

Minutes of the Blythe City Council March 12, 2019

The March 9, 2019 Meeting of the Blythe City Council was called to order at 6:00pm in the Council Chambers by Mayor Reynolds. Also in attendance were Vice Mayor Egan and Council Members DeConinck, Rodriguez and Halby. Staff in attendance included: Interim City Manager and City Clerk Crecelius, Finance Director and City Treasurer Elms, Police Chief Wade, Public Works Director Baldizzone, Chief Building Official Garnica and City Attorney Bettenhausen.

The Pledge of Allegiance was led by Mayor Reynolds. The invocation was offered by Vice Mayor Egan.

REPORT FROM CLOSED SESSION:

City Attorney Bettenhausen stated the City Council entered into Closed Session at 5:30pm for consideration of existing litigation, two cases and conference with labor negotiator. Discussion was had, no final action was taken.

PRESENTATION:

Peter Martinez, PVC Academic Senate President on Community Relations and Strong Workforce Initiatives. Mr. Martinez also had with him Dean of PVC Biju Ramen and Maria Lopez. Mr. Martinez stated PVC is moving forward at an unprecedented rate. The Governor's Office has allocated funding to career technical education. We are seeking support from the City and various entities to develop an alliance. We want to give Blythe the opportunity to grow.

Mr. Ramen stated we currently receive a grant of \$800,000 from the State of California. We have regional and local projects. We will be able to update our automotive labs and instruction. We are looking at an RN Program to accompany the LVN and CNA programs and are working on a culinary program.

Maria Lopez, Career Technical Educational Counselor at PVC working with these programs stated I have also been working with our high school students to take classes on our campus. They are earning high school and college credits and could obtain a certificate in one of these programs. This summer we will hold a 6 week course for our CNA course for 10th graders.

Peter Martinez stated we will be reaching out to you in the near future to establish a collaboration to build a stronger Blythe community.

Palo Verde College's 4th Annual Job Fair. Jeanette Garrett, Job Placement Specialist and Clinical Site Coordinator at Palo Verde College stated this position is funded by the Strong Works Force Program.

Lourdes Aguyo with the Employment Development Department stated they are working with the College to host a Job Fair in Blythe. She invited the City and public to attend the event. Last year 30 people were hired at the event.

Jeanette Garrett stated the Job Fair is on April 16th from 1-4pm in the gymnasium at Palo Verde College. We are seeking employers to participate in the event.

Mayor Reynolds invited Adrian Melendez to make a presentation.

Adrian Melendez, owner and coach of Adrian's boxing gym invited the public to attend a boxing exhibition on April 6th at 6pm at the Gym.

CONSENT CALENDAR: *Items on the Consent Calendar are considered routine and will be enacted with one motion of the Council. If any item requires individual consideration, it will be removed from the consent calendar and acted upon separately.*

No public comment. Councilman DeConinck moved approval of the Consent Calendar. The motion was seconded by Vice Mayor Egan with a unanimous aye vote.

3. Posting of the Agenda.

The summary of agenda items were posted on the bulletin boards on the outside of the public entrance to the Council Chamber and near the inside entrance of the Council Chamber on Friday, March 8, 2019.

4. Approval of the Warrant Register.

Recommendation: Approve **3/12/19**, warrants numbered 69472 through 69560 and Utility Billing Refund Warrants numbered 69561 through 69569 in the amount of \$646,250.41 and **3/12/19**, warrants numbered 69570 through 69627 in the amount of \$386,451.07.

5. Approval of the Payroll Register.

Recommendation: Approve **3/12/19**, warrants numbered 50920 through 50934 and Direct Deposits numbered 44115 through 44174 in the amount of \$228,226.64; **3/12/19**, warrants numbered 50935 through 50950 and Direct Deposits numbered 44175 through 442333 in the amount of \$234,982.59 and **3/12/19**, warrants numbered 50951 through 50955 and Direct Deposits numbered 44234 through 44336 in the amount of \$70,566.36.

6. Minutes of the February 12, 2019 City Council Meeting.

Recommendation: Approve the Minutes of the February 12, 2019 meeting.

7. City of Blythe Permits issued for the Month of February 2019.

Recommendation: Receive and file this monthly report.

