

TOWN OF JEROME

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MINUTES

REGULAR MEETING OF THE JEROME TOWN COUNCIL

JEROME CIVIC CENTER - 600 CLARK STREET - COUNCIL CHAMBERS

TUESDAY, March 10, 2015 AT 7:00 P.M.

THIRD REGULAR MEETING OF 2015

ITEM #1:	CALL TO ORDER/ROLL CALL	
	Mayor/Chairperson to call meeting to order. Town Clerk to call and record the roll.	
	Mayor Lew Currier called the meeting to order at 7:00 p.m.	
	Town Manager/Clerk Candace Gallagher called roll. Present were Mayor Lew Currier, Vice Mayor Doug Freund and Councilmembers Abe Stewart, Alex Barber and Frank Vander Horst.	
	Other staff in attendance at roll call included Building Inspector Barry Wolstencroft, Zoning Administrator Albert Sengstock and Deputy Town Clerk Joni Savage.	
ITEM #2:	PLEDGE OF ALLEGIANCE	
	Mayor/Chairperson to lead the Pledge.	
	The Pledge of Allegiance was led by Mayor Currier.	
ITEM #3:	STAFF REPORTS	
	Written staff reports by the Town Manager/Clerk, Deputy Town Clerk , Utilities Representative, Public Works Department, Building Inspector, Library, Municipal Court, Police Chief, Fire Chief and Water Liaison .	
	Motion: Vice Mayor Freund made a motion to accept the staff Reports. It was seconded by Councilmember Barber. The motion passed with 5 ayes, 0 nays and 0 abstentions.	
ITEM #4:	FINANCIAL REPORTS	
7:03	Issued checks and Budget to Actual reports for the month of February 2015. Figures included therein are presumed accurate as of the report's preparation date, but are subject to adjustment as further information is gained.	
	Motion: Mayor Lew Currier made a motion to accept the financial reports. It was seconded by Vice Mayor Doug Freund. The motion passed with 5 ayes, 0 nays and 0 abstentions.	
ITEM #5: 7:04	PLANNING AND ZONING AND DESIGN REVIEW MINUTES/ RECOMMENDATIONS/ZONING ADMINISTRATOR'S REPORT	
	Minutes are provided for the information of Council and do not require action.	
	Council was informed that they would receive these minutes at a later date. It was later confirmed that there were no minutes, as the last two meetings had been cancelled.	

ITEM #6: 7:05

COUNCIL MEETING MINUTES

February 3, 2015 special meeting; February 10, 2015 special meeting; February 10, 2015 regular meeting; February 24, 2015 special meeting

Motion: Upon motion by Vice Mayor Freund, seconded by Councilmember Barber, **the minutes of the special meeting of February 3, 2015** were **approved as submitted** by all but Councilmember Vander Horst, who abstained.

Motion: Upon motion by Vice Mayor Freund, seconded by Councilmember Barber, **the minutes of the special meeting of February 10, 2015** were **approved as submitted** by all but Councilmember Vander Horst, who abstained.

Motion: Upon motion by Mayor Currier, seconded by Vice Mayor Freund, **the regular meeting minutes of February 10, 2015** were **approved as submitted** by all but Councilmember Vander Horst, who abstained.

Motion: Upon motion by Councilmember Vander Horst, seconded by Vice Mayor Freund, the **minutes of the February 24, 2015 special meeting** were unanimously **approved as submitted.**

ITEM #7:

7:07

PETITIONS FROM THE PUBLIC

Pursuant to A.R.S. § 38-431.01 (H), public comment is permitted on matters not listed on the agenda but the subject matter must be within the jurisdiction of the Council. All comments are subject to reasonable time, place and manner restrictions. All petitioners must fill out a request form with their name and subject matter. When recognized by the chair, please step to the microphone, state your name and please observe the three (3) minute time limit. No petitioners will be recognized without a request. The Council's response to public comments is limited to asking staff to review a matter commented upon, asking that a matter be put on a future agenda, or responding to criticism.

There were no petitions from the public.

