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## MINUTES – SPECIAL MEETING CITY OF LYONS CITY COUNCIL September 14, 2010

### OPEN MEETING 10:00 AM

The special meeting of the Lyons City Council was called to order by Mayor Mike Lucas. Present were City Councilors Lon Conner, Jeff Branch and Doug Morgan by telephone. Councilor Dan Burroughs was unable to attend. Also present were Planning Commissioners Kim Hunn and Ed Jones. City Staff member in attendance was City Manager Mary Mitchell.

**GUESTS.** Dr. Jay MacPherson, Regional Engineer with the Department of Human Services Drinking Water Program.

Mayor Lucas asked that all stand for the Pledge of Allegiance. He then inquired as to whether there were any declarations of conflict of interest or ex-parte contact regarding the agenda item. There being none, the meeting continued.

**Water District Status & Informational Presentation.** Lucas stated that this matter would be discussed first since Dr. MacPherson is in attendance. Lucas said that he had just learned that MacPherson's supervisor Karen Kelley also participated in the August review/survey of the Lyons-Mehama Water District. Dr. MacPherson is the Regional Engineer with the Department of Human Services Drinking Water Program. Lucas reported that he had spent many hours on the telephone with MacPherson and two hours in the office yesterday with Karen Kelley. He referred to Dr. MacPherson's letter dated August 27, 2010 and the Lyons Mehama Water District Water System Survey, DHS Drinking Water Program, copies of which had been provided to each Councilor. He then distributed an overview of the letter and the survey reflecting his telephone conversations with MacPherson. Copies of these documents are attached hereto and made a part hereof by reference. The conversations Lucas had with MacPherson were in attempt to obtain some subjective evaluations as well as the narrative of the technical deficiencies of the Water District operations. Lucas suggested that the Councilors review the overview and noted that MacPherson's comments were in bold type. He commented on a number of the significant issues raised. He pointed out specifically item 7 which discusses the fact that no written protocol exists for under-certified operators. If Grimes is unable to perform his duties the Water District would have to be shut down until a certified operator is obtained. Conversation ensued among Council members regarding the lack of adequate contact information for the Water District employees.

Mayor Lucas drew attention to the last page of the report, citing a reference from Dr. MacPherson where the Water District budget allots \$35,000 for a new pickup truck. Dr. MacPherson's opinion is that those funds would be better used for upgrading the water system

including back flow valves; repair of the wooden storage tank and to purchase booster pumps to raise the water pressure above 20 psi for all consumers.

Mayor Lucas handed out a 'History of Repeat Survey Deficiencies' which compared survey results from 1998, May 2007 and August 2010, a copy of which is attached hereto. This history identifies deficiencies that have yet to be corrected and continue to be issues from year to year. According to Karen Kelley of DHS, our system has serious issues in terms of back flow control. If water pressure gets low there is a risk of contaminants back flowing into the homes' water supply. There is also a risk of rodents and birds getting into the wooden storage tanks due to disrepair. That could contaminate the City's water supply. Other risks are from asbestos, uranium, and nitrates which are contaminants that the Water District should be testing for but have not done so to date. For a complete summation of Mayor Lucas's conversation with Karen Kelley, see the meeting handout titled "Results of September 13, 2010 meeting with Karen Kelley..." a copy of which is attached hereto.

Dr. MacPherson mailed a formal letter and the Deficiency Summary to the Water District requesting immediate action on the areas of concern. Mr. Grimes had stated the he had not received the letter until a few days prior to the last Water District meeting. The letter states Mr. Grimes and the Water District has 45 days to respond which response would be due October 29, 2010. MacPherson commented that further correspondence would be sent via certified mail.

