

Anacortes City Council Minutes - December 5, 2022

Call to Order

Mayor Matt Miller called to order the Anacortes City Council meeting of December 5, 2022 at 6:00 p.m. Councilmembers Jeremy Carter, Ryan Walters, Christine Cleland-McGrath, Carolyn Moulton, Bruce McDougall and Amanda Hubik were present. Councilmember Anthony Young was absent. Mr. Carter moved, seconded by Ms. Hubik, to excuse the absence of Mr. Young. The motion carried unanimously by voice vote.

Pledge of Allegiance

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Mayor Miller shared an update regarding the Tommy Thompson Trail Trestle project, announcing that state and US Army Corps of Engineers permits are close to being issued, after which construction would start soon thereafter. He then provided notice of the upcoming Winter Wonderland Walk on December 9-10 from 5-8pm at Washington Park Campground, Chamber of Commerce sponsored horse drawn trolley rides downtown on December 10th and 17th from 12-3pm, Anacortes Schools Foundation Celebrate the Season events at the Transit Shed December 10-11.

Public Works Committee

Ms. Moulton reported from the Public Works Committee meeting held earlier in the evening. The topics discussed included the introduction of Brian Walker, the new Wastewater Treatment Plant manager, an update of the 9th Street sidewalk construction project by the marina, the 2023 Pavement Management Program including an overlay project in Skyline covering 1.2 miles and costing \$1.1 million that was delayed from 2022 to 2023, a discussion of chip seal projects on Q Avenue and Fidalgo Bay Road, an automated water meter reading program update, and a draft water quality report.

Housing Affordability and Community Services Committee

Ms. Moulton reported from the Housing Affordability and Community Services Committee meeting held the previous Thursday. The topics discussed included proposed public safety ordinances and waste disposal and outreach efforts on T Avenue.

Fiber Committee

Mr. Walters reported from the Fiber Committee meeting held the previous week. The topics discussed included an update on current subscription numbers, daily installation rates, changes to the master service agreement regarding outages, establishing connectivity redundancy to mitigate the impact of an upstream outage, connection speed upgrades, and eliminating identified system single-point failures.

Planning Committee

Mr. Walters reported from the Planning Committee meeting with the Anacortes Arts Festival to discuss the proposed Arts Center. The topics discussed included a proposal to draft a new lease that would continue the principal terms of the existing lease for 30-50 years, depending on Arts Festival preference, with the lease amount remaining the same plus a consumer price index adjusted inflator provided they would use the space for first-run movies for the next four years or transition it to an Arts Center sooner subject to a lease amendment. Other details are being negotiated between legal counsel with the full proposed agreement set to come before the Council at a later date.

Public Comment

Mayor Miller invited the public to comment on any item not on the agenda. No one present wished to address the Council on any topic not already on the agenda.

Consent Agenda

Mr. Walters removed Item 5.c., Contract Modification: Water Meter Antenna Design #22-082-WTR-001, from the Consent Agenda.

Mr. Walters moved, seconded by Mr. McDougall, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

a. Minutes of November 28, 2022

b. Approval of claims in the amount of \$56,971.66

The following vouchers/checks were approved for payment:

EFT numbers: 104912 through 104929, total \$38,896.35

Check numbers: 104930 through 104938, total \$16,962.74

Wire transfer numbers: 314303 through 314311, total \$1,112.57

d. Tolling Agreement with the Port of Anacortes

e. Interlocal Agreement #22-281-LIB-001 with Skagit County for Library Materials

Contract Modification: Water Meter Antenna Design #22-082-WTR-001

Mr. Walters provided an overview of the contract, referring to the presentation shared with the Public Works Committee earlier in the evening and suggested that it be shared with the full Council for their information.

Mr. Walters moved, seconded by Ms. Moulton, to approve item 5.c. Contract Modification: Water Meter Antenna Design #22-082-WTR-001 as proposed. The motion carried unanimously by voice vote.

Other Business

Final Plat Approval - LPS-2020-0001 The Crossings Unit Lot Subdivision

Planning Manager, Libby Grage, introduced the proposed Final Plat for The Crossings Unit Lot Subdivision, referring to a presentation that was included in the packet materials for the meeting. Ms. Grage answered Councilmember questions. RYAN WALTERS moved, seconded by JEREMY CARTER, to approve Final Plat - LPS-2020-001 The Crossings Unit Lot Subdivision. Vote: Ayes - JEREMY CARTER, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, AMANDA HUBIK. Nays - None. Result: Passed.

Ordinance 4035: Oversize Parking; Ordinance 4036: Sidewalk Obstruction; and Ordinance 4037: Trespass on City Property

Councilmember Ryan Walters introduced proposed ordinances 4035: Oversize Parking, 4036: Sidewalk Obstruction, and 4037: Trespass on City Property referring to a handout that was included in the packet materials for the meeting.

Mayor Miller invited the public to comment on the agenda items.

Beth Bell of Anacortes asked about the included areas covered under Section 1.D.3. of the proposed Ordinance 4035, specifically a map of the Light Manufacturing (LM), Manufacturing and Shipping (MS), and Commercial Business District (CBD). Mayor Miller responded that a zoning map was not readily available for reference. Mr. Walters added that he proposed adding several areas to the proposed ordinance including the residential area around the Trident Seafoods Plant, the 'Marine Shipping' area on the other side of Commercial Avenue, and the Commercial Marine (CM) zone that includes some residential areas. Later in the meeting she asked how the oversized parking ordinance would affect individuals who come to Anacortes for large planned events such

as the Arts Festival, Shipwreck Days, Waterfront Festival, and the Farmers Market, saying that some attendees come in recreational vehicles and park them in residential areas, adding that she would like to ensure that they could still do that.

Kate Clark of Anacortes provided feedback regarding all three proposed ordinances, reminding the Council that under *Martin v. Boise* the City could not enforce anti-camping ordinances if there were not enough shelter beds available for the local homeless population, as it would be a breach of constitutional rights. She asserted that even though the proposed ordinance reduces the penalty from a misdemeanor to a civil infraction, there would be potential for someone to receive three such infractions within four hours, alleging that certain citizens would abuse the ordinance and call the police in rapid succession, thus creating more arrests. She then mentioned a recent incident involving the towing of a vehicle belonging to a homeless individual, which served as that person's primary residence, referring to such action as illegal as previously litigated by the Washington Supreme Court under the Homestead Act. She then read from *Martin v. Boise*, positing that the Sidewalk Obstruction ordinance violated the provisions of the decision that made it illegal to criminalize conduct associated with being homeless, namely for sitting, lying or sleeping on the streets, saying that the proposed ordinances were directly pushing against Eighth Amendment rights through technicalities. She urged the Council to consider this legal precedent and asked if the Council were ready for potential litigation. Related to the Trespass on City Property ordinance, she asked what training there would be for police officers who would be empowered to make the trespass determination. She then pointed out that 'unreasonably disruptive' is an incredibly vague term and could be abused depending on the circumstances, asking for more specificity.

Evan Saxton of Anacortes spoke of the three proposed ordinances. Regarding the parking ordinance, he asserted that the proposed legislation codifies that the parking space adjacent to private property is an extension of that owner's sole domain and that this is not acceptable being that it is a public roadway. He then referred to the 4-hour parking limit as unjustly affecting those who live in their vehicles, by requiring them to seek permission for parking beyond that timeframe from an adjacent property owner. With respect to the Sidewalk Obstruction ordinance, he commented that the provision regarding objects such as chairs or tables belonging to businesses needs further consideration, as this would require businesses to seek permits for such activity outside their concerns. On the Trespass on City Property ordinance, he echoed Ms. Clark's concern regarding a police officer's discretion to determine if a trespass violation would be warranted, and asked if it is the role of government to prescribe a code of conduct, as this seems much more open to interpretation and could be used to unfairly exclude an individual from a public place. He mentioned conversations with homeless individuals who have been trespassed from public restrooms, saying that this leaves these individuals with very few options for relief. He concluded by averring that the proposed ordinances should be rejected outright, but would re-consider them if they were softened considerably.

Mark McEathron of Anacortes spoke in favor of the proposed ordinances, as it would help the police in their efforts. He expressed appreciation for Mr. Walters' openness to including the north portion of T Avenue and Sixth Avenue in downtown as being part of residential areas. He mentioned his appreciation for what the Council are doing and urged them to make their decisions based on data, facts, and the impact these decisions will have over the next five to ten years, as they reflect the future and culture of the town they would like to maintain and create. He emphasized that the Council's decisions on issues such as stationary RVs, arresting drug distribution sites, potential hiring of additional police or fire personnel have an impact on whether people want to visit, patronize or own businesses, or live here. He added that the revenues from these activities give Anacortes the funding to provide support for the homeless, asserting that such aid should be given to those who truly do not want to be homeless, rather than giving them everything they need with no expectations or responsibilities, citing Seattle, Portland and San Francisco as examples of cities that had chased away residents, visitors, and businesses because of flawed policies.

Keiko McCracken of Anacortes asked about the allowable hours for using the sidewalk for sleeping or resting,

wondering if the Council had given consideration to seasonal differences including light and temperature when specifying the 10pm hour for allowing those without homes to put down bedding materials. She also pointed out that being homeless is immediately correlated to addiction and mental health issues, averring that many of those with homes face these same problems. She added that addiction and mental problems are recognized illnesses and poverty also correlates to higher rates of cancer, diabetes and heart disease, remarking that those conditions are somehow more socially acceptable to experience and those who experience the former conditions are vilified. She pushed back against the narrative that every homeless person is an addict, a pedophile, or in a mental health crisis, acknowledging that some definitely are because poverty and homelessness are conditions that no one wants to experience.

Rochelle Kealoha of Anacortes expressed that the future and culture of Anacortes should be one of caring for everyone equitably, asserting that the city is failing the community and the people who most need support. She added that efforts should be judged on how every member of the community is dealt with, regardless of status, and cited the efforts of selfish 'NIMBY's' who favor ridding the community of humans that should be cared for, declaring that this does not make those who advocate for marginalized communities crazy. She criticized Councilmember Walters for targeting a specific community on T Avenue as an effort to address concerns over public perception and garner votes. She advocated for an approach that treats everyone with dignity, remarking that the proposed ordinances purposefully target marginalized communities.

Ordinance 4035: Oversize Parking

Ms. Moulton asked for the reasoning behind the four-hour time limit on parking of oversized vehicles. Mr. Walters responded that the time period was somewhat arbitrary, but was chosen to consider what a police officer could encounter in a single shift, as the 72-hour timeframe made it so that violators could be illegally parked for up to a week before it could be verified by different shifts that the vehicle was in violation of the 72-hour period. He added that the objective is to prevent recreational vehicles and other oversized vehicles from being parked on residential streets to improve safety and prevent them from staying overnight. Ms. Moulton replied that the 72-hour limit would still apply to regular-sized vehicles, and recommended that the Council consider another time period such as 6 or 8 hours, terming the 4-hour period as arbitrary and short. Mr. Walters added that the 4-hour period is consistent with the parking limit downtown. Mr. Carter asked if an oversized vehicle could park for longer than four hours with the adjacent property owner's permission. Mr. Walters responded that the proposed ordinance provided for a time period of up to 72 hours with the permission of the adjacent property owner. Mr. McDougall expressed uncertainty over the 4-hour time limit. Mr. Walters pointed out that an 8-hour time period would not fit in a single officer's shift, but that it could be coordinated between shifts to check on a suspected vehicle to ensure code compliance. He added that he agreed that homelessness does not immediately correlate with addiction or mental health and that efforts to solve homelessness have been a failure to this point. He then referred to *Martin v. Boise*, clarifying that the decision only prevents municipalities from enacting and enforcing camping ordinances that criminalize sleeping, standing and sitting in all public places and that the decision also provided that criminalizing homeless individuals for sleeping in public places is not a viable solution to the problem. He stated that the goal of the ordinances is to regulate behavior not to prohibit the existence of homeless people in Anacortes, doubting that the proposed ordinances would change behavior, but would provide law enforcement with a tool to use when there is a problem. He expressed he would be in favor of changing the time period to something other than four hours, and that the proposed ordinance needed changes to account for where there are no sidewalk curbs or unimproved right-of-way and suggested a complete re-write of the parking chapter of the municipal code. Ms. Cleland-McGrath asked Police Chief, Dave Floyd, to explain how the four hour limit would best fit with police department operational capacity. Chief Floyd responded that with the proposed addition of a part-time parking enforcement officer in 2023 that he could not accurately predict what time period would work best and added that his department is currently working on a re-write of the parking chapter of the municipal code and would support Mr. Walters' proposal to make the 72-hour parking violation an infraction to bring it in line with the rest of the code. Ms. Moulton asked what would happen to the oversized vehicle that violates the four-hour time limit.

