
City of Florence
City Council Minutes
March 1, 2010

CALL TO ORDER - ROLL CALL - PLEDGE OF ALLEGIANCE

Mayor Brubaker opened the regular council meeting at 7:00 p.m. with the pledge of allegiance. Other members present included Council President Nola Xavier, Council Vice President Alan Burns, and Councilor Suzanne Roberts. Councilor Dave Franzen was absent and excused. Staff in attendance included City Manager Robert Willoughby, Assistant City Manager Jacque Morgan, Public Works Director Mike Miller, Community Development Director Sandra Belson, Finance Director David Armstrong, Police Chief Maurice Sanders, Senior Planner Wendy Farley, and City Recorder Pat Heinze.

APPROVAL OF AGENDA

Mayor Brubaker requested that item 10 (Census 2010) be moved to the beginning of the meeting in the form of a public service announcement; council concurred.

CENSUS 2010

Community Development will provide a report to Council on the Census 2010 process

AP Farley said that city staff had made a request to the Regional Quality Assurance staff person at the Census department, to have the city's Quality Assurance Center (Center) moved to city hall or the library. She said the Center provides assistance to Florence area citizens by answering their questions, providing questionnaires for those who did not receive one and assisting in filling out the form. She said it was important for the Center to be accessible and open hours so that citizens could access that information. She said the Center was currently proposed to be housed at the Siuslaw Outreach Services building and the SOS director was opposed to that idea; due to the confidentiality issues with their clients.

AP Farley said if citizens have a PO Box; they would not receive a questionnaire and they would need to go to the Center to get one. She went on to say that the completion of the questionnaire was worth a lot of money to the community as Florence receives money for services provided, therefore, it was important for everyone to complete their questionnaires.

Mayor Brubaker said the Census Bureau was not willing to send questionnaires to PO Box holders. He said we hope to know where the Center will be located by the next council meeting (March 15th) which is the day the questionnaires go out to city residents. He said we have hundreds of PO Box holders, not just in the City of Florence, but the greater Florence area who will not be receiving a census questionnaire. He said in terms of state money alone (cigarette, liquor, gas tax and 911 fees) it represents \$70/for every person including children and federal money is on top of that amount.

Mayor Brubaker said to the viewing audience; if citizens had not received a questionnaire by March 19th, the city hopes to have the Center in the lobby of city hall during normal working hours. He added that in 2000, he was not counted because he had a PO Box and the census taker did not knock on his door when he was home, so he was missed and he knew of at least two other mayors that were also missed.

PUBLIC COMMENTS

Mayor Brubaker offered an opportunity for members of the audience to address the council regarding any matter not already on the agenda for that evening. With no one coming forward, he moved on with the Consent Agenda.

CONSENT AGENDA

MINUTES

Consider approval of minutes from the February 16, 2010 regular council meeting.

Councilor Xavier referred to page 1 of the minutes where it stated that "Councilor Franzen noted that he had not attended the meetings," she said that was incorrect he attended the February 1st meeting. She said the vote on the February 1st meeting stated "4-2" and it should have been "4-1" with Mayor Brubaker abstaining as he did not attend that meeting.

Mayor Brubaker referred to the middle paragraph on page 17 pertaining to ½ year business fees that was listed as \$45.00 and he thought the actual fee was \$40.00. CR Heinze said it was \$45.00 for ½ year business, seasonal and temporary license, but it is a \$40.00 delinquency fee.

Councilor Burns moved to approve the minutes of February 16, 2010 as corrected. Second by Councilor Xavier, by voice all ayes, motion carried unanimously. It is noted for the record that Councilor Franzen was absent and excused.

ACTION ITEMS

APPEAL OF DENIAL OF BUSINESS LICENSE APPLICATION

Consider hearing an appeal of a denial of a business license application for Doggie Den Daycare, per FCC Title 3 Chapter 1 Section 9: Appeal

Mayor Brubaker said this item is an appeal for a business license application and it was a quasi judicial proceeding; although it is not land use, but we follow a similar format. He asked if any councilor wanted to declare a probable/potential conflict of interest or ex parte contact with the applicant. All of the council replied, no, including the Mayor. He then asked if there was anyone in the audience that would like to challenge the objectivity of the council, based on conflict of interest or ex parte contact; hearing none, he said all council present were eligible to hear this appeal.

Mayor Brubaker said they would hear from the appellant, then staff with the reasons for the initial denial, then they would give the appellant a chance to

respond to any questions or points raised by staff and then the council would deliberate. He said it was not a public hearing, but a hearing open to the public that involves the applicant and the city.

Teresa and Dan Lofy: Ms. Lofy provided the council with a letter dated February 23rd.

Mayor Brubaker said in the council packets there was a letter from the applicant dated February 2nd and noted that the applicant was introducing a letter dated February 23rd which none of the council had seen before that evening. He suggested that the applicant go through the letter in detail so they could be assured that the council was fully briefed on the content.

Ms. Lofy said they were asked to provide information on what she does; and she said that she provides day care for people who do not want to leave their dogs home alone. She said they were also asked what their hours of operation were. She said they are open 8-5; 7 days a week, year around. She said they were asked to provide how they would deal with the sounds of the dogs (barking); she said they had ultra bark sound devices on the property.

She said she was asked to contact her neighbors regarding her business and on the back page of the letter were signatures of her neighbors stating their approval or no issue for their business.

Mayor Brubaker said the license application stated the times of operation was 8-6 and asked if that was now changed to 8-5; Ms Lofy replied yes. Mayor Brubaker said when he went by the property he noticed outside exercise areas and asked what happens at 5:00; do people come and pick up their animals. Ms. Lofy said the day care kids are picked up, but they do have some boarding. She said we have doggy doors so they can come in and out; some choose to play outside if it is not raining and some stay inside. Mr. Lofy said at night the dogs stay in rooms inside and the doggy doors are closed.