ITEM #8: 7:10

ORDINANCES

ITEM #8A: SECOND READING AND ADOPTION – ORDINANCE NO. 415, AN ORDINANCE TO AMEND ARTICLE 8-3, "BUSINESS LICENSE TAX," OF THE JEROME TOWN CODE

Council may conduct the second reading of, and may adopt, an amendment to our Town Code regarding business licensing. The proposed amendment would make issuance of a business license specifically contingent upon review and approval by the Zoning Administrator, Fire Department and Building Department, as well as procurement of a Transaction Privilege Tax license, if required. In addition, it would remove rarely used provisions and generally clarify the language of the existing Code.

Mayor Currier read Ordinance 415 in title only. He stated that, because this ordinance deals with businesses, he ran it by the Chamber and their concern is that, if one is selling a business, the new buyer may be subject to several inspections, which might kill the deal. In light of their concern, he talked to our various inspectors and he was led to believe that, unless there were major improvements, upgrades or a change-of-use, it really wouldn't trigger anything. He then invited comments from Albert Sengstock, Zoning Administrator, Barry Wolstencroft, Building Inspector, and Rusty Blair, Fire Chief.

Mr. Sengstock said, "If a building is for sale and the businesses in place are in good standing, we have nothing to do with anything as long as the tenants stay the same. Until a new business comes in or they are doing something significant, we have nothing to do with it." Mr. Wolstencroft said that, typically, jurisdictions offer two different types of permits. One is for tenant occupancy, and any changes are cosmetic (such as new carpeting or painting). The other is for tenant improvement, where maybe they are adding lights or perhaps taking down a wall. With this inspection, he said, we can ascertain which bracket this falls into. It also gives our building and fire departments the opportunity to get in and see if there are any glaring safety issues, and to check emergency lights and fire extinguishers.

Chief Blair noted that this would not exclude businesses from periodic fire inspections, and any major violations would have to be addressed.

Mayor Currier asked Mr. Wolstencroft about ADA improvements and requirements. Mr. Wolstencroft stated that, when making tenant improvements, they are obligated to spend a certain percentage of the improvement cost on ADA upgrades; however, because of the historic status of Jerome, if someone was required to do something to comply with ADA, they would be exempt if that change would hurt the historic aspect of the property.

It was noted that, when the Haunted Hamburger undertook major renovations recently, they were obligated to upgrade the new bathroom to meet ADA requirements, and to install a sprinkler system.

Mayor Currier recognized the Chair of the Chamber of Commerce, Donna Chesler, and asked if she had any concerns.

Ms. Chesler asked, if a business were to sell and the new owner doesn't make any changes to the property, is there anything that would make the new owner unable to open the business? Mr. Wolstencroft responded, "No, we would be doing an inspection, Rusty, myself or together." He noted that, by making inspections part of the licensing process, it consolidates things so that people don't feel like they are being required to get more building permits. Mr. Sengstock noted again that, if the businesses in the building don't change, "then we do nothing. It is only when a business changes that we get involved with looking at the inside of the building." Ms. Chesler noted that it would be a new business license for the new owner. Mr. Sengstock said "the owner of the building is not relevant to the business license. If it is owner occupied, then that is a different story, but if it is a rental building with different businesses, then the businesses are not affected."

Mayor Currier referenced fire inspections, noting that Chief Blair already does a fire inspection once a year in the commercial district, which is per Town Code; this would be in addition to or replace one of the annual inspections. He then opened the discussion to Council.

Vice Mayor Freund noted that home occupations are not limited to the residential zone. We have them in our commercial zone, according to our zoning ordinance. Yet, the definition of "home occupation" in the draft ordinance reads, "... activity or use located within a residential district." He recommended removing that entire clause. It was agreed that the first portion of the definition would be changed to read, "Home occupation is any occupation, profession, activity or use which is incidental and subordinate to the use of a dwelling unit for dwelling purposes and does not change the character of the neighborhood...."

Mayor Currier said he had received a phone call earlier in the evening about home occupations. He said that he doesn't see that this ordinance changes the definition of a home occupation at all. Ms. Gallagher agreed, and noted that this definition is specifically presented as being "for purposes of this article," and is relevant only to business licensing. Mayor Currier then posed the question, "If I am making widgets at home and I work at a place that sells widgets, do I need a business license? Is that addressed in these changes or is that for another day?" Ms. Gallagher stated that she thought that would be for another day. Mayor Currier said that we would let that question sit unanswered at the moment, because it is not relevant to this discussion.