Chief Floyd responded that the vehicle owner would be issued a citation for the infraction under the City ordinance that would have an associated monetary fine. Ms. Moulton followed up by asking what if the vehicle remained beyond the four-hour period. Chief Floyd responded that it would involve towing the vehicle as a last resort, but that the department would work with the owner to find an acceptable solution. Ms. Moulton expressed a belief that the Anacortes Police Department has a culture that is compassionate and kind, and works with people to get needed aid. She added that the level of de-escalation training on the force qualifies them to better determine a trespassing violation than a department head. Ms. Cleland-McGrath asked if parking enforcement would be based on citizen complaints or regular patrols. Chief Floyd responded that it would be the former until additional staff comes on board to assist with parking enforcement, adding that one potential challenge would be identifying the resident who gave permission for a vehicle owner to remain beyond 72 hours. Mr. Walters responded that it would most likely be the adjacent property owner who would complain about a parked vehicle, so the question of whether permission was granted could be easily worked out. Mr. Walters proposed moving on to the next ordinance, and bringing a map for the follow-on discussion to identify specific affected zones.

Ordinance 4036: Sidewalk Obstruction

Mr. Walters pointed out that the proposed hours prohibiting sleeping on the sidewalk between 8am and 10pm were modeled on the City of Bellingham's ordinance and could be amended to reflect something different, acknowledging that Ms. McCracken had brought up a valid point with respect to 10pm being very different depending on the season. Ms. Moulton expressed support for moving the hours limiting sleeping earlier to 8pm or 9pm and added that she wanted the reference to 'low-income' replaced by 'people' or maybe making a reference to children in the third recital of the proposed ordinance. Mr. Walters recommended adding that sitting or lying down could be permitted in the event of a mental health emergency. Mayor Miller announced that the ordinance would be brought back before the Council with the requested edits.

Ordinance 4037: Trespass on City Property

Mr. Walters pointed out that the proposed ordinance is based on a Port Townsend ordinance, adding that the proposed code of conduct includes prohibitions on dangerous, illegal and unreasonably disruptive behavior, which includes unreasonably hostile or aggressive language or gestures, unreasonably loud vocal expressions, or unreasonably boisterous physical behavior. He continued saying that there are exceptions for any constitutionally protected actions or speech and is cited by the Municipal Research and Services Center (MRSC) as an exemplary ordinance that protects individual due process rights when excluded from government facilities. Ms. Moulton expressed appreciation for the clarity of the language in the ordinance, supporting adoption. Chief Floyd asked that the time period be amended to one year for consistency. Mr. Walters responded that MRSC required a progressive time scale and that it may not be possible to have a single time period and added that the proposed ordinance does not apply to public streets and sidewalks, as those are regulated under separate code provisions. Mr. McDougall and Ms. Moulton expressed support for the progressive time schedule. Ms. Moulton added that she appreciated the appeal process included in the ordinance. Ms. Hubik wondered what the option for delivering the trespass violation would involve. Chief Floyd responded that they would use any of the standard personal service methods as recognized by the court, such as certified mail or delivered in person.

RYAN WALTERS moved, seconded by CAROLYN MOULTON, to approve Ordinance 4037: Trespass on City Property as presented. Vote: Ayes - JEREMY CARTER, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDUGALL, AMANDA HUBIK. Nays - None. Result: Passed

Ordinance 4033: 2023-2028 Capital Facilities Plan (CFP)

Mr. Hoglund re-introduced the proposed ordinances. Mr. Walters asked if the solid waste containers could be rolled into equipment rental and replacement (ER&R) under the CFP due to regular replacement of those units, somewhat similar to vehicles. Mr. Hoglund responded that he was unsure of the replacement schedule for these

containers and thought that the life-cycle planning for them could be distinctly different than that of vehicles. Mayor Miller pointed out that the materials presented in the agenda packet matched what is available in OpenGov. Mr. Walters advocated for annual review of inventory of conditions and capacities, inclusion of projected real estate excise tax revenues, expected spending based on planned projects, general revenue, utility user fees, required system or facility maintenance costs all to be included in an outline that could be used by staff as a guide when constructing the 2024 CFP. He expressed doubts about the efficacy of OpenGov and advocated that the City find alternate means to better demonstrate the linkages between funding and planned projects. Mayor Miller expressed confidence that the CFP is above average when compared to other municipalities, but acknowledged that there is always room for improvement and welcomed the idea of better inventory management. Ms. Cleland-McGrath added that an overview narrative and punch list of prioritized projects will be included to inform the public and memorialize the City's priorities for that year. Ms. Moulton expressed agreement with Mr. Walters and Ms. Cleland-McGrath.

BRUCE MCDOUGALL moved, seconded by CHRISTINE CLELAND-MCGRATH, to adopt Ordinance 4033: 2023-2028 Capital Facilities Plan. Vote: Ayes - JEREMY CARTER, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, AMANDA HUBIK. Nays - None. Result: Passed.

