



## CITY COUNCIL MEETING MINUTES November 27, 2018

The scheduled meeting of the Ontario City Council was called to order by Mayor Ronald Verini at 7:00 p.m. on Tuesday, November 27, 2018, in the Council Chambers of City Hall. Council members present were Ronald Verini, Norm Crume, Dan Capron, Thomas Jost, and Marty Justus. Betty Carter and Ramon Palomo were excused.

Members of staff present were Adam Brown, Tori Barnett, Larry Sullivan, Terry Leighton, Kari Ott, Cliff Leeper, Cal Kunz, Dan Cummings, Betsy Roberts, and Peter Hall.

The meeting was recorded and copies are available at City Hall.

Dan Capron led everyone in the Pledge of Allegiance.

### AGENDA

This Agenda was posted on November 26, 2018. Copies of the Agenda are available from the City Hall Customer Service Counter and on the city's website [www.ontariooregon.org](http://www.ontariooregon.org).

Request to amend the Agenda to include an Executive Session under ORS 192.660(2)(d).

CRUME moved, CAPRON seconded, **TO ADOPT THE AGENDA AS AMENDED**. Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2.

### PUBLIC COMMENT

Steven Meland, Ontario: *I'm the owner of Hotbox Farms, with my business partner. I wanted to take some time to talk about the marijuana business license that we'll be voting on this evening. I also worked on that business license through my work with the Ad-Hoc Committee. I do think that the Ad-Hoc Committee spent an awful lot of time talking about these regulations and even met as recently as a week ago, to vote on certain topics or issues that came up in this. And I do feel that we've come to a very complete ordinance that gives a very fair business license fee, hours of operation, and ways to conduct the business. Specifically, I do think that the hours of operation is something that make sure that we can help evenly distribute the amount of cliental that will be coming into the city around the different sites that we're seeing popping up. So that's all I really have at this time, just to support that ordinance as it was written. Thank you.*

### OLD BUSINESS

#### Bid Award: Ontario Aquatic Center Splash Pad Site Work

Adam Brown, City Manager, presented.

Public Works staff secured a low bid for the Splash Pad Site Improvements at the Ontario Aquatic Center. Staff would like to secure a partial approval of the bid by the City Council so the project can progress forward. Several years ago a passionate group of volunteers got together to revive the Ontario Aquatic Center. Over time, they determined an outdoor splash pad was the most cost effective way to begin revitalizing the city's pool. The City of Ontario committed several years transient occupancy tax collections toward the project until it had sufficient funds to award the splash features to Anderson Poolworks in January of 2018. After the Council awarded the contract to Anderson Poolworks the Friends of the Aquatic Center began securing significant donations towards the remainder of the project, and last spring, the project was kicked off.

The city's Parks Master Plan was approved in time for the city to apply for the State Local Government Grant Program. In the spring, the city applied for the grant and received funding for up to \$298,200 for restrooms and other splash pad elements, such as shade structures. The restroom portion of the project was bid previously and awarded to Holcomb Construction for \$154,720 after the State of Oregon officially announced the award of grants in September of 2018.

The Site Work portion of the Splash Pad Project was bid separately from the restrooms. This part of the project tied together the bathroom piece with the pool features into one facility. Two bids were received. The low bid came from Warrington Construction for \$378,620. Since receiving the bids, city staff and JACOBS had worked with the contractor to value engineer elements of the project. JACOBS worked with the engineer to reduce concrete fill amounts and concrete coloring by \$46,080. Staff was also able to reduce the scope by a donation of fill material to save approximately \$7,715. Another \$4,890 was saved by the contractor identifying different lights and drains. Additionally, the city's public works contractor, JACOBS, agreed to donate \$50,000 to the project.

After accounting for the donation from JACOBS and the contract savings, that was still a revenue gap of \$50,000 to finish the project. Staff was awaiting notification from several donors to fill the remaining gap. After fulling exploring those donors, staff will consider other alternatives to make sure the project is finished.

