called for the question.

30

31 Vote: Motion 2 passed.

32 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

33

34 V. SPECIAL ORDERS

35 A. Public Hearing continued: Receive Public Input on Regulations for Medical Marijuana Facilities

36 Murray reported there was no written testimony received since the last Council meeting. Mayor Mattila
37 called for public comments from the audience; there were none.

38

39 B. Interview/Appoint Applicants for City Commissions and Committees

40 Mayor Mattila said that Bill Spores was unable to be present this evening. Ballots were filled out,
41 signed, and handed in. Murray tallied the votes (copy of ballot and application attached to original of
42 these minutes) and announced the results. The vote to re-appoint Bill Spores to a three-year term on the
43 Budget Committee and the Urban Renewal Budget Committee was unanimous.

44

45 Motion 3: Olsen moved to accept the nomination and the voting of Bill Spores to the Budget. Gambino
46 seconded the motion.

47

48 Mayor Mattila said it was made and seconded, and called for discussion. There was none.

49

1 Vote: Motion 3 passed.

2 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

3
4 Murray reviewed the list of unfilled vacancies, and said we will continue to advertise for them.

5
6 VI. REPORTS OF OFFICERS, BOARDS, OR STANDING COMMITTEES

7 A. Parks Commission Recommendation – Alsea Avenue Encroachment

8 Murray said there was no Parks Commissioner present to address the Council on this issue, and
9 reviewed a memo (copy attached to original of these minutes) to the Council dated 2/27/15 regarding the
10 history of the encroachment, and the Parks Commission’s recommendation – a motion passed
11 unanimously: *Move to answer back to Mendenhall that the city take back its property and insist that the*
12 *property owner move the piers back to his property, off the city property, and reject his offer.* Weidner
13 reported the property line pins are fully visible. Fisher-Brown asked if the 10-12 foot fence the property
14 owner proposed in place of the piers and rope fence would violate any City ordinances; Lewis reported
15 the City does have fence regulations that state the first 20 feet of a yard is considered the front yard, and
16 front yard fences can be no higher than 3½ feet. He said after 20 feet, a fence up to six feet tall could be
17 built without a building permit, and a fence higher than that could be built if a building permit were
18 obtained. He also said that the City considers any public right-of-way a street. Fisher-Brown said she
19 visited the site today, and thought it presumptuous of the owner to build on the City’s property and just
20 assume it would be gifted to him. Sparks did not like the precedent-setting aspect. Weidner said it’s a
21 really nice area that we want to keep for the public, and there are plans to put in a bench at the end of
22 Alsea Street.

23
24 Motion 4: Gambino moved to re-direct Mr. Mendenhall to move his piers and rope back to his legal
25 property line. Olsen seconded the motion.

26
27 Mayor Mattila called for further discussion; there was none.

28
29 Vote: Motion 4 passed.

30 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

31
32 VII. PUBLIC COMMENTS

33 Pat Dunlop 1275 Walking Wood, distributed the last page from the minutes of a Pacific Sea Lions
34 (Lions) meeting (copy attached to original of these minutes), and addressed the Council on a discussion
35 regarding liability insurance for activities at the community center. All events insured by the Lions
36 would have to list the Lions as sponsor and would need to be approved by the Lions in advance. In
37 exchange for insuring community activities (e.g. knitting circle, or computer help class), the Lions are
38 requesting use of the community hall twice each month for their meetings. There was discussion.

39
40 Motion 5: Olsen moved to allow the Pacific Sea Lions to enter into that agreement with us at no expense
41 of their own, that is the “no pay list”, and the caveat would be that they provide additional proof of
42 insurance as needed. Wyatt seconded the motion.

43
44 Mayor Mattila called for further discussion. Gambino asked if this should be passed by the City
45 Attorney. Olsen said the Council has added groups to the list before. There was discussion about
46 signage. Fisher-Brown called for the question, with decisions about signage and other details to follow
47 later. Grant asked to have the motion re-stated; Olsen said the motion is to allow the Pacific Sea Lions to
48 use the Community Hall expense free, provided they have the proper insurance certifications. Mayor
49 Mattila called for further discussion. There was none.