Councilor Conner expressed his concerns that the Water Board and Bill Grimes specifically do not seem to feel there is cause for concern and it is unlikely that they will do what is required or expected. The DHS Lyons Water District Survey dated August 12, 2010 mirrors this concern with a specific comment made by Mr. Grimes stating he doesn't believe there is a problem in the watershed and creating paperwork would be of no use. There was discussion as to accountability since they are a governmental entity. Lucas stated that he had spoken with the Director of the Association of Water Utilities (Jason Green). Green said that it is extremely cumbersome to get the Water Districts to do what they need to do but that things usually get done because it is the right thing to do.

Lucas stated that the August 12, 2010 report required Grimes to begin measuring and recording chlorine immediately and to recalibrate the turbidimeter by September 1, 2010. He also commented that data reported in the Community Confidence Reports (CCRs) are identical from year to year in many cases and because of that the Water Department might be hesitant to forward them to the requesting agency.

Branch suggested we have the City of Salem come out to assess ways to improve water quality and to help with strong water odors and other issues. Dr. MacPherson stated the City of Salem could come out to suggest some improvements if the City of Lyons requested them to do so. Mitchell asked what the process would be to initiate this assessment in the event the Water District declined to do so. MacPherson stated that this would not be a regulatory issue, merely one city asking another city for assistance. Lucas asked if Grimes' cooperation would be required. MacPherson said that they wouldn't need 100% cooperation. He felt that Grimes would welcome the assistance since someone else would be handling work he clearly doesn't want to do. Lucas commented that Grimes had refused the help offered in the 2007 report

because there was no reason for him to accept it. There has been no consequence for his failure to follow through. There was discussion regarding the possibility and timing of Grimes' retirement and the percentage of salary increases over the past three years.

Mayor Lucas asked the Commission and those present whether there was support to continue pursuing this issue in a formal way to ensure the problems are corrected as required. Councilor Conner concurred that the City Council should continue to actively push the issue in order to force the Water Board to resolve the issues. Discussion ensued about finding ways to partner more with the Water Board including running for Board positions when they come open and seeking other external candidates to apply for Mr. Grimes position once vacated.

Councilor Morgan commented that in his opinion Grimes did not have the motivation to do what needed to be done. Motivation will probably have to come from City Council or other entities. In the event the citizens of Lyons are put at risk due to the contaminants in the water those citizens would want to know why City Council hadn't taken any action when they knew there was a problem. City Council has a responsibility to do something as a governing board to ensure the issues are remedied for the sake of the community. Ignoring the issue is not an option in his opinion. These issues have been outstanding for several years and it's to the point where action must be taken since the Water Board and Mr. Grimes are not addressing the issues. Lucas asked what Morgan would suggest Council do in this situation. Morgan said that it appeared that there was some action outside entities could take and perhaps Council should consider those avenues. Lucas said that while he agreed action needed to be taken, he was unsure as to what action to take other than to put the Water Board on notice that Council is aware of the situation and are requesting that they take remedial action.

Mitchell stated that it is necessary to educate community members and the people who are potentially impacted. She suggested contacting a reputable newspaper to have them publish a factual article regarding the water quality findings. If citizens of the community are aware of the issues and deficiencies they may put pressure on the Water Department to take action. By educating the community there may be some citizens who will step up and demand that something has to be done to remedy the situation. Jones commented that Council should keep in mind that there are people in the community who do not have a problem with the water. Mitchell agreed that there will be some citizens who have an opposing view. Hunn commented that it would be difficult to have an opposing view when you have the facts. Communication about these issues and developing a strong method to get the message out most effectively is key.

Lucas suggested that the crux of the matter was the comment made by MacPherson about the water system that "I think you have a low risk of a public health hazard; however, because of inadequate water testing and non-compliance with important policies and procedures I cannot guarantee there is no public health hazard present." The citizens are at risk because we don't know what we don't know.