Ordinance 4034: 2023 Budget

Mr. Hoglund reminded the Council that the edits, including the training budget, additional funds for Community Action and funding for the ballot initiative, were included in the draft ordinance presently before the Council. Mr. Walters advocated that more detailed materials normally included in the budget book be available to the Council and public during the budget review and adoption process, providing more in-depth background and associated policies be included in the 2024 budget. Mayor Miller agreed that this would be an appropriate topic to address at the upcoming Council retreat. Mr. McDougall expressed appreciation that the funding for Skagit Community Action was included in the current budget and highlighted the \$700,000 allocated to affordable housing, reflecting that such funding did not exist in budgets as late as 2019, and pledged to keep working on those issues. Mayor Miller mentioned that staff had recently met with Skagit Community Action and would be bringing the proposed contract to the Council in the near term. Mr. Walters pointed out that the affordable housing line item in the budget is there as a result of the ballot measure approved by the community, adding that he thought that the community still desires to do more to address the issues, though it is incumbent upon the Council to continue to provide the community with proposed solutions. He concluded by mentioning that he welcomes public comments and appreciates them, even if they are personally insulting. Mayor Miller added that you are seeing the results of the affordable housing measure with new developments being constructed and some near completion.

CHRISTINE CLELAND-MCGRATH moved, seconded by BRUCE MCDOUGALL, to adopt Ordinance 4034: 2023 Budget. Vote: Ayes - JEREMY CARTER, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, AMANDA HUBIK. Nays - None. Result: Passed

Resolution 3103: Levy Lid Lift

City Attorney, Darcy Swetnam, re-introduced Resolution 3103: Levy Lid Lift referring to a presentation that was included in the packet materials for the meeting. She responded to Councilmember questions. Mr. Walters pointed out that ongoing costs should be included.

Mayor Miller invited the public to comment on the agenda item.

Evan Saxton of Anacortes commented on the addition of five police officers, asserting that recent rhetoric from local leaders and discussions during recent community meetings citing that Anacortes is riddled with crime is ridiculous. He added that allowing that narrative to continue is risky and potentially destructive, citing that the proposed addition coupled with recent staff additions earlier in the year amount to a thirty-three percent

increase in the size of the Anacortes Police Department. He doubted that these increases were based upon crime statistics, but rather best practices offered by the police union organizations and that their recommended staffing was not necessarily in accordance with the needs of the community. He pointed out that this increase was very aggressive and based on desire, doubting that crime had increased at a corresponding rate and adding that, if so, it was incumbent on community leaders to present supporting justification.

Mr. Walters pointed out that the increase in call volume and complexity, not crime, is a compelling reason to add five police officers, citing recent legislative measures that have changed how law enforcement approaches complex situations. He acknowledged that there is work to do to establish a case for the increases and that it is a noticeable expense, but that there is not sufficient money in the budget to fund these positions. He pointed out that cutting the museum entirely would not pay for these positions, adding that having a safe community is well worth the investment. He expressed support for approving the resolution as presented and including it in the April 2023 ballot and implementing it in January 2024. Ms. Hubik pointed out the emphasis on level of service and response times, citing the need for de-escalation training and compassion for better handling domestic violence and behavioral health calls, allowing for public safety personnel to spend as much time as is needed to adequately address these complex and potentially traumatic situations. Mr. Walters commented that he is not motivated to move this measure ahead because of the individuals on T Avenue, asserting that a police response to homelessness is inappropriate and the initiative stands apart from those issues. He acknowledged that the Police and Fire departments have a role because they both employ social workers. He specified that the role of the police is to respond to crimes and mentioned reading about increased instances of crimes related to weapon use and expressed a desire to have a well-staffed police department rather than one that operates on a constrained budget. Mr. McDougall asked for an explanation of the step function method of staffing. Chief Floyd responded that domestic violence calls require more officers to be safely handled and detailed a typical call scenario in which additional assessment requirements to safeguard the victim(s) and the firearms accounting process have substantially increased the amount of time required for responding officers.

RYAN WALTERS moved, seconded by JEREMY CARTER, to Approve Resolution 3103: Levy Lid Lift as presented. Vote: Ayes - JEREMY CARTER, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDUGALL, AMANDA HUBIK. Nays - None. Result: Passed.

Adjournment

There being no further business, at approximately 8:11 p.m. the Anacortes City Council meeting of December 5, 2022 was adjourned.