

**COUNCIL MEETING MINUTES  
October 18, 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 18, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, and David Sullivan. Ronald Verini was excused.

Members of staff present were Henry Lawrence, Tori Barnett, Mark Alexander, Yorick de Tassigny, and camera operator Hailey Skinner.

Norm Crume led everyone in the Pledge of Allegiance.

**AGENDA**

Request made to move item 6B to November 1, 2010 as representatives from ODOT were not available to attend the current meeting.

Charlotte Fugate moved, seconded by Susann Mills, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

**CONSENT AGENDA**

Susann Mills moved, seconded by David Sullivan, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 10-04/2010; Item B: Approval of Minutes of Special Session of 09/30/10; and Item C: Ordinance #2650-2010: Annexation and Rezone of Property (Presbyterian Community Care Center) 2431 NW 4<sup>th</sup> Avenue – UGA Residential to RM-10 High Density Residential (Final Reading). Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

**NEW BUSINESS**

**Bid Award: City Hall HVAC and Lighting Upgrade Project**

Yorick de Tassigny, Facilities Manager, stated in November 2009, staff applied for American Recovery and Reinvestment Act of 2009 (ARRA) Energy Efficiency and Conservation Block Grant (EECBG) funding to complete a lighting and HVAC (heating, ventilating and air conditioning) upgrade at City Hall. These projects were identified in a report compiled by McKinstry in October of 2008 following a level 1 energy audit of the facility. On January 29, 2010, Oregon Department of Energy issued a press release identifying the Ontario City Hall lighting and HVAC project as one selected for funding. The City was awarded \$728,000, the full amount for designing and completing the project, less the estimated \$10,000 in staff time that would be required for administering the work.

Council approved Resolution #2010-114, acknowledging receipt and authorizing expenditure of a \$728,000 American Recovery and Reinvestment Act (ARRA) Energy Efficiency and Conservation Block Grant (EECBG) in the Grant Fund.

In February 2010, staff released a Request for Qualifications for engineering services to design the project. Four statements of qualifications were received and reviewed by a selection committee consisting of Council members David Sullivan and Norm Crume, Deputy Public Works Director Bob Walker, Facilities Manager Yorick de Tassigny and Grant Mechanical (City's mechanical contractor) owner Matt Grant. Musgrove Engineering was identified as the top-ranked firm based on their extensive experience designing VRF systems, both in new construction and in retrofit installations. On April 19, 2010, Council approved Resolution #2010-122, authorizing the City Manager to enter into an agreement between the City of Ontario and Musgrove Engineering, P.A. of Boise, Idaho for professional engineering services for the design of the City Hall HVAC and Lighting Upgrade project. Musgrove Engineering completed the design and construction documents to the satisfaction of staff and the project was put out for bid.

CITY OF ONTARIO 444 SW 4<sup>TH</sup> STREET ONTARIO OREGON 97914

Bids were first opened on August 18, 2010 for the project, which consists of replacing the existing and dated HVAC (heating, ventilating and air conditioning) and lighting systems in the building with more energy efficient equivalents. Hobson Fabricating Corporation, Boise, was the apparent lowest responsive and responsible bidder at \$601,600.00, including Alternate Number 1 - refrigerant shut-off valves at each fan coil.

It was discovered during the course of the bid file preparation that a procedural error with the bidding process involving advertising requirements had occurred. An advertisement for the project was not published in a trade newspaper of general statewide circulation and, as a result, bids were rejected on the grounds that the solicitation process might have unnecessarily restricted competition for the contract. The project was placed back out to bid less than four weeks later.

Second round bids for the project were opened on October 5, 2010. Hobson Fabricating Corporation was once again the apparent lowest responsive and responsible bidder at \$546,600.00, including Alternate Number 1. Their bid was significantly lower the second time around due to more favorable pricing from suppliers. Hobson Fabricating is a reputable company in the Treasure Valley. The re-bid results were as follows:

CITY HALL HVAC AND LIGHTING UPGRADE RE-BID RESULTS			
COMPANY	BASE BID	ALT. NO. 1	BID TOTAL
MVCI, LLC (Ontario)	\$690,496.00	\$4,585.13	\$695,081.00
Andersen Construction Company (Boise)	\$565,000.00	\$5,000.00	\$570,000.00
RM Mechanical Inc. (Boise)	Non-responsive		
Hobson Fabricating Corp. (Boise)	\$542,000.00	\$4,600.00	\$546,600.00

Hobson Fabricating Corporation's bid came in under the engineer's estimate of \$620,000 and was well within the overall project budget of \$728,000 (which included design costs). Work under this contract would be funded in its entirety with federal grant funds from the Oregon Department of Energy awarding American Recovery and Reinvestment Act federal stimulus funds from the US Department of Energy.

The project targeted the two largest energy consuming systems in the facility: Lighting and HVAC. The lighting portion of the project, estimated at \$103,000, includes a complete retrofit of interior and exterior lights and fixtures. The HVAC portion of the project, estimated at \$625,000, would seek to completely dismantle and replace the existing variable air volume (VAV) system that was original to the building. The City would follow McKinstry's recommendation to design and install a variable refrigerant flow (VRF) system. The project could be expected to cause some disruption to the normal flow of business, but unlikely to cause any interruption of services or lengthy displacements of staff.

David Sullivan moved, seconded by John Gaskill, that the City Council award the City Hall HVAC and Lighting Upgrade Project to Hobson Fabricating Corporation, the lowest responsive and responsible bidder, in the amount of \$546,600.00 and authorize the City Manager to be signatory to an agreement with Hobson Fabricating Corporation. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

**Approval of the Bills**

Mayor Dominick recused himself from action on the bills as his company had a statement submitted for payment.

John Gaskill moved, seconded by Norm Crume, to adopt the bills as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-abstain. Motion carried 5/0/1/1.

**Liquor License Application-New Outlet (El Jalisciense Night Club)**

Councilor Sullivan recused himself from the action as he was an owner of a similar establishment.

Mark Alexander, Interim Police Chief, stated Juan Pablo Garcia, under the trade name of El Jalisciense Night Club, completed the New Outlet application process for Limited On-Premises Sales liquor license privileges through the Oregon Liquor Control Commission for his new business located at 490 East Lane Plaza, Suite #4. A criminal record process was completed on Mr. Garcia, owner/manager of El Jalisciense Night Club, in accordance with the City of Ontario's ordinance regulating a liquor license, and it was discovered that Mr. Garcia had a criminal history and lengthy driving history. This might not exclude him from obtaining a liquor license through the Oregon Liquor Control Commission, but the history was not disclosed in the application as required. Mr. Garcia's driving record and criminal history indicated a tendency to be non-compliant with the law.

Having completed a review of the application, and based upon the information discovered on the background check, the recommendation was to deny the application for New Outlet/Limited On-Premises Sales liquor license for El Jalisciense Night Club.

Following the study session last Thursday, Chief Alexander inquired from the OLCC what the repercussions would be for a denial. He was informed it would trigger an investigation by the Commission. That investigation would then be forwarded to the Commissioners of OLCC, where it would be reviewed for approval or denial. Another question that had been raised was if Mr. Garcia could reapply, and the answer was yes. Another question was if a spouse could apply, and OLCC stated yes, a spouse could apply, but Mr. Garcia would still be a licensable interest. Also, he had been asked why there was such a gap in processing the application. The Liquor Commission received the application on July 12, 2010, and the City received it on October 7, 2010. He was told the gap was due to OLCC staffing levels and the initial investigation also caused a delay in receiving it.

Juan Pablo Garcia, Applicant, admitted he had some problems with his driving, but he tried to keep it up. He had some rough times. He was a self-employed plumber, and he had tried to start stepping up. He understood that he had made mistakes in the past, and he was trying not to make more. He drove every day, and carried a CDL. He was just looking for an opportunity to have a better life.

Councilor Gaskill asked Mr. Garcia, as he completed the application, had he intentionally not filled in that there were some issues, was it an oversight, or was it a misunderstanding?

Mr. Garcia stated it might have been a misunderstanding. Part of the application he hadn't filled out, and every paper sent to OLCC, he had asked them to review them for him, and no one had mentioned it. He also provided a background on himself, so he didn't understand why...

Councilor Gaskill confirmed that Mr. Garcia had submitted information about his background to OLCC?

Mr. Garcia stated yes. English was not his first language, but he understood it. Also, he tried to keep his record pretty straight. He applied for a concealed weapon permit and he was granted that. He understood that he had made some mistakes with his driving before, but he tried to keep it up as best he could. It cost him big money for all those tickets.

Councilor Mills asked Mr. Garcia how long it had been since he had had any criminal history put on his record.

Mr. Garcia stated the only criminal on his record was his driving, for inattentive driving. Most of his life, he had been driving sports cars.

Councilor Mills stated her question was how long ago it had been since he had something criminal added.

Mr. Garcia stated he had been getting tickets off and on since he first got his driver's license.

Councilor Mills asked how long – from today – had it been since he received anything. Had it been two years, a year, six months?

Mr. Garcia stated he got his driver's license when he was sixteen... he didn't really understand the question.

Councilor Mills stated she wanted to know when the last time was when he had something issued against him on his criminal history.

Mr. Garcia stated it was two years ago, driving with a suspended license.

Councilor Mills asked how long ago he had applied for the license with OLCC.

Mr. Garcia replied it was in July, 2010.

Councilor Crume asked that after the application had been submitted to OLCC, was the information on driving and criminal background given to OLCC?

Mr. Garcia stated yes, he had provided the driving record himself when he turned the application in.

Councilor Crume asked if that was the reason it took so long to get it back to the City?

Mr. Garcia stated he did not know why it took so long.

Chief Alexander stated it was due to OLCC staffing, as well as the OLCC investigation. On the application, the question was "*in the past 12 yeas, have you been convicted of any*" ("any" being underlined and in bold) *violation, misdemeanor, or felony?*" Mr. Garcia had checked "no". OLCC received the information as stated, and it appeared they did a follow-up call with Mr. Garcia, and OLCC corrected it to "yes". Also, in response to Councilor Mills' question on recent criminal issues, criminal was correct, "any" violations was incorrect because there were recent ones.

Mayor Dominick asked Chief Alexander to restate his recommendation to the Council.

Chief Alexander stated his recommendation, based on the criminal history and driving record and the propensity to not comply with the law, was to deny the application.

Councilor Mills confirmed if the Council denied the application, it would go back to OLCC for review.

Chief Alexander stated yes, and it would automatically trigger an investigation by the local office, and that report would be forwarded to Portland where the Commissioners would meet and review the investigation results.

Councilor Gaskill stated the liquor license denial they had dealt with before had a direct relationship to the type of business that was being undertaken, and the possible implications of that person's past involvement with things in opening this type of business. The current issue, to him, did not seem to have any bearing other than Mr. Garcia had had some citations. He did not know how extensive Mr. Garcia's record was, but he obviously had done a good enough job of correcting his mistakes with his driving record to receive a CDL. He also had a good enough background to receive a concealed weapons permit. He just didn't see how the Council's denial of the application protected the City.

Mayor Dominick stated his different opinion was that he was not versed well enough in the laws of OLCC and in issuance of liquor licenses. He relied on staff to tell him when and if an application needed to be referred back to OLCC for their expertise on it. He believed they needed to follow staff's recommendation.

Councilor Crume stated based on the information they had been provided by the Chief, their job as a Council was to protect the community. Referring it back to OLCC was prudent because they were the professionals.

Councilor Mills questioned why OLCC would send the application to the City, and not deny it based on the information.

Chief Alexander stated it was because they did not deny or approve at that level. It was handled by a local office, then sent to the municipality.

Councilor Crume verified if the Council denied the application, it would go to the state?

Chief Alexander stated it would return to the local office first, who would conduct an investigation. That investigation would be submitted to the Portland office, where the Commissioners there would review the findings of the investigation and make a final ruling.

Mr. Garcia stated he had nothing against Chief Alexander for doing his job, but he was simply trying to make a better life. He never denied that he had problems with his driver's license. He didn't understand the runaround.

Mayor Dominick stated he understood Mr. Garcia's concern, but the ability for an establishment to serve beer or wine and then to later apply for a hard liquor license, was a serious license for the City, and it needed to be looked at by professionals. When there were questions on an application, he preferred those who knew more about them, to review it.

Norm Crume moved, seconded by Susann Mills, to deny the application for New Outlet/Limited On-Premises Sales liquor license for El Jalisiense Night Club. Roll call vote: Crume-yes; Fugate-yes; Gaskill-no; Mills-yes; Sullivan-abstain; Verini-out; Dominick-yes. Motion carried 4/1/1/1.

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

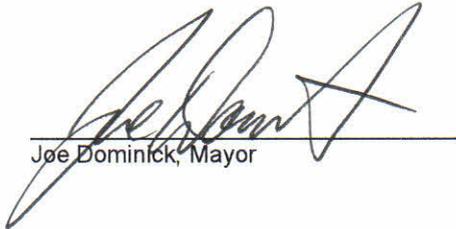
- Chief Alexander stated he was working with the Veteran's on the upcoming parade.
- Councilor Crume stated for anyone needing graffiti removal, please complete the waiver to get it done. Because the weather was getting cooler, he would not be able to remove graffiti much longer.

- Councilor Sullivan stated SREDA was in the process of selecting an Executive Director. They had gone through the interviews, and they were down to three finalists. They should know the outcome within the next two weeks.
- Councilor Fugate stated she had distributed a hand-out of the Idaho Recruitment State Law that Chief Alexander had provided her. She wanted Council to study it over the next week, and to have a discussion regarding the laws. Hopefully they could develop something like it.
- Tori Barnett stated ballots had gone out for the upcoming 2010 election, and she encouraged everyone to exercise their right to vote.
- Mayor Dominick thanked Larry Meyer and the Argus staff for the excellent editorial on Sunday, which reflected the Ontario City Council's view of the destination resort issue. It was a well-written piece.
- Mayor Dominick stated he had been informed by the Fire Chief that October was "Check Your Smoke Detector" month, so change batteries in your detectors every October. If anyone needed assistance, or could not afford it, contact the Fire Department. Also, the Department was doing some door-to-door checks, and they would be in full uniform. If someone stated they were representing the department and were not in uniform, it was probably fraudulent.
- Mayor Dominick stated thanked Carol Olsen, Connect Oregon, for visiting the Ontario Airport, to see the \$4.5M project existed and was very much needed. Finalizing was being done, for construction next spring.
- Mayor Dominick reminded the Council they had moved the City Manager's evaluation to the study session on the 28<sup>th</sup>.

**ADJOURN**

Norm Crume moved, seconded by David Sullivan, that the meeting be adjourned. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

ATTEST:



Joe Dominick, Mayor



Tori Barnett, MMC, City Recorder