Councilor Roberts asked if it was correct that there was no overnight care and Ms. Lofy replied that was correct. Councilor Roberts asked if they boarded cats and Ms. Lofy replied, no.

Mayor Brubaker asked how many dogs they could accommodate. Ms. Lofy said she could handle 20 dogs and they each have their own overnight room.

Mayor Brubaker asked for a presentation by staff on the appeal.

CDD Belson said when someone applies for a business license they apply to the city recorder, who then sends the application around for review by each department. She said when this application came to planning there had been no land use application for this property in terms of a change of use. She said after reviewing the code, staff found that there was no provision for this type of use in the zoning district. She said that prompted her to write the letter that was included in the council's packet explaining that it was not an allowed use in that zone. She also indicated that staff was looking at changing the code

for the Industrial Park and suggested that the applicant come to the Planning Commission to discuss that. She said they came to the Planning Commission worksession on the code update and explained their situation. She said she did not know what the Planning Commission was going to do; but thought that they would make this an allowed use in some manner within the Airport Industrial Park as part of the Limited Industrial Zoning District. She said in the meantime the Lofy's chose to appeal the business license and that is what is before the council that evening.

Mayor Brubaker asked when the re-zoning was scheduled before the planning commission. CDD Belson said the public hearing was March 9th and she expected this to come before the city council in April. Mayor Brubaker asked if the planning commission made a decision on March 9th if there was a statutory delay or public comment period between the two meetings.

CDD Belson said staff generally likes to give 3 weeks notice so that once the planning commission had made a recommendation citizens have 3 weeks to prepare comments for the council public hearing.

Mayor Brubaker asked Mr. and Mrs. Lofy if they would like to comment on anything that CDD Belson had shared; they responded no.

Councilor Roberts said the city had been trying to get the business park underway ever since she was first on the council. She said during that time there had been denials that she had questioned; particularly an attorney who wanted to go into a totally clerical type area where Cardinal had moved out of. She said until we got our code changed this was not going to be allowed; and we had to grant something special for a dentist to go in there. She said because of the current changing of our regulations she thought there might be some misinformation and misunderstanding on both sides. She said when the ordinance finally gets adopted she hoped that this type of business would be allowed. She said we complain we don't get any businesses over there and she could understand why when we've denied various businesses from going in there. She would like to see any way for this to be expedited and allow this business in there; they are set up in there and this is one of the reasons that citizens get so frustrated at government is the bureaucratic run around that we sometimes put our citizens through.

Councilor Xavier said she was confused on the dates. She questioned Ms. Lofy about her letter that stated she was notified in December 2009 that their present location would no longer be available unless they spent a great deal of money. Councilor Xavier asked when they actually moved. Ms. Lofy replied that they received an extension from Lane County to stay until the end of January because the building was not ready to move into. She said they moved into the building the 25-31st of January.

Councilor Xavier said on the application for the business license dated January 13th had an opening date of February 1st and asked the applicant if they moved into the building before they got approval, assuming that they would get approval. Ms. Lofy replied that was correct.

Councilor Xavier asked Ms. Lofy when they talked to staff had staff told them that the business was not allowed. Ms. Lofy said she didn't speak to staff; she just turned her application into John in finance and was told it could take from 7-10 days or as long as 30 days for license approval. She said when she had not heard anything on February 1st and she called, but Pat was out of the office and she left a message. She said the next day her denial letter came in the mail.

Mr. Lofy said we had looked at a building north of that area and city staff said we couldn't be there because it wasn't zoned for that type of business and staff suggested that they move down in this area because there was a veterinary clinic down there. He said because we had to move very quickly they looked for a building down in the area of the vet clinic.

Mayor Brubaker asked what would this type of business be called; boarding or a kennel; he knew it was day care with overnight boarders. Ms. Lofy said if you read all the descriptions of kenneling it refers to breeding and she doesn't do that. She provides a day care service for dogs and she has boarders. Mayor Brubaker said for the land use for this could be called canine boarding; Ms. Lofy replied yes.

Mayor Brubaker said he learned that a kennel typical involves breeding, and asked staff how they would see this if the code was changed to allow this business operation; what word would staff put into the code for the planning commission to consider.

CDD Belson said we haven't made a recommendation; but in her mind she was thinking of kenneling but she didn't know that the word was considered as a place for breeding. Ms. Lofy said if one looked at Lane County's description of kenneling they refer to breeding.

Councilor Burns moved to approve the business license for Doggie Day Care at 1765 Laurel Place (uphold the appeal). Second by Councilor Roberts.

Councilor Burns said in the area of the business park that we're talking about, if we tried to enforce every single business or every single regulation in that particular part of the park we'd lose half of the businesses in there. He said there are businesses in there that don't have business licenses; he said we're getting there but he thought was very wrong to deny this license.

Councilor Xavier said she had a great deal of sympathy for the situation that the applicants were in and she understood the difficulties. She said they went ahead and moved in without a business license; not knowing for sure that they could have a business there. She said we have turned away other businesses that have similar situations; but those businesses came in first to get their license and found out the zoning didn't work for them and they were told no. She said it was the inconsistency that bothered her; she said the council needed to be consistent across the board and it troubled her that they were not being consistent.

Councilor Roberts said in just her time on the council she could remember granting an exception to Dr. Holmes. Councilor Xavier responded that he was granted the variance before he moved in. Councilor Roberts said because of the changing of the code that we're doing now she didn't believe that what the applicants were told was clear and there was a misunderstanding. She said it was her understanding that they were told that if it was allowed anywhere where it would be allowed would be "so and so," and that is where they put it. She said she felt they were misinformed and she felt very strongly about the motion that they should be granted their business license.

Councilor Burns said he understood Councilor Xavier's concern about inconsistency particularly the situation with the attorney who was denied a business license. He said after that situation we all agreed to eliminate situations like this in the future.

Mayor Brubaker said that staff's recommendation was to uphold the denial or deny the license. He thought this recommendation was made on very firm regulatory and procedural grounds and it was never good to go against your staff's recommendation. He said in this case what was compelling for him was what we learned in the hearing was that the operation will assume all the aspects of a small animal hospital except there would not be vet giving shots, etc.

He said what we're talking about is a possible noise problem and that the appellant had explained that the dogs were supervised when the dogs are outside and when the owners leave the premises for the evening the doggie doors are closed for the evening. He said to him that puts the business activity more in line with the legal activity going on within the four walls and if it doesn't intrude on the neighbor then it should be all right. He said we're going in the right direction in looking at the code amendment and one that will be before the planning commission as early as March 9th; so he was persuaded that nothing was done with malice or forethought and we'll vote for approval. He asked CR Heinze to call the roll on the motion.

Mayor Brubaker called for those in favor of approving the business license or finding in favor of the applicants. Motion carried with 3 ayes, 1 nay with Councilor Xavier casting the dissenting vote. It is noted that Councilor Franzen was absent and excused.

FIREWORKS PROHIBITION IN OLD TOWN DISTRICT AREA A, B AND THE PORT OF SIUSLAW PROPERTY

Consider approval of Ordinance No. 5, Series 2010, an ordinance amending Title 6 Chapter 1 of General Offenses for a localized ban of fireworks in Old Town District Areas A and B and the Port of Siuslaw Property.

Mayor Brubaker said this item was for the prohibition of "personal use fireworks" in Old Town as opposed to the public display that goes off the barge that is licensed to the private contractor.

Chief Sanders said last year the Port of Siuslaw enacted an ordinance prohibiting all fireworks. He said that ordinance was unenforceable because the City of Florence police officers had no authority to enforce it. He said one of the council's goals for this year was to consider banning fireworks in the Old Town area. He said after meeting with the Assistant City Manager, Fire Chief and Port Manager their recommendation was to bring this ordinance before the council for their review and possible approval.

He said the fireworks are dangerous as they are a fire hazard to the Old Town structures and the large groups of people who congregate in that area. He said this ordinance would ban the ignition of all fireworks in Area's A and B along with the Port property that abuts these two areas. He said in the proposed ordinance if a police officer found a person in violation the approval of the ordinance would give the authority for an officer to seize all fireworks in that person's possession. He said that was something missing from the Port's ordinance where someone could be violating and could have a whole stack of fireworks and go back and ignite them. He said the normal penalty in our code is \$500; but this ordinance includes a Class B violation for the first offense and a Class A if there is a second offense. Chief Sanders said the fines for the violations are:

- Class D \$142
- Class C \$190
- Class B \$207
- Class A \$472

Mayor Brubaker asked if we would have the discretion to do A, B, C or D on the first offense. Chief Sanders replied yes, the council could set whatever number they wanted. Mayor Brubaker said the proposal is for the first offense is confiscation and \$207 fine; second offense within 72 hours is Class A which would be \$472 on top of the Class B. Chief Sanders said that was correct, the thought was to double it as an incentive to prevent further violations.

Mayor Brubaker suggested that the ordinance be written so violators would have their fireworks confiscated but there would be no fines imposed until the next year. Chief Sanders replied that it was his plan to use an educational approach this year by simply warning citizens to put them away and if it continues to then confiscate the fireworks.

Councilor Roberts disagreed with the Mayor's suggestion and said that she wanted this to go into effect this 4th of July as she thought the citizens should be able to get informed by July. She cited the dangers with the large congregation of people in a small area and the frustration of animal owners whose pets are terrified by these fireworks.

Councilor Burns said it concerned him that we would be enforcing this ordinance on private property owners in Area A and B; and that the kids couldn't even have a sparkler in their front yard. He said the problem with the fireworks is on public property specifically the port. Councilor Burns said he would be supportive of the ordinance if we limited it to public streets and port of Siuslaw property.

Councilor Xavier said she thought if we only ban it on the port property and public streets it would only push the problem onto private property; so she didn't see that as being a solution. She thought it should be banned in the entire Old Town area.

Mayor Brubaker said we're not talking about those fireworks which are already deemed illegal in the State of Oregon such as aerial; bottle rockets; fire crackers.

Mayor Brubaker opened this issue up to public comment.

John Cable - 75 Harbor Street: Mr. Cable said as a retired fire marshal he wanted to initially say that illegal fireworks are a fire hazard and a threat to the safety and he was totally in favor of the police department cracking down on the illegal fireworks, but that he disagreed with banning all fireworks.

Mayor Brubaker said to clarify the violation in the ordinance as written is for igniting the fireworks and not simple possession. He asked staff if officers see someone carrying around a bottle rocket which is illegal but not ignited, is that in the same category. Chief Sanders said that possession would be an offense if you possess illegal fireworks.

Councilor Burns said last year the Port took the stance of "all" fireworks off of their property and asked if Mr. Cable voiced his concern to the Port about that. Mr. Cable replied, absolutely. He said the Port responded that we are going to ban all fireworks and our Port employees would do the enforcement.

There was discussion about the boundaries to include in the ordinance and Mayor Brubaker suggested the following: Quince and 2nd Street to Juniper stay on 2nd past the church and then left on Juniper down to Juniper and Bay and then of course the entire waterfront area and the entire Port property.

Mayor Brubaker asked Councilor Roberts and Burns if they were in favor of the levels of violation; they replied, yes. Councilor Xavier said she was not entirely clear on the boundaries. Mayor Brubaker said he suggested there was a logical division which is Quince which curves around and comes back up by city hall and then down to Juniper past the Methodist Church and back down to Bay Street. He said the DQ and city hall would also be included in the ban.

Craig Vincent: Mr. Vincent asked who made the decision for the Port, who asked the city to make all fireworks illegal. Mayor Brubaker said there was a Port Commission (5 elected officials) who made that decision. Mr. Vincent asked if anyone had approached the port committee to see if they would agree to allow the legal fireworks and only ban the illegal fireworks on their property. He was told that the port was adamant about banning all fireworks on their property.

Mayor Brubaker called for the first reading of Ordinance No. 5, Series 2010, by short title only acknowledging council's familiarity with the content of the

ordinance. CR Heinze gave the first reading. Councilor Roberts moved for approval of the first reading of the ordinance; second by Councilor Xavier. By voice 2 ayes, 2 nays with Councilor Burns and Mayor Brubaker casting the dissenting votes, motion failed.

Mayor Brubaker asked for ideas on how to amend the ordinance. Councilor Roberts suggested limiting the area. Councilor Burns moved to amend the ordinance by “prohibiting fireworks on Port of Siuslaw property from Nopal along 1st Street to Harbor, to the Port RV Park. Mayor Brubaker said then we would delete the reference to Area A and B and leave in “anywhere on Port of Siuslaw Properties that abuts Old Town District, including the Port’s boardwalk property.” Councilor Burns agreed.

Mayor Brubaker called for the first reading of the amended ordinance, limiting it to just Port property. CR Heinze gave the first reading, “An Ordinance modifying Florence City Code 5-1-3-2 localizing prohibition of fireworks on Port of Siuslaw property.” Councilor Burn moved for approval of the first reading of the amended ordinance. Second by Mayor Brubaker. By voice, 2 ayes, 2 nays with Councilors Xavier and Roberts casting the dissenting votes, motion failed.

After further discussion it was determined to have staff come back to the council at the next meeting with a proposal for a portion of Area’s A and B. Mayor Brubaker with the consensus of the council laid this matter over to the next meeting.

ISSUES ARISING OUT OF LANE COUNTY PROCESS FOR THE CO-ADOPTION OF THE CITY’S 2020 COMP PLAN

Consider directing staff as how to proceed regarding the non-decision by Lane County Board of Commissioners on co-adoption.

Consider directing staff as to whether to continue IGA negotiations with the Heceta Water District

CM Willoughby said he would summarize his report in the council’s agenda packet on Lane County’s non-decision on the co-adoption of the City’s 2020 Plan which makes three observations based on what happened or didn’t happen at the hearing and based on the comments made by the county commissioners and on the process that was used to make their non-decision.

1. The Board of County Commissioners (BBC) do not consider the city an equal partner in the process in deciding how our UGB will be developed.
2. This is not an isolated incident or unique to the City of Florence on this co-adoption process, that same disinterest or lack of concern for the concerns, needs or opinions of the cities in Lane County has occurred with some frequency since he had been in Florence the last three years.
3. Because of Heceta Water District’s decision to ask the BBC to hold our co-adoption process hostage until we sign an IGA with them, and because the BCC agreed to do that, he was very skeptical that the city will be able to negotiate an IGA with HWD in the foreseeable future.

He said based on those observations and concerns staff has suggested three options for the council on these two things.

1. Continue as we have been doing for both the co-adoption process and the IGA negotiations with HWD.
2. Suspend any further effort on one or both of the above.
3. (This is the option recommended by staff) Notify the BCC that the city is suspending any further effort on both of these matters until the council receives from the county:
 - a. Our 2020 Plan as presented at their last meeting with specific detailed changes approved by the BCC that address all of their concerns that they expressed at their last hearing. So it is clear what the BCC is willing to co-adopt rather than us trying to guess what they want from us.
 - b. The county commissioners assuming their statutory role of coordination with regard to the IGA with HWD but in the meantime any IGA proposals previously submitted to HWD be withdraw by the city.

Councilor Roberts said Lane County Commissioner Dwyer and HWD Board member Bob Hursh called our staff, city council and she imagined every employee here at the city, “disingenuous.” She said as a 20 year retired Naval officer she resented those statements and said that the city staff, council, planning commissioners and other volunteers were some of the finest dedicated people that she had seen. She went on to give the definition; “Disingenuous, lacking in frankness, candor or sincerity and if you go into the Thesaurus it says, falsehood, superficial, shallow, left handed, lying, untruthful...”

She said she watched the BCC hearing on the Lane County website and at the beginning they decided this would be a legislative hearing and not a quasi judicial, which meant the city would have no rebuttal. She said when they spoke to our Community Development Director she was treated with rudeness and disrespect during her allotted three minutes.

She said the commissioners had their 12-13 people testify who said how awful the city was and some of these people had developments outside the city limits in the UGB. She said for some reason they are terribly worried about the city doing any testing of the septic tanks. She said even the county planning commission voted 6-1 in favor of the co-adoption of our 2020 Comp Plan.

She said Heceta Water District has nothing to do with the Comp Plan. She said as the city manager said we’ve been held with a gun to our temple if we don’t approve an IGA that HWD wants and we’ve been working with them for 6 years or so. She said during the BCC hearing there was a motion made by Commissioner Dwyer to come back next February (a year from now) to make a decision on the co-adoption and even their legal counsel had a problem with that one. She said then when the BCC decided it would be May because they couldn’t put it off that long; Commissioner Dwyer said he didn’t really mean that, he had made that motion for “shock.”

She said two of the commissioners kept talking about a secret map that had to do with annexations that supposedly our community development director had somewhere in her office and after the meeting was closed the commissioners had the audacity to call out loud to CDD Belson, "bring your map up here." She said CDD Belson went up and told them she didn't know what map they were talking about. Councilor Roberts added that she was not aware of any such map.

She said she had been in Oregon all her life and has a political science degree from Lewis and Clark College so she was familiar with some of the laws in this state politically. She knew that the county was suppose to coordinate between the cities and the rural areas and she had not seen any type of coordination since she'd been here and added that the commissioners had closed the Florence annex so our people have to drive all the way to Eugene to deal with any county issues.

Mayor Brubaker said he was expecting that they would have a chance to respond to some of the comments made by the commissioners and it was his intent to speak, but was not given the opportunity. He said he knew what map Lea Patton was talking about; he said it had nothing to do with Sandra Belson or this current administration, but he wasn't going to talk about it now; it is a flat out fabrication.

Mayor Brubaker suggested that the council follow the city manager's recommendation 3A, requesting the county commissioners approve the language changes that they want to make (presumably in May) and send it back to us; meanwhile we do nothing about it. He said as to 3B and the coordination role between HWD and the city we'll leave that up to them, they can seek their own counsel and direction; in the meantime all of the IGA proposals that we've previously submitted to HWD should be withdrawn and we would direct staff to spend no more time on that until further notice. Councilor Burns stated, so moved; second by Mayor Brubaker.

Councilor Xavier said she would like to go on record with Councilor Roberts in expressing her complete unhappiness over the whole situation. She said didn't have any idea of the cost to the city in terms in staff time, through all these years, trying to address every single issue and when we get them all done and back to the county, the game plan has changed and back it comes for more changes. She said the only way this has a possibility of succeeding is if the county are the ones that have to make the adjustments; even then she wasn't sure that what they propose would be anything that the city would be interested in approving; let the ball be in their court. She didn't want city staff to spend any more time on the co-adoption.

Councilor Burns asked Councilor Roberts asked about that "word" and who were the ones who said it. Councilor Roberts replied, "Disingenuous," she said Commissioner Dwyer used it during the hearing and then she had a copy of an email from Mr. Hursh (HWD) who also said it. Councilor Burns said he would like to send a letter to both parties requesting an apology from the county commissioners and HWD. He said he would also like to see the secret map

and went on to say that this council and the councils he had been involved with before had never lied, fabricated or pulled the wool over anyone's eyes. Mayor Brubaker said he didn't expect to get an apology so he wouldn't even ask. He said to keep the record perfectly clear there is nothing in any of the proposals that the city has made to "test septic systems." He said our proposal is to test a sole source aquifer ground water in the great Florence area which includes Heceta Water District, UGB, and the City of Florence and we have a program starting to do that. He said to test and verify is the best way to protect our environment and that is what the city intends to do.

Mayor Brubaker called for the question, 4 ayes, motion carried unanimously. It is noted for the record that Councilor Franzen was absent and excused.

WATER CONSERVATION MANAGEMENT PLAN

Consider approving the water conservation management plan as prepared by GSI Water Solutions, Inc. and direct staff to draft an ordinance to formally adopt the plan including the curtailment procedures.

Mayor Brubaker said this item is a report on our Water Management and Conservation Plan that has been spearheaded by our public works director along with our consultants.

PWD Miller said there was a very detailed memo in the council's packet so he put together a quick PowerPoint to summarize the information. (A copy of the PowerPoint is located in the city recorder's office in the council's agenda packet) He said a Water Conservation Management Plan is required for the city's water permit that was applied for in 2002; because the permit was not fully developed, the city is required to have a Plan in place demonstrating not only that we have a need for the water but that we've been very effective and efficient in using the water.

He said this Plan provides that access to the remaining 0.6 cfs (cubic feet per minute) or approximately 387,000 gallons water/day (gpd). He said the Plan presents the existing Water Plan Conservation Programs and establishes a Curtailment Plan which the city doesn't have right now. He said these plans are cutting down or curtailing water usage at specific times of the year when emergencies arise. He said WMCP requires the city to submit a progress report to Oregon Water Resources Summit in 5 years informing them of the progress of our benchmarks, and then we have to submit an update to WRD every ten years.

He referred to the slide with the historic year around average water demand and pointed out that that since 2004 the city's water demand has gone down; and the average is down to 1.15/mgd on a year; the max day demand is 2.21/mgd. He said the fluctuation of these numbers depend upon the severity/dryness of the summer.

He said you can see the trend is coming down and it has a lot to do with our water demand reductions. Some are environmental (cooler summers) newer

houses with low flow fixtures, customer sensitivity to rates, inclining block water rates and most recently monthly water billing.

PWD Miller said he wanted to talk about overall capita demand; he referred to the slide that showed the average daily demand in 2004 when Florence's population was 7,830 the usage was about 157 gallons/day; in 2008 we didn't have a full year of history, it's down to 112 gallons/day.

He said the max day demands goes from 300 gal/person/day to 211 gal/person/day which decreases the amount of water that is used in the system. He referred to the slide with the trend line and it showed a trend of 15 gallons per capita/day down to 9 gallons per capita/day.

PWD Miller said we're looking at per capita/day getting down to below 120 gallons per capita/day which is very good. We may see it go down to 100, but not below. PWD Miller said we will continue with conservation as there is some elasticity with water rates, the more you charge the less people use and then they begin to go back to their old habits and water usage increases again.

He said our current water conservation practices:

- Inclining water block rate which shows that it provides incentives for conservation.
- Monthly billing.
- System development charges; we charge based on a landscaped area so you have a separate meter for commercial properties – landscaping is charged a different rate depending on whether the landscaping is native, or a large turf area.
- Landscaping code that encourages native plants;
- Annual water quality report where we highlight methods for saving water.
- Ongoing meter testing and maintenance programs;
- Leak detection program
- Water audits; comparing true production with meter consumption and going to monthly metering helps that.
- Irrigate Miller park with well water and not using highly treated water

Future programs will look at a system wide leak repair program, having people come in a listen for leaks underground and having funds dedicated to replace the pipes.

Water Curtailment

1. Stage 1: Water Shortage Alert: We're talking about a drought condition throughout Lane County or that our demand has reached 80% of our water supply for 3 consecutive days. This is short term and a very reasonable shortage alert.
2. Stage 2: Serious Water Shortage: An example is back in 1992 when the governor declared a state of emergency for a drought in all of Oregon. This would be a declaration by the governor for Lane County that there is a drought and our usage is exceeding the 80-90% of our supply for 3 or more consecutive days.

Mayor Brubaker said if the governor declares an emergency in Lane County we have to do stuff whether we have a problem here or not. PWD Miller replied, correct. He said that was typical of water systems; and in 1992 when the Bull Run system was very hard hit with the drought you had systems across the street one was in restrictions and the other one was not. He said the state is looking at this and may want to equalize this a little bit so you have neighbors on one side of the street that are water rich and the other ones are considered without water.

3. Stage 3: Severe Water Shortage: If we're exceeding 90% or more of our water supply for 3 consecutive days or if there is a disaster creating a severe shortage.
4. Stage 4: Critical Water Shortage: We're out of water due to a failure of a system and we can't supply water to a residence.

He said Stage 1: Is the voluntary type of curtailment we go out and do PSA's on the radio; go to odd/even watering days, see how people respond voluntarily.

Stage 2: Is serious - odd/even schedule; no washing of vehicles so it's more prescriptive.

Stage 3: Is all outside watering is banned. Although if you had just planted new turf you can water to keep it going. Can't use water from the hydrants; reducing the amount of water to try to make sure there is enough water for basic health needs.

Stage 4: You are in the "hail Mary" calling this in to the Dept of Health notifying them that you have a severe event and you are getting the word out to everyone not to use water. This would include an emergency council meeting to discuss a plan of action. Talk to State police and county sheriff on how to help contact customers. This is a very serious situation which means we would have to contact our neighboring system to the north to see if they have any water available and can provide water relief.

Mayor Brubaker referred to stage 4 there is a term from the Navy that is called "water hours," there were 15-30 periods where the water was turned on. He asked if we could go to this in stage 4. PWD Miller that was possible and we could provide staging areas with a water tanker where people could come in and get water with containers.

Mayor Brubaker asked how many days worth of water are in the city's water tanks. PWD Miller replied it depends, in summer 2½ -3 days.

PWD Miller said when we look at our Water Conservation Management Plan it also establishes our water needs in the future; based on the trends in 2020 we're looking at an average daily demand in today's existing city limits of 1.4/mgd to maximum day demand of 2.7/mgd. He said the reason that we have the UGB area included; is that is the maximum area where the city could have responsibility for water. He said it would not include the entire UGB but somewhere in between the UGB and city limits. In 2020 we're at 1.6/mgd for

average daily demand and 3.1/mgd for maximum day demand. He said in 2030 1.7/mgd and 3.2/mgd for maximum day demand. If you take in the entire UGB it goes up to 2/mgd in 2030 and 3.7/mgd for maximum day demand.

Mayor Brubaker said there was 100% differential between the numbers from 1.7 to 3.2; what do we plan for, do we plan for the maximum daily demand?

PWD Miller said we plan for maximum daily demand to be able to meet the demand with storage; we may not meet it with production we need to at least meet it with storage and try to meet that 3 day maximum demand in the summer. He said our capacity in the well field will be 3.2/mgd and maybe 3.7/mgd. He said we also look at firm capacity; we have 12 wells and firm capacity means that at least one or two of those wells are out of service now what the capacity of that well field is without those wells. We talk about firm capacity at pump stations with the largest motor out of service what can be delivered from the pump station. He said with everything running we may be able to deliver 3.2/mgd but we have to have redundancy and the ability to have some cushion because there is always going to be maintenance or a well out of service or you're going to be in the middle of summer and a well would fail.

He said a Water Conservation Management Plan really shows where our supply needs are or where we should be. It outlines if we should be asking for more water rights; perfecting our water rights and when we look at just our city limits bringing on new wells in 2020, (although we plan to do that sooner).

He said in summary; staff has plans to perfect the .6/cfs; to bring on line an additional 387,783 gal/day (almost a well) and have the firm capacity in place.

Mayor Brubaker referred to the previous slide and said for the viewing audience and Heceta Board member in attendance that people don't know how close we are with an agreement with HWD and so when we say, "take it off the table," it is in sheer frustration. He said this council has agreed to enter into a permanent agreement where all the residential properties both now and in the future would remain in the Heceta Water District. He said we're not talking about stealing any customers from the water district. He said for the commercial properties along Hwy 101, there is a fire flow issue; we believe they would be best served by getting city water in a city water system. He said we did not withdraw Driftwood Shores or Fawn Ridge when we annexed them.

He said it makes sense for all of us to work together on this and if we don't have to supply the UGB with water we're in the 2020's right now with what we can add on, on our own. He said we have plenty of water in the ground we just need to get it up, process and distribute it.

He said the politics had gotten in the way of getting the IGA completed. He said if he was sure that there was good faith, he would be willing to come back to the council and un-do what they just did and get this IGA done, and without the county's help; we're that close. He said this has a direct bearing on our water projection demands.

Mayor Brubaker said he was surprised to see our unaccounted for water is as high as it is – 7-9%, even though the state standard is 10% or less and asked if that was just leaky pipes. PWD Miller said actually it's very good in the water industry. He said the unaccounted water is caused by system breaks, meters that may not have been read for whatever reason, and the water used on city property. He said we try and have all the water go through the fire hydrant for construction at the city shop because it is metered, and we bill that monthly. He said we have water that is used on construction sites not only for testing of water mains but also for the use of construction; those are metered through hydrant meters on site and sometimes that information does not come in, in a timely manner; that's part of the 8% unaccounted water that we're seeing.

Mayor Brubaker said the whole solution won't eliminate that loss; we still have to go to the 2020's.

Councilor Roberts said per Oregon Admin Rule 690.0015; this was mailed to affected local governments including Lane County and they did not submit anything within that 30 day period. She said although they are not a local government, a courtesy copy was sent to HWD and the city did not receive any comments back from them either.

PWD Miller when the city puts this Plan together, the city sends out a letter to affected governmental agencies, and we sent an advanced copy to the water district. He said when the State of Oregon receives a copy they advertise in the Daily Journal of Commerce and on the website requesting comments. He said typically "Water Watch" or "1000 Friends", makes comments but there were not comments submitted on the City's Water Plan and that was good.

Mayor Brubaker said the recommendation is that the city adopts this report as prepared by GSI and direct staff to draft an ordinance to formally adopt a Plan including the curtailment procedures. He said in the curtailment procedures he would like to see some mention of water hours in Stage 4.

Mayor Brubaker said we have a water sharing agreement with HWD that goes back to 2002, and if there is an emergency and we need water for a fire; Heceta would sell water to us if they have it available. He commented on the huge rate differential between the two systems, and said that causes a problem for accounting and billing; and this is part we need to perfect. He said neither the city nor Heceta has ever left the other entity in the lurch when it comes to an emergency. He said when it comes to long term permanent use, none of us want to pay Heceta rates right now so we will go on 100% independent for customary use, but when we get to Stage 4 Emergency, we're going to have to do whatever we need to, to get through that.

Councilor Roberts said we do have contractual agreements to buy and sell water with Heceta. PWD Miller said yes, but it was something we would need to check on and make sure.

Mayor Brubaker said we went through this when Alan was Mayor and he was first on the council and the question was how much to discount for each other's water because it's a volume rate. He said back in those days we were concerned about permanent need from Heceta to serve our residents and those days are now over. He suggested several months ago, that we charge each other whichever entity has the higher rate.

Councilor Burns moved to approve the Plan and put water hours in the curtailment procedures. Second by Councilor Roberts.

Councilor Xavier said she was glad we were doing this and she had been in one of these situations when they lived in southern CA. She said during an earthquake they got water from a water truck as the transmission lines were all broken. She said she had lived under these circumstances, and didn't want the city to get there, but knew that we needed to have a plan and she was glad to see that we have a public works director that understands water and is trying to keep us in good shape.

Mayor Brubaker called for the vote on the motion, by voice all ayes, motion carried unanimously. It is noted for the record that Councilor Franzen was absent and excused.

REPORTS

SIGN CODE REPORT TO COUNCIL

Consider reprioritizing the 2010 Council Goal code updates to allow for review of the Sign Code to be done simultaneously with affordable housing

Mayor Brubaker said the staff report in the agenda packet states we should look at the sign code and then asked the council for further discussion; hearing none he said the recommendation is to work on affordable housing and the sign code simultaneously for reasons and capabilities set out in the staff report.

Councilor Roberts moved to approve staff recommendations to work on the sign code and affordable housing simultaneously. Second by Councilor Xavier, by voice 3 ayes, 1 nay with Councilor Burns casting the dissenting vote, motion carried. It is noted for the record that Councilor Franzen was absent and excused.

TRANSIENT ROOM TAX (TRT)

Finance Director David Armstrong will provide a report to Council on the transient room tax collections

Mayor Brubaker said this is an update on the TRT with a proposed schedule including specific steps to be taken.

FD Armstrong said last week he was asked to get together a report on where the city was with TRT. He said he put together a time-line of everything that Brandon, Chief and he had done in relation to the collection of TRT. He

referred to the page in the report with all of the properties (inside the city limits) and stated that the majority of the properties are paying their TRT. He said we do have a few that were not contacted in the first round, and we will contact them. He said it appears that most of those properties are not doing a lot of business; maybe none at all, but they receive a letter making them aware of the requirements.

FD Armstrong proposed the following steps:

1. Send a letter to those 7 properties asking for voluntary compliance if they have qualifying properties. This letter would be the same one sent by Brandon on 6/20/09. Letter to be sent by 3/15/10 with follow-up via phone on 4/15/10 to non-responders.
2. FD Armstrong to contact Kathy Alexander to discuss any issues with remittances, and to further investigate Eugene's audit procedure and schedule. This to be completed by 3/15/10.
3. FD Armstrong to contact Eugene TRT auditors to discuss audit programs used and consider how Florence might conduct audits of local properties and on what kind of schedule. This completed by 4/15/10.
4. Devise audit program and schedule to commence in FY 10-11.

He said he would like to have all of this completed and a draft of an audit program for next fiscal year; he wanted to make sure staff had the time or could afford to pay for what we needed to have done.

He said after discussing all of this with Chief and Brandon he thought we were in very good shape.

Councilor Roberts moved to approve the audit and procedure notifications as outline by staff. Second by Councilor Burns, by voice all ayes, motion carried unanimously. It is noted for the record that Councilor Franzen was absent and excused.

IDENTITY THEFT PREVENTION PROGRAM

Finance Director David Armstrong will provide a report to Council on the identity theft prevention program

FD Armstrong said since they had discussed this item last August and during his time with the city there had been no incidents of identity theft, and there hadn't been a lot that staff had been able to do. He said we talked about physical security and we tried two different locking mechanisms on the finance door and neither one were acceptable. He said the long term solution would be a key card system.

Councilor Burns asked why the door wasn't kept locked with a key. FD Armstrong said we don't just have a security problem just in finance there is a security problem with the entire building. Councilor Burns said if you go to a key you can key the doors for the specific keys.

CM Willoughby said the problem with keys is that copies get made and you lose control of the situation once the key is outside the building because copies can be made.

Councilor Burns expressed his unhappiness of keeping the council out of the council chambers and the back office. CM Willoughby said that wasn't the intent, the intent was to make sure we have security of the personal information and one of the things our plan says is that we'll have physical security of critical places like the finance department.

Mayor Brubaker said he thought Councilor Burns raised a good point we don't want to error on the other side and the councilors do need to get into their office at anytime. CM Willoughby said whatever solution we come to has to accommodate the council and asked the council if there was ever an issue to let him know.

Councilor Burns said when the lock was on the finance door he could access that department through other doors. FD Armstrong agreed and said that was the problem; we don't have control over the building and that is something staff will be working on. He said we will be getting together with all the departments and discussing building security as a whole.

Mayor Brubaker said the critical areas are on the outside; the central core is the public space and the councilor office and if we have a way to get into the public areas, the problem is solved. We don't need to secure the entire building with a fancy key card system to keep people out of the council chambers.

CITY MANAGER REPORT

Report on Fawn Ridge Appeal Decision

CM Willoughby said after several years we received a decision on the appeal of the annexation of Fawn Ridge which ironically was filed a year before the appeal of Driftwood Shores annexation. He said the difference was that Driftwood Shores appeal went to LUBA and that appeal was decided in less than a year. He said the appeal for the Fawn Ridge annexation was filed by essentially the same people; the issues were essentially the same. He said this decision was from the Court of Appeals and it was found that there was no merit to either of the appeals so the appeal was denied by the Court of Appeals and that decision will be final in 35 days from when it was decided and that was several weeks ago.

Councilor Roberts said as we know these appeals came from residents in the UGB and she thought we ought to state for the citizens in our city that have to pay for these appeals, exactly how much we had to pay in attorney fees for Driftwood Shores and Fawn Ridge.

ACM Morgan said the attorney fees for Fawn Ridge was \$19,912 and for Driftwood Shores it was \$32,747, the total of \$52,600 came out of the general fund. Councilor Xavier said that was just attorney fees and doesn't include

staff time and if we added all of that in it would probably double what we spent on the attorneys.

Progress Report on the Senior Center

CM Willoughby said it appears that the contractors will be working on punch list items as early as the middle of the month and the project should be completely done by April 1st. He said the original completion date was sometime in May. He said we will have about 9 change orders for additional work, but the total of those things will not be over about \$7,000-\$8,000. He said we have \$15,000 in contingency; therefore the project is not only ahead of schedule but it's also within budget.

Mayor Brubaker asked if staff knew how long it would take the Seniors to move into the building. CM Willoughby said we would want to think about an open house after they had moved in and used the facility, and that could be as early as mid-May. Mayor Brubaker said there is no age limit for those attending the grand opening.

Business License Report

CM Willoughby said CR Heinze reported that we sent out 109 letters and there had been 32 renewals from that letter and the article in the newspaper. He said there are still 77 outstanding but some of those are not in business and we will be following up on those. CR Heinze said we sent out 865 renewals.

MAYOR AND COUNCIL REPORTS

Annexation Policy

Mayor Brubaker said he wanted to share what he would have told the county commissioners had the city been given the opportunity to respond to the annexation question. He said in CDD Belson's presentation she referred to the city's annexation policy and the plan is majority rules. He said if you look at the state law ORS 222, there is no process that would allow the city to annex the residents in the affected area without a vote of those residents. He said when we say, "majority rules," what we mean is, "if there are residents there they get to vote if they are in the affected area of the annexation." He said we were not given the chance to explain that to the commissioners because we were not asked. He said that is why we have stated that we're going to sit back and let the commissioners approve the language they like.

New Bus

Councilor Xavier reminded everyone that the Home Show was this weekend at the FEC. She said the city's new transit bus should be delivered to town on Thursday; there will be a ribbon cutting at 11:00 p.m. on Saturday at the Home Show. She said this is a combined project also publicizing the Census and there will be someone from the Census handing out brochures and information. She added it would be helpful to have the final location of the Center if that was available by Saturday.

EPA Grant

Councilor Burns asked CDD Belson how many elected members represent the City of Florence on the elected stakeholders committee for the EPA grant. CDD

Belson replied, one, Mayor Brubaker is the city's representative and Councilor Roberts is the alternate.

Councilor Burns then referred to an email from Mr. Hursh from HWD to Mr. Fleenor that said Mr. Meyers attended the meeting and he was not pleased with how recent things were going and said HWD received a letter from the Mayor stating that there would only be one stakeholder at the table on March 11.

Councilor Burns said all HWD wanted was the three words in the IGA, "no forced annexation," and as he understood it even state wide planning goals do not permit that language and asked if that was correct. CDD Belson replied that was correct; Dave Perry was very clear on that.

Councilor Burns said he was emphatic about those three words, he said if we can't use those three little words, he wondered what was the issue? He asked PWD Miller about the fire flows, as it says "the city wants to place a fire flow requirement on HWD on the west side of Hwy 101 that HWD cannot meet." Councilor Burns asked if the city could meet that requirement.

PWD Miller said based on our hydraulic model we're short 3,000 gal/minute; but our plan is to provide 3,500 gal/minute and you'll see that when we make the presentation on the Water Master Plan in April. He said one of the things we have to remember for the north area of the city is that the system is driven from pumps from the reservoirs on the top of 35th Street by Sandpines. He said one of the issues is the capacity of pump station. He said he has hydrant flow reports that indicate that we're able to achieve 3,000 gal/minute and we're planning for 3,500 gal/minute and our Master Plan will be showing us how to achieve that.

Councilor Burns quoted from email, "once they (city) take away part of the district they can simply change the zoning and off we go." "The Mayor said in a council meeting recently that he wants to control everything up to Heceta Beach Road, in other words the whole enchilada."

Mayor Brubaker responded that we were talking about commercial properties along Hwy 101 and the fire flow issues for the properties along that area. He said during the negotiation for the current capacity configuration we have a line up the east side of the highway. He said HWD was looking at the east side and we told them loud and clear that we're talking about the commercial properties in the UGB all the way along Hwy 101 and that was what he was referring to before when he said, "we're that close." He said it would cost HWD a large amount of money to upgrade their entire system, and they would only have large volume commercial properties.

Mayor Brubaker said on this no forced annexation; when we say majority rules under state law and you put it to a vote of the residents if they want to annex or not; majority rules. He said if there are 20 property owners and 11 of them vote yes; the majority has ruled, although there might be 9 unhappy property owners. He said we regard that as democracy; it is as simple as that.

With no further business, Mayor Brubaker adjourned the meeting at 9:48 p.m.

Phil Brubaker
Mayor

ATTEST:

Pat Heinze
City Recorder