

## **REGULAR COUNCIL MEETING BY TELECONFERENCE August 5, 2020**

**Officials in Attendance:** Mayor Dorothy Knauss; Councilwomen Nicole Norvell, Jolene McGee and Ashley Grubb; Councilmen Payton Norvell, Bruce Nupp and Evan Schalock

**Staff Present:** City Attorney Mike Waters, Clerk/Treasurer Pamela McCart, Deputy Clerk Catherine Konzal

**Vacant:** Council Position #2

The Mayor called the meeting to order at 6:30 PM.

**Audience Comments:** Comments by Denece Caton, Suzanne Robinson, Vicki Greer and Jared Arnold regarding homelessness issue in the City.

### **Approval of/Changes to Proposed Agenda:**

*Motion by Councilman Norvell to approve agenda as presented, seconded by Councilwoman Norvell. Roll call vote taken with all in favor. Motion carried.*

### **Mayor Announcements/Appointments:**

- Dave Gilbert resigned from the Airport Governing Board. Gary Hunt has agreed to fill in. I will need a motion for the appointments of Gary Hunt (and Bill Wester, discussed at the last meeting). *Motion by Councilman Norvell confirming the appointments of Gary Hunt and Bill Wester to the Airport Governing Board, seconded by Councilman Schalock. Roll call vote taken with Councilwoman McGee abstaining, all others in favor. Motion carried.*
- Due to Councilwoman Wuesthoff's resignation, Councilman Schalock offered to serve on and chair the Nuisance Committee.

### **Consent Agenda:**

*Motion by Councilman Norvell approving Consent Agenda consisting of:*

*> July 1<sup>st</sup> and 15th Regular Minutes*

*> July Payroll and Claim Vouchers*

*Seconded by Councilwoman Norvell. Roll call vote taken with all in favor. Motion carried.*

### **Committee/Commission Reports:**

- *Park/Rec/Cemetery Committee, Councilwoman Grubb:* Gave a Power Point presentation on current issues at the park, including: unsanitary restrooms for park guests, unfavorable parking, picnic tables being used as beds, lack of enforcement of no dogs in the park and obscene amounts of garbage. Suggestions made included: close the bathrooms and install temporary porta-potties, limit parking to 2-3 hours, no overnight parking unless a camping permit is purchased, add a structure/addition to the top of the tables to hold down plates and to make the tables uncomfortable to sleep on, remove garbage bins and expect visitors to take out their own garbage, and add more signs to allow better visibility of rules.
- *Ad Hoc COVID Committee, Councilwoman Grubb:* Small Business Grant applications were reviewed, and the following awards recommended: Wildflower Skin & Sugar Studio \$1,949.58, Trails End Gallery \$2,639.60, Bradley's Taekwondo \$5,000.00, Quartzite Brewery \$5,000.00, Chewelah Painting \$604.45, Chamber of Commerce \$1,720.09.
- *The Mayor asked the Nuisance Committee to look at the fireworks issue/complaint regarding altering the hours fireworks would be allowed.*

### **Mayor's Report:**

- The taxiway at the airport will be crack sealed in late August. The City budgeted \$5,000 for this and we can probably do that with our own crew. WSDOT will not give us any money because the City does not want to move the taxiway 100 feet to the east. Also, we did not get the WSDOT Aviation Grant to repair the runway - we will apply for that grant again next year.
- The fuel system at the airport is in question right now. The preliminary estimate is way above what it was when the Tribe was going to do it. I am still searching for alternatives to bring that cost down.
- There is a person from Alaska interested in building a hangar at the airport.
- In August we will be removing all the stumps at the airport and get them ground up.
- The water crew has finished the water line on King Street.
- The Stevens Street sidewalk project has been completed; the trees have been planted.
- Councilman Nupp had previously asked what had happened to the ADA chair lift from the pool - the City still has it, in the original box.
- The used benches the City was getting from Joe Albi Stadium - they over ordered so we will be getting the extras in reserve. Our crew will be going into Spokane to get those and will install in September.
- The downtown paver replacement project has been completed by Baumann Brothers - certain sections were removed and replaced with stamped concrete.

