

City Council Meeting Minutes

THURSDAY, NOVEMBER 1, 2012

CITY HALL COUNCIL CHAMBERS

CITY OF COLUMBIA CITY, COLUMBIA COUNTY, OREGON

AGENDA ITEM 1 **CALL TO ORDER/ROLL CALL:**

CONVENED:

Council President Sally Ann Marson called the regular meeting to order at 6:00 p.m. Harold Olsen delivered the invocation and led the flag salute.

COUNCIL MEMBERS PRESENT:

Councilor Shannon Fitzgibbons
Councilor Sally Ann Marson
Councilor Casey Wheeler

COUNCIL MEMBERS ABSENT:

Mayor Cheryl A. Young
Councilor Josh Fromm

ALSO PRESENT:

Micah Rogers, Public Works Superintendent
Leahnette Rivers, City Administrator/Recorder

ATTORNEY PRESENT:

Harold Olsen

A quorum was present and due notice had been published.

AGENDA ITEM 2 **PUBLIC HEARINGS:**

2.1 Abatement Hearing: To consider a request to order the abatement of activities associated with the propagation and sale of dogs on property located at 2350 Sixth Street, Columbia City, Oregon.

Leahnette stated, "The Council members have a copy of a packet of information. Most recently the police department received a complaint from a Benjamin Kroll regarding what he described as the poor treatment of poodles at the Marsh residence. He had seen an advertisement online about poodles for sale, "registered" poodles. He had gone to the residence to look at a poodle puppy and he email us his concerns. We've had a long history of nuisance complaints associated with dog activities located at this residence and they date back to when I arrived back in 1999. The recent complaint led us to begin searching online for ads associated with the sale of dogs from the residence and we were able to quickly come up with 15 separate ads from 2011 to 2012 associated with the sale of registered poodles at the residence. I believe they were all listed as registered poodles. The property is zoned residential and our Development Code defines a kennel as a premise where four or more dogs, cats or other small animals are kept for business of boarding, training, propagation or sale. We do not permit kennel activities within the residential zone. I am asking the Council to abate the nuisance and I have provided the Council with information associated with similar complaints that we have received about this site. The calls just to C-COM, which is our 911 center, are calls just since April 11,

2011 through October 14, 2012. There are seven calls just during that period of time, but I can tell you that if we had searched back to 1999 we would have seen similar nuisance complaints associated with these same types of activities at the site since that time. So it has been a long ongoing problem for the City and it has utilized a lot of our resources over the years and I am certain it has been detrimental to the health and well being of the neighborhood and community there and the people who live there. It has been detrimental to Columbia City's resources as well and I would like to ask the City Council to formally order the abatement of these activities from the property."

The Public Hearing was opened by Councilor Marson.

Councilor Marson stated, "I was involved as a witness a few years back in which the Marsh family was involved with dogs that had escaped and harmed and killed some cats. I was one to give testimony and there was a conviction. Or a fine I should say. Just so that everybody knows that in the audience. I am of that background. I thought I would state so."

Councilor Marson then asked if anyone would like to speak in favor of an abatement.

Mr. David Pereira, Columbia City, asked, "What is an abatement?"

Leahnette answered, "It is the removal, removal of the activities."

Leahnette asked Harold Olsen, City Attorney, "Should the folks that are here wanting to defend their position associated with the abatement order be allowed to speak first? Or does the order of speaking matter."

Harold answered, "I don't think it is going to make any difference."

Leahnette then said, "Ok, thank you."

Mr. Elden Stender, 2330 Seventh Street, Columbia City, stated, "We have the opportunity of having a draw between the two houses that are on Sixth. And that incessant barking since we have lived here for what, since 99. It has never ceased and I have approached a couple of officers and, she will attest to that (motioning to his wife Marilyn) and I was told politely that since they didn't come on duty til like eight o'clock in the morning they didn't hear all this yap'n that was goin on. I need... I am pushing 83 in a couple of weeks and believe me folks trying to get back to sleep at this time of the day is slim and none and it is not FUN! If I play the stereo out on the back deck I would have the gen darms on my back in about two minutes, but the dogs can bark for hell freezes over and nothin happens. And my first question would be why in the world has it taken so long with that house because everybody in the world knows what they are doin doesn't take a rocket scientist to figure that out. Does it take that long to institute something in this City?"

Leahnette stated, "In this particular case the issue that we're abating or considering abating is the propagation and sale of dogs, which is the illegal activity and we most recently received an email from a citizen who entered into the property which is something that we don't have access to freely and witnessed the kennel activities going on at the site. And so once received that information from someone who was inside of the house, we were then able to confirm additional evidence from Internet capabilities and now that we have concrete evidence in front of us we're asking to abate the activities. It is not necessarily the dog barking issue that is being abated, but it is all part of the residual, the kennel activities which is why we don't allow kennels within Columbia City."

Roger Kadell, Columbia County Animal Control Officer, stated, "... I don't necessarily take sides on this, but to provide information to let you know I talked to some people today at City Hall about this activity and some of the issues. I have actually went to the house today and did an inspection and was invited in, allowed to come in and see what they have. So I came to give you some information and to, when you talk about abatement to address some issues there because I deal with these kind of things on a regular basis and if you are not very specific people just change the manner in which they are doing something and

you still got the same problem. Obviously you have been dealing with this since 1998 what I see from the records of complaints and issues and things like that there. Currently for the Marsh's upstairs portion of the house and then a lot of us who know this house, there are two portions, there's a lower half which has a Fifth Street address and an upper half that has a Sixth Street address. Both are owned by the Marsh Family. The part of your problem with this address is the person downstairs currently has seven small dogs as well. So you are putting seven dogs above upstairs and seven dogs below downstairs so barking, noise and issues like that they could be coming from either location at that... coming from the same household. Currently licensed for the upper portion for the Marsh's upstairs is seven dogs that are currently vaccinated and have the proper records and things for those dogs. Out of those seven, four are unfixed and three are fixed, that's consistent with what I found when and did an inspection inside the house today. I did see three puppies inside, that was the extent of the amount of dogs available for sale or what was going on, on the internet, kind of matched up with the three puppies that are at the house. There was some complaints about the health standards and things like that. I can... when I did the upstairs, the downstairs, a different story there are some real concerns about the downstairs issue in the cleanliness and health and welfare of the animals down there, separate issue besides this one, but still in the same household so it still effects the same nuisances for the neighborhood. Upstairs I found it's cluttered but not what I refer to like downstairs as being filthy. The house did have some stains and things like that on the carpet, but it had been cleaned. I didn't smell or feel a sense of overwhelming urine or fecal matter like some of the complaints had said. I have indicated I didn't find that. I did find they do have some crates stacked up with the puppies inside. They have fresh newspaper and it had obviously been, being changed and taken care of. I did physically touch several of the dogs in the house. I didn't find any flea issues with the dogs, I didn't find any skin issues, I didn't find any oily heat spots on the dogs when I touched them, so I didn't find anything that I was looking for in a neglect category. We also deal with kennel violations or kennel issues on the County side. Of course the County is nine dogs or more that you are breeding and selling dogs. And then they are required to have a Land Use permit, which from what I understand you guys are pivoting on... it sounds like you have had a lot of complaints, I have seen a lot, I have been there several times before, normally about the below portion, but I dealt with I think the larger poodles that they had upstairs. They now have a smaller type poodle, not the big poodle. I think it was the big poodles that were doing the physical attacking of animals in the neighborhood. They have since gotten rid of those larger poodles and down sized to have the smaller, smaller version, so I don't think you get the injurious complaints of the dogs and stuff. You might get more of the noise."

Harold asked Roger, "How many dogs were on each floor?"

Roger answered, "There is seven downstairs and seven upstairs plus three puppies."

Roger continued, "I don't know how the tax lots look at that. I do know that both addresses have a different street address and I think literally one has a Fifth Street address and one has a Sixth Street. So, I don't know if it is considered one property one house or if it's listed as two separate properties. The ones downstairs have all spayed and neutered, so they are not being bred, there's no puppies downstairs. Those dogs are all fixed. When you are talking nuisance, you know the thing we look at is history and things like that. It sounds like you have a lot of history. So if you do decide to abate that you say simply they can't sell dogs. If you have one unfixed dog in the house it can become pregnant whether you try to prevent it or not. Unless you specifically address they can't have any breed able dogs in the house you may have the issue with dogs becoming pregnant you have puppies it was an issue when we addressed our kennel ordinance. How do you define what is a business. If somebody has one dog in her house that becomes pregnant and you sell the puppies are you a breeder, are you a kennel at that point. I think in your situation you have numerous ads over the years that indicate different breeding and sales activity going on. That is a big difference. Signage, I see there was a complaint about a sign out front posting dogs for sale. Do people advertise as a kennel? Do they put information on the Internet selling dogs and things like that? A lot of people go to Craig's List once they get dogs they can advertise they are selling them. But there are some websites to sell dogs, so you have to decide as a Council what you consider a business, how much a person selling the dog

becomes a business. I think in this case you kind of looked at that on this one because of the volume of complaints. I think that this is an activity that has gone on for years. I would say on the upper portion, I don't see anything that I am going to proceed with as a neglect issue. There wasn't any violation; there are no licensing violations, no county kennel violations for breeding these babies and taking care of animals in the house. Those things I did not see today when I went there. Part of why I wanted to go see is because one of the complaints was of neglect of the animals. The animals all appeared in reasonable good health they all had vaccination records, they all had the different things they needed to have so, I wanted to make sure you guys were aware of that. Caus I'd say I am hear to present the information, not to necessarily go one way or another with it. I do see your share of nuisances issue of noise and the neighbors having to put up with it and resolved one of the days still can happen."

Leahnette thanked Roger for his input.

Ben Croll, Portland OR, "I am the person that actually sent in that email first off. At the time when we arrived at the residence we smelled a distinct odor in the house as well as it was quite unkept when we were there at the same portion. I didn't, I was not aware of the lower portion of the house. When we were there we sighted around I want to say like a dozen dogs inside the house. One big piece that really alerted us to the issues though were more so the fact when we were inquiring about papers as well as shot records the gentleman there told us he was not able to provide those for us and that the first time we take them to the vet that the vet would then give them all the shots that they needed and provide their shot records at that time. So, from when we were there a few weeks ago that's when we weren't able to get any kind of paperwork or any kind of records on the puppies at that time."

Allison King, Portland OR, stated, "He had said that it seemed cleaner and he didn't smell the odor, you know, I just feel that's not the way the residence was when we were there. There was empty food and water bowls, not sure about the newspaper in the crates, but you know the distinct odor from the heavily stained carpets and just a dirty house. That was why I was concerned and a dirty yard there was feces and what not all over the yard that hadn't been pickup that didn't seem like a good environment for those dogs. I just I don't know if there is anyway to tell if seven really live upstairs and seven really live downstairs or if that's just the way they split them up when they have someone coming over to inspect. You know I don't know if there is anyway to... I don't know what your... I don't know how you determine that or if you just have to go on their word.

Roger stated, "Both the inspections were unannounced."

Ben stated, "That was why we alerted the City authorities and why we are here tonight."

Fonda Lawson, 2340 Sixth Street, Columbia City OR, stated, "I would ask you to clarify something for me, and this is kind of aside breeding and selling, does the City have an ordinance that puts a limit on how many animals can be at a residence."

Leahnette answered, "No."

Councilor Marson stated, "There are some convinents and restrictions in certain areas that are in the title work of the particular subdivision that have been developed, but again it is up to the, if there is, the home owner's association for that particular subdivision."

Fonda said, "But not as a City."

Councilor Marson stated, "No, not to my knowledge."

Fonda said, "Thank you."

Councilor Marson closed the public hearing.

Narcissus Marsh, 2350 Sixth Street, Columbia City OR, stated, "I am the owner of the dogs and is papers for my dogs. My son just didn't know where they were at. Last, two weeks I was very sick with tonsillitis and bronchitis and therefore my house wasn't as clean as it normally was. I try to keep my house clean, I try to keep my dogs under control. In the deal with the carpet, it's been a mess for since we moved in. My husband is suppose to be replacing the floor and we do have the funds to do that. I do not believe that I am a kennel according to AKC I can have two to three litters a year without being a kennel. I don't always have that. I sometimes have one, I sometimes have none. But I do have three puppies. I have one given away to an autistic child and do not sell them, I re-home them and it usually is way less than what my dogs are worth and that's how I feel about it. I am going to sell or re-home three of my dogs. My son, one of them is my son Samuel's, he's the little black and one is my husband's, that is our oldest dog Emert and the others are mine. I had just gotten little male that's now probably 7 months old and the other little male is due to be re-homed. But other than that I do not classify myself as a kennel. According to the AKC I am not. That is all I have to say."

Harold Olsen asked, "Who owns the home?"

Narcissus answered, "My husband and I."

Harold Olsen stated, "The two of you." And then asked, "Both upstairs and downstairs?"

Narcissus answered, "It's a duplex."

Harold asked, "You rent the lower portion of it to whomever the other people are?"

Narcissus answered, "Yes."

Harold asked, "Do you know what their names are?"

Narcissus answered, "Yes, they are Marsh's as well. It is our oldest boy and his wife. I don't go down there too much because I own a little gift shop and I am there a lot and in between I'm have my own upstairs to care for. I know she has a lot of medical issues though I know."

Councilor Marsh asked, "May I ask, I don't mean to be offensive here but why are any of the animals not fixed?"

Narcissus answered, "Because I do have occasional puppies. I like puppies and I usually have one or two litters a year."

Leahnette stated, "So you have the dog bred."

Narcissus stated, "I have my own little male."

Leahnette stated, "Well um, like I said in the beginning the City Development Code does not permit breeding activities at your house because you are zoned residential. So that is the activity that you cannot, according to our definitions. We don't follow the AKC definitions. With the Columbia City Development Code definitions apply with regard to zoning and our definitions prohibit breeding and sale activities."

Narcissus stated, "We've got it setup to get our females fixed on... I can only do a few at a time because we are not very rich, both retired, I am not making a profit at my store so therefore I don't have a lot of money. If you will check with Dr. Middle I have setup to get them neutered. I have got one that will be neutered on the 8th and then we will go from there. Other than that I was going by AKC rules."

Councilor Marson asked, "So you have currently four unfixed, right?"

Narcissus answered, "Yes."

Councilor Marson said, "Two males?"

Narcissus answered, "One actually I gave it to my granddaughter, but where they moved to she can't keep him. And that is my second male."

Councilor Marson stated, "So you have two males and then two females?"

Narcissus answered, "Yes. Three actually. Mine myself I've got Chancey and I've got my Sophie. Those are my girls. And then I have the one male and then I have my granddaughters and then he (pointing to Arlen Sr.) has little Ember and Samuel has Echo, who is my problem child, she barks and lets everybody else. It used to be you could get that taken care of at the vet's where they the barking was toned down and now no vet here in town will do it. So that's why that wasn't done. I had done that previously with the Pomeranian we had and in the case of the two bigger dogs. When Ben killed the cats he was put down and the black Ebony he was our retarded dog he followed everything that Ben did. He had absolutely no idea that he was doing something wrong. He was only doing what Ben did and he did kill one of ours, to which we really laid into him and after that he wouldn't go near a cat and we have strays and they come through our yard and they walk the fence line teasing the dogs and I have tried to find out the situation that will deal with them and there nothing. They said I could catch them and get them neutered, which there at that time, was about three females and each had a litter of kittens that they kind of lived between her house (_____) and my house. Then I think they go downstairs and eat with my son's cats.

_____ said, "Then they come up and mess in our yard."

Narcissus said, "Yeah we have that too."

Councilor Marson said, "Getting back to the dogs, so you have two current females then and your going to have them spayed?"

Narcissus answered, "Yes."

Councilor Marson asked, "Within what time frame?"

Narcissus answered, "I can only do it once a month because that is when I get paid on the 3rd Wednesday of the month. I am planning to re-home the silver one, she is the miniature and I am planning to re-home the miniature male. He was suppose to be a toy and he turned out miniature."

David Pereira, Columbia City, OR said, "Regardless of what happens regarding the issue of the breeding we are still going to have to deal with the noise and the City is going to have to implement strict noise requirements with bonding mechanisms some bonds posted with substantial amounts for anybody who insists on having dogs that continue to bark, it is not our job to..."

Leahnette stated, "I was just going to say I neglected to mention earlier when I was asked about why we haven't dealt with barking. They have been cited repeatedly for barking dog issues. So it's, they get cited, they get convicted, they pay a fine the dogs continue to bark we cite them again but because the barking really isn't the issue that we were here for tonight, I neglected to mention that."

David Pereira stated, "But the penalties need to be substantial enough to actually curtail the activity. It is just wasting everybody's time."

Leahnette responded, "And in order for us to issue a citation for barking we rely on you folks to file a complaint. A lot of times you will actually have to sign the complaint because unless our officer happens to be present to hear the barking he cannot issue the citation. So, if people in the neighborhood, I know I realize that they might be tired of complaining

about that but if they would complain and be willing to sign complaints then we could enforce the barking regulations more often.

___?Who___ state, "I just want to make a comment about the officers whether they are hearing it or not, I actually had an officer standing in my living room and heard the dogs and denied it when we got to court. So, I am just putting that out there, it has been a few years and we did come to court for that particular dog. But, the reliance of an officer hearing and then following through with whether or not they actually heard could be a problem.

___who?___ stated, "I have a quick question regarding that this is about the event of the sale. What would be the result, cause you mentioned that there is no ordinance on how many pets you can have so, if they were ordered..."

Councilor Marson stated, "It is basically on the subject of the breeding and selling. They wouldn't be able to do either of those two activities."

___who?___ said, "But would that effect the animals that are currently in the house or there would be no issue with how many they have currently they would just no longer be allowed to breed and sell the ones they have. Is that correct?"

Councilor Marson answered, "Yes. We're not dealing with the number of pets or city ordinance on how many."

Harold stated, "There may be other basis for abatement based on what we are hearing tonight too. So we have to look into that a bit further."

___Who___, "What precipitated your going to their house?"

Mr.Croll said, "They were looking for a puppy to kind of help us with the grieving process as well as bringing a little more life back into our house. So we've been looking at all several different types of breeds and shopping around online trying to find rescues and anywhere we could find places to go and look and that's when we came across their ad that we found online and then followed up with a phone call. Drove out here later that afternoon and then that were a couple of weeks ___."

Harold asked Mr. Croll, "When you were there who did you speak to or who was present at the house?"

Mr. Croll said, "There was one gentleman there and I would assume Sam."

Narcissus said, "My son."

Arlen Marsh spoke up to say, "I think I might have been there too. And then I told ya the price was way too high and she chewed me out because _____"

Mr. Croll continued, "Yeah, I don't really, I know there was one gentleman there with a fairly large beard and Sam I believe was his name."

Ms. King said, "I believe the other son came home while we were there, we were introduced to him, I don't remember his name."

Narcissus said, "Like I say I don't classify that I am selling them, I re-home them. I have several I have given to like the gal that is getting the little black one. I do know that there is a lot of noise and there was like two weeks ago there was a lot of noise because I was sick and my children are not as good about keeping them quiet. But in the case of Mrs. Lawson, I was over at her house when a dog was barking and she swore up and down I had it on the porch or I had it in the shed and it was the people across the way from us. It wasn't one of mine. And there is several dogs on Fifth that bark and then there are some dogs up on Seventh that bark. But it echoes down through there and we on Sixth get a lot of that. And I

hear it and I am sure that the rest of the neighbors hear it. We have a family that lives right catty-corner, they have three, they bark.”

Councilor Marsh reminded, “Well again barking is not the particular issue this evening.”

Mr. Croll stated, “During Mrs. Marsh’s conversation she was just having here with us, she had made mention that one of her dog’s was intended to be a toy and came out as a miniature and to me that sounds like it is a breeding activity. If you are intending for it to come out one particular way, you’re potentially, you’re purposefully trying to make something that was not just be a puppy, I had a puppy liter and now I have to get rid of some.”

Ms. King said, “I don’t believe you can say you are not selling them when you are asking for money for them.”

Narcissus spoke up to say, “It’s called a re-homing fee and in most cases, ebay or Craig’s List request a re-homing fee. And in the case of the dog I bought what was suppose to have been a toy and when you put down that toy poodles and they come and get and it grows up to be about 14 inches tall, people don’t like that. So that is why I set the price that, now the little dog I got he at 8 months, last summer, set two of my dogs and they should have all been toys. But he was 8 months old, I wasn’t expecting him to do that, so, anyways I had a little one, a medium size one and a big one. Now I gave the big one to a friend of mine and she wanted a small one. He is bigger than his Dad, so therefore I can’t say that these are toys. So I have to specify what is happening and that is the reasoning for that.”