Since the full revenue to complete the job had not been raised, staff recommends the Council award the project MINUS the concrete deck. Staff would include the deck for the splash pad so that Anderson could install the pool features as soon as possible once the pad was complete. The reduction in scope was \$110,970, which fell within the current revenue. The remaining portion of the contract would be awarded as soon as additional funds were identified.

Staff was looking to the Council to award a partial contract of \$208,966 to Warrington Construction, as well as an additional \$2,000 for material testing. Staff had sufficient project revenues to cover this contract. The savings of \$110,970 was more than enough for the current gap. If the volume of quantities changed by more than 25%, the contractor and owner had a right to renegotiate unit prices; however, it would certainly be staff's goal that before moving forward with placing concrete, the money was in hand and there was no reduction in quantities and therefore none in unit price.

Timing for awarding this project was critical. The goal was to have the Splash Pad open by June 1, 2019. There was a very short window for work yet this fall, with the majority occurring next spring. The more that could be completed this fall, the better off the contractor would be in the spring. If the project was not awarded soon, the contractor might not be able to get much prep work completed before freezing conditions (which were not acceptable for material placement and compaction), occurred. Warrington would like to try to get the Anderson Poolworks vaults installed and as much of the fill material placed and compacted as possible before winter really settles in. The Council could approve the low bid for the splash pad by Warrington Construction and allow the project to move forward; or, not approve the low bid, which would result in a significant hold up to the project.

JOST moved, CAPRON seconded, **THAT THE CITY COUNCIL APPROVE THE BID FROM WARRINGTON CONSTRUCTION FOR THE SPLASH PAD SITE IMPROVEMENTS AT THE ONTARIO AQUATIC CENTER MINUS THE CONCRETE DECK FOR UP TO \$208,966 PLUS AN ADDITIONAL \$2,000 FOR MATERIAL TESTING.** Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2.

#### **NEW BUSINESS**

##### **Resolution #2018-143: City Hall Security Project**

Adam Brown, City Manager, and Betsy Roberts, City Engineer, presented.

Public Works opened a bid for the City Hall Security Upgrade Project on November 8, 2018. Only one bid was received.

Over the past 18 months, the Police Chief had been working with City Administration to develop an improved flow through the City Hall building that would better separate Police space from Administrative space. This was being done through relocation of staff, construction of walls to divide space, and addition of doors with new security

locks. The movement of doors, addition of walls, and other changes required some lighting, electrical, and communications cable updating as well. All of these improvements were developed into a set of Construction Documents that were put out to three local contractors for consideration.

Public Works staff followed up several times with each contractor, including taking each contractor through City Hall and describing the improvements. However, due to the booming economy, only one bidder responded. At this time, to keep the project moving and implements the changes desired by Public Safety, Public Works staff needed an approval from Council to award the project to Holcomb Construction.

This project had been budgeted and bid in the past. Unfortunately, no bids were received. The project was modified slightly, and the bid was held up to allow for a potentially better bidding environment. However, the budget was not carried forward into the current fiscal year. The cost of the project identified in the motion includes an approximate 10% contingency; the actual bid amount was \$43,914.

This project had been in the works for over a year. Winter was a good season for this type of indoor construction. The improvements were being done as a safety and security measure for those working in and using City Hall. The Council could choose not to award the bid and rebid at a later date. Whether a better bid could be secured was questionable in this bidding climate.

Following discussion, it was determined that as this funding had not been allocated in the current budget, the Budget Committee should be convened to discuss the action and make a recommendation to the Council. Therefore, this action would be on hold until such meeting could be scheduled.

#### Ordinance 32746-2018: Extenet Systems, LLC Franchise Agreement

Larry Sullivan, City Attorney, presented.