**Presentation:** None

**City Attorney Report:** None

### **Old Business:**

- The Clerk/Treasurer stated that the Small Business grant application form for COVID funds was originally geared towards non-essential businesses that were required to be closed. After receiving grant applications from essential businesses, the Clerk/Treasurer researched and discovered essential businesses could be eligible for the grant. *Motion by Councilman Norvell affirming that the Small Business Grant Program is available to all small businesses located in the City limits which have either closed or reduced their services, voluntarily or otherwise, as a result of COVID-19 or which were affected by decreased customer demand as a result of the COVID-19 public health emergency, seconded by Councilwoman McGee. Roll call taken with all votes in favor. Motion carried.*
- Draft Resolution 20-07 Declaring Real Property as Surplus and Authorizing the Sale and Disposition Thereof (Pool Property). The Mayor stated that the existing 50-foot easement behind the PACA property could not be taken away, even if they were amenable to it, because it would not leave PACA with the minimum acre required in that particular zone. Councilwoman Norvell suggested a potential trade of some of the pool property for the back 30 feet of PACA's property, leaving PACA with the required acre. The City would keep up to 50 feet of the back of the existing pool property. Once traded it would leave the rest of the pool property to be sold. Consensus of Council for the Mayor to get details and bring back to the next meeting.

### **New Business:**

- *Motion made by Councilwoman Norvell to Approve Agreement of Professional Services with SCJ Alliance for Emerging Issues/Outreach Grant (\$45,000), seconded by Councilman Norvell. Roll call taken with all in favor. Motion carried.*
- *Motion made by Councilwoman McGee to Approve Software License and Services Agreement with Itron for Upgrading of Meter Reading Software (Quote \$27,567 for 2021)*

*budget year), seconded by Councilwoman Norvell. Roll call taken with all in favor. Motion carried.*

- Nuisance/Parking discussion.

**Attorney Waters:** Obviously, the nuisance thing had some steam for a while then it died off, a little bit pre-COVID, then did not get any steam during COVID. It seems to have reared its head much more significantly now, based on the audience comments. We have got three issues, three binding pieces of law that are at play right now. One is the Ninth Circuit decision. There is some good analysis out there and some bad analysis. *Martin v. Boise* basically boils down to this: you cannot prosecute somebody just for sleeping or lying or for basically being homeless when there is no bed in a shelter to take them to. That does not mean you cannot enforce other rules. To be quite honest, I don't think I'm saying anything unusual, this City has not enforced the rules for a very long time in a very large number of areas. That is part of what the nuisance committee was looking at as much as a year or more ago. Again, that sort of withered for whatever reason. But the City can absolutely enforce the rules that it has on the books as long as it does so consistently and even-handedly. Right now, the parking rules out there may or may not really be getting violated. The dog rules may not be getting violated. The Council has got a bit of a job ahead of it, quite honestly, to try to decide what the rules should be across the City. How they're going to be enforced. Probably citations, much like the moving violations that would be enforced by the Prosecutor in Stevens County in Colville. Effectively, the *Boise* decision says we cannot criminalize pure homelessness. Some people are out there saying just because they refuse to go because of their dogs, that doesn't make it impossible. They're right, that in my opinion is a correct assessment. The question is, is the bed available? And if it is, then choosing not to go does not change the analysis that the bed is available. Then choosing not to go takes it out of them just saying "well fine, we get to stay". Regardless of what that reason may be. There's been some talk about loitering. My understanding, and this is evolving, is that loitering is no longer an enforceable statute or ordinance in the states of the Ninth Circuit, which obviously includes Washington. Loitering is effectively saying "you can't be here". Basically, we're saying if you can't go anywhere else, we're not allowed to kick you out. There are some nuances of that. Is it homelessness? Is it just loitering? But quite honestly in a case like what we're seeing today, hitching our wagon to any sort of technical argument that they are not homeless, I think is a losing proposition in a recent time. I think we have to treat them as homeless and go accordingly. What the decision said is you cannot criminalize homelessness so long as they have nowhere else to go. And nowhere else meaning, and they were quite careful about defining nowhere else as a bed. There are some arguments that they can go to the campground and that counts as somewhere else to go, that is not a bed. The campground is just somewhere else in the park. So really, the issue is going to be shelters in Colville. From what I understand are the only shelters in Stevens County. Now, if there is some help from some of the charities in the county, like maybe Rural Resources. If they have an option to get somebody somewhere else to go. I suspect there is a very strong argument that that counts, and they don't get to just refuse it because they don't want it. That would have to involve at least some kind of consistent coordination between the City and whoever is providing that. That's the rough outline of *Martin v. Boise*. Again, technically it just says you can't criminalize sleeping, lying in public just on its own sake. That is correct but be careful about the armchair analysis of that. It is a lot more complicated than people want it to be. The second decision that just came out from Division One of the Court of Appeals, which is the Western portion of the state. It technically doesn't apply to us. I think it would be very wise to treat it as if it does apply - if someone is living out of their car, the court has ruled that the car counts as a homestead. Meaning you cannot attach undue fines or liens to it. So, if somebody violates