1 Vote: Motion 5 passed.

2 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

3
4 VIII. UNFINISHED BUSINESS

5 A. Salmon Enhancement Commission – Project at North Reservoir

6 Beanie Robison, Salmon Enhancement (SE) Commission Chair, thanked the Councilors who came up,
7 at Councilor Olsen’s suggestion, to visit the site. He said things have slowed down since the last time he
8 addressed the Council, and the dock people are taking advantage of good weather and are out building
9 docks instead of doing diagrams – no plans have yet been produced. Looking to Murray, he said Staff
10 was going to double check having the funding go through a non-profit. Murray reviewed an email sent
11 to Mr. Robison last week: the City Auditor said while the City, including the SE Commission, doesn’t
12 need a fiscal agent outside the City, the Auditor believed that one could be named, if so desired. The
13 Auditor advised that once the grant is awarded and the City enters into the agreement for the funds,
14 another entity could be named as fiscal agent for the project at that time, if desired. Mr. Robison said
15 what was suggested from the head biologist of the district was for the Depoe Bay STEP (Salmon and
16 Trout Enhancement Program) to apply for the grant. He said the Commission isn’t ready to apply for a
17 grant right now, and they want to have things in place, have everybody on board, and be very clear on
18 what they’re going to do; and then apply for a grant in the next quarter. He said it’s about a six month
19 process, so funding would come in around the end of the year. He believes the application has a very
20 good chance of being approved. He said SE wants to apply for a grant, and talk to Neighbors For Kids
21 (NFK) about being the fiscal agent; he said the way the SE Commission sees it, what that does is to
22 maybe open a door. He said the grant funding reimburses costs, so the question is, when the grant comes
23 and the costs are reimbursed, who’s responsible for the capital outlay for the dock? He hasn’t received
24 an answer yet. Olsen asked about public safety during the fin clipping; Mr. Robison said there may not
25 be a fin clipping this year, and they are still waiting to hear from the biologist. There was brief
26 discussion about permits and the type of dock the SE Commission would like to get. Sparks asked if
27 there was a way the City could give seed money to get the project started more quickly; Murray said
28 money spent before grant award is not eligible for reimbursement, and explained how the
29 reimbursement process works. Grant asked what the budget for the project is; it hasn’t been budgeted
30 yet. He also asked if STEP was organized as a 501(c)(3) or 501(c)(4); Mr. Robison said it’s just the
31 STEP Project, which is the SE Commission. Mayor Mattila said the dam is part of the project, as part of
32 it is rotting away and needs to be addressed at the same time as we decide what to do with the dock. Mr.
33 Robison will keep the Council informed on the progress of this project.

34
35 B. Shell Avenue – Traffic Concerns

36 Weidner reported that high-visibility aluminum signs have been ordered for Shell Avenue. He ordered
37 safety signs for each side of the street. He is searching for a sign to add to the South 40 Lane stop sign
38 post, which says “cross traffic does not stop”. He hopes to have the signs up in about two weeks.

39
40 C. Jesse Caldwell Complaint – Allen & Sons Paving

41 Weidner reported he did a site visit looking for hazardous chemicals, with an employee present. There is
42 a lot of debris the owner needs to get cleaned up. There is a nearby property owner who is clearing the
43 hillside to build a retaining wall, and the clearing work has revealed a lot of debris and is causing the
44 neighbor to be concerned. Weidner said if the Council directs, he will write a letter to the property
45 owner telling him to clean up the lot. Weidner said it’s about 300 yards to the intake in the park where a
46 raw water sample could be obtained for testing for volatile and synthetic compounds. The test is quite
47 expensive at over \$1,000. Fisher-Brown asked if it wasn’t possible to require the owner perform testing
48 and remediation at his expense since he’s the one who caused the problem. Weidner said he could ask
49 DEQ, who is currently not involved, but suggested starting with a letter to the owner and see how things

1 progress, which is the normal procedure in this situation. He said he will keep the Council and Ms.
2 Caldwell updated.

3
4 Motion 6: Gambino moved to direct Staff (Brady) to write a letter to the owner of the property. Fisher-
5 Brown seconded the motion.

