COUNCIL MEETING MINUTES
October 4, 2010

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, October 4, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan, and Ronald Verini.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Mark Alexander, Alan Daniels, David Richey, and camera operator Hailey Skinner.

Visiting Cub Scout Graydon Lea led everyone in the Pledge of Allegiance.

AGENDA

Ronald Verini moved, seconded by John Gaskill, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CONSENT AGENDA

Susann Mills moved, seconded by Norm Crume, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 09/20/2010; Item B: Proclamation: Oregon Days of Culture; and Item C: Approval of the Bills. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

The Mayor read the Proclamation into the record:

Whereas, Culture draws us together in common purposes, understanding, and celebration; and

Whereas, Oregon's 1,300 arts, heritage and humanities nonprofits - museums, libraries, theaters, historical societies, arts centers and heritage sites - are the heart of our communities; and

Whereas, The Oregon Culture Trust presents Oregon Days of Culture, October 1-8, during National Arts and Humanities month, to encourage Oregonians to Celebrate! Participate! And Give! To Oregon culture; and

Whereas, October 8, 2010 marks the 8th anniversary of Oregon's innovative cultural tax credit, encouraging new public and private investment in Oregon culture; and

Whereas, The Oregon Cultural Trust is a smart public policy, like vote-by-mail, the bottle and beach bills, that make Oregon a proud thought-leader nationwide; and

Whereas, Supporting culture, by giving to cultural nonprofits and to the Oregon Cultural Trust, is vital to preserving the past, sustaining the present, and creating the future.

Now, therefore, be it resolved that I, Joe Dominick, Mayor of the City of Ontario, do hereby proclaim October 1-8, 2010, as Oregon Days of Culture in Ontario and call upon citizens during the 8-day period to participate in Oregon culture, to celebrate its vibrancy and depth, and to give to the arts, heritage, and humanities to ensure their future vitality.

Mayor Dominick presented a Mayor's Certificate of Appreciation to Roger Smith for his leadership in putting together the Ontario Air Faire.

OLD BUSINESS

Ordinance #2648-2010: Amend OMC 7-1 re: Nuisance Provisions (1st Reading)

Mark Alexander, Interim Police Chief, stated the Police Department wanted to amend Ontario Municipal Code Chapter 1, Title 7, by adding three weeds to the list of noxious weeds and changing all reference to a 14-day abatement period to a 10-day abatement period.

In December, 2009, the Council amended the nuisance ordinance to include a list of noxious weeds and to shorten the period for a nuisance abatement from 14 days to 10 days. During the Council study session of September 2, 2010, staff tabled this proposed ordinance change in order to gain further information before proceeding. On September 19, 2010, Council passed Ordinance #2648-2010 on First Reading.

The 2009 changes were a result of a review of the current nuisance ordinance, whereby staff noted that the existing ordinance only allowed the city to abate weeds that exceeded 10 inches in height, leaving no ability to abate noxious weeds that were low-growing. The City consulted with the County Weed Department and developed a list of eight noxious weeds growing within the City. The City Ordinance Office has now identified three additional noxious weeds, which need to be added to the existing list, specifically Purple Loosestrife (Lythrum Salicaria), Yellow Starthistle (Centaurea Solstitialis L) and Rush Skeleton (Chondrilla Juncea). While the ordinance does allow the Council to modify the weeds list by resolution, because there were other proposed changes to the resolution, it was believed best to incorporate the additional three weeds into the ordinance at this time.

Also in December of 2009, staff recommended to the Council to alter the time given a property owner to abate a nuisance property be extended from 10 days to 14, giving the Ordinance Officer the opportunity to notice a property owner by posting the property and not mailing a certified letter. It has not been the practice of the department to do that, and there were no plans to begin to. The primary reason for not mailing certified letters was purely financial; however, not mailing certified letters could result in problems for the City when trying to prove that notice was served.

With regard to the period of time for abatement, ten days had historically given the property owner enough time to receive the notice and take action. The department would like any reference to a 14-day period to abate a nuisance by changed back to the 10-day period.