8. City of Blythe Fire Department Monthly Activity Report for February 2019.

Recommendation: Receive and file this monthly report.

9. City of Blythe Police Department Monthly Activity Report for February 2019.

Recommendation: Receive and file this monthly report.

10. AB 1383 Comment Letter.

Recommendation: Retroactively approve the Mayor signing and directing staff to submit the attached comment letter to CalRecycle regarding proposed AB 1383 regulations.

11. Agreement for CFD No. 2004-1 Special Tax Administration Services.

Recommendation: Authorize the City Manager to sign an Agreement with David Taussig & Associates for Special Tax Administration Services.

12. Recreation Center Building Improvement Project.

Recommendation: Accept a donation of labor and materials in an amount not to exceed \$5,000 from the Rec-N-Crew needed to finish the Building Improvement Project at the Recreation Center.

13. State and Federal Surplus Property Program.

Recommendation: Adopt Form SASP 202-Resolution and authorize the Mayor and staff to execute any and all forms necessary to become eligible for the State and Federal Surplus Property Program.

14. Amendment No. 2 to the MOU between Riverside County Transportation Commission and the City of Blythe.

Recommendation: Authorize the City Manager to execute Amendment No. 2 to the MOU between County and City for trading State Transportation Improvement Program Intra-County Palo Verde Formula funds.

No public comment. Councilman DeConinck moved approval of the Consent Calendar. The motion was seconded by Vice Mayor Egan with a unanimous aye vote.

PUBLIC HEARING:

Notice of Exemption-Casablanca Farms. Interim City Manager Crecelius stated the Casablanca Farms project includes multiple greenhouse cultivation units totaling approximately 34,560 square-feet and four modular units with a footprint of 960 square-feet each for use as an administrative office/break room and ancillary facilities. Also included in the project is a parking lot, storm water detention basin and a new water supply well and septic system. The proposed project is located on a 2.94 acre property located at 3450 W. Hobsonway with Neighbors Blvd. to the east, Interstate 10 to the South and Hobsonway to the North. The City's General Plan land use and zoning designation on the project site is General Commercial which allows for the operation of cannabis related businesses. Based upon review of the CEQA Guidelines, the City has determined that the proposed project qualifies for an Urban Infill Exemption as it meets each of the five criteria set forth in the CEQA Guidelines, section 15332:

- (a) The proposed use is consistent with the City's General Plan and zoning.
- (b) The Site is within City limits, less than five acres, and in the vicinity of other existing and planned urban uses.
- (c) The Site is historically farmed land and has no value as habitat for special status species.
- (d) The proposed Project will have no significant effects relating to traffic, noise, air quality and water quality.
- (e) The Site can be adequately served by all required utilities and public services.

Therefore, subsequent to the Public Hearing it is recommended Council adopt a Notice of Exemption for the Casablanca Farms project and direct staff to file the Notice of Exemption with the County Clerk.

No public comment. Vic Mayor Egan moved approval of staff's recommendation. The motion was seconded by Councilman Rodriguez with a unanimous aye vote.

NEW BUSINESS:

AVA Towing Services. CSO Thomas reported on February 12th Council authorized staff to receive proposals for the Abandoned Vehicle Abatement program. The RFP was hand delivered to all local agencies and sent to the agency we currently contract with. All agencies responded with a bid. Initially, as stated in the staff report it appeared Parker Towing was the low bidder. After further consideration it was deemed non responsive as it did not meet the required guidelines and criteria. It is staff's recommendation that Council award the AVA Towing Services Agreement to H&H Ramsey, the responsible bidder. It is further recommended you authorize the City Manger to execute all forms and agreements.

Councilman Halby asked what about the quote was not responsive. CSO Thomas reported Parker Towing submitted hourly rates. The bid required a flat rate.

Vice Mayor Egan stated my daughter works for Ramsey and excused himself from the meeting.

Public comment. Leslie Jessop Watkins of 117 E. Hobsonway stated I am glad to see this. As the State Farm Agent I have the opportunity to be out inspecting homes, going down alley ways and we have several vehicles requiring abatement. The sooner we can get them off the streets the better. They are a safety hazard. The rates are very fair.

Councilman Rodriguez moved approval of staff's recommendation including a finding that the low bidder was not responsive therefore; the contract will be awarded to H&H Ramsey. The motion was seconded by Councilman Halby with a unanimous aye vote.

Vice Mayor Egan rejoined the meeting.

Phlebotomist/Evidence Collection Services. Chief Wade reported the Blythe Police Department has been using Gale Nelson Phlebotomy for our 24/7 phlebotomy services for at least the last 20 years. Phlebotomy services, commonly referred to as blood draws, are a round the clock necessity in law enforcement. The need to collect blood from persons involved in various crimes, most commonly DUI's, occur at all hours of the day. In July of 2018 the Blythe Police Department was notified by Gale Nelson that she was retiring and closing her Phlebotomy business. Staff researched available options and found no other licensed phlebotomy services servicing Blythe. Thankfully Ms. Nelson was flexible in her retirement date and assisted in recruiting Jennifer Lambert a local Blythe resident already working in the medical field. Ms. Lambert formed MJ3, Inc. a phlebotomy service company and on December 2, 2018 completed the necessary requirements to become a certified phlebotomy technician. Since that time Ms. Lambert has been responding along with Gale Nelson to various call outs and has done a really good job. Therefore I am asking Council to authorize staff to execute a professional service agreement with MJ3, Inc. for the on-call blood draw evidence collection services.

No public comment. Councilman DeConinck moved approval of staff's recommendation. The motion was seconded by Vice Mayor Egan with a unanimous aye vote.

Miller Park Playground Improvement Project. Public Works Director Baldizzone reported City staff has been working on this project for a long time. Bid documents were prepared for the Miller Park Project. Bids were opened on February 26th. Three bids were received. The City determined the first two were non-responsive bidders due to the failure to submit all appropriate documentation as required by the bid package which included federal and local requirements. Therefore the only responsive bidder was Ortco, Inc. in the amount of \$176,765. The City has accumulated a total of \$143,394 in CDBG funds from Fiscal Years 17/18 and 18/19. After communicating the results of the bid opening with County EDA the City is able to advance CDBG funds from FY 19/20 to complete this project. For the construction of this project it is recommended Council award the project to Ortco, Inc. contingent on all bonds and contract documents being fully executed and to the satisfaction of County EDA, authorizing the City Manager to execute the agreement with Ortco in an amount not to exceed \$176,765 and authorize the request of an advance of FY 2019/20 CDBG funds in an amount of \$35,000.

No public comment. Vice Mayor Egan moved approval of staff's recommendation with a finding that the other two bids were deemed unresponsive. The motion was seconded by Councilman DeConinck with a unanimous aye vote.

Commercial Cannabis Ordinance Amendments. Interim City Manager Crecelius reported this next item is related to the Cannabis Ordinance, but there are two separate topics we will be discussing. To streamline the discussion I would like to break them into two, starting with the Ordinance amendments requested by EL Rancho Verde, LLC. We will discuss that, Council will make a motion and then we will move onto discuss Deliveries.

In late January staff received a request from El Rancho Verde, LLC to amend a section of the Commercial Cannabis Ordinance related to signage and hours of operation. As currently written the Ordinance does not allow for cannabis businesses to have an illuminated sign or to use logos on signage. The proposed amendment would allow for illuminated signs to be placed at Cannabis businesses and for use of a company logo on the sign for advertising purposes. The logo would be prohibited from including identification of the products offered. The Ordinance prohibits the use of banners at cannabis business. El Rancho Verde, LLC would like to place a "coming soon" banner at their location which is not allowed per the Ordinance. The proposed amendment includes language that would allow a temporary banner (in place for less than 60 days). This would give cannabis businesses the opportunity to advertise their business until a permanent sign could be installed. Currently the hours of operation for a dispensary are 8am and 7pm daily. The proposed amendment includes hours of operation from 6am to 10pm daily. State regulations allow for sales to take place between the same hours. Other requested amendments include the removal of the requirement for remote access to security. Currently cannabis businesses must supply the City's Police Chief with remote login to their security system. Staff does not support the removal of this language. Remote login would be used as the need arises. Currently the Ordinance does not allow any products or graphics depicting cannabis to be visible from the exterior of the property. El Rancho Verde, LLC has requested this language be removed from the Ordinance. As it was Council's intent to keep this business out of sight and out of mind for our residents, staff cannot support the removal of this language. This business is located in a very public place with the potential for children to be walking the dispensary on their way to Albertsons. It is recommended Council conduct the first reading of Ordinance No. 895-19 by title only, waiving future reading adopting changes to the Commercial Cannabis Ordinance related to signage and hours of operation.