6
7 Mayor Mattila called for the question.

8
9 Vote: Motion 6 passed.

10 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

11
12 D. Medical Marijuana Regulations

13 Murray asked to return to the subject of medical marijuana while Lewis is still here. She said the
14 moratorium ends April 30, and asked the Council to consider reviewing draft Ord. #302 and Lewis's
15 map with buffer circles (copies attached to original of these minutes). There was no objection to
16 Murray's request; lengthy discussion ensued.

17
18 Motion 7: Olsen moved to accept Larry Lewis' schematic of the 1,000 foot exclusion zone from NFK;
19 however, everything else in the town should be allowed through the business license process to have a
20 business selling marijuana. Fisher-Brown seconded the motion.

21
22 Mayor Mattila called for discussion. There was discussion including buffer zones, whether regulating
23 zoning might be discrimination, and how much additional Staff time would be required for noticing
24 property owners in a 1,000-foot radius vs. a 100-foot radius. Fisher-Brown said her understanding of
25 both medical and recreational marijuana law is that these businesses are not allowed in Residential
26 zones, which eliminates those areas from consideration in this discussion; and if we're going to exclude
27 this one legal substance then we should be thinking about excluding other possibly hazardous legal
28 substances as well, including alcohol and tobacco. She said it was splitting hairs to say you can't do it
29 for just this one thing. Wyatt thought we were trying to be a judge more than we should be. Lewis drew
30 the Council's attention to draft Ord. #302, at the bottom of the 1st page, #2 Location, and said this would
31 be changed to *...may not be located within 1,000 feet of a public or private facility attended primarily by*
32 *children and minors (under the age of 21 years), including but not limited to children day care facilities,*
33 *children clubs, after school program facilities and other facilities attended primarily by children and*
34 *minors the Neighbors For Kids facility.* Olsen said he didn't believe we would need to increase the
35 price of a business license. Murray explained the business license processing procedure, including that
36 when an application is received for a new business, there is a \$30 fee to cover the cost of notifying
37 surrounding property owners within 100' of the applicant of the determination made whether to grant or
38 deny the application. If we have a 1,000 foot boundary for marijuana businesses, a 100 foot notification
39 area is useless and would need to be expanded to a 1,000 notification area, which is far larger and would
40 require more processing time and cost for supplies and postage. The current new application fee is \$30,
41 and if we expand the notification area to 1,000 feet, then the one-time new application fee should be
42 increased. Those fees are set through Resolution, so the Council would not need to decide that question
43 this evening. Grant said he's all for protecting the children from anything that might be harmful. He said
44 the Council has discussed private property rights and NKF can restrict anything they like on their
45 property. The gas station next door sells beer and wine, and much of the public has stated that they
46 consider use of marijuana similar to beer and wine. He questioned the wisdom of going down this road
47 or not, and just let the chips fall where they may and let the private property owners restrict the use of
48 the substance on their own property, and allow the State law to be what we adopt here. Sparks asked if
49 there wasn't something specific about schools being 1,000 feet away; Wyatt said it's not a

1 school; Sparks said it's a moral issue, and if there was a school there, we wouldn't be having this
2 discussion. Wyatt repeated Grant's earlier statement that it's the same thing as alcohol, wine, and beer –
3 anything requiring a person to be at least 21 years of age to purchase. Olsen said what if we say you can
4 sell it wherever you want, and somebody does get in by NFK – would we get in trouble with the State if
5 NFK becomes a school? Would there be a grandfathering clause for a business that was established
6 before a school was present? He could see problems with having to go to a business and say “oh, it's a
7 school now, so you're out of business.” Sparks said the kicker is that in the context of the long-term
8 planning that's going on for after-school programs, the Lincoln County School District and the 21st
9 Century Community Learning Center Program sponsored by the Federal Government is inclusive of
10 NFK. He believes that an extended school day will include after-school programs is coming in the
11 future. He said if we don't do something in the beginning that's morally consistent with State law for
12 1,000 feet and make that correct assumption that NFK is a school, then down the road somebody's going
13 to make it a school and we're going to have all these other problems. He said he's an expert on this
14 subject matter, as he's the Vice Chair of NFK, and he assured they Council they would see a school
15 designation at some point in the future. Gambino called for the question. Mayor Mattila asked him to
16 wait a minute, while he asked Murray to read a paragraph from a handout he brought back from a recent
17 League of Oregon (LOC) Cities meeting. Reading from the document, Murray said LOC will advocate
18 for the following legislative and administrative changes:

19 ***Allow City Councils to Prohibit Retail Marijuana Sales and Production and Allow for***
20 ***Meaningful City Input in the Licensing Process***

21 *Measure 91 allows cities and counties to prohibit marijuana sales by an initiative vote of the*
22 *people at the next general election, which would be 2016. However, under the act, OLCC would*
23 *begin accepting license applications in January of 2016. Oregon has traditionally been a strong*
24 *home-rule state, while allowing citizens to legislate directly through the initiative process. City*
25 *councils should be allowed to prohibit commercial marijuana by ordinance. Additionally, allowing*
26 *citizens to vote on an “opt-out” only at the next general election does not allow them to express*
27 *their wishes at other stages of the process. Cities must also have a meaningful avenue to express*
28 *concerns and objections to individual license applications.*

29
30 Mayor Mattila said to keep that under consideration because we might be voting on something that will
31 have to change. Lewis agreed, saying that the Council's addressing medical marijuana now, but within a
32 year we'll be sitting here talking about the retail facilities. Olsen said if we don't do something by May
33 1, anybody could put a dispensary right next to NFK. Gambino asked didn't he call for the
34 question; Mayor Mattila said yes, he did. Gambino said he isn't being recognized when he puts his hand
35 up, and because he's not a bully in this group he rarely gets recognized. He apologized for his
36 outburst. Mayor Mattila called for the question. Grant asked to have the motion re-stated; Murray re-
37 stated the motion.

38
39 Vote: Motion 7 passed.

40 Ayes: Fisher-Brown, Grant, Mattila, Olsen, Sparks, Wyatt

41 Abstain: Gambino

42
43 Olsen called point of order, and asked Gambino if he was involved in this, Gambino said no. Olsen
44 asked him how he could abstain. Gambino asked Murray if he was legally allowed to abstain; Murray
45 replied yes.

46
47 Murray asked the Council if they are ready for a re-draft of Ord. #302 (copy attached to original of these
48 minutes) to be presented and start the adoption process at the next meeting; the consensus was yes.

1 Murray said she would schedule the reading of proposed Ord. #302 for the March 17 Council meeting,
2 to start the adoption process.

3 Motion 8: Grant made that motion. Wyatt seconded.

4

5 Mayor Mattila called for the question.

6

7 Vote: Motion 8 passed.

8 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

9

10 IX. NEW BUSINESS

11 A. Port Leases

12 Olsen read the last paragraph of an unsigned letter to the Council, the Harbor Commission, and the
13 Parks Commission into the record: *Unfortunately, we cannot sign our names. This concern is not from*
14 *one family or one property owner – but a group of several residents and a number of property owners*
15 *who want to see the City do the right thing and conduct city business without prejudice or favoritism.*
16 *You are not performing the duties of your office in a prudent manner and you have been neglecting your*
17 *fiduciary duty to the citizens.* He said it should have been signed by all parties, or it should go on “Rants
18 and Raves”. He was offended by the letter, and didn’t want to address it because it wasn’t signed. Mayor
19 Mattila said in 2006 the Council decided to eliminate port leases to pursue a walkway around the harbor
20 and other harbor beautification, and some of those things are still pending. He said even if the letter was
21 signed, he would be inclined to vote no on getting back into harbor leases. Fisher-Brown wanted to go
22 on record as saying this bit of literature is a very cowardly way to try to get shots in. She didn’t
23 speculate as to who or why, feeling that’s best left to the conscience of the people who drafted the
24 letter. Sparks said his issue on the letter is that he doesn’t have enough information to understand all the
25 implications, but he does recognize the fiduciary responsibility that goes with this. He didn’t want to
26 drop it; he wanted to learn more about it. He doesn’t like having this sort of thing out there with the
27 implication that the Council isn’t performing their fiduciary responsibilities, and somehow it needs to be
28 addressed. He said he’d get familiar with it on his own time. Grant said it was a “drive by” and he didn’t
29 see how the Council could consider anything when they can’t cross-examine the author(s).