Vice Mayor Freund noted that paragraphs 8-3-2, E and F, in referencing exemption from zoning, fire and building inspections for home occupations, each end with the phrase, "provided the home occupation is in a residential district." He suggested that those words be deleted in both paragraphs. Ms. Gallagher advised that, if those clauses are removed, it would mean that, if there were a home occupation in the commercial district, it would not be subject to inspections. She asked if that is Council's intention. The provision that Mr. Freund referenced was included, she said, so as <u>not</u> to exempt home occupations in the commercial district from inspections. It was agreed to retain that language as written.

It was further discussed and agreed to change the words "residential district" to "residential zone" in both paragraphs.

Vice Mayor Freund noted that the definition of "person" included in the ordinance states that it "shall include persons, partnerships, association, company or corporation." He suggested that this be changed to read, "Person shall include <u>individuals</u>, partnerships," He also noted that, in the second to the last line of 8-3-2 A, the word "and" was struck, but is actually still needed. It was agreed to make both changes.

Carol Yacht, a Jerome resident, asked, "If I am writing books at my desk, do I need a business license?" Mayor Currier noted that one does not need a Transaction Privilege Tax license for service businesses. Ms. Yacht went on to ask about an artist with a kiln at their home. The Mayor opined that, if one is producing items for sale and selling them, they would need a license. There was further discussion regarding who would or would not need to obtain a business license.

Ms. Yacht asked for clarification regarding the \$2,500 exception. Ms. Gallagher explained that, in drafting this Code amendment, we had originally removed the existing exemption for businesses grossing under \$2,500 per year, but it was agreed at the prior meeting to leave that exemption in place, because it uncomplicated a lot of things.

It was acknowledged that this amendment would strike a clause that requires a day to day license (at \$5 per day) for "theaters, road shows and all other theatrical, athletic or musical performances, lectures, entertainment or exhibitions ...," which would include busking. Council member Stewart noted that paragraphs 8-3-6 C and 8-3-7 F of the draft ordinance are redundant. Ms. Gallagher commented that she and Councilmember Vander Horst had discussed that earlier, and agreed that paragraph 8-3-6 C should be removed. Councilmember Vander Horst referenced language in paragraph 8-3-2 A which states that it is the responsibility of the person conducting business to "apply/reapply" for the required

license. He recommended that the word "reapply" be changed to "renew." It was agreed to

make that change.

Mr. Vander Horst also said that he would like to see some language included regarding the basis for approval or denial of a business license by the Fire Department and the Building Inspector, Mayor Currier said that, according to his understanding, the Fire Chief and Building Inspector would need to sign off in order for the business license to be issued. If either finds a violation of significance (for instance, if the building was a fire or safety hazard), and they could not sign off on it, that would be a reason to deny the license. However, he noted, the license is not technically denied, but rather held in abeyance until the situation is resolved. Ms. Gallagher stated that Chief Blair has suggested that we change the first sentence of 8-3-2 F, which reads, "Where any business is physically located within the Town of Jerome, no license may be issued until the Fire Department and the Buildina Department have inspected and approved the premises..." to REMOVE the words "inspected and," because, he said, they may not require a physical inspection, and he does inspections at other times. We would also change the second sentence to indicate that the owner must grant the inspector access to the premises to accomplish any inspection necessary. She asked Mr. Wolstencroft if he agreed with that. He said that we need to decide who will get inspected, and that, by inspecting, he can determine if a building permit is needed. Mr. Sengstock added that zoning and building will both always inspect at any business license application or change of use. Mayor Currier noted that there is a clause which states that all inspections will fall within the first five days of the application for license.

Ms. Gallagher asked Council to clarify whether they would like inspections and approvals to take place for each renewal of a business license as well as for the initial issuance. Chief Blair noted that there are over 161 businesses in town, and if they had to inspect every renewal within five days, it would tax their ability to do other things. He noted that he inspects them periodically, anyway, and added that, for the building inspector to go in for every renewal would be "ludicrous." Mayor Currier reiterated that the approvals must take place within five days, and he would assume that the inspector could decide whether or not a physical inspection was required at the time.

