

**COUNCIL MEETING MINUTES
December 20, 2010**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, December 20, 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, and camera operator Delaney Kee.

Ron Verini led everyone in the Pledge of Allegiance.

AGENDA

John Gaskill moved, seconded by Susann Mills, 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 Charlotte Fugate, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 12/06/2010; Item B: Resolution #2010-159: Acknowledge Receipt of 2010-11 ODOT Grant Funds in General Fund and Appropriate Expenditures for Traffic Safety Coordinator; 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.

NEW BUSINESS

City Manager Employment Agreement Amendment #1

Larry Sullivan, City Attorney, stated the proposed amendment would delete a provision of the employment contract with Henry Lawrence requiring the City Council to approve the hiring of department heads. On June 2, 2008, the Council approved Resolution No. 2008-127, authorizing the Mayor to sign the City Manager employment contract with Henry Lawrence, effective May 27, 2008. On November 5, 2010, the Council approved contract Addendum#1 with a retroactive raise for Mr. Lawrence.

An amendment to the City Manager's employment contract was necessary to resolve a conflict between Section 2.2(a) of the contract and two provisions of the Ontario City Charter, specifically Sections 4.3(f) and 4.5. Section 4.3 of the Charter designates the City Manager as the Chief Administrative Officer of the City government. Section 4.3(f) provides him the authority to "[a]ppoint and remove all appointive officers and employees except as otherwise provided by this Charter."

Section 4.5 of the City Charter provides as follows:

No member of the Council shall directly or indirectly, by suggestion or otherwise, attempt to coerce the city manager in the making of any appointment or removal of any officer or employee or in the purchase of supplies; or attempt to exact any promise relative to any appointment from any candidate for manager; or discuss directly or indirectly with him the matter of specific appointments to any City office or employment. Nothing in this section shall be construed, however, as prohibiting the Council while in open session from fully and freely discussing with or suggesting to the city manager anything pertaining to City affairs or the interests of the City.

When Henry Lawrence was hired as City Manager, the terms of his employment were set out in his contract with the City, which included the following Section 2.2(a):

2.2 Notwithstanding Section 2.1 of this Agreement, Manager shall exercise the following authority only with the approval of the City Council:

(a) To hire any department head.

This contract provision imposed two restrictions on the City Manager: first, it obligated him to submit his department head hiring decisions to the Council before he made them; and second, it prevented him from acting on those hiring decisions without the Council's approval.

Reading Charter Sections 4.3(f) and 4.5 together, it was impossible to reconcile the two Sections with the second restriction imposed by Section 2.2(a) that prevented the City Manager from hiring a department head without the Council's approval.

The Ontario City Charter defined the authority of the City Council. The case of *Harder v. City of Springfield*, 192 Or 676, 683, 236 P2d 432 (1951) stated:

A city charter constitutes the organic law of a municipality. It must be first consulted to determine the rights, powers and privileges and the limitations of the authority of the city's legislative body. The municipality's action must find its support therein and everything to the contrary must give way to the mandate of that body of the city's organic law, unless the charter itself is in conflict with the constitution of the state.

Section 4.3 vested the City Manager, not the Council, with the authority to hire employees. The Council could not enter into a contract with the City Manager that expanded the authority of the Council beyond that authorized by the City Charter. The Council could not prevent the City Manager from hiring a department head without obtaining the Council's consent first. Inasmuch as Section 2.2(a) of the contract imposed a restriction that was contrary to Section 4.3(f) of the Charter, it was unenforceable and should be deleted. The proposed amendment to Henry Lawrence's employment contract deleted Section 2.2(a) from the contract.

The proposed change did not prevent the Council, acting in open session, from making suggestions to the City Manager about City affairs or matters of City interest. The Council's right to make such suggestions was specifically authorized by the last sentence of Charter Section 4.5, which was worded broadly enough to include suggestions about hiring department heads. However, those suggestions might not rise to the level of "attempted coercion" as prohibited by the first sentence of Charter Section 4.5. In addition, all such suggestions must be made in open session, not in executive session. See the case of *Still v. Benton*, 251 Or 463, 445 P2d 492 (1968), in which the Oregon supreme court allowed a fired Police Chief to recover a personal judgment against the Mayor for ordering the City Manager to fire the Police Chief during an executive session.

Charlotte Fugate moved, seconded by John Gaskill, that the Mayor and City Council approve Amendment No. 1 to the Ontario City Manager Employment Agreement, and authorize the Mayor to sign it on behalf of the City. Roll call vote: Crume: yes; Fugate: yes; Gaskill: yes; Mills: yes; Sullivan: yes; Verini: yes; Dominick: yes. Motion carried 7/0/0.

Ontario/Fruitland Building Inspection Agreement Addendum #1

Henry Lawrence, City Manager, stated the City of Ontario, Oregon and City of Fruitland, Idaho entered into an Intergovernmental Agreement in October 2005, wherein Fruitland agreed to assist Ontario in administering the Ontario building and mechanical permit inspection program. In exchange for 50% of the applicable inspection and plan review fees, Fruitland provided certified inspection personnel, a vehicle and related expenses.

The parties now proposed to extend the contract for an additional five years, with one minor revision. Paragraph 4 of the old agreement provided for a guaranteed minimum payment of \$20,000 from Ontario. The new agreement eliminated this minimum charge provision. Also, the term of contract would go to five years, using a calendar year, so it would expire June 30, 2015, with a 180 notice if either side desired to close the contract.

Ron Verini moved, seconded by David Sullivan, that the City Council approve Contract Addendum #1 of the Fruitland/Ontario Building Inspection Agreement, and authorize the Mayor and City Manager to execute the Agreement on behalf of the City of Ontario. 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 stated David Reukauf would be returning from Afghanistan, and his mother was asking that the community welcome him back on Thursday, December 23, 2010, at 9:40 a.m. he was coming in on Delta Airlines in Boise. People could carpool or meet at the airport. They would have US flags for everyone who attended, and to show that his service was appreciated. Interested persons could contact the Veteran's Advocate at 889-1978.

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- Susann Mills reminded everyone of the open house/ribbon cutting at the Fire Station Substation on Thursday, December 30, at 10:30 a.m.
- Mayor wished everyone a Merry Christmas!

ADJOURN

Ron Verini moved, seconded by John Gaskill, 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.



Joe Dominick, Mayor

ATTEST:



Tori Barnett, MMC, City Recorder