30

31 X. CORRESPONDENCE

32 There were three items of correspondence (copies attached to original of these minutes), with two being
33 from NFK: 1) An announcement/invitation to March Family Literacy Event on Thursday, March 5 at 6
34 PM, in celebration of Dr. Seuss’s birthday. 2) A request for Mayor Mattila to read and sign a
35 proclamation to designate March 5 as “Read Across Depoe Bay”, at the March 5 event.

36

37 Motion 9: Gambino moved to approve the Mayor signing the “Read Across Depoe Bay” proclamation to
38 be read at the Neighbors For Kids event. Fisher-Brown seconded the motion.

39

40 Mayor Mattila said it was moved and seconded, and called for the question.

41

42 Vote: Motion 9 passed.

43 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

44

45 Murray continued with Correspondence.

46 3) An email from Harmony Miller with a photo and appraisal of whale sculptures hanging in an office;
47 the sculptures are for sale and all offers will be considered. Murray said the City became aware of this
48 last week when a Chamber representative came in and said they had no place for these large sculptures

1 and thought the City might be interested. There was discussion about where the sculptures might be
2 placed. This item will be forwarded to the Parks Commission for a recommendation.

3
4 XI. CITY STAFF REPORT

5 Weidner 1) Provided an update on the Lincoln County Emergency Preparedness grant application,
6 saying he and Murray located a good fit for the grant: a 1,000 person emergency trauma kit that has
7 everything from tourniquets to body bags with toe tags. 2) Indian Trail Avenue needs to be widened. He
8 has obtained two bids from asphalt contractors; each is around \$2,500. He will take the lower bid. 3)
9 Sometimes pumps at the wastewater plant get clogged with grease and sewer stuff; this recently caused
10 pumps at the plant to go out. 4) If people ask about the painted lines on Coast Avenue, it is because Civil
11 West Engineering has started doing the project's concept design. 5) Crew is staying busy with projects.

12
13 Murray asked the Council if they were ready to make a motion from tonight's Executive Session.

14
15 Motion 10: Sparks moved to approve the Wave franchise agreement for cable only with 5% cap that's
16 regulated by the FCC. Gambino seconded the motion.

17
18 Mayor Mattila called for the question.

19
20 Vote: Motion 10 passed.

21 Ayes: Fisher-Brown, Gambino, Grant, Mattila, Olsen, Sparks, Wyatt

22
23 Murray reminded the Council about the joint meeting tomorrow evening with the Lincoln County Board
24 of Commissioners at 6 PM. The agenda has been provided (copy attached to original of these minutes).

25
26 XII. COUNCIL COMMENTS

27 Sparks reported on his attendance with the Mayor at *City Day at the Capitol* last Thursday. He was very
28 interested in the mental health initiative and said what he saw there reinforced the Council having put
29 that on the agenda. He said it's expected of us to do a grass roots analysis of what our needs are in the
30 county, and he has already volunteered to take the lead on this. Perhaps the grass roots effort with his
31 small group will lead to something like a partnership. He said the focus at the meeting was on crisis,
32 response, and first aid vs. using 911 as the only way to get mental health assistance.

33
34 Wyatt spoke to Gambino about his statement about not being a bully, saying she raised her hand a lot
35 tonight and wasn't always called on. She said maybe he needs to be a bit more aggressive.

36
37 Mayor Mattila 1) Apologized for not recognizing Gambino, and said he'll try to do better in the future.
38 2) He will attend the Dr. Seuss event at NFK, but has a 5:30 meeting so will probably not get there until
39 around 6:15.

40
41 Gambino said he should be more lenient with the newer members, but it's their responsibility to know
42 how meetings are run and to know the rules of order, which are definitely not being adhered to.

43
44 XIII. ADJOURN

45 There being no further business, the meeting was adjourned at 9:04 PM.

46
47
48
49 _____
A.J. Mattila, Mayor

1
2 _____
3 Emma LuMaye, Recording Secretary