

**COUNCIL MEETING MINUTES
November 1, 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, David Sullivan, and Ronald Verini.

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

Ron Verini led everyone in the Pledge of Allegiance.

AGENDA

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

CONSENT AGENDA

Ron Verini moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 10/18/2010; and Item B: 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.

PRESENTATION

State Representative Cliff Bentz was in attendance, to provide the Council with an update on the legislative happenings. Representative Bentz stated he would be being appointed to new committees in the next year, and valued the input from the Council on how he could best serve the community. He reminded them to let him know what the Council wanted to see happen for the City of Ontario. One issue Representative Bentz brought to the Council's attention was the possibility that the state was looking to eliminate the deductions on taxes.

PUBLIC COMMENT

Dan Cummings, CK3, LLC, read a statement into the record:

You know, it is not often that the City Council and City staff get told that they're doing a good job and more often than not, you hear how tough it is to get things done in a timely manner, so, on behalf of CK3, LLC Engineering and Land Surveying; Boyd Yee, Wingers property owner and developer; the potential out of town developer of the new proposed site; Ray Frechette, Grubb & Ellis Idaho Commercial Group of Boise, and Dennis Kelly and Steve Yates of NAI Pinnacle Commercial Real Estate of Boise, who are representing the potential developer, they all would very much like to personally thank the City Council and City staff for stepping up and helping out by getting the street vacation of SE 13th Street on the agenda and the process started. We would further like to personally single out Chuck Mickelson, Dan Shepard and Tori Barnett for stepping up to the plate and getting all the information out that was required to have the public hearing on this action on the November 15th Council agenda.

The public needs to know that we have a great staff that is working hard at helping out and promoting development in our town, and that we have a Council that is also dedicated to promoting development in our community. A big kudos to all of you. Thank You

NEW BUSINESS

Bid Award: Water Treatment Plant Lighting Upgrade

Yorick de Tassigny, Facilities Manager, stated in October 2008, Energy Industries performed an evaluation of lighting efficiency at the Water Treatment Plant and submitted a report that included a designed retrofit.

In 2009, staff applied for a State Energy Program (SEP) grant through the Oregon Department of Energy (ODOE) awarding American Recovery and Reinvestment Act (ARRA) federal stimulus funds from the US Department of Energy and was successful in securing an amount equivalent to half of the project cost, or \$17,500. Idaho Power and State of Oregon incentives, which were projected at nearly \$17,500, would represent the other half of the estimated project cost of \$35,000. It was important to note that the actual incentive amounts received might deviate from this projection as the basis for awarding these funds might have been adjusted. Any amount not reimbursed by the grant or the incentives would be paid with water fund expenditures reallocated as project match for the project, done previously through Resolution #2009-132, a resolution acknowledging the receipt and authorizing the expenditure of grant funds from the Oregon Department of Energy, and further authorizing a reallocation of water fund expenditures as project match for the Water Treatment Plant Lighting Upgrade project.

In August 2009, staff submitted a Business Energy Tax Credit (BETC) Application for Preliminary Certification for Lighting Projects to ODOE. The BETC pass-through option let a project owner transfer a tax credit to a pass-through partner in return for a lump-sum cash payment upon completion of the project. This would allow local governments without tax liability to use the BETC by transferring their tax credit for an eligible project to a partner with a tax liability. ODOE's review of the application was still pending.

Bids were first opened on September 2, 2010 for the Water Treatment Plant Lighting Upgrade Project. The Project involved retrofitting and replacing existing light fixtures in buildings throughout the plant with more efficient equivalents. This work focused on upgrading the existing lighting system to maximize energy use and to lower maintenance costs without actually reducing the amount of fixtures or lowering light levels.

The three bids received for the project were not in substantial compliance with the solicitation document and all prescribed public procurement procedures, and were therefore rejected. The project was placed back out to bid approximately six weeks later. Second round bids for the project were opened on October 19, 2010. Anderson and Wood Construction, of Meridian, was the apparent lowest responsive and responsible bidder at \$34,649.00. The re-bid results were as follows:

WATER TREATMENT PLANT LIGHTING UPGRADE BID RESULTS	
COMPANY	BID AMOUNT
Energy Industries (Spokane)	\$55,506.20
Fruitland Electric (Fruitland)	\$68,622.00
Anderson & Wood Construction (Meridian)	\$34,649.00
Power Plus Inc. (Boise)	Non-responsive
Tri State Electric (Boise)	\$39,245.00

Work under this contract would be funded in part 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. Anderson and Wood Construction's bid in the amount of \$34,649 is within the project budget of \$35,000.

It was noted that while the Idaho Power and State of Oregon incentives, estimated at approximately \$17,500, would represent the other half of the estimated project cost of \$35,000, due to budgetary constraints by the State of Oregon, and the possibility of the State being short of funds, it was possible that the \$17,500 incentives would not be realized, and the City would have to absorb that cost.

Charlotte Fugate moved, seconded by Ron Verini, that the City Council award the Water Treatment Plant Lighting Upgrade Project to Anderson and Wood Construction, the lowest responsive and responsible bidder, in the amount of \$34,649, and authorize the City Manager to be signatory to an agreement with Anderson and Wood Construction. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2010-151 and Contract Award: Aquatic Center Renovation Design Phase #2

Yorick de Tassigny, Facilities Manager, stated in August 2010, the Budget Committee consented to move forward with a second design phase of the Aquatic Center remodel with a scope that sought to upgrade the facility without changing the existing footprint. This phase would provide the City with construction drawings and bid specifications that would render the project ready for implementation. In October 2009, Council approved Resolution #2009-129, authorizing the City Manager to enter into an agreement between the City of Ontario, Oregon and Hutchison-Smith Architects of Boise, Idaho for professional architectural services for the Ontario Aquatic Center Renovation project (Phase No. 1).

The cost for the design work was initially quoted at \$72,834 by HSA prior to the committee's meeting and, consequently, was the amount approved for the work. Since that time, however, the architectural firm and their consultants determined that the quoted fee was not reasonable for the scope of the design. HAS was now asking for a *guaranteed maximum price* of \$100,330 for completing the work.

There were still sufficient funds in the current budget to cover the revised cost of the design work provided that allocations for various maintenance and repair projects were not expended. The funds were identified in the table below:

Project #	Description	Budgeted	Expended	Variance
AQU-1	Paint West Wing Exterior	\$3,500	\$0	\$3,500
AQU-2	Interior Metal Door Replacement	\$3,500	\$0	\$3,500
AQU-3	Lap Pool Drain Cover	\$1,500	\$0	\$1,500
AQU-47	Dressing Room Flooring	\$32,250	\$0	\$32,250
AQU-49	Pool Painting	\$12,100	\$0	\$12,100
AQU-50	Roof Repair Facility Design/Bid	\$75,000	\$20,068	\$54,932
Totals:		\$127,850	\$20,068	\$107,782

Being aware that there would be Council questions regarding the newly quoted price of \$100,300, Hutchinson-Smith agreed to honor their quote of \$72,834, including a not to exceed reimbursable expense budget of \$3,000, which would cover mileage, postage, copying costs, etc.

In June of 2009, staff issued a Request for Qualifications (RFQ) with the objective of formulating a list of qualified consultants for the design phase of the Aquatic Center Renovation project. The process yielded a total of three responses from firms deemed highly capable of meeting staff's expectations, and all were invited to respond to a Request for Proposal (RFP) released in July of that year. Hutchison Smith Architects (HSA) emerged as the first choice of the selection committee based on Don Hutchison's roofing expertise and the quality of the team of consultants assembled for the project. The Ontario City Council, in conjunction with the Ontario Budget Committee, approved Capital Improvement Project AQU-50 OAC Roof Repair Facility Design/Bid which allocates \$75,000 for the design of the project.

In October of 2009, Council authorized staff to execute a contract with HSA in the amount of \$18,175 for the first design phase of the project: A master planning effort meant to provide direction for moving forward with the renovation of the Aquatic Center. This phase resulted in a set of documents consisting of drawings (floor plan, site plan, building sections and elevations), a written description of deficiencies and cost estimates to solve those deficiencies. Other innovative concepts were developed to improve the overall appeal of the facility, including additions to the north and west sides of the building and a spray park to the east.

HSA presented their Master Plan for the future of Ontario Aquatic Center to the Budget Committee on August 4, 2010, and the project was further discussed at a subsequent meeting on August 24th. At the conclusion of the discussion, committee members reached a general consensus to move forward with the next phase of the design work with the intent of ending up with an "off-the-shelf" project ready for implementation. The focus of the scope was narrowed down to the development of construction drawings and bid specifications for the remodel of the facility without modifying the existing floor plan. The West Wing and Safe Waiting additions, as well as the spray park, were eliminated from this phase. The committee opted not to move forward with an array of budgeted facility maintenance and repair projects to cover the costs of design Phase No. 2. However, the Council could choose not to award the Ontario Aquatic Center Renovation design Phase No. 2 to HSA and either abandon the project, or start over by seeking the services of another design firm.

Expenditures for design Phase No. 2 was the guaranteed maximum price of \$72,834. Staff recommended using existing funds in the Aquatic Center budget allocated to this project and others. However, that meant that those budgeted projects will not be completed in 2010-11 and funds might again be requested thru the 2011-13 Budget. Question raised on whether this was one project, or if it would be Phase 1 and Phase 2.

Staff recommends the Council first adopt Resolution 2010-151, reallocating expenditures within the General Fund Aquatic Department, and then award the Aquatic Center Renovation Design Phase No. 2 to Hutchison-Smith Architects for a maximum guaranteed price of \$72,834.

Discussion was held by the Council asking questions about the additional cost to add the safe waiting area, and why the cost from Hutchinson-Smith was high. It did not match the costs listed in the Master Plan.

Neither Mr. de Tassigny, nor Mr. Lawrence, were able to provide an answer, only that the numbers before the Council were the newly quoted prices.

Council disagreed with the new prices, and wanted to keep to the bare necessities for the project.

Charlotte Fugate moved, seconded by *Ron Verini*, that the City Council award the Aquatic Center Renovation Design Phase No. 2 to Hutchison-Smith Architect for the maximum guaranteed price of \$72,834, and authorize the City Manager to be signatory to an agreement with Hutchison-Smith Architects. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-no; Verini-yes; Dominick-yes. Motion carried 6/1/0.

Ordinance #2652-2010: Amend OMC, Decriminalizing the Code (Various Sections) (1st Reading)

Larry Sullivan, City Attorney, stated the proposed ordinance was basically a housekeeping measure intended to remove all references to misdemeanor penalties in the Ontario City Code, and to replace them with references to violations instead.

Chapter 4 of Title 1 of the City Code set forth the general penalty for violation of City Code provisions in which the penalty was not otherwise specified. On December 4, 2006, the Council passed Ordinance 2587-2006, which removed the criminal penalty from Section 1-4-1B by repealing that Code section. The intended effect of repealing that Code section was to decriminalize Code offenses by making them subject only to civil fines. However, numerous City Code sections continued to describe various offenses as misdemeanors. Misdemeanors were crimes under Oregon law for which an offender could be sentenced to jail for up to one year. The Council recently removed one of those references on September 20, 2010, when it passed Ordinance #2649-2010 decriminalizing Code Section 7-4-8 pertaining to graffiti.

The intended effect of proposed Ordinance #2652-2010 was to change any remaining Code penalty references from misdemeanors to violations, which were punishable only by fines under Code Section 1-4-1. Most of the existing references to misdemeanors were in error, because they continued to define the penalty only by reference to the General Penalty in Chapter 4 of Title 1, which no longer had a criminal penalty. In order to avoid confusion and potential legal challenges to these Code sections, all such misdemeanor references were being removed by Ordinance #2652-2010.

The proposed change would not prevent the Ontario police from charging many offenders with crimes. A number of City Code offenses were also crimes under the Oregon Criminal Code, and the police would continue to have the ability to charge those as crimes through Ontario Justice Court or through the Malheur County Circuit Court, with the approval of the Malheur County District Attorney.

Susann Mills moved, seconded by John Gaskill, that the Mayor and City Council approve Ordinance #2652-2010, AN ORDINANCE DECRIMINALIZING THE ONTARIO CITY CODE, 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.

City Manager Evaluation

Joe Dominick, Mayor, stated the Addendum #1, once duly signed, would incorporate the Council's action into the Employment Contract Agreement between the City of Ontario and Henry Lawrence. On October 28, 2010, the Council held an Executive Session under ORS 192.660(2)(i) to conduct the annual City Manager evaluation pursuant to Sections 5 and 7 of the contract between the City of Ontario and the City Manager.

Charlotte Fugate moved, seconded by Norm Crume, that the City Council adopt Addendum #1 to the City Manager's Contract, stipulating a 2% increase in annual salary, retroactive to June 2009; with an additional 2% retroactive increase beginning date June, 2010. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

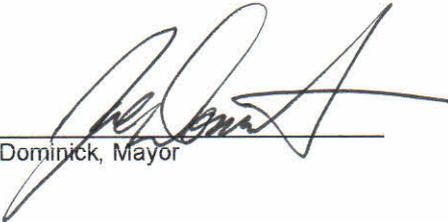
CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Ron Verini reminded everyone of the Veteran's Parade on Saturday, November 6, 2010, beginning at 1pm. And, from 10am-2pm, the Veteran's Van would be in the parking lot of the Veteran's Advocates of Ore-Ida. On November 7th, from 8-10am, there would be a Warhawk Museum pancake breakfast. On November 9th, beginning at 7pm, there would be a Veteran's concert at Nyssa High School. On November 10th, from 8am-1pm, a living history day in Vale. Finally, on November 12th, there would be a retirement party for Bill Thompson from 2-4pm.

ADJOURN

John Gaskill 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