



City of Oregon City

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Oregon City, OR 97045
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Meeting Minutes City Commission

Doug Neeley, Mayor
Rocky Smith, Jr., Commission President
Betty Mumm, Kathy Roth, Carol Pauli

Wednesday, September 5, 2012

7:00 PM

Commission Chambers

Regular

1. Convene Regular Meeting and Roll Call

Mayor Neeley called the meeting to order at 7:00 PM. Commissioner Roth attended via teleconference.

Present: 5 - Mayor Doug Neeley, Commissioner Rocky Smith Jr., Commissioner Betty Mumm, Commissioner Carol Pauli and Commissioner Kathy Roth

Staffers: 12 - David Frasher, Mike Conrad, John Lewis, Tony Konkol, Scott Archer, Nancy Ide, Jim Loeffler, Wyatt Parno, Maureen Cole, Eric Underwood, William Kabeiseman and Kattie Riggs

2. Flag Salute

3. Ceremonies, Proclamations, Presentations

3a. [12-085](#) Musical Presentation - Rebecca Anderson

Rebecca Anderson sang for the audience and then gave her background.

3b. [12-084](#) Proclamation Declaring September 17-23, 2012 as Constitution Week

Mayor Neeley read the proclamation declaring September 17-23, 2012 as Constitution Week.

DeAnna Way, representing the Daughters of the American Revolution, announced a kick off event on September 17 with a ceremony at the Library.

4. Citizen Comments

Bill Kabeiseman, City Attorney, said in regard to agenda item 6c, written submissions would be taken instead of oral testimony on the issue.

Karin Morey, resident outside of the City limits, was representing the Chamber of Commerce to thank the City and volunteers for their assistance during the Antique Fair.

William Gifford, resident of Oregon City, responded to an article in the Oregon City News regarding attacks on public servants. He said the attacks were counter productive and he encouraged citizens to move forward with positive attitudes and work together as a team.

Mayor Neeley announced a memorial dedication by the Parents of Murdered Children on September 25th at the cemetery.

5. Adoption of the Agenda

The agenda was adopted as presented.

6. General Business

6a. [12-082](#)

Second Reading, Emergency Ordinance No. 12-1008, Authorizing Submission of Explanatory Statements by the City for Inclusion in the Clackamas County Voters Pamphlet for Matters Submitted to the Voters Under the Referendum or Initiative Powers

Mr. Kabeiseman explained this ordinance authorized the City to include explanatory statements in the Voters Pamphlet. The deadline for submittal for the November election was September 6. In order to have the ordinance go into effect immediately it would have to be adopted unanimously as an emergency otherwise it took effect 30 days after adoption. If approved unanimously, the Commission could consider the explanatory statement to be printed in the Voters Pamphlet for the November 6th Election. If the ordinance was not approved unanimously, no explanatory statement could be submitted for the upcoming election; however, the ordinance would be on the books for the future.

Kevin Hunt, resident of Oregon City, said in his opinion, this ordinance did not comply with Oregon Administrative Rule 165.022.0040. He did not think there was an emergency. He thought the real reason for declaring an emergency was to put an explanatory statement in the Voters Pamphlet with regard to Measure 3-407. He thought the Commission should be honest and recite the real reason.

Mr. Kabeiseman confirmed the emergency standard was met.

David Prideaux, resident of Oregon City, referred to the Oregon City News article and the comment that people were hiding true intentions under the guise of the right to vote. There was an attitude circulating that was not civil and did not recognize legitimate opposing sides. He requested citizens not look at this as personal but to stick to the issues. The right to vote was not a guise, but went back to the Constitution and consent of the governed. He was one of the chief petitioners for Measure 3-407 and he believed big City debts were the issue and the right of people to have a say so.

Commissioner Mumm never said this measure would kill Urban Renewal. The reason she was pushing this was the definition of future was confusing and she thought the City was obligated to write an explanatory statement.

Commissioner Pauli said Commission Goal 5 was to increase communication with citizens and facilitate citizen participation. That's why she thought explanatory statements were important if there was not clarity.

William Gifford, resident of Oregon City, encouraged the Commission to focus on the

ordinance and not the other issues surrounding Measure 3-407.

Dan Fowler, resident of Oregon City, said \$130 million dollars had been authorized, not spent. He explained why Urban Renewal bonded indebtedness had not historically been voted on because it was a different type of debt and would not affect citizen taxes. He encouraged the Commission to pass the ordinance.

A motion was made by Commissioner Mumm, seconded by Commissioner Pauli, to approve the second reading and final adoption of Ordinance 12-1008 and declaring an emergency. The motion carried by the following vote:

Aye: 4 - Mayor Neeley, Commissioner Smith, Commissioner Mumm and Commissioner Pauli

Nay: 1 - Commissioner Roth

6b. [12-081](#)

Explanatory Statement for Inclusion in the Clackamas County Voters Pamphlet for Measure No. 3-407 on the November 6, 2012 General Election Ballot Related to Voter Approval of Urban Renewal Bonds.

Mayor Neeley thought this was part of the Constitutional process. The Commission wanted to make clear that the measure applied to the current Urban Renewal Plan and the Plan would be altered by a vote of the people. The vote on Ordinance No. 12-1008 was not unanimous and as such, no explanatory statement would be included in the Voters Pamphlet in November.

Commissioner Smith said there should not have been the fighting over something that the voters would ultimately decide. They needed to start working together.

Commissioner Mumm said the explanatory statement had been vetted through a third party. Was it possible to put it in the citizen water bills?

Mr. Kabeiseman said it was legal, but might not politically be a good idea.

Commissioner Mumm wanted everyone to know the Commission had the opportunity, but did not do it.

6c. [12-092](#)

Request from Michael T. Berman to Demonstrate his Compliance with the Residency Requirement for Candidates for the City Commission

Commissioner Pauli read a statement regarding this issue. When she decided to run for a four year term on the Commission she did not know whether she would have an opponent. When she learned there was another candidate for her position who had not produced documents to support his residency requirement, she also learned the Charter permitted the Commission to be the final judge of the qualifications. Since it was an awkward position to decide on the eligibility of her opponent, she decided to recuse herself from the vote.

Mr. Kabeiseman explained the best way to keep the process straightforward and within the timeframe was to limit citizen comments to written testimony and allow the candidate or candidate's representative to appear before the Commission. With Commissioner Pauli's recusal, there was the possibility of a deadlock. The rule of necessity dictated that if there was a deadlock even though the recused person might have a conflict, they would have an obligation to make that decision if necessary. So if there was a deadlock, Commissioner Pauli would cast the final vote.

Nancy Ide, City Recorder, stated two registrations were submitted on August 28. She called the Elections Office to verify registration and it was found Mr. Berman's registration was not up to date. Later that evening when she saw him at a Commission meeting she mentioned the discrepancy and that he would have to visit the County Elections Office to update his registration. She also formally prepared a letter about the residency issue and how he could prove residency. On August 30, Mr. Berman brought several documents to City Hall, but was not able to provide documentation that he lived in Oregon City from November 2011 to February 2012 as the Charter required. On August 31 she sent Mr. Berman another letter stating his name would not appear on the ballot unless further evidence of his residency was provided. The deadline to certify the ballot was September 6. The Charter said the Commission was the final judge of the qualifications and election of its own members. Since Mr. Berman did not have further evidence to present, he had come to the Commission.

Michael Berman, resident of Oregon City, stated he lived on a houseboat on Marine Drive for 12 years, and in 2008 he lost his job and had a medical issue. In 2009 he bought the 505 Tavern and sold the houseboat and decided to live in his cabin cruiser. He later moved into a duplex owned by a friend. For over two years he had lived either at Sportcraft Marina on a cabin cruiser or at the 505 Tavern. He used the 505 Tavern as his address. Since he had owned the 505 Tavern, he had lived in Oregon City. He grew up in Oregon City and people in the City knew him. He believed in the process, but thought the documents required were not exclusive. He cared about the City and had a vested interest as a business owner.

Kevin Hunt, resident of Oregon City, was speaking on behalf of Mr. Berman. He thought Mr. Berman was qualified to run for the City Commission. It was impossible to comply with the requirement in the Charter. Someone could have been a resident up to the time they turned in paperwork, but could move before the election. Mr. Berman had produced an affidavit of residency, a sworn statement of his landlady and friend, and written statement from Paul Edgar who had personal knowledge that Mr. Berman had resided at 316 S. McLoughlin since July or August 2011. He was satisfied by the documents provided by Ms. Ide of the fact that this was the standard procedure for eligibility. Most of the registration packets of the past had a declaration of candidacy, but it was not included in the packets for this election. It was not required that a person had a house or received mail or had utilities to run for office, and it should not be required that someone produce proof of these things in order for them to be on the ballot. There was nothing that disqualified Mr. Berman from running for office.

Mr. Kabeiseman said the question was whether or not Mr. Berman had resided in the City during the 12 months immediately preceding the election. Even if the residency could not be proved for the past two months, they could look back at the last ten months that preceded filing of the application. Given the Charter provision that the Commission was the final judge of the qualifications of the candidate, the courts would most likely not intervene. The City had not received any written testimony that Mr. Berman was not a resident.

Commissioner Mumm asked if Mr. Berman could show an envelope postmarked with his name and address. She wanted to see a document of some kind for proof. She was not sure if the qualification was met.

Ms. Ide had worked for the City for seven years and she had not come across a candidate who was not qualified.

Commissioner Smith believed that Mr. Berman met the requirement for residency.

Mr. Berman clarified that he was receiving mail at the 505 Tavern which was purchased in June 2010. His Multnomah County registration expired in August 2011.

Mayor Neeley said there was sufficient notice given for someone to come forward with documented evidence that Mr. Berman resided elsewhere. He thought the affidavits provided by Mr. Berman were sufficient.

Commissioner Mumm questioned if this met the rules.

Ms. Ide explained the declaration of candidacy for was no longer used because it was redundant, as her inquiry to the County Elections Division would answer the same questions as the declaration.

A motion was made by Commissioner Roth, seconded by Commissioner Smith, to accept Mr. Berman's application for candidacy for City Commission position #3. The motion carried by the following vote:

Aye: 3 - Mayor Neeley, Commissioner Smith and Commissioner Roth

Nay: 1 - Commissioner Mumm

Recused: 1 - Commissioner Pauli

6d. [12-083](#)

Second Reading, Ordinance No. 12-1007, of the Oregon City Municipal Code Amending Chapter 8.20 Related to Solid Waste

A motion was made by Commissioner Smith, seconded by Commissioner Mumm, to approve the second reading and final adoption of Ordinance 12-1007. The motion carried by the following vote:

Aye: 5 - Mayor Neeley, Commissioner Smith, Commissioner Mumm, Commissioner Pauli and Commissioner Roth

6e. [12-088](#)

Personal Services Agreement, Kennedy/Jenks Consultants, Inc., Engineering Development Review Services

John Lewis, Interim Public Works Director, said the City had a current contract with Kennedy/Jenks. This was a new contract for an additional two years with the option of extending the contract for another two years. This contract was for development review services.

Mr. Kabeiseman explained this contract did not need to go through a competitive bidding process as it was a qualification based selection.

A motion was made by Commissioner Mumm, seconded by Commissioner Pauli, to approve the personal services agreement with Kennedy/Jenks Consultants, Inc. The motion carried by the following vote:

Aye: 5 - Mayor Neeley, Commissioner Smith, Commissioner Mumm, Commissioner Pauli and Commissioner Roth

6f. [ORD 12-1006](#)

Ordinance for Introduction, No. 12-1006, An Ordinance Amending Title 12.04 of the Oregon City Municipal Code for Pavement Cut Restoration Standards.

..Body

RECOMMENDED ACTION (Motion):

Staff recommends that the City Commission approve the first reading of proposed Ordinance No. 12-1006, an Ordinance amending Title 12.04 of the Oregon City Municipal Code.

BACKGROUND:

The City adopted Ordinance No. 08-1007 that created a Pavement Maintenance Utility Fee that funds pavement maintenance and restoration projects. In order to protect the City's investment in its roads, higher pavement cut restoration requirements are needed. Studies conducted by multiple agencies have shown that poorly restored pavement cuts cause permanent structural and functional damage that result in increased maintenance, early replacement, and generally produce a rough ride. These deficiencies increase public costs for maintenance and repair and ultimately become a burden for the taxpayer/ratepayer.

The purpose of this ordinance is to amend the City Code to revise the pavement restoration requirements to meet the City's new standards and to simplify the process for future edits to these standards. These new standards, which will be adopted by resolution after the second reading of this ordinance, establish pavement cut restoration requirements based on the age and classification (arterial, collector or local street) in which the pavement cut will be made. This standard will increase restoration requirements in roads with new pavement or with higher traffic by requiring replacement of the top lift of pavement beyond the excavation area. It will also require warranties on the pavement restoration work. It is the goal of this standard to provide long-lasting pavement repairs at the least possible overall cost to both utility companies and taxpayers/ratepayers.

Public Works will administer this standard under its Right of Way Permit. A minor fee will be charged in addition to the Right of Way permit fee for permits that include pavement cuts. This added fee will cover the staff time required to administer these new standards.

Mr. Lewis said the Municipal Code would be amended to increase the standard by which trenches were repaired. He explained the changes proposed in the ordinance.

David Frasher, City Manager, said this was a timely ordinance due to the amount of investment the community decided to make in upgrades in street infrastructure.

A motion was made by Commissioner Smith, seconded by Commissioner Mumm, to approve the first reading of Ordinance 12-1006. The motion carried by the following vote:

Aye: 5 - Mayor Neeley, Commissioner Smith, Commissioner Mumm, Commissioner Pauli and Commissioner Roth

7. Consent Agenda

A motion was made by Commissioner Pauli, seconded by Commissioner Mumm, to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Mayor Neeley, Commissioner Smith, Commissioner Mumm, Commissioner Pauli and Commissioner Roth

7a. [12-080](#) Oregon City Swim Team, Scoreboard Lease Agreement, 2012-2013

7b. [12-090](#) Minutes of the August 15, 2012 Regular Meeting

8. Communications

8a. City Manager

Mr. Frasher reported on an issue regarding coal shipments that was likely to increase the traffic in Oregon City. He passed out articles for the Commission to read on this issue and staff could prepare an ordinance stating the Commission's position. He announced Oregon City would be awarded a local government grant through the Oregon Parks and Recreation Department for the Rivercrest Park restroom project. He explained the City's liquid assets and applied to the total debt, every person in Oregon City had equity of \$174. There was no debt and the City ran on a cash basis. He then compared the City's financial situation with other jurisdictions. Citizens could trust the City to do the right thing with their resources. The police department would be holding their third citizens police academy September 19 to November 14. The Public Works Department had completed the slurry seal projects. Four and a half miles of road had received surface treatment. A recording was played from a citizen who thanked the City for the slurry seal on her road. Regarding the Ermatinger House, a total of \$415,500 had been accumulated. The City's water division worked with the Utility Services Association to complete a leak detection project. The project discovered nine leaks that would have otherwise gone undetected and all had been repaired. The final paving operation for Highway 213 would be completed in September and trees and shrubs would be planted by November. The ribbon cutting would be in October.

8b. Mayor

Mayor Neeley attended the opening for the Neighborhood Economic Development Corporation who had set up an office in Oregon City.

8c. Commission

Commissioner Smith reminded everyone that school started on September 10. He had an inservice day where literacy across the curriculum was discussed. Mr. Frasher stated the school zones for King and Mt. Pleasant schools would still remain in effect as there were Charter school services there.

9. Adjournment

Mayor Neeley adjourned the meeting at 9:13 PM.

Respectfully submitted,

Nancy Ide, City Recorder