other statutes or ordinances to the point that they are going to get towed, they can get towed, but we cannot charge them more than maybe a nominal fee. That is still getting worked out, to recover the vehicle. My suspicion is very strong that we could not charge even to recover costs, even the amount of a towing cost. Councilwoman Grubb mentioned earlier the idea of parking violations would result in being towed. We just have to be careful how we do that, that it's consistent with existing laws and that we're not being overly reactionary to it. We can put a sign that violators will be towed at owner's expense. I would honestly have to research how that plays out in terms of what's realistic as far as tickets versus towing. That is the second new piece of judicial information that effects our decisions here. The third, is the COVID situation and the Governor's Proclamations. The Governor's got a Proclamation that has now been amended three times. It's a Proclamation on evictions. Those evictions are very, very broad, and what they basically say is no landowner may threaten to remove, or remove, or give notice to, or anything else, to someone that is living on their land. The very broad interpretation is that the City is the landowner and they are living on City land. COVID, completely ignoring the ongoing issues with this issue, the COVID Proclamation is something that will have to be dealt with. The only exceptions to the Governor's Proclamation, which goes right now until I believe October, is if there's a threat to the health and safety of the individuals or others, which I think is potentially quite valid given our current situation. The other one is if the owner plans to sell or move into as a primary residence, which obviously would not apply for the City here today. Keep in mind that's for eviction, moving, that sort of thing. The issues with ticketing and enforcement of the nuisance ordinances, whether it be littering, noise, dogs in the park, dogs on the run, or any other things, those in my opinion are available to the Council. I would strongly recommend that whatever action the Council takes be consistent and wide-spread and again, right or wrong, it's important to point out that we haven't enforced any of this for years. I understand that Councilwoman Wuesthoff was very interested in reigniting that, I understand it had some traction last year, for whatever reason that died. The Council has got some work ahead of them, quite honestly.

**Councilman Schalock:** Not to be the pessimist, but am I basically hearing from Attorney Waters that we really don't have a whole lot of options?

**Attorney Waters:** That's not what I'm saying. I think the options are not criminal prosecution for sleeping there. I think the Council has options for starting to enforce some of the things that are on the books, such as the littering, perhaps the dogs if they're on a leash, I haven't heard reports of that. I would be surprised if it weren't happening. If there are aggressive dogs that are causing issues with people, the City Code authorizes the Police Chief to establish a pound for animals. I'm fairly certain we've never done that, if we did, it's long gone. I don't know what the county situation is on animal control, but that's something we need to be aware of. Our code authorizes the Police Chief to impound animals to a pound that the Chief is authorized to create or contract for.