Trevor Farrage, General Manager of El Rancho Verde, LLC which will be doing business as the Prime Leaf stated we wanted some clarification on the security and being able to control our surveillance system. We are fine with providing a security login to view the cameras. Along with the signage we asked for the ability to have billboards. The State of California already prohibits billboards on a State freeway within 15 miles of a border which takes Blythe almost completely out of it, but we would like to have a billboard in say Desert Center. As the Ordinance is written it would prohibit a billboard anywhere in the state and we find that to be unreasonable. We are fine with reasonable restrictions on

the visibility of certain products or certain pictures of products. However, we believe there should be some kind of reasoning for not allowing the cannabis leaf. It's essentially the leaf of a plant. I have a logo of the Prime Leaf. This is the logo our sister company uses for medical marijuana in Arizona. This could be argued that it's a star with rays coming off of it or argued that it's a cannabis leaf. It's not obtrusive or offensive. I believe something as simple as that should be allowed. The Bureau of Cannabis Control uses the cannabis leaf. This marking is required on any product we sell. It's a symbol of our industry. We want to be a successful retail business and be involved in the community and at the same time we are expected to be out of sight and out of mind. That may be ok for cultivation and manufacturing operations, but not appropriate for a retail business.

Interim City Manager stated the reason I didn't look into the billboard issue more is because I knew the State regulation so I thought well that takes care of that because our Ordinance is for the City. Our City Ordinance says except for temporary banners, no banners, flag, billboards or other prohibited signs shall be used at any time. That is for the City. If it's outside the City this Ordinance is kind of ambiguous. They may be able to put a billboard out in Desert Center.

Councilman Halby does not have a problem with a billboard in Desert Center.

Discussion was held regarding logos. City Attorney Bettenhausen advised that this topic be continued to allow for further study. There are complications with the conflict between State and Federal laws. I don't want to go into detail and create an issue for you. I would like my office to look at this. We should take a thoughtful approach and not make any snap decisions tonight.

Public Comment. Heather Fulmer of 339 N. 5th stated I thought there were two parts to this, did I miss something? It was reported there will be a second report and second public comment period.

The item was tabled for further review.

Interim City Manager Crecelius stated when the City's Cannabis Ordinance was adopted in 2017 delivery was excluded from the list of available cannabis permits. At that time, State regulation allowed the local authority to make that determination. The State recently adopted regulations that took away that local control. The State now allows delivery employees to deliver to any jurisdiction. Although our Ordinance does not allow delivery businesses, we are no longer able to enforce this provision. Deliveries to Blythe from out of the area or from one of the two permitted dispensaries would be allowed even though the City does not have the ability to license or regulate the delivery business as the Ordinance is currently written. The Council has a number of options to address this change in state regulation.

Option 1. Do nothing. As long as the ban on deliveries as currently written in the Ordinance is not enforced, an amendment would not be necessary. This would allow outside businesses to deliver to Blythe without any licensing or regulation from the City.

Taxes would not be collected from these businesses. Several Cities are challenging the State on this language. If the Cities are successful with their challenge, the language could be amended.

Option 2. Amend the Ordinance to insert delivery language compliant with new state regulation. This would allow for the two permitted dispensaries in Blythe to deliver along with any businesses coming from out of the area. There would be no licensing fees or licenses issued by the City. The City would be able to collect taxes on the local dispensaries only.

Option 3. Add delivery permits under Non-Store Front retail. This would allow the City to license, regulate and tax any business and its employees delivering within the City. The City would then have access to and knowledge of all commercial cannabis businesses operating in the City. The Council could limit the number of non-storefront retail permits available. These permits would be issued in the same manner as all other Commercial Cannabis Business Permits. No deliveries would be made unless the operator had applied for and been awarded a permit from the City and all employees were issued employee permits.

Staff recommends adding two (2) Non-Storefront Dispensary Permits to the City's Commercial Cannabis Ordinance. This would allow the City the ability to license, regulate and tax delivery businesses operating within the City. This would also authorize the City to perform background checks on all delivery employees working within the City.

Councilman Rodriguez stated we can't collect unless we have an Ordinance. Interim City Manager Crecelius stated the sale is made on-line so the tax is collected where the sale happens. If they make the sale in Indio and deliver it to Blythe, Indio gets the tax. If we allow non-storefront retails in Blythe they make the sale in Blythe and will be taxed in Blythe. Right now anyone can deliver, but we can't tax, regulate or stop the delivery.

Councilman Halby stated what I don't understand is that you are recommending two permits, but that doesn't stop an entity from LA or Indio from taking orders and delivering here. Interim City Manager Crecelius stated as it has been explained by the City Attorney's office, if we have these permits available, it would apply to everyone and they would have to apply for them. Councilman Halby does not understand how we could stop another entity from delivering here. City Attorney Bettenhausen stated it's a question of enforcement. They are required to get a permit, but it won't necessarily stop someone from operating without it. If we have something on the books then we can enforce it.

Interim City Manager Crecelius stated this is one of the reasons Cities are challenging the State on this as the language is very vague. It takes local control away from banning delivery, but it gives us the control to license and regulate them.

Councilman Rodriguez stated I don't like the idea. I have security concerns about a mobile business. You could say you are delivering this much when it's really another amount. Could we put a cap on the amount they can carry? City Attorney Bettenhausen stated State law would most likely preempt that. Councilman Rodriguez stated with State

law we can't be more lenient but can't we be more restrictive? City Attorney Bettenhausen stated he would have to look at the provision and come back with a more specific answer. Councilman Rodriguez stated if we lowered the amounts it would not be feasible for anyone to come from out of the area. That would eliminate that from our City. It says after every delivery route they have to return to their place of origin with their loads. If we limit that amount, it would not be feasible and may eliminate that market until the Ordinance is clarified or we develop our own cannabis industry. City Attorney Bettenhausen stated there are preemption issues there that would require a closer look. It's certainly an idea. There are some potential issues that I would want to look at.

Councilman Rodriguez sees a non-storefront as a work around for a dispensary. In my mind there is too much room for crime. To have a local delivery guy running around with \$5,000 in product and \$3,000 in cash, they will be an easy target.

Councilman Halby stated there are a lot of ways you can read this. Does it mean they have to have a dispensary in another location and they can come to Blythe and apply for a non-storefront? I don't believe that's the way California is issuing those permits. I believe it would be two more retail permits in Blythe. They would have to have a location in town just like a dispensary without any customers. I think the issue is we don't fully understand this.

Councilman DeConinck stated this says no deliveries will be made unless the operator has applied for and been awarded a permit. What if we don't award a permit? We have it set up, but we don't award a permit. City Attorney Bettenhausen stated then they shouldn't be delivering in the City. Councilman DeConinck stated we can put the Ordinance together and if we don't award a permit they don't work here. City Attorney Bettenhausen stated you are again getting into preemption issues. If the State has laid a clear intent to allow delivery, I would recommend against putting in a scheme specifically with the intent to prohibit it. I think that will bring potential issues.

Vice Mayor Egan asked El Rancho Verde, LLC if their dispensary would apply for a delivery license. Trevor Farrage stated that would not be necessary as there are no delivery licenses, but two types of retail licenses. Each retail license is allowed to deliver. A non-store front is just not allowed to have a storefront. I think there is a misunderstanding here. Saying allowing two more licenses would prohibit people from the outside delivering, that is false. We already have licenses set up here and if you don't have those licenses you can't deliver. La Quinta for example don't have any licenses, but they can't stop someone from delivering. You can't say we have these licenses so we can prohibit others, it doesn't work that way. The State set this up to allow delivery into locations that don't allow it. Although the locations don't allow commerce, the State has allowed people to possess and consume cannabis. It's a way to get it to the people who aren't able to get it from a retail location. Allowing these two licenses will not stop anyone from coming from out of town and you won't be able to enforce it. It won't create any more revenue for the City.

Councilman DeConinck asked how would you solve our problem? Trevor Farrage stated with Option 1 or 2. There is no way around the State regulation allowing it to come to town. The only way is to make it unfeasible to come here from out of town and compete with the two licenses in the City.

City Attorney Bettenhausen advised the Council to recess into Closed Session for consideration of anticipated litigation. If you would like to further discuss this issue.

The Council recessed into Closed Session at 7:14pm.

The Council returned to the meeting from Closed Session at 7:21pm. City Attorney Bettenhausen stated discussion was had, and there is nothing to report.

Public comment. Travis Pollock owner of Flora Holding located at 332 S. Lovekin stated I am very proud to be the first licensed cannabis business to operate in the City of Blythe and appreciate the opportunity you have given me. I have been fully operational since January and paid my first cannabis taxes last month. On January 16, 2019 the office of administrative law officially approved the final State regulations for cannabis businesses. In those rules the Bureau of Cannabis control prohibited cities from banning deliveries on their roadway and allowing deliveries to occur on all California roads as long as the delivery begins in a City that allows that use. This has opened it up for other companies from cities such as Needles, Cathedral City, Desert Hot Springs, Palm Springs and Calexico to deliver to Blythe. The taxes from that sale stay in the community the sale originated in which is the community where the delivery business is located. This means if a Blythe resident utilized a delivery service from Needles; they would be required to pay taxes to needles. Those taxes would leave the City of Blythe for another community. If the City added Type 9 licenses it would give the opportunity for individuals like myself to continue to grow my business in this community and continue giving back to the City. Currently my location meets all local and state requirements. My distribution and delivery vehicles are required to have motor carrier permits, CA Highway Patrol CA number, DOT numbers, vehicle and inventory insurance, unemployment insurance, security systems and a cage for product storage. My business model would be an on-line platform for person to pre-purchase items to be delivered to their homes. This would be a cashless system to eliminate the need for drivers to carry money. Individuals would have to be verified to be 21 years of age or older and the correct person approved to order from the online system is being delivered to. All deliveries are designated to a specific individual to eliminate surprise theft and hold a person accountable if a theft should occur. The market is very competitive and margins are small. As a distributor the most commonly sold product is a prepackaged flower jar that typically sells to the retailer for \$18 per 1/8th. The profit is \$3-\$4 per jar. In order to be successful and cover my monthly expenses I have to distribute around 3,500 jars each month before making a profit. If I was able to sell my own jars under a type 9 delivery license I would be making close to a \$12 profit per jar since I would be distributing it to myself. This would allow me to provide more jobs and tax revenue to the City of Blythe. Prior to me knowing the Council was going to discuss delivery I located several properties in the Palm Springs area to implement a Type 9 license in order to deliver to the City of Blythe. Additionally I have

gone into escrow on a piece of property at 15900 S. Broadway and filed a pre-registration application with the County for Dispensary and Cultivation licenses. For my success in this community I need to be able to provide a retail product either through a storefront or delivery business. I want to invest in the City of Blythe and keep the jobs and tax dollars here. If I was able to implement a delivery or retail business in Blythe, I would not have to go to another city or the county to provide this use. I ask the Council to please consider allowing the Type 9 licenses and add it as an approved use so I can begin providing the service in a safe and secure manner and not allowing those tax dollars to go to another community.

Trevor Farrage stated this Type 9 retail license is a retail license. It's no different than a storefront license except that it can't have a storefront. By creating this license you are not deterring anyone from coming from the outside. This isn't a community that needs four delivery services. Most cities operate on a ratio of one retail licensor per 10,000 residents. We have a population of less than 15,000 with two dispensary licenses. We have two retail licenses in town to compete with out of town businesses and keep them from taking this revenue. The margins are small with over regulation and over taxation. All this will do is make it harder for these licenses to stay afloat. Then you will have enforcement issues. All this is going to do is dilute the revenue for the licensees already in place.

Mike Farrage of El Rancho Verde, LLC I know you are thinking about losing revenue, but I am not sure how it will gain revenue when we already have two dispensaries who can do delivery. If we thought it was going to create more revenue then great, do it; but what I think it is going to do is create an unfair advantage for the people already here with a delivery license. Adding two more licenses is not going to stop others from coming in.

Council gave staff direction to schedule a study session to discuss this item further.

ORAL REPORTS: None

PUBLIC COMMENT: None

ADJOURN: The City Council meeting was adjourned at 7:32pm.

Dale Reynolds, Mayor

ATTEST:

Mallory Crecelius, City Clerk