



## LA PINE CITY COUNCIL MEETING AGENDA

Wednesday, December 9, 2015

**Executive Session – 5:00 pm**

**Regular Session – 6:00 pm**

16345 6<sup>th</sup> Street, Suite 102

La Pine, Oregon 97739

### **A. Executive Session – ORS 192.660(2)(f) and ORS 192.660(2)(h) – 5:00 pm**

The council will meet in executive session under (a) ORS 192.660(2)(f) – to consider information or records that are exempt by law from public inspection, and/or (b) ORS 192.660(2)(h) – to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

### **B. Council Meeting – 6:00 pm**

#### 1. Call to Order

#### 2. Establish a Quorum

#### 3. Pledge of Allegiance

#### 4. Added Agenda Items

Any matters added to the Agenda at this time will be discussed during the “Other Matters” portion of this Agenda or such other time selected by the City Council.

#### 5. Consent Agenda

Information concerning the matters listed within the Consent Agenda has been distributed to each member of the City Council for reading and study, is considered to be routine, and will be enacted or approved by one motion of the City Council without separate discussion. If separate discussion is desired concerning a particular matter listed within the Consent Agenda, that matter may be removed from the Consent Agenda and placed on the regular agenda by request of any member of the City Council.

##### a. Approval of Minutes

- i. November 18, 2015 Work Session & Council Mtg Minutes

##### b. Bills and Invoices

- i. Approval of Reimbursements

##### c. Financials

- i. Revenue and Expenses

#### 6. Public Comments

#### 7. Medical Marijuana Tax Discussion – Ordinance No. 2014-07

8. Recreational Marijuana Establishments Banning Ordinance – Ballot Referral (draft)
9. Recreational Marijuana Taxing Ordinance – Ballot Referral (draft)
10. Approval of New Phones and Software for City Hall
11. Delinquent Utility Accounts
12. Other Matters

This item concerns any matters that were added to the Agenda under the Added Agenda Items portion of this Agenda.

13. Public Comments
14. Staff Comments
15. Council Comments
16. Mayor's Comments
17. Adjourn

Pursuant to ORS 192.640, this notice includes a list of the principal subjects anticipated to be considered or discussed at the above-referenced meeting. This notice does not limit the ability of the City Council to consider or discuss additional subjects. This meeting is subject to cancellation without notice. The regular meeting is open to the public and interested citizens are invited to attend. The public will not be permitted to attend the executive session; provided, however, representatives of the news media and designated staff will be allowed to attend the executive session. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the executive session as previously announced. No decision will be made in the executive session.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Patti Morgan (541-536-1432). For deaf, hearing impaired, or speech disabled dial 541-536-1432 for TTY.

## LA PINE CITY COUNCIL MEETING MINUTES

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### **B. Council Meeting – 6:00 pm**

#### **1. Call to Order**

Mayor Mulenex called the meeting to order.

#### **2. Establish a Quorum**

Interim City Manager Rick Allen

City Attorney Jeremy Green

Assistant City Manager Cory Misley

Mayor Ken Mulenex

Councilor Stu Martinez

Councilor Greg Jones

Councilor Kathy Agan

Councilor Karen Ward

Councilor Dennis Scott

Student Councilor Sydney Bright – absent due to prior arrangement

Public Works Manager Scott Perkins

Accounting Clerk Ashley Williams

Admin Ass't Patricia Morgan

**Quorum established.**

#### **3. Pledge of Allegiance**

Jim Fleming led the Pledge of Allegiance.

#### **4. Added Agenda Items**

Any matters added to the Agenda at this time will be discussed during the “Other Matters” portion of this Agenda or such other time selected by the City Council.

- 1) Johnson Building Agreement for a rightofway issue with the County and Parks District
- 2) Authorize the City Manager to go out for bids on a new sound system for the Council Chambers

#### **5. Consent Agenda**

Information concerning the matters listed within the Consent Agenda has been distributed to each member of the City Council for reading and study, is considered to be routine, and will be enacted or approved by one motion of the City Council without separate discussion. If separate discussion is desired concerning a particular matter listed within the Consent Agenda, that matter may be removed from the Consent Agenda and placed on the regular agenda by request of any member of the City Council.