**Mayor Knauss:** We do have an agreement with the local veterinary clinic, and we impound dogs regularly.

**Attorney Waters:** So that is absolutely an option under the code if the dogs are violating the code. Which basically is, at least that portion of the code boils down to, being unlicensed, running, I forget the technical term, but basically running uncontrolled, not being restrained, or biting. We spent time several years ago developing a noise ordinance, that may be an issue. I don't know exactly what the issues are down there. One of the simplest things the Council can do is to adopt some parking restrictions and ticket accordingly. Right now, the way things are, they're not breaking a lot of laws or ordinances. Whatever they are breaking we haven't enforced for years. So, this has kind of brought this to a head. I think it's absolutely reasonable for the Council to decide that we are finally going to get this done and decide on how to enforce the nuisance ordinances.

That is the primary vehicle here, you cannot be arrested or prosecuted just for sleeping there. I don't think we have an ordinance like that, at least not that I'm aware of. The City, in my opinion needs to start enforcing its rules.

**Councilman Norvell:** It seems to me that we have plenty of code violations that they're doing, especially our public nuisance ordinance. It just doesn't seem like it's being enforced. I don't see what else we need at the moment, there's plenty of things to enforce.

**Mayor Knauss:** We have issued citations, a few. Which either get paid or don't get enforced when they get up to the County. So, we can write citations all day long.

**Councilwoman Norvell:** We could potentially start with some of the other smaller things, such as the restroom situation is something we could definitely take care of, right now, possibly.

**Mayor Knauss:** I wanted to bring that to the Council's attention, because as Mayor, I would have authority to close the bathrooms in the park. I have sincerely thought about that because of COVID because we don't have adequate staff to be over there all of the time. I have thought about closing both bathrooms, north and south. Bringing in 2 porta-potties, one on the north and one on the south. I would really like to have the Council's backing if I did that, although I could do that on my own. I would like the Council to think about that.

**Attorney Waters:** I want to make this clear, we are branching from one discussion into another. I want to make that clear for the record that if the Mayor or the City chooses to close the bathrooms it's because it's unable to comply with the COVID mandates for the moment. It has nothing to do with punishing the people that are living there. It's a valid point for the Council to consider but this is a COVID issue.

**Mayor Knauss:** Right, but it came up in her report as one of the recommendations which I said we would talk about in this discussion that we would close the bathrooms and bring in outhouses, as she called them. That is why I was following up on that, just as a general idea.

**Councilman Norvell:** Mr. Waters, it seems like citations don't have any effect. Is there a way to go further to have an effect on current situations?

**Attorney Waters:** Extensive discussions with MRSC and others on this, despite the conventional wisdom, there aren't cities out there that are just solving this problem. *Martin v. Boise* was a stick of dynamite into government's ability to enforce these types of ordinances. Most cities have been, to the extent they're addressing it, they're creating beds. I suspect, for a number of reasons, that may not be the way to go here. I've got an MRSC blog post in front of me, it says, what are local governments doing in response to *Martin v. Boise*? The City of Burien adopted a 4-month pilot program to address camping in city parks. It has a navigation team that maintains a list of local shelters that provide emergency housing that verifies availability. When they first encounter somebody camping in parks, they try to offer services. The police department takes steps to ensure that enclosed tents aren't set up in the parks. Individuals who have been asked to remove their tents will not be allowed to set up camp in another park or a different part of the park. The people who remain in parks are asked to voluntarily remove their belongings and they're provided information and transportation to available shelters. The City of Seattle is expanding options for tiny house villages and authorized encampments. The City of Spokane Valley adopted an ordinance regulating camping on a public property last November. The ordinance suspends enforcement during times the City is not able to verify the availability of shelter beds. There are no homeless shelters in Spokane Valley but the city partners with Spokane County itself.

**Councilman Norvell:** Do we have the ability to perhaps partner with Colville?

**Attorney Waters:** I believe absolutely. I think the problem is, the Mayor researched it and I believe there are only 2 shelters up there and they're both full.

**Mayor Knauss:** Yes, there is a women's shelter and there is a men's shelter, and they are both full. They have lifted the restrictions on the amount of time a person can stay there during the COVID pandemic. I believe also, both have waiting lists.

**Attorney Waters:** The City of Spokane Valley ordinance allows for immediate removal of personal property, camping facilities and paraphernalia when an unauthorized encampment is located on park property, City Hall or a location that results in a significant risk of harm to any person. In all other cases, the City posts notice at least 48 hours in advance that the property and camping equipment is subject to removal. In either case the City holds personal property for 60 days and provides notice of where personal property removed may be claimed. And then he says that all the other cities are basically still working on it. Each jurisdiction faces a unique blend of local circumstances, policy priorities and resource availability. The best I can read that this boils down to is, if you don't have available beds somewhere, that you can reasonably transport them to, your hands are pretty tied in terms of just addressing their being there and living the way they are. You can address the underlying issues. You can address the litter. You can address the dogs. You can address parking violations if they exist. Which again, I don't believe they're violating any parking ordinances at the moment. That would be something for the Council to consider. What you can't really address is them choosing to live there unless you can get them somewhere else. We may be able to designate a spot for them to go to, to do the same thing. I would have to look into that. But I'm not sure, if there's bathrooms right there and there is a spot with no bathrooms. I think there might be a serious civil rights claim that that's not equivalent. That's just one example of where this gets thorny. Again, I wish I had an easy answer for you, but the Ninth Circuit has really, really blown this up.

**Councilwoman Grubb:** Mike, thank you so much for all that legal knowledge. When I did present earlier, I did want to note for the record that it had nothing to do with the folks that have claimed homelessness in our park. It has to do with providing a safer and sanitary condition for our parks. Whatever we do move forward with, that's what I want our focus to be. I think that everyone is in agreement that we're not targeting at all. It's generally what will apply to all of our parks. I do think that parking is an issue. I do think that our restrooms are an issue, well before any of this issue with the van occurred. I want everyone to know that was my focus, that it's not in relation to the van. It's genuinely because I want to see our local families enjoying our parks again.

**Attorney Waters:** I was not trying to imply that's what you were say. I just want to clarify for the record that the Council is looking at multiple issues here.

**Councilman Norvell:** I would just like to say, if we do come up with anything, it might be wise to try and get it by the second meeting if we do have a second meeting.

**Councilwoman McGee:** I like the recommendation about more signage, because I think what Ashley said about the one sign, about no dogs in the park. Since I've lived here I've seen people with their dogs in the park. I think that people don't even know that they are not supposed to have their dogs. And also no parking and no littering. I live by the other park and littering is a pretty big problem over here, too. I think that even just signage too, as far as the laws as well, because then they can't claim that they didn't know. That would be the first initial step.

**Attorney Waters:** Councilwoman McGee's point reminds me of Councilwoman Grubb's presentation; that the you-pack-it-out approach at Browns Lake is for a private organization with members who have paid to be there. I would caution the Council that my suspicion, and I could be completely wrong, is that removing the trash cans from the park will just result in the bulk of that trash ending up on in the ground rather than being packed out. I'm not saying it's right or wrong, I'm just putting that consideration out there.

**Councilwoman McGee:** At Lake Roosevelt, when COVID happened, they took out all of the trash cans and people were throwing trash on the ground. I can see that being an issue.

**Mayor Knauss:** When we had the north bathroom closed early in the spring, we had both restrooms closed, due to COVID we had to close the park. People were defecating in front of the door to the restroom and our crew had to clean it up daily. It doesn't solve a problem, really. And then we had complaints from the neighboring business because the people from the Farmers Market were going over to use his restroom. So, there's no easy answer here. I wonder if the committee would like to meet and then come up with some ideas that we could get our attorney to go over before they present it to the whole Council again, so we would know what we can do.