Extenet Systems, LLC, had applied to the city for a nonexclusive telecommunications franchise to use the city rights of way for the installation and maintenance of telecommunications devices. Ordinance #2746-2018 granted Extenet Systems, LLC, a franchise in accordance with the Agreement set forth in Exhibit "1" to the Ordinance. The company might or might not provide telecommunications services directly to end-users within the city, but it does intend to install transmission devices to lease out to other service providers. Those devices would be installed on new or existing poles in the city.

The City Attorney had been negotiating the terms of the franchise agreement since July, 2018, and also provided Extenet Systems, LLC, with a copy of the franchise agreement with Mobilitie, LLC, approved by the City Council in 2017 through Ordinance #2724-2017 to use as a template because of the similarity between the proposed franchise operations of both companies. Extenet and the City Attorney had tentatively agreed on minor revisions to the Extenet agreement, and Extenet representatives had signed a draft of the most recent version.

Section 9 of the proposed franchise agreement required Extenet to pay quarterly payments of the greater of (1) 7% of Extenet's gross revenues received for the delivery of services within the city or (2) \$225.00 per quarter for each installation located in a city right of way, whichever was greater. Therefore, even if Extenet had no local customer base from which it generated gross revenues, the city would obtain a minimum franchise fee per year of \$900 for each one of Extenet's installations either on city poles, or on other poles that were within the city's rights of way. Extenet had not provided the city with a timetable for beginning installation of any telecommunication devices in the city limits.

Telecommunications franchise agreements were subject to provisions of federal and state law in addition to the following Chapters of the City Code: Rights of Way (Title 8, Chapter 8) and Telecommunications (Title 3, Chapter 2). Ordinance #2746-2018 and the attached franchise agreement complied with federal and state law and the City Code. The City Code required all telecommunications providers in the city to have written franchise agreements with the city. The city's policy was to charge all telecommunications franchisees a 7% franchise fee based on gross revenues earned within the city. Similar to Mobilitie, which obtained a franchise in 2017, Extenet was mounting WIFI devices on poles in the city rights of way instead of installing fiber optic cable below ground. Extenet was willing to pay the city the same franchise fee as the city was charging Mobilitie.

The Council could take no action on this franchise request, which would probably result in a legal claim by Extenet that the city was either barred by federal law from preventing it from operating in the city, or was discriminating against it under federal law, which required municipalities to treat all telecommunications providers equally. If the Council did not agree with any of the provisions of the franchise agreement, the Council could direct the City Attorney and city staff to renegotiate the terms. If that occurred, the Council had the right to conduct that discussion with staff in an executive session under ORS 196.660(2)(e), real property negotiations.

CRUME moved, JUSTUS seconded, **THAT THE CITY COUNCIL APPROVE ORDINANCE #2746-2018, AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO EXTENET SYSTEMS, LLC, ON FIRST READING BY TITLE ONLY.** Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2.

Ordinance #2747-2018: Marijuana Business License Ordinance Amendment (Emergency Passage)  
Larry Sullivan, City Attorney, presented.

Initiative Ballot Measure 23-61, passed by the voters on November 6, 2018 and effective January 1, 2019, allowed certain marijuana businesses. Both the city's home rule authority under the Oregon Constitution and ORS 475B.486 authorized the City Council to impose reasonable regulations on marijuana businesses.

One of the purposes of Ordinance #2747-2018 was to enforce the authority granted to the city by the voters to enforce the 3% marijuana retail sales tax. Ballot Measure 23-61 also added various sections to Chapter 23 of Title 3 of the Ontario Municipal Code dealing with the licensing and regulation of marijuana businesses by the city. In 2016, the Ontario City Council enacted Ordinance #2714-2016, which added Chapter 24 to Title 3 of the Ontario Municipal Code, to establish a business license for medical marijuana dispensaries, in the event that Ontario legalized such dispensaries.

