

**CITY OF MERRILL**  
**EXECUTIVE BUSINESS MEETING**  
Tuesday October 9, 2018 5:30 P.M.  
**REGULAR BUSINESS MEETING MINUTES**  
Tuesday October 9, 2018 6:00 P.M.  
Merrill City Hall 301 E. Second Street Merrill, OR 97633

**MEETING CALLED TO ORDER:**

The meeting was called to order at 5:32 p.m. by Mayor Carlson.

**EXECUTIVE SESSION:**

- Water/Sewer Code Interpretation

**ADJOURN EXECUTIVE SESSION:**

Motion was made and 2<sup>nd</sup> to adjourn at 5:58 p.m.

**CONVENE REGULAR SESSION:**

The meeting was called to order at 6:03 p.m. by Mayor Carlson.

**ROLL CALL:**

Roll call was taken with the following members of Council and others being present: Councilor Lesh, Councilor Smith, Councilor Carleton, Councilor Taylor, Mayor Carlson, and City Recorder Hernandez.

**Flag Salute:**

The **Flag Salute** immediately followed with Mayor Carlson asking Councilor Taylor to lead it.

**MAYOR STATEMENT:**

Mayor Carlson asked that everyone please turn cell phones on silence. All meetings are recorded and when addressing the council, please speak clearly and state your name.

**PUBLIC COMMENT:**

Mayor Carlson stated the public is invited to provide their comments and opinions to the City Council at this time on issues of concern. Non-emergency issues brought up in this form will not be considered tonight other than in this preliminary discussion, but if found warranted, may be considered at a future meeting of the city council. Public comment is limited to five minutes per person.

No public comments followed.

**CONSENT AGENDA:**

- **Meeting Minutes:**
  1. Councilor Smith made a motion to approve Council Meeting Minutes for September 11, 2018. Councilor Carleton 2<sup>nd</sup> the motion. The motion passed 4-0 in favor.
- **Phone Poll Ratifications:**
  1. Councilor Smith made a motion to approve phone poll ratifications for September 11, 2018. Councilor Taylor 2<sup>nd</sup> the motion. The motion passed 4-0 in favor.
- **Business License:**
  2. Councilor Smith made a motion to approve the Mia and Pia's Pizzeria and Brew House Weekend Permit. Councilor Taylor 2<sup>nd</sup> the motion. The motion passed 4-0 in favor.
- **Accounts Payable:**
  3. Councilor Smith made a motion to approve the September Accounts Payables. Councilor Carleton 2<sup>nd</sup> the motion. The motion passed 4-0 in favor.

**STAFF REPORTS:**

- **Police:**

- Marshal Bicknell reported on a solved theft from Parks-Hickey Hay where the perpetrator is no longer in the country; however, Parks-Hickey Hay reported another theft. The investigation is ongoing. The suspect in the case was caught in the act (fell asleep in vehicle) in Midland, Oregon resulting in arrest. Keys to vehicles were recovered. CenturyTel notified Marshal Bicknell a prohibited utility company was operating on CenturyTel utility poles. CenturyTel requested the utility company be trespassed. Work crews were trespassed without incident.
    - Councilor Carleton inquired to an incident by Merrill Lumber and why another police department responded. Discussion followed.
  
- **Public Works:**
  - Public Works Director Matthews reported on multiple tasks performed and distributed to City Council. Public Works Director stated Utility Worker Taylor installed new faucets at the Public Rest Area Restrooms. The intent is to chlorinate the fixtures due the stainless steel fixtures costing \$500.00 each. Public Works Director is continuing to flush lines when reports of sulfur are called in by residents.
  - Discussion of the possibility of sidewalk installation from Merrill Mobile Manner to Court Street and Lincoln Street to Elm Street after pictures and meetings with Oregon Department of Transportation. Councilor Smith signed a letter of support. Marshal Bicknell requested a guardrail for the turn located by Court Street. A request for sidewalks to the Dollar General has been mentioned. Clean-up for the Potato Festival has commenced.
  - Polk Street sidewalks have been rescheduled for early spring 2019.
  - Darryl Anderson Report: City Engineer Darryl Anderson was introduced by Public Works Director. City Engineer Anderson reported on the completion of the Municipal Well Project. The well has been completed to state standards with a depth of 1051 feet. The well is sealed and cased off from 900 feet to the surface. The casing landed on the basalt meeting requirement so all water variance strata come from the basalt layer. The test pump was 500 foot per minute with a 2 foot draw down with less than a 24 hour test time reducing costs. The static water level is approximately at 66 feet. The test pump drew down to 67 feet. The chemical analysis from samples tested resulted in good quality water. Public Works Director Matthews has results for public view if desired. Delays occurred but completion of the well has been accomplished. Costs need to be finalized before moving further on the Municipal Well Project. The valve stem on the old existing well was immobile with no other means to shut off the water supply. A break in the line would have resulted in the tank draining. The valve stem remained open with thrust blocking, chains, and caudle on the well to prevent damage while removing the old pump to complete abandonment of well #1. Withholding the old pump became too complicated and expensive resulting in a new contract and change order. Chlorinated gravel, a basalt layer, and 75 feet of grout were required in the process of abandoning well #1. A bentonite plug was placed on top of the gravel due to pressure from the cement grout spreading into the aquifer in the basalt layer. Perforation occurred during the grout process resulting in loss of silt and sand in the upper strata's. A change from grout to bentonite chips was necessary but more expensive equating to a second change order. The Municipal Well cost approximately \$700,000.00 after adjustments.
  - The City of Merrill is seeking a new contract for the pump and well house. Advertisement for bids have been published with a deadline of October 25, 2018 at 2:00 p.m. (*Darryl stated October 24, 2018*). The distribution bid will be published in late November. Once the contract has been awarded, the distribution and storage tank installation could commence the beginning of 2019.
    - Councilor Carleton inquired to the type of pump being installed. City Engineer Anderson replied with a 500 gallon per minute pump from a depth of 150 feet with a 180 foot a head motor (60 horsepower). The depth is intentional to prevent the loss of water to the City, which occurred in the past. The pump will have a frequency drive to control amount of water pumped.
    - Public Works Director Matthews inquired to the distribution system and tank bid being combined or separate. City Engineer Anderson replied the distribution system and tank will be one bid except the tank is subcontracted. Contractors request the tank be separate to prevent issues with the fluidity of funds.

- Rodney Green inquired to the operation of the water tower as present. Public Works Director Matthews and City Engineer Anderson stated the water tower is in use as of present but will not be incorporated with the new system.
  - Councilor Smith stated the City Council requested the water tower be left for landmark purposes.
  - Mayor Carlson inquired to the sulfur smell. City Engineer Anderson explained well #1 was shallower than well #2 equating to more sediments from the upper strata's being drawn: hydrogen sulfide, iron, and manganese from silt and sands. The hydrogen sulfide can be eliminated through chlorine.
- **City Recorder:**
  - City Recorder Hernandez stated during the September 11, 2018 City Council Meeting the deficiency in the Asyst Program bank reconciliation was to be resolved. Customer support stated the problem is the Cash Control Program was never purchased. The options presented were to purchase the Cash Control Program or research other accounting software. Documentation for the year end audit is due mid to end of October 2018. Councilor Taylor made a motion to purchase the Cash Control Program purchase to bring the City of Merrill into compliance. Councilor Carleton 2<sup>nd</sup> the motion. The motion passed 4-0 in favor.
  - Utility Worker Taylor was budgeted per the Employee Pay Schedule for the 18/19 FY Budget. Councilor Smith made a motion to implement next Step of the Pay Schedule for Utility Worker Taylor. Councilor Lesh 2<sup>nd</sup> the motion. The motion passes 3-0 in favor with Councilor Taylor abstaining due to conflict of interest.
  - City Recorder Hernandez stated the Notarial Test and background check were passed. Presented to City Council was a Notarial Journal Agreement signed by Mayor Carlson and Councilor Taylor upon approval stating the journal would stay in the City's possession upon termination or resignation. Discussion of fees followed. City Attorney Schade clarified a city employee may exempt notary fees for city business. Consensus of a \$10 notary fee will be charged for services.
- **Lawyer:**
  - ET Capital Easement: Mayor Carlson stated the history leading to the request for an easement. The Solar Plant was conditioned to have landscaping around the front perimeter. The maintenance of the landscape is the Solar Plant's responsibility with repercussions for failure to maintain. ET Capital requested an easement to guarantee access to the landscaping. City Council developed language stating ET Capital may be granted an easement. The City of Merrill reserves the right to cancel the easement and landscape obligation if land is developed on the landscaping footprint. ET Capital requested different language. ET Capital paid to have City Attorney Schade discuss legal opinion. City Attorney Schade reviewed documentation and reiterated the City of Merrill's stance. The easement language ran with the requirement ET Capital had to maintain the landscaping. The language did not prohibit the City of Merrill in any capacity. Easement access is defined as reasonable access, which is debatable. Councilor Carleton inquired to the language used by ET Capital, and if easement is necessary for ET Capital to maintain the landscaping? City Attorney Schade was asked to review the easement and state whether the easement would prevent the City from commercial development or selling the property at a future date. City Attorney Schade stated the language in the easement contains no restrictions to the City of Merrill and ran with the requirement to maintain the landscaping. With no landscaping requirements, ET Capital forfeits the easement. The final decision is for the City Council to determine. Councilor Smith stated the opinion that she does not believe ET Capital requires an easement to maintain the landscaping. Councilor Carleton stated ET Capital planted the landscaping on City property without permission. The landscaping was originally to be planted on ET Capital property. After the fact, ET Capital requested an easement. Councilor Carleton stated disapproval for the easement for the following reasons: the landscaping is on public property, there are two entrances with easy access, and the requirement for maintenance is contractual through conditions of approval. Mayor Carlson stated personal opinion in favor of the easement to prevent the City from future conflict giving the example of a future business prohibiting the maintenance of the landscaping. City Attorney Schade stated Councilor Carleton is not incorrect from personal opinion. An easement does not technically need to be granted. For example, ET Capital's project is subject to maintaining the landscape, ET Capital is required to maintain the landscaping. Five years from present, 10 years

from present, and the City of Merrill created an obstruction to prevent maintenance of the landscape, the City of Merrill would not be able to claim breach of contract. ET Capital does not have to have an easement due to the fact the contract clearly states ET Capital has to maintain the landscaping. With multiple access points to maintain the landscaping, ET Capital does not have to have the specific easement. With a granted easement, ET Capital could potentially create a major issue in the future. The City of Merrill's position is ET Capital's requirement is to maintain the landscaping. The City of Merrill is not obligated to provide an easement. The City of Merrill is not going to sign an easement at present. Councilor Carleton inquired to the time period ET Capital is requesting for the easement. City Attorney Schade stated 30 years. Councilor Carleton commented the original agreement was two years until the vegetation became established. Mayor Carlson stated a third option to buy the parcel was offered to ET Capital at \$5.00 per square foot. City Attorney Schade stated a contractual agreement is already in place to maintain landscaping and The City of Merrill has to provide access. Councilor Carleton listed all access points from The City of Merrill's property and ET Capital's property. Councilor Smith made a motion not to grant an easement to ET Capital (Solar Plant). Councilor Carleton 2<sup>nd</sup> the motion. The motion passed 4-0 in favor. City Attorney Schade will contact ET Capital with The City of Merrill's decision and the legal reasoning to the decision.

➤ Rodney Green inquired to the time period ET Capital is required to maintain the landscaping. The City Council stated the life of the project.

- **Code Enforcement:**

- Code Enforcement Shilling reported on 6 in compliance. Martin Aguirre has started maintenance on properties to bill and start lien process. Residents on Washington are draining the washer onto the lawn. There is a language barrier and is seeking Martin Aguirre to translate. City Councilor Smith stated the resident should be cited. City Recorder Hernandez stated the Code Abatement was translated.

- **Planning:**

- Councilor Carleton reported on Les Schwab. Councilor Carleton proposed Les Schwab purchase the triangle parcel at the same price per foot as the other property. Les Schwab responded by email stating the company will research as to why the parcel was not originally purchased. Then Les Schwab could apply for access off of Fourth Street. Mayor Carlson inquired to the amendment from ODOT for truck accessibility. Councilor Carlton stated ODOT would only allow a 40 foot entrance. The curvature is being reviewed.
- Mayor Carlson briefly mentioned the Conceptual West Merrill Highway Plan.