Councilor Branch suggested a more aggressive approach such as sending out a newsletter advising citizens of the problems and encouraging them to contact the governor or their senator or representative to push the issue to resolution. The Council agrees that the Water Board is well aware of the long-standing issues and have been given countless opportunities to take advantage

of assistance. They have also been offered the opportunity to partner and work with City officials. To date, there has been no positive response from the Water District. Mitchell commented that each member of the Water Board was sent a personal invitation signed by the Mayor to attend a City Council meeting. None of them attended. After discussion regarding liability and certification issues, Conner said that he agreed with Morgan that it was Council's duty, now that they have knowledge of the situation, to move forward with some type of action. Hunn asked if the City had any assurance that Grimes would be capable of fixing a problem such as water contamination if it arose. Branch said that he felt that Grimes had that capability. MacPherson stated that in the event the water was contaminated by certain bacteria or viruses they can be killed with chlorination. Lucas asked whether the fact that there is no cross connection plan will adversely affect the ability to turn off parts of the system and turn on others. MacPherson stated that the plan is a formalized way of documenting what is present and showing that testing was done. There are cross connection devices that get placed on branches of the system to prevent backflow into the system. Lucas asked if those connection devices are present on the system. MacPherson said that Grimes says that he could locate some of them but they may not exist everywhere. There is no inventory; he just knows the location of some of the devices.

There was discussion of the possibility that the citizenry may become upset with the City because corrective action which may be required because of the City's actions may cause the water rates to rise.

To respond to negative feedback in the event Council agreed to send out such a newsletter or newspaper article, it should contain supporting information such as:

- 1) Communication about what Water District employees are paid including raises received over recent years.
- 2) The Water Board has done nothing to address the issues from 2007 forward.
- 3) Recent surveys identifying numerous risks to the citizenry.
- 4) Lack of assurance that our water is of good quality (it's word of mouth at this time).
- 5) That we are socially irresponsible if we do nothing about it yet are aware of it.

Mitchell suggested that something be included in the article inviting citizens who wish to discuss this matter further to come to a City Council meeting, giving them the time and date and have Dr. MacPherson, and whoever else might be appropriate, in attendance.

Other options discussed included beginning the process to disband the Water District through legal means and voter/resident approval. The Council discussed concerns with the potential of the Water District responsibilities coming under City of Lyons purview. Morgan commented on the matters discussed at the Water Board meetings as they relate to the day to day operations of the Water District.

Mayor Lucas offered a less aggressive option where the City would contact the Water District Board by certified letter to raise their awareness of the issues at hand and our knowledge about said issues with a resulting request for action. We could also bring to the attention of the Water Board that there is the possibility of some potential financial penalties; potential media involvement; and the possibility of initiating a recall. We should also let them know that the City is not actively preparing to go to those lengths, but that the City reserves the option and right to take any or all of those actions based on our concern for the citizenry. If the Water Board does not demonstrate action that is appropriate to make sure that the City's water is taken care of properly, regardless of what course of action the DHS Water System agency may decide to follow, these options will be explored further. The Board should be made aware that they have to satisfy the City that they are moving toward that goal or the City will move toward taking steps to assure that this is done.

If nothing transpires, Council could look into other more aggressive options as previously discussed. This request would come with a specified response time and/or formal request to attend a joint meeting to discuss these issues in an open forum. The Council would request formal acknowledgment of the stated issues as per the DHS Water Quality Surveys from May 2007 and 2010 with an expectation of when the issues are to be addressed and/or a plan to address them within specific timeframes. If the Water Board chooses not to respond or provide requested information, the Council will take such other steps they deem necessary.

Lucas said that he would draft a letter to be approved by all Council Members inviting the Water Board to a Council meeting after they have come up with a plan to resolve these issues which should be presented to Council both in writing and verbally. The letter will set forth a specific date and time for the Council meeting. Council can evaluate their plan and if it does not meet the necessary actions to cure the deficiencies the Council can move forward with other options which have been presented to them. There was discussion regarding the time line for the response. MacPherson was invited to the proposed meeting and he stated that he would have to get approval of their public relations department to attend such a meeting.