David Sullivan moved, seconded by Charlotte Fugate, to adopt Ordinance #2648-2010, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, ADDING NEW PROVISIONS AND REPEALING OTHER PROVISIONS, on Second and Final Reading by Title Only. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

NEW BUSINESS

Resolution #2010-148: Accept Amendment #1 of Connect Oregon II Grant Agreement #24941 for the Ontario Airport Pavement Improvement Project

Alan Daniels, Airport Manager, stated the City of Ontario was awarded an unfunded grant from the Connect Oregon II program, as part of the Multimodal Transportation Fund Program of 2007. The project was approved without funding in an effort to allow the City to utilize FAA matching funds available for the City's airport. Funding for the City's project had been awarded thru the Connect Oregon III grant program; however, staff would continue to work with the July 2009 Grant Agreement so that all FAA funds expended since that time could be counted as project match on the City's behalf. Accordingly, the Council was presented with Amendment Number 01 for approval, which brought the Connect Oregon II project up to Connect Oregon III standards.

In February, 2009, the Council Accepts FAA Grant for Project #3-41-0044-008 for $124,168 thru Resolution #2009-104; in July 2009, the Council approved the contract with Kimley-Horn for $60,030 for project design start up, the contract with USKH for Independent Review of Kimley-Horn Pricing, and the ODOT Connect Oregon Agreement #24941 dated July 8, 2009, which allowed the City to begin FAA funded work prior to accepting the Connect Oregon grant. In November, 2009, the Council approved the Connect Oregon 3 Application. In March, 2010, the Council approved the contract increase with Kimley-Horn from $60,030 to $124,168 for additional project design work. In September, 2010, the Council accepted FAA Grant #3-41-0044-009 for $168,913 thru Resolution 2010-147.

During the winter of 2007, the City of Ontario applied for Connect Oregon II funds for the runway rehabilitation and apron rehabilitation/expansion project for the Ontario Municipal Airport. While waiting to be moved into a funded position on the Connect Oregon II project, the City reapplied for the same project under the Connect Oregon III funding cycle. Staff was notified that the City's grant request had been funded under the Connect Oregon III funding cycle, and the Council was being asked to accept Grant Agreement Amendment Number 01 to accept the funding.

The overall project budget approved by the Connect Oregon III Grant was approximately $4,457,970. The Connect Oregon III grant award was for a total of $3,566,376, or 80% of the overall project budget, which left the City's matching portion a total of $891,594, or 20%, of the total project budget. With respect to the City's $891,594 Connect Oregon III match, the City had leveraged FAA grant funds that would amount to approximately 95% of the total City match, or $847,014. The FAA grant funding would be issued in several smaller project grants over the course of the project. The City already accepted two FAA grants for this project in the amounts of $124,168 and $168,913, used for engineering work on the project. The City budgeted its required match for the two FAA projects, a total of $15,440.

The final FAA grant, anticipated to be $553,933, would come some time after January 2011, and the remaining City match of $29,140 would be requested from the General Fund contingency at that time to complete that piece of the project. The $3,566,376 in Connect Oregon grant revenue was proposed to be budgeted within the City's Grant Fund. The remainder of the required grant match funds would be budgeted with the approval of the next FAA Grant, anticipated to be $553,933, which would require an additional $29,140 in matching funds being reallocated from General Fund Contingency to a General Fund transfer to the Grant Fund. City Staff would manage the grant project and those costs are not reimbursable thru this grant project.

John Gaskill moved, seconded by Ronald Verini, to pass Resolution #2010-148: A RESOLUTION ACCEPTING AMENDMENT NUMBER 01 OF CONNECT OREGON II GRANT AGREEMENT NO. 24941 FOR THE ONTARIO AIRPORT PAVEMENT IMPROVEMENT PROJECT. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2010-149: Receive the ODOT Connect Oregon Grant for Ontario Municipal Airport and Appropriating Revenue and Expense Budgets within the City's Grant Fund

Alan Daniels, Airport Manager, stated this resolution would acknowledge receipt and authorize expenditure of a Connect Oregon grant in the amount of $3,566,377 for the Ontario Airport Pavement Improvement Project.

In February, 2009, the Council accepted an FAA grant for Project #3-41-0044-008 for $124,168. In July, 2009, the Council approved a contract with Kimley-Horn for $60,303 for project design start-up, and contract with USKH for an independent review of the Kimley-Horn pricing. In March, 2010, the Council approved a contract increase with Kimley-Horn from $60,030 to $124,168 for additional project design work. In September 2010, the Council accepted FAA grant #3-41-0044-009 for $168,913. In October, 2010, the Council accepted the ODOT Connect Oregon grant through Agreement #24941, Amendment Number 01.

The City of Ontario applied for and was awarded a Connect Oregon Grant in the amount of $3,566,377 to be used on the Ontario Airport Pavement Improvement Project. This represented the third grant award for this project, the first two being FAA Project #3-41-0044-008 and #3-41-0044-009. It was anticipated that a third FAA Grant would be awarded to continue to help meet a majority of the City's match requirement as this overall project continued toward completion. Additional grant match dollars would be requested from the General Fund Contingency at such time as the final FAA grant project was awarded. The overall project was projected to cost $4,457,970, with the City's cash contribution in match totaling $44,580.

The $3,566,377 in Connect Oregon grant revenue was proposed to be budgeted within the City's Grant Fund, with the required match to be budgeted at such time as the final FAA Grant was awarded, anticipated for January 2011. The City would not spend down those grant funds until that final grant was awarded, securing the additional $553,932 in FAA funds to cover the City's local match requirement for these monies. Additionally, City Staff would manage the grant project and those costs were not reimbursable thru this grant project.

Susann Mills moved, seconded by David Sullivan, to pass Resolution #2010-149: A RESOLUTION ACKNOWLEDGING RECEIPT OF AN ODOT CONNECT OREGON GRANT FOR THE ONTARIO MUNICIPAL AIRORT AND APPROPRIATING REVENUE AND EXPENSE BUDGETS WITHIN THE CITY'S GRANT FUND. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Agreement Between the City of Ontario and Kimley-Horn for Additional Engineering Services for Airport Improvement Project #3-41-0044-009

Alan Daniels, Airport Manager, stated this request for approval consisted of authorizing an additional $168,913 in contract services to Kimley-Horn for the Ontario Airport improvement project. This amount would be in addition to the existing $124,168 agreement authorization made by the Council during March 2010. Funds for this contract authorization would be from the new FAA Grant Project #3-41-0044-009 in the amount of $168,913, together with the City's match of $15,390 from both open FAA Grants. The original contract with Kimley-Horn, in July 2009, was $60,030, and the Council approved an increase based upon the maximum grant amount for Project #3-41-0044-008 thru Resolution #2009-104 in March 2010.

Unfortunately, neither the Agenda Report nor Resolution 2009-104 specified the maximum grant amount for Project #3-41-0044-008 to be $130,668, and the Kimley-Horn contract attached to Resolution 2009-104 was for a lump sum fee of $223,752, plus time and materials up to $93,030 for bidding and a portion of construction and additional services, for a total of $316,782.

Following the Council's approval, the agreement was signed for up to $316,782 in services when the minutes reflected an approval of an amount up to the full project budget for Grant #3-41-0044-008, which was only $130,668. Since that time, the Council accepted and budgeted for FAA Project #3-41-0044-009, and the Council was being asked by staff to approve the increase in the agreement with Kimley-Horn from $124,168 to $308,471, a total increase of $184,303.

The new authorization represented a total contract with Kimley-Horn of $308,471 and would represent the total project budget of both the #008 and #009 FAA Grants as follows:

Year	Project Number	Grant	Match	Project Budget
2009	#3-41-0044-008	$ 124,168	$ 6,500	$ 130,668
2010	#3-41-0044-009	$ 168,913	$ 8,890	$ 177,803
		$ 293,081	$ 15,390	$ 308,471

In February, 2009, the Council accepted an FAA Grant for Project #3-41-0044-008 for $124,168 and pledged $6,500 in grant match for a project total of $130,668. In July, 2009, the Council approved a contract with Kimley-Horn for $60,030 in project design start-up, a contract with USKH for an independent review of Kimley-Horn pricing, and the ODOT Connect Oregon Agreement #24941, an unfunded grant award, allowing the City to begin the overall project with FAA grant funds prior to receiving any Connect Oregon grant funds. In November, 2009 the Council approved the Connect Oregon III application for the same project awarded to the City, and unfunded. In March, 2010, the Council approved a contract increase with Kimley-Horn from $60,030 to $124,168 for additional project design work up to the amount of funding for Project #3-41-0044-008. In September, 2010, the Council accepted FAA Grant #3-41-0044-09 for $168,913 and pledged $8,890 in a grant match for a project total of $177,803.

Staff previously informed Council that in anticipation of major construction at the airport funded by Connect Oregon III and by FAA funds, the long lead time items needed to be started as soon as possible. The State of Oregon gave written approval to start work on the project thru ODOT Connect Oregon II Grant Agreement #24941; however, ODOT Connect Oregon II funds would not be available for use on the project until funding became available, possibly thru the Connect Oregon III funding cycle. Staff also informed Council that any approved City funds spent on design prior to the Connect Oregon II grant award being funded could be applied to the City's grant match requirement for the overall project.

The FAA agreed to leverage the City's Connect Oregon II project thru grant funds it awarded to the City for the same project, acting as a majority of the City's required local match for the project. To date, the FAA had awarded two grants, the first of $124,168 for Project #008, and most recently an additional $168,913 for Project #009. The work under this Council approval of an expanded agreement amount, much of which has already been completed, would allow for the City's project to proceed to bidding. It was anticipated that further requests for additional engineering services to Kimley-Horn would be presented to the Council following the award of the Connect Oregon II funding agreement and the final FAA grant for the overall project.

The Council could choose not to proceed with awarding additional design work to Kimley-Horn, understanding that the overall project would be delayed until design work was completed, and further understanding that some of this work had already been completed based on the existing agreement signed in March 2010.

This agreement expansion was proposed to be paid out of the FAA Grant Project #3-41-0044-009 as accepted by the Council thru Resolution 2010-141, and utilizing the budget adopted thru Resolution 2010-147, which allocated $8,890, or 5% of this grant project budget, of General Fund Contingency as project matching funds. Council approval would bring the maximum payment for work to Kimley-Horn to $308,471, the total of both open FAA grants. The $8,311 remaining difference between Council approved amounts funded by existing open grants and the value of the Agreement signed in March 2010 would not be authorized to be billed by Kimley-Horn until such time as the Council approved additional amounts based on future grant awards.

Charlotte Fugate moved, seconded by John Gaskill, to acknowledge and approve the Agreement between the City and Kimley-Horn for a value not to exceed $308,471, to continue with design work for the Ontario Airport Improvement Project as funded by FAA Grant Project #3-41-0044-009. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Adopt Criteria for City Manager Evaluation

Joe Dominick, Mayor, stated pursuant to the City Manager's contract with the City of Ontario, executed on May 29, 2008, with follow-up Resolution #2008-127, dated June 2, 2008, an annual evaluation needed to be conducted by the City Council. The Council was required to adopt the evaluation criteria in open session. Following adoption of the criteria, Council could enter into an Executive Session to conduct and discuss the evaluation, but was required to be in open session to take any action.

Ronald Verini moved, seconded by John Gaskill, to adopt the City Manager Performance Evaluation Criteria as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Following Council discussion, it was the consensus of the Council to conduct the Executive Session, under ORS 192.660(2)(i) on Thursday, October 14, 2010, immediately following the regularly scheduled Council study session.

PUBLIC HEARING

Ordinance #2650-2010: Annexation and Rezone of Property (Presbyterian Community Care Center) 2431 NW 4th Avenue – UGA Residential to RM-10 High Density Residential (1st Reading)

It being the date advertised for public hearing on the matter of Ordinance #2650-2010, the Mayor declared the hearing open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and no declarations of conflict of interest.

Dave Richey, Planning and Zoning Administrator, stated at the regular meeting of September 14, 2010 the Planning Commission heard the annexation and rezone proposal contained in Planning File 2010-07-09 AZ, which was applicable to property generally known as Tax Lot 3300, Assessors Map 18S 47E –05BD, located at 2431 NW 4th Avenue, Ontario. The applicant, Presbyterian Community Care Center felt a need to provide an expanded range of services that could not be conveniently accommodated at their facility on North Oregon Street.

The Planning Commission addressed the proposed annexation and the accompanying rezone from Urban Growth Area Residential to a City Zone classification of RM-10 High Density Residential for Tax Lot 3300, Assessor's Map #18S 47E 05BD. It was seven (7) acres in size, generally known as 2431 NW 4th Avenue. The Comprehensive Plan urban growth area residential classification was broad enough that any of the City residential zones could be considered to be consistent with it. The existing land use on neighboring properties ranged from single family to assisted living facilities so this proposed care facility would not be a departure from the character of the existing neighborhood.

The Mayor opened the hearing for public testimony.

Proponents: Cathleen Sullivan, Administrator, Presbyterian Community Care Center, state their current center was incorporated in 1957, and occupied the current location in 1960. It currently housed 123 beds, serving intermediate and long-term care individuals. Their facility had not changed from mostly long-term care to a majority of short-term, rehab care. The current building was not conducive to that type of care. They wanted to construct a new building, that would serve a capacity of 40 short term, either therapy or skilled nursing beds, and another unit that would house 14 long-term care beds. They wanted the building to be very residential in appearance.

Mayor Dominick asked what would happen to the existing building?

Ms. Sullivan stated that building would become unoccupied.

Opponents: None.

There being no further Proponent and no Opponent testimony, the Mayor declared the hearing closed.

Ronald Verini moved, seconded by Susann Mills, to adopt the Findings of Fact as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Susann Mills moved, seconded by John Gaskill, to adopt Ordinance #2650-2010, AN ORDINANCE ADDRESSING THE FINAL ORDER AND FINDINGS OF FACT FOR THE ANNEXATION OF SEVEN (7) ACRES OF PROPERTY INTO THE CITY OF ONTARIO AND TO REZONE SAID PROPERTY FROM UGA-RESIDENTIAL TO CITY RM-10 HIGH DENSITY RESIDENTIAL FOR PROPERTY LOCATED AT 2431 NW 4TH AVENUE, ONTARIO, TAX LOT 3300, MAP 18S 47E-5BD, PLANNING FILE 2010-07-09 AZ, on First Reading by Title Only. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

RETURN TO NEW BUSINESS

Ordinance #2651-2010: Amend OMC 6-1, Adding Chapter 31, Prohibiting the Distribution, Possession, and Use of Certain Nonprescription Intoxicating Compounds; Declaring an Emergency for 1st and 2nd Readings

Larry Sullivan, City Attorney, stated the proposed ordinance would ban certain intoxicating chemical compounds, including commercial products, such as "Spice", which were being sold as aromatics or incense but which had ingredients that resembled the chemical compounds in marijuana and had similar intoxicating effects.

At least four businesses in the Ontario city limits were marketing commercial products as incense and were being used by juveniles and adults as intoxicants. The products were being sold under such brand names as "Spice", "K2", "Puff" and "Sugar Sticks". They were not new; they had been commercially available for years. The products were clearly advertised and labeled as not intended for human consumption. Nonetheless the products had become increasingly popular locally, around the United States and in other countries for their intoxicating effects, which reportedly were the same as the effects of marijuana intoxication.

