

**MINUTES
PAYETTE CITY COUNCIL
REGULAR MEETING
April 2, 2007**

A regular meeting of the Payette City Council was called to order at 7:00 PM by Honorable Mayor Douglas E. Henderson in the City Council Chambers of Payette City Hall, 700 Center Avenue.

ROLL CALL

Members Present: Mayor Doug Henderson, Ivan Mussell, Mark Heleker, Vallery Klitch, Lee Nelson, Jeff Williams

Members Absent: Georgia Hanigan was excused.

Also Present: Mary Cordova, City Clerk; Jeff Sands, Fire Chief; Kellie McCombs, City Treasurer; Street Superintendent Willie Hollis; WWTP Superintendent Randy Schwartz; Captain Dave Platt; City Attorney Bert Osborn; Police Chief Mark Clark; City Engineer, Doug Argo

PLEDGE

Mayor Henderson led the Pledge of Allegiance.

APPROVAL OF MINUTES

A. 3/19/07 Regular Meeting Minutes

A motion was made by Heleker and seconded by Nelson to approve the regular meeting minutes of 3/19/07.

Hearing no objections, the meeting minutes were APPROVED.

APPROVAL OF BILLS & PAYROLL

A motion was made by Nelson and seconded by Hanigan to approve the City Bills & Payroll in the amount of \$144,805.06.

At the roll call:

Ayes: Mussell, Nelson, Heleker, Klitch, Williams

Nays:

The motion CARRIED.

COMMUNICATIONS

No comments heard.

SPECIAL ORDERS

None heard.

PLANNING & ZONING

None heard.

UNFINISHED BUSINESS

A. Ordinance 1273 - AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO, ADOPTING A NEW TITLE 18 AND NEW CHAPTER 18.01 OF THE PAYETTE MUNICIPAL CODE ENTITLED ANNEXATION PROCEDURES PROVIDING FOR AN APPLICATION AND REVIEW PROCESS FOR ANNEXATIONS; BY PROVIDING FOR A SEVERABILITY CLAUSE; BY PROVIDING FOR A REPEALER CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

~Third Reading

A motion was made by Councilor Heleker and seconded by Councilor Mussell to place Ordinance 1273 into its third reading.

After a unanimous voice vote, the motion CARRIED, and City Attorney Osborn read Ordinance 1273 for the third time.

Mayor Henderson stated that this ordinance includes the changes that were suggested at the last meeting.

Councilor Heleker requested a clarification on page 14, regarding the wellhead protection zones. Doug Argo replied that we are required to have a wellhead protection study, or source water protection study. Ours was approved a few months ago, where we create a zone where you protect what happens. When you put a dry cleaner in a certain zone where the aquifer is recharging, it could contaminate a well. If a development happens to be in a wellhead protection zone, we would have to apply certain restrictions.

Heleker continued that in regards to (m), any time he sees "sole and absolute discretion", who is the Administrator in this case. It was clarified the City Clerk would be considered the Administrator in this case. Councilor Klitch asked if that section needed to be in there. City Attorney Bert advised that it needs to be in there. Someone has to be able to make the final decision. City Engineer Argo pointed out that the applicant explained that section states the applicant "will" do certain things, unless it is determined it is not necessary. Argo believed that we do need that discretion for instances such as a small annexation. City Clerk Cordova added that the Council is the ultimate decision makers. If anyone is aggrieved by any administrative decision, they can always appeal to the Council.

Councilor Nelson stated that he hates to be negative. He has brought up nothing specific, and it is a beautifully written ordinance, but it is overkill, and there hasn't been a problem, we don't need it. We can do our protection with our preliminary plats and our final plats. Mayor Henderson stated that annexation can happen long before a preliminary or final plat.

Councilor Williams stated he has some mixed feelings. One big concern is that we not do something that impacts the current residents. Things like traffic, how do you equate the need for another stoplight. If we don't cover that now, it could affect the current residents. At the same time, we are putting this into place, and hope that the current applicants are not going to be covered by the annexation. We need to protect the current residents.

Councilor Klitch asked how does that fit in line with the annexation ordinance and what are the specific concerns. Councilor Williams did not want to discuss the issue because of a conflict of interest. City Clerk Cordova explained that the people who have currently applied for annexation will not be required to comply with the new ordinance, however, they have met all of the requirements with the ordinance willingly.

Mussell stated he also has mixed feelings, and doesn't want annexation to fall on the backs of current residents, but it is so cumbersome it would stymie growth. For example on K, won't the City automatically maintain the streets? Mayor Henderson replied that is not the case. Mussell explained that if he was a developer, he wouldn't want so much money taken out of his pocket.

Councilor Klitch state that it seems like Mary is already doing this as part of an administrative function. Can't we just provide something in administrative policy and procedure? Mayor Henderson stated that we would like to see this as an ordinance, so it is expected of everyone. Councilor Klitch asked City Attorney Osborn that if we set something in policy and procedure, doesn't it set precedence. Osborn replied that it sets precedence but it is not binding. Mayor Henderson stated that we deal with negotiations on developments weekly, and are doing what the Council expects of us to protect the City, but are not defined word for word in the code. That puts us in an uncomfortable position. It is something we are already asking for; we just want it backed up by law.

Councilor Klitch said she hears what her fellow Council members are saying, and it is kind of like the dog ordinance, we are just kind of lingering in fear that if we pass an ordinance like this, we don't know what the fallout is going to be. Her personal preference stated that anyone that is currently working with the city, are currently working within the guideline. We as a council need to be aware that we have already approved some preliminary plats and those developments will be contributing to the traffic light needs. In regards to all of the houses coming in, her personal feeling was we need to put something in place, so if a guy comes in here and wants to buy a hundred acres, we have something on the books, but something that doesn't scare them away. When they are going through the process, they are told they can only have a 20 x 20 building because that's what the ordinance says, and that's it. They can't have their coffee shop, unless someone tells them you can always go and file for a variance or a conditional use permit. She sees a need for the ordinance, but is leery of the public finding out that they can grieve to the Planning & Zoning and to the City Council for conditions that aren't fitting within the parameters.

Councilor Williams stated that this is probably something we need. Case in point, he doubted that our previous council thirty years ago had any idea about where we are today. Vista Hills subdivision has been platted for 30 or more years. Those additional houses are not going to pay anything toward a future well, or a traffic light, unless this body puts it in a budget, it will be all of us paying. Is there anything in here that tells an applicant that they can ask for a waiver? City Attorney Osborn advised that there is a section that states one can appeal a decision. Williams continued that if we have these rules, we can always make them more lax

so we don't scare off developers. If we don't have any rules, we are going to get what happens, and that could be a Vista Hills type scenario thirty years from now. Williams asked if there is enough in there where someone will know they can appeal decisions.

Councilor Mussell stated that he does not see a problem with the ordinance as long as everyone is reasonable with it. Right now, Mary and the Mayor & the Council is working really well with developers. But right now, everything is so vague as far as what they have to do; they can make it as easy or as hard as they want. If there was a Mayor or City Clerk that wanted to be difficult, it seems like they could make it really tough. We do need to protect the City, but he was not sure this is the best thing for us.

Councilor Nelson asked at what point do we decide we need a new traffic light. Who decides that? Councilor Klitch stated that it is really easy to focus on a traffic light, but it is a state highway and they are obligated to take care of the traffic, and we already have a problem without any new homes. That should not be an issue. Klitch continued that she has visited other cities and asked "how do you plan for growth". For instance, Caldwell's budget was last year was 54 million. She asked them how are they preparing for growth and they have a policy in place called a budget policy. It is kind of like the liquor license. We know in the state of Idaho, based on the population, how many liquor licenses you can have in a county. In a city, let's say for example for every 1,000 people, it creates another position for a police officer. That is a budget policy issue. Once we create a policy in the budget, we are leaving a legacy so that the future Councils that come on board will already know that when they are approving 800 homes times 2.5 potential occupants, we will already have to equate for one other police officer or a full time fire department. Klitch did not think it was fair that new growth has to pay 100% of all the changes. That is where budget policy is applied.

Councilor Williams stated that Ivan said something that he hadn't thought of. Right now, we all seem to work well together, but none of us will be around here forever. Let's say the citizens elect somebody anti growth. With this tool, it could really shut things down. Mayor Henderson pointed out that could be said for a lot of ordinances, but for us to sit here and say we are not going to pass code because someone could abuse it in the future, we could apply that to any piece of code we have. It is either a good piece of code protecting the citizens, or it doesn't and we need to change it.

Councilor Williams asked where the get out of free from jail verbiage is. City Clerk Cordova stated that the reason administration brought this annexation forward was because at one point, the Council said 'we want everyone treated equally'. This was our tool to treat everyone equally. Cordova stated that she has spoke to other cities that use an annexation ordinance similar to this, and they love it because it gives them a lot of discretions. Cordova pointed out that the Council has a lot of say in this ordinance. For example, the Council can determine whether or not there is a traffic study warranted. Cordova pointed out that this ordinance reserves the right for the Council to make further fiscal contributions to the City for the annexation. City Attorney Osborn pointed out that any decision made at a lower level will ultimately be decided by the Council. If there is an adverse decision made, they can always apply to have it reversed.

Councilor Nelson commented that the Council knows that is true, but there have been times that the Council never heard of anything that could have been appealed because the perception was the City was hard to work with, and therefore, we never got a chance to consider any adverse decisions. We don't want that perception again.

Councilor Williams stated that perhaps we should give out a piece of paper to showing the appeal process. Nelson stated he thinks it is overkill. We need something, but not this restrictive. Mayor Henderson stated the staff is getting frustrated because we have heard this for three meetings in a row, and have been told we need something, but haven't been given direction on what needs to be changes. Nelson stated that he wished he had something more specific, but he does not have a good feeling on it.

Councilor Heleker pointed out that "Administrator's sole and absolute discretion" could scare the developer from coming in. If he was told something by the person in City Hall, and he gets to page 14, and it says "Administrator's sole and absolute discretion", that would scare him off. City Attorney Osborn replied that Jeff had a great idea. Just create a document that says any decision you are not happy with, you can take to the City Council.

Councilor Klitch moved that Ordinance 1273 due pass. The motion was seconded by Williams.

Councilor Mussell asked if any other developers have looked at the ordinance. Cordova explained that they have not looked at the ordinance, but they have seen the application and have complied with it. Councilor Klitch stated she personally contacted several people who are involved in development in the area, and have waited for a response. People have been well informed, and have had opportunity to comment on it.

At the roll call:
Ayes: Williams, Klitch
Nays: Mussell, Nelson, Heleker

The motion FAILED.

Councilor Klitch would like to see Councilmen Nelson, Mussell and Heleker come with some resolution. Mayor Henderson agreed. We have had 3 council meetings, asked for comment before the 1st meeting, have held a work session, made every changed asked, and still it is not good enough. We can't fix it unless someone tells us where it is broken. Councilor Nelson asked that the staff come back with a minimum, and Mayor asked where. Heleker stated he is in agreement with most of the ordinance, and he pointed out only one thing that could possibly scare a developer away, and it needs to be stated that if they don't like "administration sole and absolute discretion", it may be over ruled or that it can come back to the City Council for appeal. We have asked and now we are throwing it back again on page 14. Mr. Attorney what should we put in there

Councilor Mussell stated that he feels bad about not passing it, but there were just so many things. He knows a developer in McCall, one item on there he had to pay \$7,000 for. There are so many things that could be very costly. Maybe in Boise they are used to this, but not in Payette. It is going to cost thousands of dollars more. The \$500.00 per lot is a good thing. If this was to come back, a little softer, he would probably approve it.

City Engineer Doug Argo had two points. The ordinance as written takes many of the requirements that will be required for the preliminary plat, and moves them to the annexation stage; it is a matter of timing. The other philosophy is give us a little brief sketch, meet all of our codes, bring water, what zoning do you want, how are you going to get utilities to the property, then all of these things would required at preliminary plat stage, but they have passed one hurdle in annexation because they know that they are dealing with the City and

not the County. If they don't get annexed, then they have to deal with the County and a different set of rules. That is one of the biggest complaints he has heard. It is a matter of order, not total cost. Can we do a simplified annexation at the minimum? Yes, and what he just stated is the bare minimum. Councilor Nelson stated that he was just convinced that he voted the right way. Argo explained that what he was trying to convey is that there is not a difference in cost; they will have to do it anyway. The developer coming in now is doing the preparation for the preliminary plat and annexation at the same time.

Councilor Williams asked Argo where we go from here. Argo replied that there are two options, soften slightly or go with a more minimalist either can work, and either is presently being used within a twenty mile radius. Ontario for example state "Tell us what you want to do, we'll annex you", it's that simple. Other places like Middleton is very similar to this ordinance here. Both are workable.

Councilor Nelson asked if some of this, in ordinance form help that stage. We have not had anyone want to be annexed until they are ready to build. Would that put more teeth into preliminary plat? Mayor Henderson pointed out that it has been the complaint of some developers that by putting it back further in the process, they don't know up front what we require in the process. Most times this comes immediately before the development stage, but this tells them right up front.

Councilor Klitch stated it is to the City's best interest to annex anything in the impact area and to understand the plan before it is going to be annexed. We need to make sure development pays for itself, but not taking so much from development that they are not paying future costs. In addition to all of that development, each item is different. If you are building up off of Payette Heights road, one will be dealing with issues that will be specific to that area.

NEW BUSINESS

A. Application for a Mobile Food Service Vendor by Joel Aleman, dba Dos Hermanos, to sell food at 521 South 9th Street, Payette

A motion was made by Councilor Klitch and seconded by Councilor Heleker to renew the Mobile Food Vendor Permit for Joel Aleman dba Dos Hermanos for a period of one year.

After a unanimous voice vote, the motion CARRIED.

B. Resolution 2007-04 Enacting the National Response Plan to be Compliant with the State Homeland Security Objectives

Fire Chief Jeff Sands explained that state that under the Homeland Security Presidential Directive -5, they want all agencies to operate under this incident command system format. It is a matter of protocol; the fire department has been doing it for years.

A motion was made by Councilor Heleker and seconded by Councilor Mussell to approve resolution 2007-04.

After a unanimous voice vote, the motion CARRIED.

C. Application for a Liquor License by David Lee Posey dba Boomerang Saloon

A motion was made by Councilor Williams and seconded by Councilor Nelson to approve an application for a liquor license by David Lee Posey DBA Boomerang Saloon.

After a unanimous voice vote, the motion CARRIED.

DEPARTMENTAL REPORTS

Written reports were presented to the Council.

CITIZENS COMMENTS

David Posey, Payette, he noticed that in reviewing the Council Packet on-line, application was put on line with his SSN and birth date.

Mr. Posey then suggested that it would be helpful if the Mayor made a ruling on the vote after a vote is taken by the Council.

MAYOR'S COMMENTS

Mayor Henderson informed the Council of the following:

Mayor Henderson assigned two council people to each focus group for the upcoming community review:

- Infrastructure – Jeff, Lee
- Seniors & Youth – Mark & Georgia
- Arts, Historic and Recreation – Val & Ivan

We will be holding a work session to help coordinate the community review schedule. Dale Dixon or another representative of the Idaho Rural Partnership will be participating in that work session. In addition, we realized that they have scheduled the review during the same days as the AIC conference. We may be rescheduling the date, but will keep everyone posted.

2007 AIC spring district seminar will be Tuesday, April 10 at the Nampa Civic Center. Contact Mary if you wish to attend.

There will be a Town Meeting this week, Thursday at 8pm at the County Courthouse. Representatives Denney, Edmunson and Senator Pearce will be there to give an overview on the session that just ended and answer some questions.

Went before the County Commissioners and requested that they participate in the financial support of the airport. We came to a preliminary agreement. Bert will draft the agreement for Council approval, and if it is approved, it will be brought to the Commissioners for their endorsement.

Councilor Klitch asked if the hangar has been leased. City Clerk Cordova responded that they are checking on references of the applications at the request of the Airport Advisory Committee.

EXECUTIVE SESSION

- A. Executive Session per Idaho Code 67-2345 (c) To conduct deliberations concerning acquisition of an interest in real property which is not owned by a public agency

Councilor Klitch moved to recess into executive session per Idaho Code 67-2345 (c) To conduct deliberations concerning acquisition of an interest in real property which is not owned by a public agency. The motion was seconded by Councilor Heleker.

After a unanimous voice vote, the motion CARRIED and the Council recessed at 8:00 PM.

Councilor Heleker moved and Councilor Williams seconded a motion to reconvene into the regular meeting.

After a unanimous voice vote, the Council reconvened at 8:15 PM.

ADJOURNMENT

A motion was made by Councilor Heleker and seconded by Councilor Williams to adjourn.

After a unanimous voice vote, the Council adjourned at 8:15 PM.

Signed this _____ day of _____, 2007.

DOUGLAS E. HENDERSON, Mayor

ATTEST:

Mary Cordova, City Clerk