**Councilwoman Norvell:** The Parks Committee or the Nuisance Committee?

**Mayor Knauss:** Nuisance, I think.

**Councilman Norvell:** It might be wise to have a few committees look at these issues. I know that they can't be committees with the same members chairing committees.

**Mayor Knauss:** Right, whatever the Council wants to do, but we need to take an approach to this and get it solved.

**Councilwoman Norvell:** Maybe if the Nuisance Committee wants to start us off and then look at legally how we enforce that without doing something wrong.

**Attorney Waters:** My caution would be to put the priority on the public health and safety. I heard a caller earlier today saying that the dogs were lunging at them and that is not ok. My suspicion is that it's going to be very factually dependent on the situation. There may have already been impoundable offenses by the dogs. I would just keep a strong eye on that. I guess this is more for the Mayor as the executive for the Police Chief than anything else.

**Councilman Schalock:** This is probably going to start with both the Nuisance and the Parks Committee. The one thing that concerns me is that I just don't want people to feel that we are targeting somebody. Overall, this is an example of something that is going to continue to occur if we don't try to come up with some remedy. I would like people in the community to know we are not targeting somebody specifically. Somebody that is already homeless. Somebody that has already fallen on bad times. I think it's mostly what people are saying, we're trying to protect the community, the one that we love and chose to live. We're not targeting somebody; we're just overall trying to avoid this becoming a bigger issue. It can be easily construed that we are targeting. I don't want that to happen.

**Councilwoman McGee:** Yes, I think we have to be careful that everything is enforced fairly across all parks, all public places not just one location, or one person.

**Councilman Norvell:** I have one more question for Mike, what about someone who chooses to be homeless. They have the means to provide housing for themselves but do not. Is that a factor?

**Attorney Waters:** My initial impression is that's a very dangerous road to go down from the City's perspective. It's a value judgement. It's a relative judgement. I'm not saying dangerous philosophically or politically. I'm speaking legally from the Ninth Circuit's decision. There are lots of reasons for homelessness. Most studies seem to indicate that mental illness is a large factor. I'm not saying it's a factor here or not, I have no idea. If it's a decision that you think somebody should make differently but they don't because of mental illness, are they homeless at that point? From a legal counsel standpoint, giving the City the way to not incur liability potentially. I think the answer is to assume that if they are living homeless then we will treat them as homeless.

**Councilwoman Grubb:** I think the best approach, like Mike said, is to have the Nuisance Committee look back on anything that is existing right now, that's not being enforced, go from there and see if we can't fill in some gaps and create something that might benefit all of our parks.

**Mayor Knauss:** The parking part of it could also be another committee. One committee could look at parking, one could look at the park itself.

**Councilwoman Norvell:** I suggest that the Parks Committee take care of the parking, dogs in the parks, and signage situations.

**Councilman Schalock:** What would we be asking the Nuisance Committee to be taking care of then?

**Councilwoman Grubb:** I think we should look into barking, noise, dogs on streets and sidewalks, garbage.

**Councilwoman Norvell:** How we would enforce those things, legally?

**Councilwoman McGee:** What exactly the rules are, what might be missing and how the enforcement process should work.

**Attorney Waters:** One note for all the committees, as the attorney, I am the first to admit I don't know the City codes like the back of my hand. This is a time for everybody who is involved in this to take a look at the provisions. It's not actually that long. The code is not too bad when you're searching it. Look at the provisions that are there, and figure out what we've got, what we don't have, any holes that might be there. I'm happy to answer any questions. In my experience, every single code is always up for multiple opportunities for revision just on its face. The starting point is what the Chewelah Municipal Code reads right now.

**Adjournment:**

At 8:13 PM, *motion by Councilwoman Norvell to adjourn, seconded by Councilwoman McGee. Roll call vote taken with all in favor. Motion carried.*

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Mayor Dorothy L. Knauss

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Deputy Clerk Catherine Konzal