It was further discussed and generally agreed that the Town should retain the option to inspect, but it should not be mandatory. The language of the first two sentences in 8-3-2 F was changed to read, "Where any business is physically located within the Town of Jerome, no license may be issued or renewed until the Fire Department and Building Department have approved the premises to be occupied by the business. The owner of the business shall grant the Fire Chief, Building Inspector and/or his/her designee(s) access to the premises where the business operates to accomplish any inspection deemed necessary by the Fire Chief and/or Building Inspector."

Finance Director Becky Cretti opined that all types or categories of businesses should be listed in the ordinance to prevent confusion. Ms. Gallagher said that she discussed this with the Town Attorney, who has recommended that we do not include that in the ordinance. It is on the application form, and that is sufficient. If we missed a category in the listing in the ordinance, it would then be illegal to issue a business license. Ms. Cretti disagreed. The ordinance, she said, is what gives the person who is working with the public the knowledge of what they have to do. She noted that this is how the issue of "vacation rental" appearing on a business license happened, and she does not want the person at the window to be put in that position again. She feels that the types of businesses allowed in the Town should be spelled out in the ordinance.

Councilmember Stewart noted that the Zoning Administrator would be reviewing and approving the application, and would catch any problems.

Mayor Currier noted that, when the person at the window is asked for a business license, they provide the form which the applicant fills out. The person at the window does not have to object, he said, and they also don't have to issue the license at that time. Instead, they pass it

on to the inspectors and the zoning administrator. If they don't think it looks right, it bounces back, and the person applying for license is referred to the inspector or zoning administrator. Ms. Cretti asked, if the inspector didn't complete the inspection within the five day period, would it go to the manager? Mayor Currier confirmed that it would.

Ms. Yacht asked if there was any language in the ordinance that addresses or specifically mentions the application process. Councilmember Stewart noted that paragraph 8.3.2 A states that it is the responsibility of any person conducting business to apply for and renew the required license. Ms. Cretti said that the process should be set out in more detail. Mr. Stewart said that he interprets the process as: the person at the front counter gives the applicant the form, they are told that they will hear back from us within five days, they pay when they receive approval. Ms. Cretti said that that is what she would like to see in the ordinance. Mayor Currier commented that we can never think of all the possibilities in advance, so there needs to be some play here somewhere. "I don't see the need to get it quite as tight as you seem to want to get it," he said.

Ms. Gallagher suggested that a simple way to address Ms. Cretti's concern would be to change paragraph 8-3-3 A (under "Payment Procedure"), which currently reads "All business license fees shall be paid at the office of the Town Clerk or in such manner as may be specified by the Town Clerk," to insert the words "Following all necessary approvals" at the beginning of the sentence. Council was in agreement.

Mr. Sengstock explained that what this business license ordinance does is to redirect it to the professionals responsible for the other disciplines, as listed in the Building Code, the Zoning Code and the Fire Code. The idea and the presumption, he said, is that it deflects it to the professionals. They will draw the conclusions, and they will give the approvals or denials. If something is denied, it will be based on a specific code reference. "You are leaving the business license world," he said, "and going to the building, zoning and fire world."

Ms. Cretti asked if the application will also go to the utilities department for approval so that we can make sure that the licensee gets their utility application in. She said that we have had people "blow off their utility applications," and spoke of the difficulty involved in collecting utility payments from a delinquent tenant when they share a building with other tenants whose accounts are in good standing. She noted that, if we could go to landlord billing, it would take care of this problem.

Councilmember Stewart asked if there is a provision to revoke a business license for non-payment of Utilities. It was confirmed that there was not any such provision at this time. Chief Blair commented that utilities are addressed in other parts of the code.

Councilmember Vander Horst said that he feels it would be reasonable to add utility compliance to the ordinance. Mayor Currier agreed, but added that he is nervous about having the business licenses hinging on so many things. He asked if staff could draft a paragraph to add this to the ordinance. Ms. Gallagher said she could do that, but she would need to run it by the attorney, and we would not be able to adopt the ordinance at this meeting. She suggested that it could be addressed separately, as another amendment to whatever part of the Code is appropriate. Council was in agreement.

Councilmember Vander Horst said that he would like to remove Section 8.3.5, "License Not Transferrable." Ms. Gallagher agreed, and noted that this conflicts with Paragraph 8-3-3 G. Council had no objections to removing Section 8-3-5.

Councilmember Vander Horst went on to reference paragraph 8.3.7 D, exempting from the license fee someone selling agricultural products produced by himself or herself, and said that this should already be covered under the \$2,500 exemption. He sees no need to retain that section in the ordinance. Ms. Gallagher asked Ms. Cretti if she was aware of anyone ever having utilized that exemption. Ms. Cretti said that she was not.

Motion: Councilmember Vander Horst moved to strike paragraph 8-3-7 D from the Ordinance. Mayor Currier seconded the motion and it was unanimously approved. Lastly, Councilmember Vander Horst referred to the penalty clause, Section 8-3-8, and noted that, if someone is in violation for eight days, the maximum fine would be \$17,000.00 and a possible three and a half years of incarceration. That seems a little excessive to him. Mayor Currier agreed, but stated, "that's why we have a judge." He said that these types of things are scattered throughout the code, and he is not prepared to go through the entire code and strike each one of those at this time. Councilmember Vander Horst said that he understood.

Ms. Gallagher confirmed with Council the change being made to Section 8-3-2 F.

Motion: Councilmember Vander Horst moved to approve Ordinance 415 as amended. It

was seconded by Vice Mayor Freund. Ms. Gallagher recommended that the approval be contingent upon the attorney confirming that we can adopt the ordinance with the changes made, rather than having another reading.

Amended motion: Councilmember Vander Horst so amended his motion, and Vice Mayor Freund amended his second. The motion passed with **5 ayes**, **0 nays and 0 abstentions**.

ITEM #9: UNFINISHED BUSINESS

7:57

ITEM #9A: THE LEANING WALL

Council will review a structural condition assessment and recommendations by Core Structure Group, LLC, regarding the leaning wall across from the Spirit Room, and may direct staff in this regard.

Mayor Currier reported that the structural engineer who inspected the leaning wall feels that it could be stabilized by installing three concrete buttresses, one on each end of the wall and one in the middle where the crack is. They would extend three feet from the base, with dead men extending below that. There would also need to be two horizontal supports. He said that this would represent Phase 1 of the project¹. Councilmember Stewart was present during the inspection and was asked to comment.

Mr. Stewart stated that his understanding was that the concrete buttresses would extend about seven feet up the fourteen foot wall, with a horizontal steel beam between the buttresses. He had suggested using a railroad rail and welding horseshoes onto it to make it look more decorative. We would also need to clear out the cavity of the wall and fill it with concrete, and remove some of the larger rocks and debris behind the wall.

Mayor Currier noted that the structural engineer has proposed to prepare sealed plans for this work for a fee of \$4,200.00. He added that Council has been concerned about the appearance of the wall, and buttresses will change that appearance. He asked how Council felt about that.

Ms. Gallagher stated that our engineer's estimate for the construction cost was between \$20,000 and \$40,000, and clarified that the \$4,200 will cover only the preparation of plans. Councilmember Stewart said that he feels \$4,200 for plans alone is excessive, and suggested that we obtain a second opinion. He also asked if this will need to go before our other boards.

Mayor Currier recalled that Council had previously discussed installing temporary braces to hold the wall in place until Phase 2, when we would excavate and stabilize the wall from behind. Councilmember Stewart said that getting machinery behind the wall would be very difficult, and he thought that the plan was to get the horseshoe pit operational.

Ms. Gallagher stated that we currently have \$39,000.00 budgeted for this project, which was intended to cover all the work that we need to do on the three walls as well as restoration of the horseshoe pit area. If the engineer's estimate is correct, she said, we could exceed the project budget just by the work on this one wall. She added that additional funds could be added in next year's budget if Council so wishes.

Mr. Wolstencroft stated that we should get another opinion on this. He believes that a cost of \$15,000 would be reasonable. If the idea is to save the wall, he said, there needs to be concessions made for it to look different. "Within a couple of years," he said, "people won't remember what it looked like before."

Councilmember Stewart asked if Council wants to proceed with installing the concrete buttresses.

Vice Mayor Freund asked if the engineer had suggested straightening the wall. Councilmember Stewart replied that he had not, and in fact felt that it would be a bad idea. The only option, he said, is the buttresses. Any excavation done behind the wall would have to be done by hand.

Mr. Sengstock asked Ms. Gallagher if, after receiving sealed plans, the project would go out to bid to contractors. She confirmed that it would.

Mayor Currier expressed his sadness that concrete buttresses would be needed.

Councilmember Vander Horst asked if there was any danger of the wall failing in the short term. Councilmember Stewart said that the structural engineer advised him that it was an interior wall, constructed to support a vertical load. It does not have much lateral pressure on

Clerk's note: See minutes of February 3, 2015 special meeting for details regarding project phases discussed at that time.

it and is not parallel with the mountainside. The Art Park wall that failed was parallel to the mountain, he said, and that is when you run into problems. He said that getting rid of the pressure points behind the wall would be good, and he would not want to wait another year. Councilmember Barber questioned whether the Town will be happy if it doesn't look like it does now. She asked, "Is it worth saving if it's not the same wall?"

Mr. Sengstock commented that this is not a historically significant structure as far as historical preservation goes; however, it is very important to the Town as far as its historical existence here is concerned.

There was discussion regarding whether the project should go to the Design Review Board before expending any more funds. Mr. Sengstock reminded the Council that the Design Review Board is excluded from authority when it is a matter of life safety versus historical preservation.

Mayor Currier confirmed that, since we do not have to go before Design Review, then we need sealed drawings to move forward and go out to bid. It was briefly discussed and agreed to solicit proposals from other engineers to prepare the sealed plans, as Core Structure's proposed price of \$4,200.00 seemed excessive.

Councilmember Stewart suggested contacting Bill Kantor, who works with the Jerome Historical Society.

Mayor Currier requested that Ms. Gallagher find some smaller engineering firms and get quotes from them for the work.

ITEM #10:

NEW BUSINESS

8:19

ITEM #10A: RECOMMENDATION REGARDING LIQUOR LICENSE – LAST CHANCE GENERAL STORE

Council will review, and may recommend approval or disapproval of, a Series 10 (Beer and Wine Store) Liquor License for the Last Chance General Store, located at 507B Main Street.

Amy Weiters (owner of the Last Chance General Store) explained that they will be opening a convenience store, and would be selling beer and wine.

Motion: Doug Freund made a motion to recommend approval for the Series 10 Liquor License. It was Seconded by Councilmember Frank Vander Horst. The motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM #11: 8:21

TO AND FROM THE COUNCIL

Council may direct Staff as to items of pending importance that they would like placed on a future meeting agenda.

Councilmember Vander Horst said that he would like to direct staff to review the Town's personnel policies and make recommendations for updating it. He said that he would be willing to volunteer with that endeavor. Ms. Gallagher welcomed his involvement.

Vice Mayor Freund said that he would like to see a "busking complaint" item added to the police report. Ms. Gallagher said that she would see if that is possible.

Councilmember Stewart asked about the status of drafting a nuisance ordinance. Ms. Gallagher said that she would try to have something for discussion at the April meeting. Mayor Currier noted there would be a budget meeting on March 12.

ITEM #12: 8:24

APPROVAL OF CLOSED SESSION MINUTES

February 10, 2015 executive session.

If necessary, Council may enter into executive session, pursuant to A.R.S. §38-431.01(A)(2), for the purpose of discussion or consideration of records exempt by law from public inspection.

Motion: Councilmember Barber made a motion to approve the executive session minutes of February 10, 2015. It was seconded by Vice Mayor Freund. The motion passed with 4 ayes, 0 nays and 1 abstention by Councilmember Vander Horst.

ITEM #13:

ADJOURNMENT

8:29

Upon motion by Councilmember Abe Stewart, seconded by Vice Mayor Freund and unanimously approved, the meeting was adjourned at 8:29 p.m.

, , ,	rom minutes taken ana transcribea by Deputy Town Clerk Johi Savage.
APPROVE:	ATTEST:
Lew Currier, Mayor	Candace B. Gallagher, CMC, Town Manager/Clerk
	Date: