**MINUTES**

**SPECIAL MEETING**

**DOWNEY CITY COUNCIL**

**WEDNESDAY, SEPTEMBER 25, 2019**

**5:00 PM**

**ATTENDANCE:** Council President Gary Barnes, Rex Nielsen, Grant Johnson, Dan

Wilson, Tony Hancock, Brenda Kay, and City Attorney Steve Fuller. Mayor

Dennis J. Phillips was excused.

**PATRONS:** Larry and Dianna Burden, Bonnie Hill, Barbara Hill, Bonnie Beck, Officers’

Steele and Argyle, from the Bannock County Sheriff’s Department.

**CALL TO ORDER:** Council President, Gary Barnes called the meeting to order at

5:07 p.m.

Rex Nielsen offered the invocation and led the group in the Pledge of Allegiance.

President Barnes asked for comments from the audience. Larry Burden asked if comments will be taken during the discussion of items on the Agenda. He suggested the Animal Control and Livestock Ordinances be moved up on the Agenda, so the City is not paying the City Attorney to stay for the entire meeting.

Dan Wilson suggested if the comments were kept short, the council would take comments during the discussion of items.

**ACTION ITEM – Consider Approval of the Law Enforcement Agreement between the County of Bannock and the Bannock County Sheriff and the City of Downey:** City Attorney, Steve Fuller, reported the City Council asked him to review the Law Enforcement Contract. The contract states the City will pay for 3.8 hours of patrol per day. Steve recommended the Contract also state that the County will provide 3.8 hours of patrol per day. Officer Argyle was concerned because it could be difficult to provide patrol time if there is an emergency such as a large fire. Steve agreed and suggested maybe an exception could be allowed in the contract for emergency situations.

Steve reported sometimes what is in practice as opposed to what is in the Agreement needs to be clear. The contract states the City will provide the Sheriff’s Department with the City ordinances that need to be enforced, along with a citation book. The officers reported they will serve citations on certain ordinances, but they have never served citations on planning and zoning ordinances. They try to keep it to law enforcement ordinances such as curfew and alcohol violations. If there is a vicious dog issue, they will take care of it. Steve questioned who is going to issue citations for City ordinance violations if the Sheriff’s Department isn’t going to. Most small cities do not have a code enforcer due to lack of funds. This needs to be clear if the County is not going to serve code enforcement type citations such as subdivision and planning and zoning ordinances violations. The City needs to figure out a way to have someone serve these citations and authorize them to do it.

Steve asked if the County will serve a citation if there is a DUI. Officer Argyle stated they will because this is a state statute. Steve read the paragraph from the Contract on prosecuting State Statutes, which states, “It is understood and agreed that for offenses for which arrests are made, pursuant to State statutes and Municipal ordinances, County shall stand all costs of the courts, and its prosecuting, only in cases where the County Prosecuting Attorney is required to do so under Idaho statutes.” Steve stated the County is not required to prosecute a misdemeanor DUI. Officer Argyle confirmed the County will prosecute it. Steve would like to clarify this so the City knows what things the County will prosecute. Officer Argyle reported if a citation is written off a State statute, felony or misdemeanor, it is prosecuted by the County Prosecutor. Steve noted this is not what the Contract states. It states, “only in cases where the County Prosecutor is required to do so under Idaho State statutes”. The County prosecutor is not required to prosecute misdemeanors, but they are required to prosecute all felonies. Steve feels the language in the contract should be made clear. Officer Argyle confirmed, the practice has been if there is anything involving violence or alcohol, the county has prosecuted it in the past. Officer Argyle reported the Prosecutor’s stance is because it is covered under the Sheriff Department’s Contract. Anything the Sheriff’s Office does, the Prosecutor is required to prosecute. This is how it has been in the past. Steve agreed this is how it has been done but stated it does not say this in the Contract.

The county will serve citations for State Statutes, but not City ordinances. Officer Argyle informed the Council most cities have a code enforcer. Cities in Bannock County are not paying very much for their law enforcement compared to what cities are paying in other counties.

Steve stated the Contract needs to be defined better and agreed upon by the County to provide the 3.8 hours, except in emergencies. If they agree to provide it, the City agrees to pay for it.

Second, what is it they will serve and what is it they won’t serve? It sounds like if it is a code enforcement, the County does not want to serve them. Although, there is a notion in the Contract that states the City will give the County the Municipal Ordinance with a citation book. This is confusing. The Council needs to decide what they are paying for, and maybe rework the contract a little bit.

Grant Johnson asked what the City is entitled to without a Law Enforcement Contract. Officer Argyle reported they would still be required to handle any misdemeanors or felonies, but there would be no designation for officers to spend time in Downey, except to answer a call. Steve reported in Franklin County they provide the small cities protection without a contract.

Steve wants it to be clear what the County is going to do, what the City is paying for, and who is going to prosecute the violations. Sometimes Mayors deliver the citation, or they can be mailed if necessary. Steve also wondered who is going to investigate and find out who the witnesses are and what they said. Officer Steele stated the cost of prosecuting a dog citation is oftentimes more costly than what is taken for dog licenses if someone pleads not guilty. Officer Argyle reported all the small cities are facing this same problem. Perhaps the cities could combine and share a Code Enforcement Officer.

Steve stated if it was Tony going out to serve the citation, it would solve the problem by having an officer going out to serve a citation with him. It would be good to have the Sheriff’s Department as back up to avoid any problems.

Grant asked how legitimate mailing a citation is. Steve stated it is not very successful. Generally, people claim they didn’t receive the citation. Personal service is usually the best way to handle it.

The County is not going to enforce any city ordinance that is not a State Statute also.

Steve stated the City can authorize anyone to be a Code Enforcement Officer. It can be done by ordinance to allow certain people authorized by the City to enforce the code. Someone needs to be complaining about something or the Code Enforcement Officer needs to see the code violation. Sometimes Mayors or Councilmen are designated to serve citations. The problem is getting people to sign a complaint about the code violation.

Barbara asked why there needs to be a complaint if someone is violating an ordinance, such as housing lamas without a livestock permit. Steve stated you generally have complaining witnesses. Yes, anyone who views a violation of the law can file a complaint. If a neighbor sees it, they need to step up and sign a complaint. If someone is bitten by a dog, they need to stand up and say they got bitten in court. You cannot get a conviction if you do not have witnesses who will stand up and say it happened.

Rex asked if the City has a question on the City Ordinance can the City contact the County. Officer Argyle stated they will only issue a citation if it is a safety issue, or a curfew or alcohol violation.

Steve feels the Contract needs to be made more specific and changed in some areas. There needs to be something that says Bannock County agrees to provide 3.8 hours of service except in emergencies and something more defining or perhaps take out the part that says the prosecutor will only prosecute those things required by state statute. He is not required to prosecute misdemeanors, but he has. It needs to say he will. There needs to be something that says if it involves a safety issue, the County will come and serve a citation or investigate it. Steve stated this is the Contract the City has been using for years, but the Council asked him to review it and this is what he has done.

Dan Argyle reported State Code 31-2227 that says the prosecutor will enforce all penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney of each of the several counties. If the County is involved in the case and they cite someone, the County prosecutor is going to prosecute it, regardless of the situation. Steve stated if the City is okay with the statute, it is okay. He is just unsure of what is said in the contract.

Steve stated the Council needs to decide if they are going to sign this contract or if they want it changed, or if they want to deal with the contract next year.

Grant asked how we approach some of the junk yards in the City. It is not on the Agenda, so this needs to be scheduled another time. Steve stated the City can contact him about this matter.

Officer Steele reported they will exceed 3.8 hours if needed. They want to make sure they cover the time. He does not feel they have ever not met the 3.8 hours per day through the month.

**Grant Johnson moved to approve the Law Enforcement Contract with the Bannock County Sheriff’s Department and re-do the Contract next year, seconded by Dan Wilson, by roll call vote: Rex Nielsen, aye; Dan Wilson, aye; Grant Johnson, aye; and Gary Barnes, aye; motion carried.**

**ACTION ITEM – Consider Approval of purchasing items from the Marsh Valley Senior Center, Inc.:** Rex Nielsen reported the City is supposed

to take charge of the building October 1. The Senior Center Board was supposed to meet Monday to decide what they are going to do. They did not report back to the City. Dan Wilson stated the City will need a stove, fridge, microwave, tables and chairs.

Grant Johnson feels we need to cross the bridge when we get there. We need to make sure we purchase the property legally. This will be put on the Agenda in October.

**ACTION ITEM – Consider Approval of a bid to apply stucco and paint the City Building:** The council reviewed bids for stucco and paint. Tony reported

we went over the two bids at our last meeting. Chase Graham bid the stucco at $7,100 and the paint was bid at almost $21,000. Tony received a bid from NB (Nicholls Brothers, Inc.) Painting for $14,280 to paint the building, and a bid for the stucco and rock from Smiley D for $5,900. Tony stated there is some work in the Mayor’s Office he and Matt will need to do on the window. This was not included in Smiley’s bid. Tony mentioned we can wait until spring to do the work, but we will need to rebid it.

Rex asked about Tony and Matt being able to paint the building. The cost will be $1,000 for the paint and $750 to rent a lift boom for a week. There will be some additional repair costs also. Tony agreed he and Matt can do the painting.

Tony is unsure if Smiley can do the stucco this fall. He and Matt can do the repairs to the window.

**Grant Johnson moved to approve the bid for Smylie D’s, seconded by Dan Wilson, all voted aye, motion carried.**

**ACTION ITEM – Consider Approval of Additional Accounts Payable:**

**Dan Wilson moved to approve the Additional Accounts Payable for September 2019, seconded by Rex Nielsen, all voted aye, motion carried.**

**Review the Animal Control and Livestock Ordinances:** Gary Barnes

asked if the Council has reviewed the Animal Control and Livestock Ordinance. The Council agreed to wait until the October meeting to review the Ordinance.

Dan Wilson reported he talked to Tad about taking care of animals. The council will talk to Tad to see if he wants to do some additional ordinance enforcing. We can check with the attorney about the process to get a Code Enforcer.

**ACTION ITEM – Adjourn: Dan Wilson moved to adjourn at 6:38 p.m., seconded by**

**Rex Nielsen.**

**APPROVED\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Gary Barnes, Council President**

**Attest\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Brenda Kay**