It was the intention of the Ontario City Council to amend or repeal some sections of Ballot Measure 23-61 in order to impose on marijuana businesses reasonable regulations which differed from those in Ballot Measure 23-61. This ordinance regulated the operation of marijuana businesses in the city in ways that protected and benefited the public health, safety, and welfare of existing and future residents and businesses in the city, by amending Chapter 24 of Title 3 of the Ontario Municipal Code to apply to all marijuana businesses in addition to medical marijuana dispensaries, and to impose additional reasonable regulations on those businesses. The ordinance imposed a residency requirement for marijuana businesses to require the majority of owners to live in the 8C School District as recommended by the Marijuana Ad Hoc Committee.

The business license application fee would be \$5,000. The ordinance also imposed a cash bond with the city to be used for any retailers that didn't pay their taxes.

Because Ballot Measure 23-61 became effective on January 1, 2019, Ordinance #2747-2018 was intended to become effective immediately afterwards. Staff was requesting an emergency approval so that it was in place immediately after Ballot Measure 23-61 became effective on January 1, 2019.

The Council could choose not to approve the proposed ordinance on emergency passage; however, problems could arise due to the timing of the ballot measure becoming approved the business license adoption.

CRUME moved, CAPRON seconded, **TO IMPOSE A \$7,500 BOND GUARANTEE.** Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-no; Capron-yes; Jost-yes; Verini-yes. Motion carried 4/1/2. [Section 3-23-47(E)]

Consensus to **REMOVE THE RESIDENCY REQUIREMENT.** Crume-remove; Carter-out; Palomo-out; Justus-remove; Capron-remove; Jost-remove; Verini-remove. Consensus carried 5/0/2. [3-24-4(A)(16)]

CRUME moved, CAPRON seconded, **TO ACCEPT THE \$5,000 FEE FOR THE BUSINESS LICENSE.** Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2. [3-24-6(B)]

CRUME moved, JUSTUS seconded, **TO REMOVE THE RESIDENCY REQUIREMENT IN THE ORDINANCE**. Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2. [3-24-4(A)(16)]

CAPRON moved, JOST seconded, **TO STRIKE THE EMERGENCY DECLARATION FROM THE ORDINANCE**. Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2.

JOST moved, CRUME seconded, **THAT THE CITY COUNCIL APPROVE ORDINANCE #2747-2018, AN ORDINANCE AMENDING PROVISIONS OF BALLOT MEASURE 23-61 AND CHAPTERS 23 AND 24 OF TITLE 3 CONCERNING THE REGULATION OF MARIJUANA BUSINESSES, INCLUDING BUSINESS LICENSES FOR MARIJUANA BUSINESSES, AS AMENDED BY MOTION, ON FIRST READING BY TITLE ONLY**. Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2.

JUSTUS moved, CRUME seconded, **TO WAIVE THE SECOND READING OF ORDINANCE #2747-2018, AN ORDINANCE AMENDING PROVISIONS OF BALLOT MEASURE 23-61 AND CHAPTERS 23 AND 24 OF TITLE 3 CONCERNING THE REGULATION OF MARIJUANA BUSINESSES, INCLUDING BUSINESS LICENSES FOR MARIJUANA BUSINESSES, AS AMENDED BY MOTION BY TITLE ONLY**. Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2.

#### EXECUTIVE SESSION

##### Executive Session: ORS 192.660(2)(d)

An executive session was called at 8:43 pm under provisions of ORS 192.660(1)(d) to discuss labor negotiations. The Council reconvened into regular session at 9:37 pm.

#### CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

Mr. Brown stated he would be sending his evaluation form to the Council for completion. Please return those to Peter Hall, HR Manager. It would need to be addressed on December 18<sup>th</sup>.

#### ADJOURN

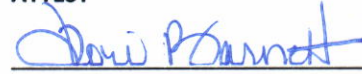
CRUME moved, CAPRON seconded, **THAT THE MEETING BE ADJOURNED**. Roll call vote: Crume-yes; Carter-out; Palomo-out; Justus-yes; Capron-yes; Jost-yes; Verini-yes. Motion carried 5/0/2.

ACCEPTED:



Ronald Verini, Mayor

ATTEST



Tori Barnett, MMC, City Recorder