Megan Percy stated, “I just want to know what she considers a re-homing fee?”

Narcissus answered, “My dog go from \$200, I’ve never yet got \$500 for ‘em. Although I have asked \$500. I have a couple of dogs there that I paid payments on and they were \$1000 dogs.”

Public Hearing closed.

Staff and Marsh’s discussed the noise ordinance.

AGENDA ITEM 3

CITIZEN INPUT:

None.

AGENDA ITEM 4

COUNCIL REPORTS:

4.1 Parks Committee: Chair Fitzgibbons said the Parks Committee had good meeting. Micah stated Public Works started today transplanting some of the donated plants and relocating them. They placed calla lilies and the hastas in Carolyn King Park.

4.2 Water Source and Development Committee: Micah stated they have been doing some maintenance on some of the wells.

4.3 Street Committee: Micah stated Public Works has been around cleaning catch basins and it is the beginning of the month so the street sweeper should be coming thought soon. Councilor Wheeler stated that Hudson will be doing weekly pickup this month instead of every other week, so that should help with yard debris.

4.4 Sewer Committee: No report.

4.5 Audit Committee: Chair Wheeler stated there will be a meeting tomorrow.

4.6 Hazard Mitigation Planning Group: No report.

4.7 Other Reports: None.

AGENDA ITEM 5 CONSENT AGENDA:

5.1 Minutes of the Regular City Council Meeting of October 18, 2012.

5.2 Activities Report from the City Administrator/Recorder.

MOVED (WHEELER), SECONDED (FITZGIBBONS), AND CARRIED UNANIMOUSLY BY ROLL CALL VOTE TO APPROVE THE CONSENT AGENDA.

AGENDA ITEM 6 UNFINISHED BUSINESS:

6.1 Second reading of Council Bill No. 12-656: An Ordinance amending Ordinance No. 03-586-O, the Columbia City Development Code (CCDC).

Leahnette mentioned that in her activities report that Lisa Smith and her had agreed upon a different interpretation of the event period which is much more manageable, acceptable and appropriate.

MOVED (WHEELER), SECONDED (FITZGIBBONS), AND CARRIED UNANIMOUSLY TO APPROVE COUNCIL BILL NO. 12-656.

AGENDA ITEM 7 NEW BUSINESS:

7.1 Equant Environmental and Water Resources Consulting Proposal for Hydrogeological Services.

Leahnette reminded that the City had received a grant for a drinking water projection and source water assessment. It is 100% funded project by the grant. Leahnette stated the City was working with Eric Collins, with GSI. Eric is no longer with GSI and he is now out on his own. He is going to partner with Dennis Nelson of GSI to complete the same project as proposed before for the same cost. We will just be working with him under a different business name. Leahnette requests the Council approve the proposal for services and we will begin moving forward the project. The project value is \$28,655.

MOVED (WHEELER), SECONDED (FITZGIBBONS), AND CARRIED UNANIMOUSLY TO AUTHORIZE SERVICES.

7.2 Abatement Hearing: Regarding activities associated with the propagation and sale of dogs on property located at 2350 Sixth Street, Columbia City, Oregon.

Council and staff discussed the issue at length.

MOVED (WHEELER), SECONDED (FITZGIBBONS), AND CARRIED UNANIMOUSLY TO DECLARE A NUISANCE AND ORDER THE ABATMENT OF THE ACTIVITIES ASSOCIATED WITH THE PROPAGATION AND SALE OF DOGS ON THE AFORE MENTIONED PROPERTY.

AGENDA ITEM 8 OTHER BUSINESS:

Credit cards/debit cards. Leahnette stated a rough estimate to cost \$1800 a year to collect \$5000 a month in payments. The amount could go up if we received more payments that way or be lower.

Casey offered to work with Leahnette on some options when she returns from vacation. Bank of the West is currently offering rebate.

AGENDA ITEM 9 ADJOURNMENT:

10 - Regular City Council Meeting
November 1, 2012

There being no further business to come before the Council, the meeting adjourned at 7:10
p.m.

APPROVED:

Sally Ann Marson
Council President

ATTEST:

Leahnette Rivers
City Administrator/Recorder