After discussion Conner made a motion to send a letter (to be approved by Council) via certified mail inviting the members of the Water District Board and the employees of the Water District to attend the October 26, 2010 City Council meeting to present a plan of action in writing to remedy the deficiencies set forth in the DHS Drinking Water Program survey conducted on August 12, 2010 and their letter dated August 27, 2010. Branch seconded the motion. Voice vote. Motion carries unanimously.

MacPherson stated that he was planning to go to the Water District to see what progress had been made in responding to the requirements set forth in the Survey.

Jones and MacPherson left the meeting.

**Survey Review & Approval for Distribution.** Hunn explained that there would be both an online version of the survey and a paper version. The online version needed a few changes but the content of both will be the same. The fact that the survey is to be distributed will be displayed on the City's web page and on the reader board. The surveys will be hand delivered

by students from Mari-Linn School in the same manner as the previous survey. Mitchell stated that at she had prepared maps to divide up the areas of delivery. At that time each Councilor or Planning Commissioner accompanied 2 or 3 students who distributed them in the particular area set forth on their map. The surveys were placed in plastic bags which were hung on the doors of the citizens. Hunn stated that the surveys will have a return address with postage prepaid so that they can be returned to the City either by mail, dropped off at City Hall or submitted via the web version. Mitchell commented that it is difficult to segregate who is inside city limits or whether the mail goes to their home or to a post office box. It will be easier and more cost effective to have them hand delivered. Since there will be only one survey per household delivered to the door, Lucas asked how differing opinions within the same household would be handled. Hunn responded that if necessary they can either go online or come by City Hall to pick up another survey.

Hunn stated that sections had been added for each district, whether it be the school district, the fire district, or the water district. The questions ask about how they feel about the service provided etc. There was also a section added about the post office. A second set of questions were added for the school district regarding property taxes and other options, including the current rate taxpayers are paying per thousand to the school district. If a bond is passed it would double the property taxes allocated to the school district. Lucas commented that the taxes do not necessarily benefit Mari-Linn. It is divided among the all of the schools in the school district. Hunn read aloud the questions being included regarding the Water District since Morgan couldn't see the form. There is a 1- 5 rating for questions regarding water quality, rates, customer service and availability, billing timeliness, access to information, communication and overall satisfaction.

Morgan asked if there was a question on the survey regarding what type of businesses the citizens would like to attract to the community. Hunn responded that the only question included was whether or not it was felt that there were adequate employment opportunities but not specifically the types of industry they would like to attract to the community. Mitchell commented that it is difficult to bring in industry when there is no sewer system.

Another item that was added that caused some controversy at the Planning Commission meeting was the inclusion in the school district section of an item entitled Student Transportation Services which asks people about how they felt about the bus services. One of the Planning Commissioners was not comfortable with that issue but Planning Commission voted to include it.

Lucas stated that on most surveys the comments get weighed heavily since most people don't make them. Hunn said that comment boxes were added to some of the categories but they were very specific. There was discussion regarding inclusion of information regarding the water quality survey. Council said they had no problem with including this information and Hunn said that she would draft some language regarding this issue for Council's approval and inclusion in the survey. Council concurred that the survey appeared to be ready for finalization.

Mitchell said that in order to schedule the distribution of the survey she needed to coordinate with Council and Planning Commission as to their availability to assist with the delivery. There

was discussion as to how long the survey should remain open. It was the consensus that a two week period should be sufficient.

Lucas made a motion to approve the Survey as submitted including language regarding the water survey issue; that the survey be distributed on October 6, 2010; that it be held open for two weeks and that the results be tabulated and presented to Council at the October Council meeting. Conner seconded the motion. Voice vote. Motion carries.

**Library Ramp Design.** Mitchell stated that she had discussed the Library ramp design with J.D. and he said that he would like to meet with Conner next week to discuss some suggestions he had for the ramp. Conner said that he would contact J.D. and schedule a meeting to do so.

There being no further business to come before Council, Conner made a motion to adjourn. Branch seconded the motion. Voice vote. The meeting adjourned at 1:10 P.M.

Audrey McNerney  
Assistant City Manager