The scientific literature about the effects of ingesting these products was sparse. However, reputable laboratories had tested these products and found they contained chemical compounds that were similar if not identical to compounds in marijuana and were often referred to as synthetic marijuana. The long term health effect of ingesting these products was unknown, because they were not meant for human consumption and had never been subjected to testing by the federal Food and Drug Administration.

Meghan Tschida of Lifeways, a local drug treatment provider, told the Council at the September 30, 2010, work session that these products were being used as intoxicants by clients who were court-ordered to participate in drug treatment because their use was not detectible by blood and urine tests.

Because of the amount of publicity these products received in recent months, their use as intoxicants had reportedly increased dramatically, and a number of states recently outlawed them. Boise, Idaho, was reportedly considering an ordinance to ban these products, and the Idaho State Board of Pharmacy enacted a temporary ban on the chemical compounds in these products on September 29, 2010, subject to the Idaho governor's approval. Under the ban, the possession and sale of these compounds would be felonies in Idaho. In the past, drug paraphernalia shops relocated to Ontario when their products were banned in Idaho. Staff believes that this was likely to happen with Idaho sellers of these banned incense products unless Ontario enacts its own ban.

A local business named "Got Spice" just opened in Ontario. The owner of the business immediately began an aggressive marketing campaign using young people waving signboards on the sidewalk advertising "Spice" as incense. The owner of the business told the Council at the September 30, 2010, work session that he was discontinuing the use of the signboards as a marketing technique; that he did not sell the product to minors; and that he would not sell it to people who said they wanted it as an intoxicant. Nonetheless, staff believed that his business name and business model were intended to target people who purchased "Spice" as an intoxicant, despite his disclaimers to the Council to the contrary. The same owner told the Council that three other businesses in Ontario were marketing the same incense products and were also marketing smoking devices such as hookahs.

Ordinance #2651-2010 was modeled on an ordinance enacted by the City of Ogden, Utah, on September 14, 2010. The list of banned chemical compounds in subsection A was derived from the Ogden, Utah, list; it included an amalgam of chemical compounds that were not necessarily found in "Spice" incense-type products. For instance, both lists included a plant, Salvia Divinorum, which had been found in some incense products but was used as an intoxicant in some South American cultures, was sold commercially in the United States as a mood altering substance, and was banned in several states. The Ogden list included compounds known as TFMPP and BZP, which, when used together, mimicked the effects of the illegal drug "Ecstasy". BZP was already a banned Schedule 1 controlled substance in the United States and had been omitted from the Ontario list so as not to conflict with federal law. The Ogden list also included HU-210, which was also banned as a Schedule 1 controlled substance in the United States, so it has been omitted from the Ontario list.

The Ontario list in subsection A included a new item as number 12, which referred specifically to certain brand names of incense. In the City attorney's opinion, including those specific brand names in the list might allow the City to prove a violation of subsection A without having to incur the expense of sending the product to a laboratory for a chemical analysis. Unlike the Ogden ordinance, Ordinance #2651-2010 did not have criminal penalties, and had a lower burden of proof. Because the Ontario ordinance would not carry criminal penalties, a provision had also been included to allow the Council to amend the list in subsection A by resolution. Chemists continued to create new synthetic marijuana compounds, and incense manufacturers were routinely changing the chemical compositions of their products to get around legal bans.

Ordinance #2651-2010 also included a new sentence in subsection G that allowed the City to collect its attorney fees if it filed for an injunction against a business that continued to sell a banned compound.

There are no federal or Oregon statutes directly preventing the City from enacting this ordinance. Neither the federal government nor the State of Oregon has passed any laws explicitly dealing with the compounds listed in subsection A or preempting the City from doing so. In the City attorney's opinion, it was unlikely that a court would find that federal or state law prevent an Oregon city from banning a chemical compound not listed as a controlled substance so long as the municipality had a rational basis for regulating the compound under its home rule authority.

The Ontario City Charter allowed an ordinance to go into effect immediately upon final passage by declaring an emergency. In the City attorney's opinion, there were sufficient facts available to the Council to justify an emergency enactment.