- a. Approval of Minutes
  - i. November 18, 2015 Work Session & Council Mtg Minutes
- b. Bills and Invoices
  - i. Approval of Reimbursements
- c. Financials
  - i. Revenue and Expenses

Councilor Martinez stated a possible conflict of interest with the Wilderness Garbage bill.

**A motion was made by Councilor Martinez and seconded by Councilor Agan to approve the Consent Agenda.**

<b><i>Vote as follows:</i></b>	<b><i>AYE</i></b>	<b><i>NAY</i></b>
<b><i>Councilor Dennis Scott</i></b>	<b><i>X</i></b>	
<b><i>Councilor Stu Martinez</i></b>	<b><i>X</i></b>	
<b><i>Councilor Kathy Agan</i></b>	<b><i>X</i></b>	
<b><i>Councilor Karen Ward</i></b>	<b><i>X</i></b>	

**Motion passed unanimously.**

#### 6. Public Comments

Kay Nelson, area resident, stated she was there to thank the City for their financial participations and efforts for the Veterans Day event.

#### 7. Medical Marijuana Tax Discussion – Ordinance No. 2014-07

Mayor Mullenex said it was unfortunate that the City had to review an Ordinance that was created and passed. He said, however, that due to legislative changes in 2016, it was necessary for the City to review this Ordinance especially in regard to a lawsuit situation. He said that Sean O'Day, General Counsel from the League of Oregon Cities, has given his opinion on the current Ordinance issues to the Council.

City Attorney Jeremy Green said that in 2016 the legislature may enact rules regarding the sale of marijuana and taxation, but right now the City is facing a lawsuit brought by Green Knottz, a medical marijuana dispensary. He then reviewed the process of marijuana being approved by the voters in the State of Oregon. He said as of today, the City has collected approximately \$6,000 in medical marijuana tax.

Sean O'Day discussed the creation of the League of Oregon Cities. He said the League lobbies the State Legislature to protect the City's Home Rule. He said as far as the League is concerned, they have not taken a position on marijuana and any taxing issues with marijuana. Mr. O'Day said that Oregon is a Home Rule State. The cities obtain a Home Rule authority over the State unless the legislature takes action, otherwise. He said if a state law says a City can or cannot do something but there are gaps in it, a City can use its Home Rule authority to fill in the gaps. He also said that the legislature knows how to pre-empt local governments from imposing and collecting on a previously adopted tax.

Attorney Leland Berger, representing Green Knottz Dispensary, said he helped draft the medical marijuana act and Measure 91, and he has begun to transition his business to representing cannabis providers. He said no other medicine is taxed, and marijuana is a recognized medicine. He said he does not believe that the legislature will authorize taxation on medical marijuana. He said he agrees with Mr. O'Day that there are not sales in medical marijuana dispensaries there are

only transfers. He said he does not agree that it creates a gap that a City could utilize. Mr. Berger said the City does not have the authority to do that. Mr. Berger discussed that tax that Green Knottz Dispensary had been paying ever month even though they believed it was an illegal tax. He said, as a result, Green filed a lawsuit against the City of La Pine. Mr. Berger said if the City repealed the medical marijuana taxation and refunded monies paid to date, the lawsuit could be dismissed.

Glen Costello, area resident, said there is a moral issue on taxing medical marijuana. He discussed his brother and his brother's need for medical marijuana to help with his long-term illness. Mr. Costello said the tax is a hardship on the people that really need the medical marijuana.

Matt Toepher, owner of High Desert Botanicals, said that the tax has greatly impacted his business. He said they did not put the tax on their customers. Mr. Toepher said he felt, in the past, that the Councilors already had their mind made up regarding early sales of recreational marijuana, and that they were not open to examining the issue. He said he does not believe that recreational marijuana should be on the next election ballot for the City of La Pine. Mr. Toepher also discussed how the ban on early sales of recreational marijuana could affect the City, economically.

City Attorney Jeremy Green stated that he believes that the taxing ordinance is legal under the Home Rules Charter authority and also as well as a fact that there is no expressed pre-emption providing otherwise. He said the tax revenue is approximately \$6,000.00. He said the cost to litigate the tax would be in the tens of thousand dollars. Mr. Green said that even if the City was successful in litigation, the legislature would probably disallow tax on medical marijuana, anyway. He said if the tax was repealed, the tax monies collected to date would be refunded to the dispensary for them to refund the tax collected to their customers. Mr. Green said it did not appear that Green Knottz dispensary would request attorney fees be reimbursed from the City.

Mayor Mullenex said that the Council originally moved forward based on what was allowed, at the very beginning of this process. He said that the City now has to look at the new rules that are out there and make some decisions on what is in the best interest of the City. Councilor Scott said he appreciated all the comments that have been made tonight. Councilor Agan said it was good to hear the various points of view and to decide what is best for the City. Councilor Ward said that taxpayers money should not be spent on this issue. Councilor Martinez said that he favored repealing the tax.

**A motion was made by Councilor Scott and seconded by Councilor Martinez to Repeal Ordinance No. 2014-07 Regarding Medical Marijuana Tax.**

<i>Vote as follows:</i>	<i>AYE</i>	<i>NAY</i>
<i>Councilor Dennis Scott</i>	<i>X</i>	
<i>Councilor Stu Martinez</i>	<i>X</i>	
<i>Councilor Kathy Agan</i>	<i>X</i>	
<i>Councilor Karen Ward</i>	<i>X</i>	

**Motion passed unanimously.**

Mr. Green discussed the Resolution, No. 2015-07, repealing Ordinance 2014-07. It directs staff to prepare an Ordinance repealing the tax and authorizing the refund of tax monies that had been collected.

Councilor Martinez commended Matt Toepher on not imposing the tax on his customers.

A motion was made by Councilor Ward and seconded by Councilor Scott to Approve Resolution No. 2015-07.

<i>Vote as follows:</i>	<i>AYE</i>	<i>NAY</i>
<i>Councilor Dennis Scott</i>	<i>X</i>	
<i>Councilor Stu Martinez</i>	<i>X</i>	
<i>Councilor Kathy Agan</i>	<i>X</i>	
<i>Councilor Karen Ward</i>	<i>X</i>	

Motion passed unanimously.

Mayor Mulenex called for a five minute break at 7:05 pm.

Meeting resumed at 7:10 pm.

8. Recreational Marijuana Establishments Banning Ordinance – Ballot Referral (draft)

City Attorney Green discussed House Bill 3400 that allows a municipality to refer a banning ordinance out to the voters in November of 2016. He said the Council decided to focus the ban on recreational marijuana. Mr. Green said if the Council decides to go forward, he would like to bring the Ordinance back at the January 13, 2016 Council Meeting. He said if the recreational marijuana was banned by the voters, the current medical marijuana dispensaries would be allowed as they would be grandfathered in.

Mayor Mulenex said that the voters, in the last election, in the City of La Pine, voted 53.6% to ban recreational marijuana. He said he felt that putting the issue to the voters was an important thing to do. Councilor Ward said that the public she deals with, have been sharing with her that they do not want recreational marijuana to be sold in the City of La Pine. Councilor Martinez said it should get to the voters and that would lay it to rest once and for all. Councilor Agan said that the issue should go before the City of La Pine voters. Councilor Scott also said it should be put before the voters, it is only eleven months away.

Public Comment

Attorney Leland Berger stated that he views marijuana use as a civil rights issue. He said he was disappointed that the legislature allowed individual cities the opportunity to opt out of selling recreational marijuana. Mr. Berger said that the City could refer the question about recreational marijuana sales in the City, at the May 2016 election, instead of the November 2016 election date. He said there were economic incentives put into Measure 91 to encourage cities to approve the selling of recreational marijuana. Mr. Berger said it creates a revenue stream and that marijuana is a great job provider. He said the OLCC has put out a large number of rules for the sale of recreational marijuana. It is heavily regulated.

Glen Costello, area resident, stated that because of the medical marijuana, jobs have been created in La Pine and a revenue stream has also been created. He said recreational marijuana will bring in revenue for the City and that the City can only benefit from the sale of recreational marijuana.

Chris Smith, area resident, stated that the strength of a small community is the ability to change. He said that there was still 46% of voters that wanted recreational marijuana in the City of La Pine. Mr. Smith says the City needs to be supportive of marijuana dispensaries. He also suggested putting the question to the voters, sooner than later.

Councilor Scott said he agreed about educating the public about the marijuana issue over the next several months. Councilor Agan said she still favors a vote on the issue. Councilor Ward also agreed that there should be a vote on it. Councilor Martinez said it is the voice of the people that needs to be heard by a vote.

**A motion was made by Councilor Ward and seconded by Councilor Agan to put the Recreational Marijuana Banning Ordinance on the ballot for referral to the voters.**

<i>Vote as follows:</i>	<i>AYE</i>	<i>NAY</i>
<i>Councilor Dennis Scott</i>	<i>X</i>	
<i>Councilor Stu Martinez</i>	<i>X</i>	
<i>Councilor Kathy Agan</i>	<i>X</i>	
<i>Councilor Karen Ward</i>	<i>X</i>	

**Motion passed unanimously.**

City Attorney Green said he will bring the Ordinance back to the Council at the January 13, 2016 Council Meeting.

9. Recreational Marijuana Taxing Ordinance – Ballot Referral (draft)

Mr. Green said that this taxing ordinance is permitted under House Bill 3400. He said that this bill allows taxing on recreational sales if there is a ballot referral which could happen in November of 2016 for the City of La Pine.

Public Comment

Brad Stewart, area resident, stated regarding taxes that the City may impose, that the tax is kept low. Matt Toepfer asked if the banning ordinance would effect retail, growers, etc.? Mr. Green said it would be the growers as well as the retailers.

City Manager Allen asked about if the banning ordinance would incorporate growers in say the Industrial Park of La Pine. Mr. Green said it would ban them as well. Mr. Allen said there is currently a marijuana growing company in the Industrial Park and that there are a couple of prospective companies that want to grow marijuana in the Industrial Park. Mr. Allen said he needs to know, now, where the Council stands on marijuana growers in the City. Councilor Martinez stated that the LED (La Pine Economic Development) members were in favor of marijuana growers in the Industrial Park and gave that recommendation to the City. Councilor Scott suggested a Work Session on the issue. Councilor Agan said it is very contradictive and if we are going to do it we need to do it as it is written. Councilor Ward said she feels she needs more information from staff.

**A motion was made by Councilor Agan and Seconded by Councilor Ward Repealing the Directive to Staff to bring back a Banning Ordinance at the January Council Meeting.**

<i>Vote as follows:</i>	<i>AYE</i>	<i>NAY</i>
<i>Councilor Dennis Scott</i>	<i>X</i>	
<i>Councilor Stu Martinez</i>	<i>X</i>	
<i>Councilor Kathy Agan</i>	<i>X</i>	
<i>Councilor Karen Ward</i>	<i>X</i>	

**Motion passed unanimously.**

**A motion was made by Councilor Agan and Seconded by Councilor Scott to Table the Taxing Ordinance until a later date.**

<b><i>Vote as follows:</i></b>	<b><i>AYE</i></b>	<b><i>NAY</i></b>
<b><i>Councilor Dennis Scott</i></b>	<b><i>X</i></b>	
<b><i>Councilor Stu Martinez</i></b>	<b><i>X</i></b>	
<b><i>Councilor Kathy Agan</i></b>	<b><i>X</i></b>	
<b><i>Councilor Karen Ward</i></b>	<b><i>X</i></b>	

**Motion passed unanimously.**

10. Approval of New Phones and Software for City Hall

Ashley Williams, Accounting Clerk, stated that she tried to solicit quotes and heard from BendTel that they could replace the entire system but that is not what the City needed. She said Bill Scully quoted about \$1,500 to do the new phones and software. Ms. Williams said that the phones at City Hall have never been upgraded since they were first installed. Mayor Mulenex stated that he thought upgrading the phone system was important and he recommended that the Council approve it. Councilor Martinez and Councilor Agan also thought it was important to do.

**A motion was made by Councilor Martinez and Seconded by Councilor Scott to Approve the Upgrading of the City's Phone System.**

<b><i>Vote as follows:</i></b>	<b><i>AYE</i></b>	<b><i>NAY</i></b>
<b><i>Councilor Dennis Scott</i></b>	<b><i>X</i></b>	
<b><i>Councilor Stu Martinez</i></b>	<b><i>X</i></b>	
<b><i>Councilor Kathy Agan</i></b>	<b><i>X</i></b>	
<b><i>Councilor Karen Ward</i></b>	<b><i>X</i></b>	

**Motion passed unanimously.**

10. Delinquent Utility Accounts

Ms. Williams discussed the list of accounts that she had prepared for the Council. She said many of the delinquent accounts are uncollectable. Ms. Williams said because of the new Ordinances that were adopted in July, 2015, the City now has better ways to collect on new delinquent accounts. For one thing, now if the tenant does not pay their final bill, the property owner has to pay for it. She said with some of the delinquent accounts, she intended to lein their physical properties. Ms. Williams recommended writing off the remaining delinquent accounts. Mayor Mulenex questioned why the delinquent accounts got so far out. Mr. Allen said it was a result of the transition when the City took over the Water and Sewer District. He said the City inherited some of these problems. Ms. Williams said that Brenda Bartlett, City Financial Officer, was comfortable with writing off some of the delinquent accounts. Councilor Martinez said he was interested in the City moving forward and resolving some of the delinquent accounts and he liked the new process for collection.



**A motion was made by Councilor Agan and Seconded by Councilor Ward to Approve the Process the City has Presented for Dealing with Some of the Delinquent Accounts.**

<b><i>Vote as follows:</i></b>	<b><i>AYE</i></b>	<b><i>NAY</i></b>
<b><i>Councilor Dennis Scott</i></b>	<b><i>X</i></b>	
<b><i>Councilor Stu Martinez</i></b>	<b><i>X</i></b>	
<b><i>Councilor Kathy Agan</i></b>	<b><i>X</i></b>	
<b><i>Councilor Karen Ward</i></b>	<b><i>X</i></b>	

**Motion passed unanimously.**

Ms. Williams said that she will bring back a Resolution at the January, 2016 meeting for the write-off amounts of the delinquent accounts, but not the lien amounts.

12. Other Matters

This item concerns any matters that were added to the Agenda under the Added Agenda Items portion of this Agenda.

1) Johnson Building Agreement for a right-of-way issue with the County and Parks District.

Mr. Allen said the building sits on County land and they just need the City to sign off on it because of the right-of-way. He said he is asking for approval from the Council to sign the agreement.

**A motion was made by Councilor Martinez and Seconded by Councilor Scott to Authorize the City Manager to sign the Right-of-way Agreement for the Johnson Building.**

<b><i>Vote as follows:</i></b>	<b><i>AYE</i></b>	<b><i>NAY</i></b>
<b><i>Councilor Dennis Scott</i></b>	<b><i>X</i></b>	
<b><i>Councilor Stu Martinez</i></b>	<b><i>X</i></b>	
<b><i>Councilor Kathy Agan</i></b>	<b><i>X</i></b>	
<b><i>Councilor Karen Ward</i></b>	<b><i>X</i></b>	

**Motion passed unanimously.**

2) Authorize the City Manager to go out for bids on a new sound system for the Council Chambers

Mr. Allen discussed the quote he had received, a year ago, that was for more than what the Council wanted to spend. He said he would like approval to go out for bid on the sound system. Mr. Allen said it will make hearing the Council meetings much easier for the public. He said he would like to get the system in place by late winter or spring. Mr. Allen said some of the old equipment can probably be used for the upgrade.

**A motion was made by Councilor Martinez and Seconded by Councilor Scott to Authorize the City Manager to put out an RFP for a new sound system for the Council Chambers.**

<i>Vote as follows:</i>	<i>AYE</i>	<i>NAY</i>
<i>Councilor Dennis Scott</i>	<i>X</i>	
<i>Councilor Stu Martinez</i>	<i>X</i>	
<i>Councilor Kathy Agan</i>	<i>X</i>	
<i>Councilor Karen Ward</i>	<i>X</i>	

**Motion passed unanimously.**

13. Public Comments

Brad Stewart, area resident, discussed the four different categories for marijuana sales starting with the growers and processors. He said the processing businesses will have high utility bills which will generate revenue for the City. Mr. Stewart also said that employees will make retail purchases in the City. He said that bringing the issue of marijuana growers to the voters will set back the processing businesses by about two years. Jim Fleming, Public Works Committee Member, suggested that on the proposed resolution, if the City will allow production of marijuana in the City to put in some language that the processing plants need to be in one location like the Industrial Park. He also commented that the tax revenue the City would receive would probably not amount to much income. The City does not share in the State tax revenue if they do not allow retail sales of recreational marijuana.

Attorney Sean O'Day said that 10% of the tax would go to the City after the State has meant it's costs for the loan that OLCC had to take out. He said after the first year, the tax will be calculated on the number of licensees located in the City.

14. Staff Comments

None

15. Council Comments

Councilor Scott said he was pleased on how the discussion went tonight. He said he is willing to speak with anyone who would like to talk with him.

16. Mayor's Comments

None

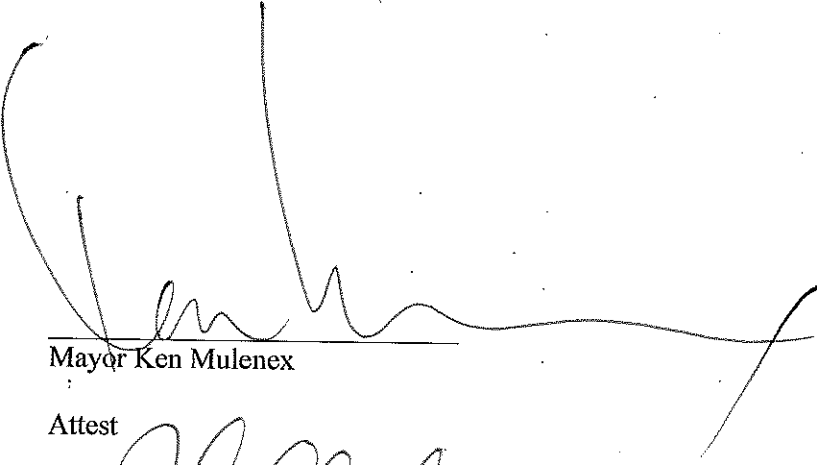
17. Adjourn

**A motion was made by Councilor Agan and Seconded by Councilor Ward to adjourn the meeting.**

<i>Vote as follows:</i>	<i>AYE</i>	<i>NAY</i>
<i>Councilor Dennis Scott</i>	<i>X</i>	
<i>Councilor Stu Martinez</i>	<i>X</i>	
<i>Councilor Kathy Agan</i>	<i>X</i>	
<i>Councilor Karen Ward</i>	<i>X</i>	

**Motion passed unanimously.**

Mayor Mulenex adjourned the meeting.



Mayor Ken Mulenex

Attest



Rick Allen, City Recorder