

**ONTARIO CITY COUNCIL MEETING MINUTES
Tuesday, January 20, 2015**

The regular meeting of the Ontario City Council was called to order by Mayor Ron Verini at 7:00 p.m. on Tuesday, January 20, 2015, in the Council Chambers of City Hall. Council members present were Ron Verini, Norm Crume, Tessa Winebarger, Charlotte Fugate, Thomas Jost, Larry Tuttle, and Betty Carter.

Members of staff present were Tori Barnett, Larry Sullivan, Marcy Siriwardene, Al Higinbotham, Kari Ott, Mark Alexander and Betsy Roberts. The meeting was recorded, and copies are available at City Hall.

Tessa Winebarger led everyone in the Pledge of Allegiance.

AGENDA

At the Thursday, January 15, 2015, Work Session, staff was directed to bring back a staff report and resolution with regard to the Police Sergeants Disparity action. (*Added as Action Item 7-E*).

Request made to add the appointment of Sandy Hemenway to the Business Loan Fund (*Action Item 7-A*).

Norm Crume moved, seconded by Charlotte Fugate, to adopt the Agenda as amended. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

CONSENT AGENDA

Charlotte Fugate moved, seconded by Norm Crume, to approve Consent Agenda Item A: Minutes of the Council Special Meeting of January 2, 2015; Item B: Minutes of Regular Meeting of January 5, 2015; Item C: Application to Operate a Taxicab Service (Arrow Express, LLC); and Item D: Approval of the Bills. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

DEPARTMENT HEAD UPDATES

Mark Alexander invited the Councilors to participate in a training opportunity at the Police Department using an interactive system called MILO. It would take around a half hour.

NEW BUSINESS

Appointments to City Boards/Committees/Commissions

Tori Barnett, City Recorder/Interim City Manager, stated it was time for the annual appointments to the various city committees and boards, and the Planning Commission. Below are the vacancies, along with letters expressing interest in appointment. As the Airport Board met recently, and reviewed the letters submitted for that Board, they provided a recommendation to the Council, which was addressed in a separate motion.

Airport Board: 5 Vacancies [4-Year Term]: Five letters received – Shawn Coleman, Shay Myers, Dale Cruson, Gary Taylor, and Luke Keller.

Budget Board: 4 Vacancies [4-Year Term]: Four letters received – Michael Braden, LeRoy Cammack, Darin Bell, and Mike Blackaby.

Planning Commission: 3 Vacancies [4-Year Term]: Three letters received – John Hall, Max Twombly, and John Breidenbach.

Public Works Committee: 2 Vacancies [3-year Term]: Two letters received – Dan Cummings and Scott Wilson.

Recreation Board: 3 Vacancies [3-Year Term]: Two letters received – Shay Meskill and Haley Miller.

V&C Bureau Board: 2 Vacancies [3-Year Terms]: Two letters received – John Hall and Debbie Blackaby.

Norm Crume moved, seconded by Thomas Jost, to appoint to the Airport Committee Shawn Colman and Gary Taylor to four year terms; Luke Keller and Shay Myers to complete one-years terms due to resignations of members; and Dale Cruson to the position of Alternate member. Other than the exceptions stated above, the expiration of terms will coincide with those established by ordinance. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

Charlotte Fugate moved, seconded by Norm Crume, to appoint Michael Braden, LeRoy Cammack, Darin Bell, and Mike Blackaby to the Budget Board; John Hall, Max Twombly, and John Breidenbach to the Planning Commission; Dan Cummings and Scott Wilson to the Public Works Committee; Shay Meskill and Haley Miller to the Recreation Board; and John Hall and Debbie Blackaby to the V&C Board. Expiration of terms will coincide with those established by ordinance. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

Charlotte Fugate moved, seconded by Norm Crume, to approve adding Sandy Hemingway to the Business Loan Fund. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

Mayor Verini asked for a consensus to appoint Tessa Winebarger as the Liaison to the Planning Commission, and Thomas Jost and Betty Carter to the Audit Committee. Consensus to do so.

