

**COUNCIL MEETING MINUTES**

**August 6, 2012**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, August 6, 2012, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan and Ronald Verini.

Members of staff present were Jay Henry, Tori Barnett, Larry Sullivan, Bob Walker, and Mark Alexander. The meeting was recorded on tape, and the tapes are available at City Hall.

Ronald Verini led everyone in the Pledge of Allegiance.

**AGENDA**

Ron Verini moved, seconded by Charlotte Fugate, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**LOCAL CONTRACTOR REVIEW BOARD ACTION**

**Resolution #2012-114: Declare HD Supply Waterworks as City's Sole Source Provider for Neptune/Schlumberger Radio Read Meter System**

Bob Walker, Public Works Director, stated Ontario City Council, acting in their capacity as the Local Contract Review Board, approved Resolution 2007-102 on January 16, 2007 authorizing Ferguson Waterworks as the sole-source Neptune/Schlumberger water meter provider in the Northwest. Since that time, HD Supply Waterworks had taken over the Neptune/Schlumberger sales in this area. By state law, the Local Contract Review Board must declare sole source status to HD Supply Waterworks for the Neptune/Schlumberger radio read meter system.

On February 19, 2002, the City Council authorized staff to sole source with Neptune/Schlumberger for an automated Radio Read System; on January 16, 2007, the City Council, as the Local Contractor Review Board, adopted Resolution #2007-102, authorizing Ferguson Waterworks to be the sole source provider for the Neptune/Schlumberger radio read meter system.

The Public Works Operations Division began upgrading the City's meter reading system in 2002 by purchasing the Neptune/Schlumberger Radio Read Meter System. National Waterworks, Inc. was authorized as the only vendor for Neptune/Schlumberger radio read meters in the Northwestern United States on September 6, 2005. As of December 2006, the sole-source provider of Neptune/Schlumberger meters switched from National Waterworks to Ferguson Waterworks, and in December 2010 HD Supply Waterworks was awarded the Neptune Sole Source distributorship. The City was now in need of purchasing more meters; therefore, the City Council, as the Local Contractor Review Board, needed to authorize sole source status to HD Supply Waterworks for the Neptune/Schlumberger radio read meter system.

The number of meters installed each year was dependent on the economy which affected the number of new homes built, and the number of new businesses coming to Ontario. The weather might also play a role in the amount of meters needing to be replaced, as severe cold weather created frozen and damaged meters. The majority of meters purchased would be ¾" and 1" meters at a cost of \$284.47 and \$383.00 per meter respectively. Staff would spend an estimated \$50,000 annually for the purchase of meters, meter reading equipment and maintenance agreement for the meter reading system.

Norm Crume moved, seconded by Jackson Fox, that the Local Contractor Review Board adopt Resolution 2012-114, **A RESOLUTION AUTHORIZING HD SUPPLY WATERWORKS AS THE CITY'S SOLE SOURCE PROVIDER OF NEPTUNE/SCHLUMBERGER RADIO READ METER SYSTEM.** Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

#### **CONSENT AGENDA**

Councilor Crume recused himself from voting, as his company had an invoice on the bills.

Ron Verini moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of the Regular Minutes of 07/09/2012; Item B: Water Line Easement Request: Ontario Eye Associates; and Item C: Approval of the Bills. Roll call vote: Crume-recuse; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/0/1.

#### **NEW BUSINESS**

##### **Resolution #2012-116: Add to List of Child Protection Zones**

Mark Alexander, Police Chief, stated this was a resolution modifying and adding to the list of Child Protection Zones established under Ordinance #2665-2012. On June 4, 2012, the City Council passed Ordinance #2665-2012, which modified and renewed Municipal Code Title 7, Chapter 6, Sections 1 and 2 relating to Child Protection Zones Section 2 (A) of #2665-2012 allowed additional protection zones to be added by resolution.

Current language describing Child Protection Zones was problematic to enforce. Some of the zone descriptions encroached onto neighboring properties where the City has no right to control. The Boys and Girls Club of Western Treasure Valley desired to be an identified zone. The Club served children under the age of 14 and would qualify as a Child Protection Zone. Resolution 2012-116 updated the description of protection zones to be limited to the property boundaries of the identified location. It also added the Boys and Girls Club of Western Treasure Valley as a Child Protection Zone.

Jackson Fox moved, seconded by Ronald Verini, that the Mayor and City Council approve Resolution 2012-116, A RESOLUTION MODIFYING AND ADDING TO THE LIST OF CHILD PROTECTION ZONES. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

##### **Ratification of City Manager Contract w/Jay Henry**

Joe Dominick, Mayor, stated the City Council had not formally ratified the Ontario City Manager Employment Agreement with Jay Henry. Both the Mayor and Mr. Henry had signed the agreement, effective July 12, 2012, and Mr. Henry started work on July 23, 2012.

Charlotte Fugate moved, seconded by Jackson Fox, that the City Council formally ratify the Mayor's signing of the Ontario City Manager Employment Agreement with Jay Henry, effective July 12, 2012. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

##### **Request to Proceed: SRO Contract w/Ontario 8C School District**

Mark Alexander, Police Chief, stated the Police Department wanted to enter into a contract with the Ontario 8C School District to provide two School Resource Officers (SRO) for the 2012-2013 school year. On November 7, 2011, the Council approved the same contract for the 2011-12 school year. OPD had partnered with the School District to provide SROs for several years. The level of service and associated costs had fluctuated, depending upon budget conditions.

The School District had budgeted money to fund two SROs for the 2012-2013 school year. The Police Department prepared a contract outlining the services and associated costs. Ontario 8C School District would pay the City fully burdened wages for actual hours performed by SROs, up to \$125,000. The City would provide equipment and training for the officers. The City would provide payroll costs that exceeded \$125,000.

Ronald Verini moved, seconded by Norm Crume, that the Council authorize the City Manager and Police Chief to sign a contract with 8C School District to provide two School Resource Officers for the 2012-2013 school year. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Jackson Fox moved, seconded by Ronald Verini, to authorize the Police Chief to enter into talks with 8C School District, if 8C desired to include additional provisions into the proposed Agreement. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**Washington Street Project Property Purchase: ODOT / Acceptance of Warranty Deed: FM Idaho, Co, LLC (NW WA Realignment Project)**

Jackson Fox recused himself from participating in the proceedings due to a potential conflict of interest.

Larry Sullivan, City Attorney, stated the Council previously approved the acquisition of the Budget Inn real property as part of the NW Washington Street Improvement Project. The deed from the owners of the Budget Inn to the City created a small remnant parcel of real property adjacent to B Place, a public street that would eventually be vacated by the City. That remnant parcel was attached to Resolution No. 2012-117 and referred to as "Budget Inn Uneconomic Remainder Purchased by City". When the City negotiated its settlement of the property acquisition from the Budget Inn owners, the owners agreed to convey the remnant parcel to the City at no additional cost to the City.

ODOT, acting as the property acquisition agent for the City on the NW Washington Project, negotiated for the acquisition of real property from FM Idaho. That was already an agenda item included in the Council packet. In the packet was a proposed Obligation(s) Agreement with FM Idaho (KSRV Radio) that was a companion Agreement to the Warranty Deed from FM Idaho to the City. That Agreement was drafted by ODOT and reviewed by staff and the City Attorney. Under that Agreement, the City agreed to declare as surplus property the remnant parcel acquired from Budget Inn, to have it appraised and to sell it to FM Idaho for the appraised price. Leslie Hasse of ODOT had informed staff that the parcel had been appraised for \$4,000. If the Council approved the sale, the \$4,000 would be deducted from the \$165,613.00 consideration for which the City, through ODOT, would be paying FM Idaho. Staff had determined that the remnant parcel was of no value to the City, because of its small size and location, and asked that it be declared surplus.

The purpose of this Agenda item was two-fold: first, to have the Council approve the Obligation(s) Agreement with FM Idaho as part of the property acquisition from FM Idaho; and second, to pass Resolution No. 2012-117 declaring the Budget Inn remnant parcel as surplus property in anticipation of the sale to FM Idaho. If the Council approved the Obligation(s) Agreement and Resolution No. 2012-117, the City would have to give notice of a public meeting pursuant to ORS 221.725 and City Code Section 8-16-10 before selling the remnant parcel to FM Idaho.

Bob Walker, Public Works Director, stated on July 6, 2012, the Council approved Agreement No. 26720 with ODOT accepting \$4.5 million for the relocation of NW Washington and constructing Park Boulevard to NW 16<sup>th</sup> Avenue; on November 15, 2010, the Council approved Agreement No. 26720-01 with ODOT, which was an amendment authorizing the expenditure and reimbursement of funds for the above project; on March 7, 2011, the Council approved Agreement No. 27027 with ODOT authorizing the ODOT right of way staff to proceed with appraisals and acquisition of properties for the NW Washington and Park Boulevard roadway project; and on July 18, 2011, the Council approved Agreement No. 27027-01 with ODOT, which was an amendment clarifying how funds would be paid by ODOT for the appraisals and acquisition costs.

ODOT staff had prepared appraisals and conducted negotiations on many of the parcels that had to be acquired for this roadway project. The Warranty Deed for the above property needed to be accepted by the City prior to recording or closing on the property.

Charlotte Fugate moved, seconded by David Sullivan, that the City Council authorize the City Manager to sign the Warranty Deed from FM Idaho Co., LLC accepting the property for the NW Washington roadway project. Roll call vote: Crume-yes; Fox-recuse; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-no. Motion carried 5/1/0/1.

Norm Crume moved, seconded by David Sullivan, that the Mayor and City Council approve the Obligation(s) Agreement with FM Idaho. Roll call vote: Crume-yes; Fox-recuse; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-no. Motion carried 5/1/0/1.

Norm Crume moved, seconded by Charlotte Fugate, that the Mayor and City Council approve Resolution No. 2012-117, A RESOLUTION DECLARING BUDGET INN REMNANT PARCEL AS SURPLUS PROPERTY. Roll call vote: Crume-yes; Fox-recuse; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-no. Motion carried 5/1/0/1.

**Lease Agreement w/South Georgia Equipment (Old City Shop)**

Larry Sullivan, City Attorney, stated the old city shop property had been vacant since the shop was moved to its new location. The city had no use for the property at the present time. Pam Hinnant, Inc., a Georgia company doing business as South Georgia Equipment (SGE) had requested a lease of the property through July 31, 2013, starting on August 10, 2012, for \$1,000 per month. The property would be used to sell onion processing equipment to local onion processors and to service the equipment.

The city would receive \$1,000 per month from the lease (except for August, 2012, because it was a short month), for a total of \$11,667. As landlord, the city would have the responsibility to make major structural repairs to the property if those became necessary. Staff was unaware of any structural problems with the building. Leasing the property commercially would cause the property to go back on the County property tax rolls in the 2013-2014 tax year, and the property taxes were estimated to be approximately \$7,000, which would be due on November 15, 2013, whether or not the lease was renewed. If the tenant desired to renew the lease, the property tax issue was one that should be discussed as part of any lease renewal.

Mayor Dominick asked if they could get a conditional use permit pending the zoning change.

Mr. Sullivan stated the way the Code was written showed permitted and conditional uses. There weren't any specific conditional uses listed. The Public Facility one was odd. It was intended to give the City Council discretion on uses on the property owned by the City. In many cases, it was an advantageous zone, as the only limitation was it couldn't be incompatible with adjoining property uses. The limitation on the issue was that the leasing out was for a public purpose. It was owned by the City, but it would be a commercial lease.

Mayor Dominick stated it was tax payer money coming back in.

Mr. Sullivan stated that was true, but the Planning and Zoning Code was focused *on the use*, not the benefit derived *from the use*. The use was not incompatible with adjoining properties. Did the Council feel comfortable going into the lease recognizing that until the zone was changed, it went against its own Code?

Councilor Fox stated the net to the City was close to \$12K, but the packet stated the taxes would increase by \$7K.

Mr. Sullivan stated taxes would not be collected until next year, and they could negotiate the lease again for another year; or the City could sell the property prior to paying taxes.

Councilor Fox stated he had spoken with the City Manager about SDCs. In a private change of use, a building empty that long triggered SDCs and landscaping issues. Did the renter know that?

Mr. Sullivan stated the SDC ordinance was important to look at how the word development was defined. SDCs affected all development in the City. To determine if SDCs were to be imposed, it read the building or construction or the making of a physical change, in a manner which would increase the needs. Did the Lease trigger an activity that fell into that area? If it did, the owner wasn't the Tenant, so the costs would be imposed on the City.

Councilor Fox stated there was a clause regarding a building being 18+ months empty. He wanted a level playing field. He would like to see development come to Ontario, but now everyone was willing to bend the rules, which discouraged private businesses from coming here.

Mr. Sullivan stated the City needed to do an inventory of uses that the City was making use of within the Public Facility zone. The property should be rezoned before allowing this type of development.

Councilor Sullivan questioned if this *was* development. Was there a clause which exempted the City from SDCs on City property or development?

Mr. Sullivan stated he was not aware of any.

Councilor Sullivan stated if there was no development on the land, no SDCs.

Mr. Sullivan stated the 18-month vacancy arose within the definition of previous use. That had nothing to do with SDCs being imposed. He did not believe the 18-month vacancy applied here.

Councilor Fox stated the City was treating this different from private entities. This was the way the Planner would have handled it if it had been private, rather than City, property. The City was willing to bend the rules if it was something the City needed, but not for private development.

Councilor Sullivan stated Councilor Fox was just mad at the way it was set up. The City had the chance to do business here, and one Councilor was upset over the way the ordinance was written.

Councilor Fox stated it was contrary to state law to do this without the zone change. He realized the City Council was going to vote in favor of it, but wanted his voice and comments heard.

Mayor Dominick agreed the Council needed to be more flexible with some of the rules. This was showing the Council that they needed to be friendlier. With help from the City Attorney, the zone needed to be changed within 45 days.

Mr. Sullivan suggested leaving the motion as presented, but to add a second motion to address the rezone issue.

Councilor Crume stated the zone was split on that property – did that matter?

Mr. Sullivan stated the City wasn't violating the Code for the entire piece. The zoning code gave the Planning Official and the Police Chief the authority and duty to enforce the Planning and Zoning provisions. In effect, the Council would be relieving them from that duty by moving forward with this Lease. Otherwise, they would be violating their duty by not enforcing that provision of the Public Facility zone. It would break the City ordinance. Zoning was state driven, but the state would not determine the penalties for non-compliance.

Councilor Jones asked if by changing the zone, did that force the property into surplus?

Mr. Sullivan stated the City could own property that was not zone Public Facility.

Councilor Fox stated it should be declared surplus. When the new City Shop was purchased, everyone was told the old Shop would be declared surplus and sold to offset the cost of the new Shop.

Mayor Dominick stated that would be coming back on a future Agenda.

Councilor Crume stated Planning and Zoning was moving too slow. The Council needed to be more flexible and lenient. He believed in standing firm on rules, but he also believed they needed to be more flexible, but that was also contrary to his beliefs. They would be shooting themselves in the foot if they passed on this Lease. But, they needed to actively work on this so it didn't happen again. It was not good for anyone to go against their own rules; however, they needed to move forward to get these things moving.

Councilor Jones supported Councilor Fox's comments. On the \$1,000 lease, was that at or under market? Did they take funds away from a private enterprise?

Mayor Dominick stated they had shown 13 separate properties, not all in Ontario.

Councilor Sullivan stated their second choice was a location in the Tri-Cities. They actually did not have any other selections for Ontario.

Councilor Fox asked if they were opening themselves up for an appeal.

Mr. Sullivan stated the only legal remedy he could see would be a Writ of Mandamus to compel the City to comply with its own planning zone.

Councilor Sullivan asked if the City could file for a variance.

Mr. Sullivan stated the problem there was that those were intended for set-back issues. It could not be used to permit a use that was not a permitted or conditional use in that zone. It wasn't authorized for a commercial or industrial development that wasn't being conducted for the benefit of the community.

Councilor Sullivan stated the front piece of the property was zoned Heavy Industrial.

Councilor Jones asked if anyone had contacted the company about postponing this for maybe 60 days.

Councilor Sullivan stated they had been talked to, and there not going to wait. They wanted in there now.

David Sullivan moved, seconded by Ron Verini, that the Mayor and Council approve the Lease for the old City Shop property, to South Georgia Equipment for starting on August 10, 2012 and ending on July 31, 2013, for the sum of \$1,000 per month. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

Joe Dominick moved, seconded by David Sullivan, to direct staff to complete the zoning change as quickly as possible, within the City's guidelines, providing full updates to the Council at every meeting. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

#### **CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS**

- Jay Henry, new City Manager, stated he was glad to be here. The City of Ontario had been hospitable and welcoming.
- Councilor Verini thanked everyone for one of the most successful fund-raisers last week in the park for veterans and their families, and for the help from the City for the 15x20 flag used as the backdrop. Job well done, everyone.
- Councilor Fox addressed the letter submitted by Barb Toomey, and asked that it be brought back for discussion at a later meeting.
- Councilor Sullivan reminded everyone they needed to get the large flag back on the flagpole.
- Mayor Dominick stated ODOT and staff from CH2M Hill were doing some investigation on the underpass, the study to needs of the underpass, and would be coming to the Council on August 15<sup>th</sup> with preliminary findings.

**EXECUTIVE SESSION(S)**

**Executive Session: ORS 192.660(2)(e)**

An executive session was called at 8:08 p.m. under provisions of ORS 192.660(1)(e) to discuss real property. The Council reconvened into regular session at 8:14 p.m.

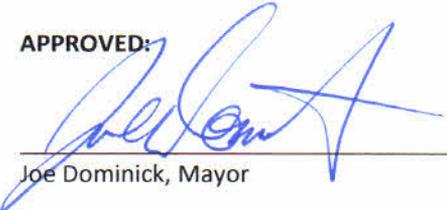
**Executive Session: ORS 192.660(2)(d)**

An executive session was called at 8:14 p.m. under provisions of ORS 192.660(1)(h) to discuss labor. The Council reconvened into regular session at 8:20 p.m.

**ADJOURN**

There being no further business before the Council, the Mayor declared the meeting adjourned.

**APPROVED:**

  
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Joe Dominick, Mayor

**ATTEST:**

  
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Tori Barnett, MMC, City Recorder