#### **PROJECT MERRILL:**

- Katie Jameson and Guest Transitional Report: Katie Jameson introduced self as local Community Builder working with Rural Klamath Connects Network which is a regional collaborative of the small communities. Katie Jameson works with Merrill, Malin, Bonanza, Tulelake, Dorris, and Butte-Valley. Katie Jameson has worked with the local communities for two years funded through the Ford Foundation. Merrill Project was implemental with the new wildlife viewing area creating new relationships, the creation of hanging baskets throughout the City partnering with Farm Country Nursery, pre-Potato Festival clean-up days, and the partnership with The Bluegrass Festival. Katie Jameson is transitioning out as the local Community Builder and thanked the various groups, communities, and individuals for their support. Introduced was Amy Fry whom is replacing Katie Jameson and partnering with Patrick whom specializes in the Rural Tourism Initiative. Public Works Director Matthews acknowledged Katie Jameson's dedication and accomplishments.
- Lee Harris Report: Rodney Green present the Project Merrill report on behalf of Lee Harris. Rodney Green discussed Ordinance 2018-213: Establishing a Process to Encourage the Beautification on Front Street within the Limits of the City of Merrill, passed February 13, 2018, and the process for receiving funds through City Council from the Oregon Community Foundation interest earned on Solar Plant funds. Project Merrill is in the process of creating bylaws. The concern of Merrill Project is The Bluegrass Festival is seeking funds for the 2019 year. The funds sought would deplete the account and prohibit Project Merrill from seeking funds for various projects. Project Merrill is currently working on obtaining and installing the Water Bucket at the Civic Center. Councilor Smith stated a proposal for fund have not been brought before City Council and inquired to a dollar amount Project Merrill is seeking for the Water Bucket installation. Rodney Green stated the concrete estimation is \$1200.00 and possible electrical expenditures. Councilor

Carleton stated confusion. Separation needs to be made between The Merrill Beautification Project and The Lost River Bluegrass Festival. The impression of City Council was \$100,000.00 of the \$125,000.00 was to be locked as permanent funds. The additional \$25,000.00 was to be set aside as liquid funds including interest earned. The fact is \$5000.00 are currently spendable funds. The funds were not separated.

Condition of approval needs to be discussed with Oregon Community Foundation. Mayor Carlson stated the Oregon Community Foundation representative acknowledged flexibility with funds if City Council so deemed. Mayor Carlson addressed the issue to investigate and report at the November 13, 2018 Council Meeting as an action item. Discussion about interest earned and available funds ensued. Mayor Carlson and Council Smith commented on bylaws, meeting minutes, and suggested priority projects. Rodney Green discussed grants and time sensitivity for funds. Mayor Carlson asked Project Merrill to define the decision making process and create priorities.

- Public Works Director Matthews Lost River Bluegrass Festival Funds Proposal: Public Works Director Matthews introduced self and Secretary of The Bluegrass Festival Joyce Furlong. Documentation has been filed to create The Bluegrass Festival as a 501 c 3 Organization (Lost River Arts and Cultural Alliance). The organization is waiting on the confirmation letter from the IRS. The Merrill Historical and Modoc War Museum, The Bluegrass Festival, and possible future projects would fall under the 501 c 3 umbrella. The Bluegrass Festival submitted a proposal for \$10,000.00. The intention is not to deplete funds Merrill Project requests and encourage other options. The goal of Lost River Arts and Cultural Alliance is to become self-sufficient and a fundraising event(s). With the broad definition, the charity could host any number of arts, crafts, and performing art type of events. The Bluegrass Festival broke even, which is unheard of for a first time event according to Joyce Furlong. The Bluegrass Festival accommodated 850 non-residents and funds brought to the community. Public Works Director Matthews mentioned the increase sponsorship, the need and want of family friendly events, and benefit to the community. Mentioned were the funds expended which would not occur for the 2019 year. Councilor Smith inquired to the dollar amount donated for the 2018 year. Public Works Director Matthews stated \$6000.00. Councilor Carleton commented on attendee's positive comments regarding the 2019 year. Mayor Carlson mentioned the different revenue provided from the Solar Plant. The first, the Oregon Community Foundation fund of \$5500.00. The second, the PILT (payment in lieu of taxes) of \$21,000.00 this fiscal year. Mayor Carlson created an action item to determine whether The City of Merrill is profitable with or without the PILT revenue. Councilor Carleton suggested the PILT revenue should solely fund The Bluegrass Festival for the 2019 year and the Oregon Community Foundation funds for other projects. Councilor Smith suggested depositing funds for immediate use for time sensitive grants received from the Oregon Community Foundation funds. There are only four times per year funds are allocated for grants. Tabled.

#### NEW BUSINESS:

- Reporting Structure for Change Order Process of \$10,000.00: Change orders are created when there is a change in contract time or price. When there is no change in time or price but a change is made to a contract, the change is labeled a work directive change. Change order contracts are required to be approved by The City of Merrill and by the funding agency. The change order is generally recommended by City Engineer Anderson simultaneously to the funding agency and The City of Merrill with cost changes from the contractor or costs on the quantities listed in the contract. Mayor Carlson stated change orders are a constant in any project. Mayor Carlson recommended a threshold of \$10,000.00. Change orders below \$10,000.00 could be approved by Councilor Carleton and City Engineer Anderson. Change orders above \$10,000.00 should have City Council approval. Mayor Carlson stated the consensus for a change order requires a phone poll of City Council due to time sensitivity for selective projects. Concerns for a change order would require a City Council Meeting. Councilor Carleton noted copies for all change orders are filed at the City Recorder's Office.

#### OLD BUSINESS:

- Discussion of Cable Plant Status: Marshal Bicknell stated self, Mayor Carlson, and Recorder Hernandez met with Klamath County concerning the Cable Plant. Klamath County has taken possession of the Cable Plant with intent to hold a public hearing and transfer ownership of the Cable Plant to The City of Merrill (Oregon Revised Statutes). The City of Merrill would be responsible for the maintenance of the system for a minimum of 20 years while in City's possession. The City of Merrill may authorize another vendor to maintain the system.

- Intent to Audit Internet Service Providers (Maintenance and Financial): The City has the prerogative per franchise rights to request an audit of providers since noticing discrepancies.

#### ORDINANCES:

- 2018-10-01 Water Rate Equalization-Second Reading: The intent is to take no action on the ordinance this Council Meeting. The City Council offered the floor to Lee Schlagel, owner of Merrill Mobile Manner, and Dave Goodfellow, another business owner.
  - Lee Schlagel: "Lee Schlagel of Merrill Mobile Manner. I know about everybody here but the Mayor. Anyway, this is a considerable shock. Luckily, I was in town when I got wind of this. This is, uh, pretty extensive. It is a hit on my business, and I do not know if you have questions on my letter. I tried to be detailed. I did not want to insult anybody, but I did want to point out the damage it will do to my company with this and the amount of .....meters that I am paying for that I don't use. There is just a tremendous cost to me do to the vulnerability of the RV industry in the wintertime. Like I have 91 overnighters from the first of the year to the first of October. Now I can show you the receipts here, but in reality, that was from April to the first of October. The 91. I had none the rest of the time. Nobody comes over that mountain in the snow in an RV. Let's face it. And I feel we contribute a tremendous amount of revenue to the City. I just got a young man in that, uh, he's had a cold worker and been in the park for short term. This fella just come in, he'll be here three months. You know when he comes in from work at night, he goin' down to the restaurant to eat. He's tired. And to me, them's the same as tourists. They generate a lot of business for our community. And, uh, I do not want to elaborate and take up a lot of your time. If anybody has any questions, I would be please to answer. One more tiny little point, is the average RV uses seven gallons of water per person per day. So, uh, an RV with a husband and wife uses about 14 gallons. To verify that a little bit, my place over in Roseburg, they give you with your meter read 600 gallons of water for the month. I have two sites over there myself and one other, and when I am there full time, we have never went over our 600 gallons in the 30 days with the two RV's in there. Just for information."
  - Mayor Carlson inquired whether Mr. Schlagel would participate in a study group with Public Works Director Matthews, Mayor Carlson, and Councilor Carleton to amend the ordinance.
  - Lee Schlagel: "What sort of time frame because I do not live here. I actually live over in Roseburg. This is my manager Kathy Johnson. She's very knowledgeable on stuff. I can come back. That is not a problem. I do a lot of traveling. I am on a 1500 mile run right now when I came down here to insulate the water boxes, and this here happened. So I stayed longer. Now I am going to trim the trees in the park while I am here and do that this Friday."
  - Councilor Carleton inquired to whether Merrill Mobil Manner ran electricity off one meter.
  - Lee Schlagel: "No it's on, uh, no I take that back. It is on one meter but I have three boxes."
  - Councilor Carleton inquired to whether each site had a meter.
  - Lee Schlagel: "They're private meters."
  - Councilor Carleton inquired to customer billing per meter usage.
  - Lee Schlagel: "Yes. They go from 0-300 kilowatts is \$35.50, and if they go over that, then they are charged what we are charged, which is defined a 10 cents per kilowatt hour. If you don't do that with RV's, then they leave everything on."
  - Councilor Carleton stated the same intention with water usage because customers will use more than a household.
  - Lee Schlagel: "No. Absolutely not. What I said there is..."
  - Councilor Smith stated the possibility.
  - Lee Schagel: "With 30 spaces...yes."
  - Discussion of water usage for a RV verses a RV Park followed and residents subsidizing for unequal water usage. Public Works Director Matthews noted Lee Schlagel is in a unique position due to one meter being for permanent residents and the other for temporary guests. Public Works Director Matthews commented the service provided is a factor more than the water usage and provided the example of a situation where a person was stealing water. Lee Schlagel was once again invited to participate in the study group after relating an example of being charged for empty sites during the winter and a major contributor to tourism in the community. Tabled.
  - Dave Goodfellow: "My only major concern is, with the business I own, I have to try to retro fit every apartment. To put a meter for each one. You know you talk about a meter at \$1000.00 a

piece, well there is over \$12,000.00. Plus, I am probably lookin' at triple that to have every apartment to have water put into every single one. Common sense tells ya it's not worth it. That is how I am lookin' at it. Yes, I have two meter's on the property. One of them does six of them, the other does four of them. You know, I am just lookin' at, you know, if I read that thing right, I am paying more for water than I am for sewer. I am going from \$560.00 to almost \$800.00 a month for water and sewer.....most of my tenants are Hispanic so I do not try to gouge them, but if I turn around and tell them, and I would be honest with them. I would say your City raised the water so I have to, you know, go after you to get...to keep the fees up, which I do not like to raise rent on anybody when they live in the establishment. That is my only concern.”  
Discussion followed to include concern in the study group. Dave Goodfellow gave examples of possible solutions to the issue. Contact information is to be submitted to City Recorder Hernandez.

**RESOLUTIONS:**

- Resolution 2018-772: Lost River Bluegrass Festival Proposal Transfer per Budgetary Law: Tabled

**FUTURE AGENDAS:**

- Lost River Bluegrass Festival Fund Proposal
- Discuss Oregon Community Foundation Funds
- Discuss Revenue and Expenditures for The City of Merrill

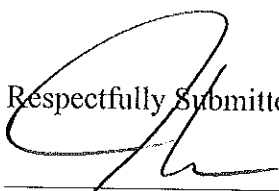
**PUBLIC COMMENT:**

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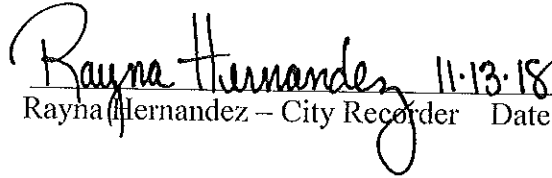
**ADJOURN MEETING:**

- Councilor Smith made a motion to adjourn the October 9, 2018 Meeting. Councilor Carleton 2<sup>nd</sup> the motion. With all in favor, the meeting adjourned at 7:47 p.m.

Respectfully Submitted,

  
Bill Carlson - Mayor

14 NOV 18  
Date

  
Rayna Hernandez - City Recorder Date