Security Assessment Recommendations

Betsy Roberts, CH2M Hill, City Engineer, stated in October of 2014, CH2M HILL conducted a security assessment of the water and sewer systems for the City of Ontario. Based on the findings of that assessment, a confidential report was developed which provided a summary list of recommendations for the Water Treatment Plant and the Wastewater Treatment Plant. The report had not yet been presented to the City Council because of the security aspect, and staff did not wish to share detailed information on system vulnerabilities. In working with the city's attorney, and reviewing other methods in which similar security assessments had been presented, it was determined that providing a bullet item list of the top priority recommendations for improvement would provide adequate information to the Council without divulging extra information regarding vulnerabilities. Based on previous discussions with the Council regarding the available budget for potential improvements, staff analyzed the prioritized recommendations within the report and provided those items of top priority that fit within the current budget. While Council had not taken formal action on this project, they had been updated by Public Works staff regarding the process, budget and expectations.

The security assessment was conducted in an effort to determine areas of vulnerability for the water and wastewater systems. Vulnerabilities could include matters such as access and intrusion issues associated with the Water Treatment Plant, water storage facilities, pump stations and Wastewater Treatment Plant. Based on an on-site assessment, CH2M HILL prepared a report with recommendations and cost estimates for both policy and procedures and physical improvements to the individual facilities. Local Public Works staff then conducted a review of the recommended protective measures and was now making the following recommendations for adoption from Section 4 of the assessment:

• Recommended Modified Policies and Procedures	\$ 0
• Install additional perimeter fencing at WTP	\$65,000
• Upgrade/replace mandoor at Pump Station	<u>\$ 500</u>
• Total Budget:	\$65,500

Further improvements would be included in the 2015 Capital Improvements Plan recommendations. This amount had been budgeted for in water line item 105-160-719280, for \$67,000.

Norm Crume moved, seconded by Betty Carter, that the Mayor and City Council authorize CH2M HILL to solicit bids for the construction of the above mentioned improvements. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

Resolution #2015-101: Txf Funds to Hire a Fire Department Chief Resolution 2015-101

Tori Barnett, MMC, City Recorder/Interim City Manager, stated that due to the upcoming retirement of the Fire Chief on June 30, 2015, the Fire Department previously asked to hire a Deputy Fire Chief; however, at the January 15, 2015 Council work session, staff was directed to begin the search for the Fire Chief position instead. Staff was also directed to fund the position and equipment/uniform purchases from the Public Safety Reserve Fund.

On November 4, 2013, the City Council adopted Ordinance #2685-2013, allocating 26.5% of Motel Occupancy Tax to a Public Safety Fund. On January 5, 2015, the Council tabled this action pending the seating of the incoming City Council members.

The Fire Chief is retiring June 30, 2015; therefore, the city needs to hire a Fire Chief as soon as possible to allow for an adequate training period before stepping into the position of Fire Chief. Funding the Fire Chief position for the remainder of the 2014-15 fiscal year, fully burdened, was an estimated cost of \$40,000, with \$2,500 necessary for uniforms and equipment.

Currently the Public Safety Reserve, established by Ordinance #2685-2013, receives funding from a portion of the Motel Occupancy Tax, not through the General Fund, and shows a balance of approximately \$177,000. This fund continuously replenishes each month. If the Council opted to hold off on this action, it could potentially cause detrimental department issues with the retirement of the current Chief in June, leaving the department without trained upper management leadership. A total of \$42,500 was needed to fund the position for the remainder of the fiscal year, and to purchase uniforms and equipment. The Public Safety Reserve has \$134,600 budgeted in contingency; however has a current balance of approximately \$177,000.

Charlotte Fugate moved, seconded by Larry Tuttle, to adopt **Resolution 2015-101, A RESOLUTION AUTHORIZING THE FUNDING OF THE FIRE CHIEF POSITION**. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

Resolution #2015-102: Request for Enterprise Zone Application Approval for Norm Poole Oil, Inc., and Campo Oil Company, Inc.

Tori Barnett, MMC, City Recorder/Interim City Manager, speaking on behalf of Greg Smith's Office, Campo Oil Co., Inc. and Norm Poole Oil, Inc. was developing property along the Union Pacific Railroad. The site was home to several dilapidated structures, which had been removed. Further development would include new structures, rail sidings, storage tanks and loading racks. The project would provide a facility that would help process/blend product and load rail cars for a company that owned new natural gas wells in Idaho. The facility was anticipated to create seven new jobs, paying at least the county average annual wage of \$31,145. Project development would be located at SE 6th Avenue and SE 1st Street in Ontario.

The two companies submitted authorization applications to utilize the Malheur County Enterprise Zone. Two applications were required as the project encompassed two tax lots, owned by two business entities. The applicants were requesting an extended abatement. Total abatement would equal five years. An extended abatement required each zone sponsor (Ontario, Vale, Nyssa, and Malheur County) to pass a resolution approving the extended abatement. Malheur County Economic Development had been working with Ralph Poole on a business development project. The development would include additional structures, including rail sidings, storage tanks and loading racks. In addition, Union Pacific is working closely with Ralph and Malheur County Economic Development to do rail siding improvements, which would benefit all local industry utilizing rail transport.

It was important to note that all the required pre-authorization conference with Ralph Poole and the Malheur County Assessor had been held, and during the meeting, it was explained that for an extended abatement, the companies would have to meet job creation requirements and each job would have to pay at least the county average annual wage, which was currently \$31,145 (determined by Business Oregon). The companies agreed to do so.

The extended abatement would allow Campo Oil Co, Inc. and Norm Poole Oil, Inc., a five-year property tax abatement on new investments only. The property/equipment would be filed with the county assessor, and the company would be required to submit documentation each year of the abatement. Further, the project would create seven jobs, paying at least the county average wage of \$31,145.

Larry Tuttle moved, seconded by Betty Carter, that the City Council pass **Resolution 2015-102, A RESOLUTION APPROVING THE ENTERPRISE ZONE AUTHORIZATION APPLICATIONS OF NORM POOLE OIL, INC., AND CAMPO OIL COMPANY, INC.** Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

Resolution #2015-103: Txf Funds to Correct Disparities for OPD Sergeants

Tori Barnett, MMC, City Recorder/Interim City Manager, stated the four Ontario Police Department Sergeants had historically been equaled or surpassed by patrol officers in wages and benefits. This situation would not be remedied with a one-time action, as the patrol officer's union contract guaranteed an annual increase in pay to their represented employees. The four Ontario Police Department Sergeants have requested an increase in wages and benefits to stay ahead of the unionized police department employees. In previous years, the Police Chief approached the City Manager with a request to correct the disparities between the Sergeants and the union employees, but no action was taken.

The Sergeants presented a request to the current City Manager, outlining on how they believed the situation could be remedied. The five items below were suggestions provided by the Sergeants:

1. *The Ontario Police Department Sergeants shall accrue 10 hours a month in sick-leave accrual.*
2. *The Ontario Police Department Sergeants shall have a maximum sick-leave accrual of 1280 hours.*
3. *The Ontario Police Department Sergeants shall accrue 19 hours a month in vacation time after reaching 22 years, plus one day, of employment with the City of Ontario.*
4. *The Ontario Police Department Sergeants shall receive a one-time increase in pay of 5% over the highest paid patrol officer, effective January 1, 2015.*
5. *The Ontario Police Department Sergeants shall receive a 1.5% pay increase following the action in #4 above, and shall continue to remain at 5% over the highest paid patrol officer, excluding overtime.*

If approved, staff was seeking direction on where to procure funding. Options available were to take the funds from the General Fund Contingency, the Public Safety Reserve Fund, or a combination of both. Funding this disparity for the remainder of the 2014-15 fiscal year was estimated at \$3,250. Currently the Public Safety Reserve, established by Ordinance #2685-2013, received its funding from a portion of the Motel Occupancy Tax, not through the General Fund, and reflected a balance of approximately \$134,500. This fund continuously replenished each month. The General Fund had a budgeted amount of \$997,076 in contingency. If approved this action would take effect immediately, and would be retroactive to January 1, 2015.

Councilor Fugate asked what the impact would be on the upcoming budget.

Kari Ott, Finance, stated it would depend on the Police Union, and it would be approximately \$16,000 with the PERS rate.

Councilor Tuttle asked if the \$3,250 included PERS.

Ms. Ott stated yes, the number was for fully-burdened costs through June 30, 2015.

Norm Crume moved, seconded by Tessa Winebarger, that the Council adopt **Resolution 2015-103, A RESOLUTION AUTHORIZING THE TRANSFER OF FUNDS FROM THE PUBLIC SAFETY RESERVE FUND, TO CORRECT THE EXISTING DISPARITIES FOR THE ONTARIO POLICE DEPARTMENT SERGEANTS**. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

EXECUTIVE SESSION(S)

ORS 192.660(2)(a)

An executive session was called at 7:34 p.m. under provisions of ORS 192.660(1)(a) to discuss the City Manager position. The Council reconvened into regular session at 8:04 p.m.

DISCUSSION ITEMS

- Councilor Tuttle asked if they were moving forward with the phone calls, was it inappropriate for the Council to contact the candidate?

Larry Sullivan, City Attorney, stated the last time there were interviews, there was a Council discussion about having individual Councilors speak with the candidates, and the consensus was that it was a bad idea. Communication between Council and candidates should be with the Council as a whole.

Councilor Tuttle stated his question was because [previous] Mayor Cammack had asked him to contract a candidate, and he had.

Mr. Sullivan stated it wasn't wrong, but the concern of the Council was that there might be information conveyed to one but not all.

Mayor Verini stated he saw no problem with communicating with any candidate. The problem might be if each Councilor called each candidate, and barraged them with calls. But, they needed to make sure, regardless of who called who, all the information was shared with the entire Council.

Councilor Carter asked about a script, so the same questions were asked.

Mayor Verini stated yes and no. Yes, because they'd all be on the same page, but no, because each one of them were different, with different priorities. They probably all had different ideas about what they were looking for in the applicants.

Councilor Carter understood that, and those could be expressed when speaking to each candidate, but the script would have them all begin the same.

Councilor Fugate asked if this would be done over the phone, or what? If they were going to be interviewed here in Ontario, why call?

Mayor Verini stated his response was based on any communication. If that happened, regardless of who initiated the call.

Councilor Carter stated she was referring to calling those listed as references for the candidates, not for an interview.

Mayor Verini stated they already had a script of a sort, via the job description for the position. It outlined what the Council was looking for in the candidates.

Councilor Carter stated it was simply to get the conversation started, getting the core information up front, and then going into other questions.

Council consensus to approach it their own way, with their own questions.

Mayor Verini stated this would be addressed again at the January 29th work session.

- Mr. Sullivan stated in 2014, the Cable One Franchise Agreement expired, and there was not currently a franchise agreement with them. Cable One inherited the Agreement from Chambers Cable, back in 1998. That Agreement provided that the city would receive a 5% franchise fee from all the Cable One operations being conducted by Chambers Cable. Cable One was now operating, and they had expanded the scope of what they did, beyond what Chambers Cable was doing. Cable One now offered broadband services, telephoning services, including long-distance, and they received fees from all of that. Based on direction from the previous Council, he informed Cable One that the Council was looking to increase the franchise fee to 7%, on all those services. He'd been doing battle with Cable One for the past three months, based upon their claim that certain of those services could not be taxed by the city because of restrictions placed by the FCC. They had agreed to disagree on that point. He told Cable One that his proposal was that they would have to come up with the 7% franchise fee on their broadband, and 5% on the cable portion [*limitation placed on municipalities that they could not charge more than 5% for cable*], and then 7% for the telephone service. They were getting into a battle over this. There was a current case in the Oregon Court of Appeals as to whether or not cable companies that provided some of these other services, could be taxed for those. If the Court takes up that question, the city might not be able to have a Franchise Agreement concluded until that case was resolved by the Court. Cable One wanted to have a limited Franchise Agreement, which read that the city was going to receive a franchise fee for only the cable portion of the services they offered, not for any of the broadband or long-distance telephone service. Those wouldn't be subject to a franchise fee. That Agreement could be concluded quickly. They could probably do a negotiation dealing with the public access channels, since we are in danger of having those channels eliminated. He was looking for a consensus from the Council on how they wanted him to proceed. Did they want him to continue the fight for taxing the other services?

Mayor Verini stated if they negotiated for the 7%, and they agreed, it would be for naught if they went to court and lost. They couldn't charge more than 5% fee for the basic cable, which was already in place. Did the broadband provide a substantial amount of money?

Mr. Sullivan stated the city didn't have those numbers. He had requested them, but they had so far not complied.

Councilor Fugate stated they could look back at what Malheur Telephone paid in fees.

Mr. Sullivan stated they could also research other Telecommunicators were paying the city for the portion that dealt with broadband coverage. He believed it was probably quite a bit of money.

Mayor Verini asked what happened while negotiations were taking place – did the city still receive the 5% fees?

Mr. Sullivan stated the Agreement expired December 31, 2014, and he didn't know if any checks had been sent to the city beyond that date. The previous Cable Franchise Agreement was based on 5% of the gross income earned by Chambers Cable for all their sources of income within the city. Cable One wanted to narrow that down. He did not know if they had been paying the city based upon the broader definition, or on the one they were attempting to negotiate. They'd be in violation of the prior Agreement if they paid less, but they could be taking the position that they couldn't legally be required to pay more than they earned from the cable service. He had no clarification yet from Cable One as to what they were using to base that 5% on. He intended to find that out. He would attempt to obtain some financial information to give the Council a better idea next time around on what might be the financial implications from agreeing to their approach versus to a broader definition.

Mayor Verini also wanted to know if they had been paying on the total. If they hadn't, could the city bring a suit against them?

Mr. Sullivan stated that was a possibility. Currently, the law was on the side of the city. The Court of Appeals had ruled in the cities' favor on the point that the city could tax broadband. If the Oregon Supreme Court refused to rule on it, Oregon would have permission to tax broadband. Cable One was hoping the Supreme Court would take that question up for review.

Mayor Verini stated if they didn't negotiate in good faith, could the city close them down?

Mr. Sullivan stated no, but they could be sued for the money they owed.

Ms. Barnett stated they could kick them out of the city's rights-of-way.

Mr. Sullivan stated Cable One was paying the city for use of the city's rights-of-way, so the Council could deny Cable One the opportunity to use those. Their argument was that they were using the same rights-of-way for their broadband and telephone services that they were using for the cable, so they didn't think the city should receive any more money than the one cable running through the ROW. He didn't buy that argument.

Mayor Verini stated his concern was the gap between when the Agreement ended and when the Court would make a decision.

Mr. Sullivan stated they could make a decision in the next few weeks, whether or not the Supreme Court was going to accept review. If accepted, there wouldn't be a decision made for about a year. The city could draft an Agreement which read that certain pieces were open questions, and Cable One was not obligated to pay the city any broadband income, unless the Oregon Supreme Court ruled against Cable One's position. In that instance, the city would be entitled to funds retroactively.

Councilor Fugate asked about the previous telephone issue, where the city received some funding, around \$200,000.

Mr. Sullivan stated yes. There had been litigation with Qwest over several years over the city's ability to receive a franchise fee from Qwest. That went all the way up to the 9th Circuit Court of Appeals before resolution. The cities in Oregon won that case. But that was unrelated to this issue.

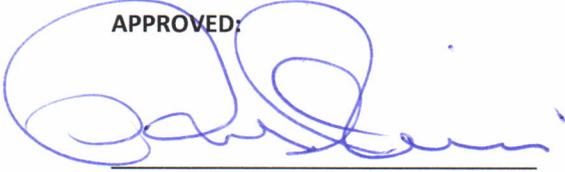
- Councilor Crume asked for an update on the businesses that were behind on their TOT payments.

Ms. Barnett stated that Finance had issued certified letters to those businesses.

ADJOURN

Norm Crume moved, seconded by Charlotte Fugate, to adopt the Agenda as presented. Roll call vote: Crume-yes; Winebarger-yes; Fugate-yes; Jost-yes; Tuttle-yes; Carter-yes; Verini-yes. Motion carried 7/0/0.

APPROVED:



Ron Verini, Mayor

ATTEST:



Tori Barnett, MMC, City Recorder