The Charter also authorized the Council to enact an ordinance at a single meeting by having it read twice; however, this was a procedure rarely used by the Council. An enactment at a single meeting would deprive the Council of the opportunity to engage in the deliberative process that it usually engaged in prior to enacting an ordinance. It would also deprive the public of the opportunity to comment on the ordinance before its enactment. Therefore, such a procedure should be used with caution.

The Council should determine whether it should follow its usual procedure of approving only a first reading of a newly proposed ordinance. If the Council decided to follow its usual procedure, only the motion for a first reading should be followed. If the Council decided to conduct both the first and second readings at this meeting, both motions should be made.

Councilor Gaskill stated he had spoken with Representative Bentz, and asked him if any action was being considered. Representative Bentz indicated he had put a place holder with the State Legislature for the January session that would ban Spice and related chemical substances and compounds under state law. The State Pharmacy Board would also be addressing the issue. It was anticipated it would be an expedited issue.

Councilor Fugate verified that even purchasing the compound through the internet was still illegal.

Interim Chief Alexander stated that was correct, as the ordinance covered all aspects of the compound, including possession.

Mayor Dominick read a section of the ordinance, under 1-6-31(A) "*...it shall be unlawful for any person, including a corporation or other entity, to manufacture, distribute, dispense, ingest, use, possess, purchase, attempt to purchase, sell, publicly display for sale, attempt to sell, give, trade or barter, any one or more of the following chemical compounds,...* (12)*...sold as incense under the brand names Spice, Black Mamba, K2, Puff, Smoke, Skunk, Pandora Potpourri, Sugar Sticks and any other brand names, that have been determined by chemical testing laboratories, law enforcement or other governmental agencies to contain any of the foregoing compounds.* He wanted that stated so the viewing audience would be aware of some of the street names of the compound, and encouraged citizens to pick up a copy of the ordinance. One main chemical was JWH-018, so please be aware.

Councilor Gaskill stated the chemical Salvia came from a plant, which could be purchased from a plant store, but those were different from what was referenced in the ordinance.

Charlotte Fugate moved, seconded by Norm Crume, that the Council adopt Ordinance #2651-2010, AN ORDINANCE PROHIBITING THE DISTRIBUTION, POSSESSION AND USE OF CERTAIN NONPRESCRIPTION INTOXICATING COMPOUNDS; AND DECLARING AN EMERGENCY, ON FIRST READING BY TITLE ONLY. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Susann Mills moved, seconded by John Gaskill, that the Council adopt Ordinance #2651-2010, AN ORDINANCE PROHIBITING THE DISTRIBUTION, POSSESSION AND USE OF CERTAIN NONPRESCRIPTION INTOXICATING COMPOUNDS; AND DECLARING AN EMERGENCY, ON SECOND AND FINAL READING BY TITLE ONLY. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Mark Alexander stated the department had been unsuccessful in their attempt to obtain a COPS Grant for police officer position. Also, he gave the Council an update on meetings that were coming up that they were all invited to attend.

- Councilor Verini thanked everyone for the great send-off to the 116th.

- Councilor Fugate stated she had received data from the feral cat program, and they had captured and spayed/neutered over 482 cats.
- Councilor Mills encouraged everyone to go see the new Fire Department storage building. It was coming along nicely.
- Mayor Dominick thanked everyone who attended the annual October Faire last week-end. Great turn-out. Also, he encouraged everyone to attend the local football games. And, Public Works Director Chuck Mickelson was asking for a volunteer to sit on the committee for the SE 2nd Street engineer selection process.

EXECUTIVE SESSION: ORS 192.660(2)(e) REAL PROPERTY

An executive session was called at 8:17 p.m. under provisions of ORS 192.660(1)(e) to discuss real property issues. The Council reconvened into regular session at 8:31 p.m.

ADJOURN

Ronald Verini moved, seconded by David Sullivan that the meeting be adjourned. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder