

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON

November 1, 2010, 7:00 p.m., M.T.

- 1) **Call to order**
A) Roll Call: Norm Crume ___ Charlotte Fugate ___ John Gaskill ___
Susann Mills ___ David Sullivan ___ Ron Verini ___
Joe Dominick ___

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, October 27, 2010, and a study session was held on Thursday, October 28, 2010. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) **Motion to adopt the entire agenda**

4) **Consent Agenda: Motion Action Approving Consent Agenda Items**

- A) Approval of Minutes of Regular Meeting of 10/18/10 1-5
B) Approval of the Bills

5) **Presentation: Legislative Update - State Representative Cliff Bentz**

- 6) **Public Comments:** Citizens may address the Council on items not on the Agenda. Council may not be able to provide an immediate answer or response, but will direct staff to follow up within three days on any question raised. Out of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

7) **New Business**

- A) Bid Award: Water Treatment Plant Lighting Upgrade 6-8
B) Resolution 2010-151 and Contract Award: Aquatic Center Renovation Design Phase #2 ... 9-15
C) Ordinance #2652-2010: Decriminalizing the Ontario Municipal Code (1st Reading) 16-20
D) ~~Downtown Project: Adopt A Pot (Pulled 10/28/10)~~ ~~21-28~~
E) City Manager Evaluation (Action Monday following Thursday Executive Session)
F) 13th Street Vacation (Hand-Out)

8) **Topics for Discussion:**

- A) Nadine Drive/Alameda Drive: Proposed LID Update

9) **Correspondence, Comments and Ex-Officio Reports**

10) **Executive Session: Thursday**

- A) ORS 192.660(2)(i)

11) **Adjourn**

MISSION STATEMENT: TO PROVIDE A SAFE, HEALTHFUL AND SOUND ECONOMIC ENVIRONMENT, PROGRESSIVELY ENHANCING OUR QUALITY OF LIFE

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**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 4th 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 4TH 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 years, 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 Jenson, 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 28th.

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

AGENDA REPORT
November 1, 2010

TO: Mayor and City Council

FROM: Yorick de Tassigny, Facilities Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: BID AWARD: WATER TREATMENT PLANT LIGHTING UPGRADE PROJECT

DATE: October 25, 2010

SUMMARY:

Attached is the following document:

- Resolution #2009-132

Bids were first opened on September 2, 2010 for the Water Treatment Plant Lighting Upgrade Project. The Project involves retrofitting and replacing existing light fixtures in buildings throughout the plant with more efficient equivalents. This work focuses on upgrading the existing lighting system to maximize energy use and 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 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 will 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.

PREVIOUS COUNCIL ACTION:

November 16, 2009 Council approved Resolution #2009-132, acknowledging receipt and authorizing 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.

BACKGROUND:

In October of 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 are projected at nearly \$17,500, would represent the other half of the estimated project cost of \$35,000. It is important to note that the actual incentive amounts received may deviate from this projection as the basis for awarding these funds may have been adjusted. Any amount not reimbursed by the grant or the incentives will be paid with water fund expenditures reallocated as project match for the project (Resolution #2009-132).

In August of 2009, staff submitted a Business Energy Tax Credit (BETC) Application for Preliminary Certification for Lighting Projects to ODOE. The BETC Pass-through Option lets 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 allows 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 is still pending.

FINANCIAL IMPLICATIONS:

Anderson and Wood Construction's bid in the amount of \$34,649 is within the project budget of \$35,000.

RECOMMENDATION:

Staff recommends the Council award the Water Treatment Plant Lighting Upgrade Project to Anderson and Wood Construction.

PROPOSED MOTION:

I move 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.

RESOLUTION 2009-132

A RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING 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

WHEREAS, the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenues and expenditures; and

WHEREAS, the City applied for and received a grant from the Oregon Department of Energy to complete a lighting upgrade at the Water Treatment Plant in the amount of \$17,500, and the City's required grant match for the project is \$17,500; and

WHEREAS, the City is eligible for rebates and tax credits upon project completion that will replenish the Water Fund; however, it is unclear what fiscal year revenues will be received; and

WHEREAS, the City Council desires to accept the grant award and formally modify the 2009-2011 Water and Grant Fund budgets by identifying the revenues and total project expenses, including match to be reallocated from Water Fund Contingency, to complete the project.

NOW THEREFORE, BE IT RESOLVED by the Ontario City Council, to approve the following adjustments to the 2009-2011 Biennial budget:

Account Number	Account Name	Adopted 09-11 Budget	Proposed Change	Revised 11 Budget	09-
WATER FUND					
EXPENSES					
105-160-829000	Transfer to Grant Fund	\$ 0	\$ 17,500	\$ 17,500	
105-160-871000	Operating Contingency	\$ 1,171,400	(\$ 17,500)	\$ 1,153,900	
GRANT FUND					
REVENUES					
010-000-456137	ODE Lighting Project Grant Rev	\$ 0	\$ 17,500	\$ 17,500	
010-000-458700	Transfer from Water Fund	\$ 0	\$ 17,500	\$ 17,500	
EXPENSES					
010-038-714137	ODE Lighting Project Grant Exp	\$ 0	\$ 35,000	\$ 35,000	

EFFECTIVE DATE: Effective immediately upon passage.

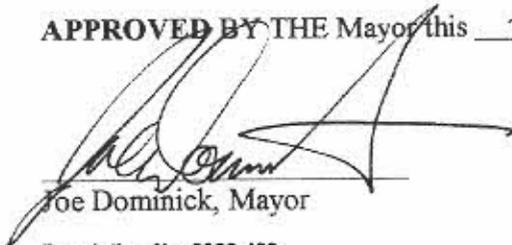
PASSED AND ADOPTED by the Ontario City Council, this 16 day of November 2009, by the following vote:

Ayes: Fugate, Sullivan, Mills, Dominick, Crume

Nays: None

Absent: Gaskill, Verini

APPROVED BY THE Mayor this 16 day of November 2009.


Joe Dominick, Mayor

ATTEST:


Tori Barnett, City Recorder

AGENDA REPORT
November 1, 2010

TO: Mayor and City Council

FROM: Yorick de Tassigny, Facilities Manager

THROUGH: Henry Lawrence, City Manager

**SUBJECT: CONTRACT AWARD: AQUATIC CENTER RENOVATION DESIGN PHASE NO. 2
RESOLUTION 2010-151, A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURE
BUDGETS WITHIN THE GENERAL FUND AQUATIC DEPARTMENT TO FOREGO MINOR FACILITY
IMPROVEMENTS AND COMPLETE THE DESIGN PROJECT FOR FACILITY IMPROVEMENTS**

DATE: October 25, 2010

SUMMARY:

Attached are the following documents:

- Hutchison-Smith Architects Fee Proposal
- Resolution 2010-151, Adjusting the Aquatic Budget for the Project

In August of 2010, the Budget Committee consented to moving forward with a second design phase of the aquatic center remodel with a scope that seeks to upgrade the facility without changing the existing footprint. This phase will provide the City with construction drawings and bid specifications that will render the project ready for implementation.

The cost for the design work was initially quoted at \$72,834 by HSA prior to the committee's meeting and, consequently, this is the amount that was approved for the work. Since that time, however, the architectural firm and their consultants have determined that this fee is not reasonable for the scope of the design. HSA is now asking for a *guaranteed maximum price* of \$100,330 for completing the work. Don Hutchison will be in attendance at the Thursday, October 28 Council Work Session to explain further.

There are 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 are not expended. These funds are 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

PREVIOUS COUNCIL ACTION:

October 19, 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).

June 2010 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.

BACKGROUND:

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.

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 scheduled on the 24th of the same month. 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.

ALTERNATIVE:

The Council could choose not to award the Ontario Aquatic Center Renovation design phase no. 2 to HSA and either abandon the project at this time or start over by seeking the services of another design firm.

FINANCIAL IMPLICATIONS:

Expenditures for design phase no. 2 is the guaranteed maximum price of \$100,330. Staff recommends using existing funds in the Aquatic Center budget allocated to this project and others. This does mean, however, that those budgeted projects will not be completed in 2010-11 and funds may again be requested thru the 2011-13 Budget.

RECOMMENDATION:

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 \$100,330.

PROPOSED MOTIONS:

First:

I move the City Council adopt Resolution 2010-151, A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURE BUDGETS WITHIN THE GENERAL FUND AQUATIC DEPARTMENT TO FOREGO MINOR BUILDING MAINTENANCE PROJECTS AND COMPLETE THE DESIGN PROJECT FOR OVERALL FACILITY IMPROVEMENTS.

Second:

I move the City Council award the Aquatic Center Renovation Design Phase No. 2 to Hutchison-Smith Architect for the maximum guaranteed price of \$100,330, and authorize the City Manager to be signatory to an agreement with Hutchison-Smith Architects.

RESOLUTION # 2010-151

A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDURE BUDGETS WITHIN THE GENERAL FUND AQUATIC DEPARTMENT TO FOREGO MINOR FACILITY IMPROVEMENTS AND COMPLETE THE DESIGN PROJECT FOR FACILITY IMPROVEMENTS

WHEREAS, the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenues and expenditures; and

WHEREAS, a the Budget Committee met with the project architect and reached a consensus to have staff continue with the project design work with a few exclusions; and

WHEREAS, the 2009-2011 budget allotted funds of \$75,000 for project design and another \$52,850 for Facility Maintenance Projects; and

WHEREAS, the project architect has provided a cost of \$72,834 to complete the design without construction management to get to a document that can be used to budget and request construction bids in the future; and

WHEREAS, the City Council desires to formally modify the 2009-2011 General Fund budget by reallocating expenditures within the Aquatic Department to complete the aquatic facility improvement design project.

NOW THEREFORE, BE IT RESOLVED by the Ontario City Council to approve the following adjustments to the fiscal year 2009-2011 Budget:

Account Number	Account Name	Adopted FY 09-11 Budget	Proposed Change	Revised FY 09-11 Budget
GENERAL FUND				
AQUATIC DEPARTMENT EXPENSE				
001-008-610600	BUILDING MAINT AND REPAIR	56,400	(22,000)	34,400
001-008-714120	SITE IMPROVEMENTS	75,000	22,000	97,000

Effective Date: Upon adoption

Passed and adopted by the Ontario City Council this ____ day of _____ 2010.

Ayes:

Nays:

Absent:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

Project: Ontario Aquatic Center Renovations

Architectural Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Architect	32 @ \$110 =	\$3,520
2 Project Architect	74 @ \$90 =	\$6,660
3 Project Manager	73 @ \$80 =	\$5,840
4 CADD	72 @ \$65 =	\$4,680
5 Administrative	4 @ \$55 =	\$220

TOTAL = \$20,920

50% Architectural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	33 @ \$110 =	\$3,630
2 Project Architect	86 @ \$90 =	\$7,740
3 Project Manager	86 @ \$80 =	\$6,880
4 CADD	86 @ \$65 =	\$5,590
5 Administrative	10 @ \$55 =	\$550

TOTAL = \$24,390

100% Architectural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	33 @ \$110 =	\$3,630
2 Project Architect	86 @ \$90 =	\$7,740
3 Project Manager	86 @ \$80 =	\$6,880
4 CADD	86 @ \$65 =	\$5,590
5 Administrative	10 @ \$55 =	\$550

TOTAL = \$24,390

Architectural Design Documents = \$69,700

Mechanical Field Verification & Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	24 @ \$120 =	\$2,880
2 Project Manager	0 @ \$95 =	\$0
3 Draftsman	56 @ \$70 =	\$3,920

TOTAL = \$6,800

50% Mechanical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	4 @ \$120 =	\$480
2 Project Manager	40 @ \$95 =	\$3,800
3 Draftsman	40 @ \$70 =	\$2,800

TOTAL = \$7,080

100% Mechanical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	8 @ \$120 =	\$960
2 Project Manager	40 @ \$95 =	\$3,800
3 Draftsman	37 @ \$70 =	\$2,590

TOTAL = \$7,350

Mechanical Design Documents = \$21,230

Electrical Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	3 @ \$100 =	\$300
2 Project Engineer	12 @ \$75 =	\$900
4 CADD	12 @ \$55 =	\$660
5 Administrative	1 @ \$50 =	\$50

TOTAL = \$1,910

50% Electrical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	3-5 @ \$100 =	\$350
2 Project Engineer	14 @ \$75 =	\$1,050
4 CADD	14 @ \$55 =	\$770
5 Administrative	1.5 @ \$50 =	\$75

TOTAL = \$2,245

100% Electrical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	3-5 @ \$100 =	\$350
2 Project Engineer	14 @ \$75 =	\$1,050
4 CADD	14 @ \$55 =	\$770
5 Administrative	1.5 @ \$50 =	\$75

TOTAL = \$2,245

Electrical Design Documents: \$6,400

Structural Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Architect	1 @ \$120 =	\$120
2 Project Engineer	3 @ \$90 =	\$270
3 EIT	4.25 @ \$80 =	\$340
4 CADD	2 @ \$65 =	\$130
5 Administrative	1 @ \$50 =	\$50

TOTAL = \$910

50% Structural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$120 =	\$240
2 Project Engineer	3 @ \$90 =	\$270
3 EIT	3 @ \$80 =	\$240
4 CADD	3 @ \$65 =	\$195
5 Administrative	2 @ \$50 =	\$100

TOTAL = \$1,045

100% Structural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$120 =	\$240
2 Project Engineer	3 @ \$90 =	\$270
3 EIT	3 @ \$80 =	\$240
4 CADD	3 @ \$65 =	\$195
5 Administrative	2 @ \$50 =	\$100

TOTAL = \$1,045

Structural Design Documents: \$3,000

Total Design Fee = \$100,330

Project: Ontario Aquatic Center - Safe Waiting Addition

Architectural Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Architect	3 @ \$110 =	\$330
2 Project Architect	5 @ \$90 =	\$450
3 Project Manager	0 @ \$80 =	\$0
4 CADD	1 @ \$65 =	\$65
5 Administrative	1 @ \$55 =	\$55

TOTAL = \$900

50% Architectural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$110 =	\$220
2 Project Architect	5 @ \$90 =	\$450
3 Project Manager	0 @ \$80 =	\$0
4 CADD	3 @ \$65 =	\$195
5 Administrative	2 @ \$55 =	\$110

TOTAL = \$975

100% Architectural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$110 =	\$220
2 Project Architect	5 @ \$90 =	\$450
3 Project Manager	0 @ \$80 =	\$0
4 CADD	3 @ \$65 =	\$195
5 Administrative	2 @ \$55 =	\$110

TOTAL = \$975

Architectural Design Documents = \$2850

Mechanical Field Verification & Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0 @ \$120 =	\$0
2 Project Manager	1 @ \$95 =	\$95
3 Draftsman	1 @ \$70 =	\$70

TOTAL = \$165

50% Mechanical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0.5 @ \$120 =	\$60
2 Project Manager	1 @ \$95 =	\$95
3 Draftsman	1 @ \$70 =	\$70

TOTAL = \$225

Mechanical Design Documents = \$615

Electrical Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0 @ \$100 =	\$0
2 Project Engineer	2 @ \$75 =	\$150
4 CADD	0 @ \$55 =	\$0
5 Administrative	0 @ \$50 =	\$0

TOTAL = \$150

50% Electrical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0.25 @ \$100 =	\$25
2 Project Engineer	2 @ \$75 =	\$150
4 CADD	2 @ \$55 =	\$110
5 Administrative	0.25 @ \$50 =	\$12.5

TOTAL = \$297.5

Electrical Design Documents: \$745

Structural Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$120 =	\$240
2 Project Engineer	5 @ \$90 =	\$450
3 EIT	4 @ \$80 =	\$320
4 CADD	2 @ \$65 =	\$130
5 Administrative	0 @ \$50 =	\$0

TOTAL = \$1,140

50% Structural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2.5 @ \$120 =	\$300
2 Project Engineer	5 @ \$90 =	\$450
3 EIT	5 @ \$80 =	\$400
4 CADD	5 @ \$65 =	\$325
5 Administrative	2 @ \$50 =	\$100

TOTAL = \$1,575

Structural Design Documents: \$4290

Total Design Fee Safe Waiting = \$8500

Project: Ontario Aquatic Center Renovations - West Wing Addition

Architectural Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Architect	4 @ \$110 =	\$440
2 Project Architect	5.5 @ \$90 =	\$495
3 Project Manager	0.25 @ \$80 =	\$20
4 CADD	1 @ \$65 =	\$65
5 Administrative	1 @ \$55 =	\$55

TOTAL = \$1,075

50% Architectural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2.5 @ \$110 =	\$275
2 Project Architect	7 @ \$90 =	\$630
3 Project Manager	0 @ \$80 =	\$0
4 CADD	5 @ \$65 =	\$325
5 Administrative	2 @ \$55 =	\$110

TOTAL = \$1,340

Architectural Design Documents = \$3810

100% Architectural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	3 @ \$110 =	\$330
2 Project Architect	7 @ \$90 =	\$630
3 Project Manager	0 @ \$80 =	\$0
4 CADD	5 @ \$65 =	\$325
5 Administrative	2 @ \$55 =	\$110

TOTAL = \$1,395

Mechanical Field Verification & Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0 @ \$120 =	\$0
2 Project Manager	1 @ \$95 =	\$95
3 Draftsman	1 @ \$70 =	\$70

TOTAL = \$165

50% Mechanical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0.5 @ \$120 =	\$60
2 Project Manager	1 @ \$95 =	\$95
3 Draftsman	1 @ \$70 =	\$70

TOTAL = \$225

Mechanical Design Documents = \$615

100% Mechanical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0.5 @ \$120 =	\$60
2 Project Manager	1 @ \$95 =	\$95
3 Draftsman	1 @ \$70 =	\$70

TOTAL = \$225

Electrical Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	0.25 @ \$100 =	\$25
2 Project Engineer	2 @ \$75 =	\$150
4 CADD	0 @ \$55 =	\$0
5 Administrative	0 @ \$50 =	\$0

TOTAL = \$175

50% Electrical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	1 @ \$100 =	\$100
2 Project Engineer	2 @ \$75 =	\$150
4 CADD	2 @ \$55 =	\$110
5 Administrative	0.5 @ \$50 =	\$25

TOTAL = \$385

Electrical Design Documents = \$945

100% Electrical Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Engineer	1 @ \$100 =	\$100
2 Project Engineer	2 @ \$75 =	\$150
4 CADD	2 @ \$55 =	\$110
5 Administrative	0.5 @ \$50 =	\$25

TOTAL = \$385

Structural Schematic Design

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$120 =	\$240
2 Project Engineer	5 @ \$90 =	\$450
3 EIT	2 @ \$80 =	\$160
4 CADD	2 @ \$65 =	\$130
5 Administrative	0 @ \$50 =	\$0

TOTAL = \$980

50% Structural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$120 =	\$240
2 Project Engineer	4 @ \$90 =	\$360
3 EIT	4 @ \$80 =	\$320
4 CADD	4 @ \$65 =	\$260
5 Administrative	2 @ \$50 =	\$100

TOTAL = \$1,280

Structural Design Documents: \$3,540

Total Design Fee West Wing = \$8910

100% Structural Construction Docs

Hours	Hourly Rate	Labor Cost
1 Principal Architect	2 @ \$120 =	\$240
2 Project Engineer	4 @ \$90 =	\$360
3 EIT	4 @ \$80 =	\$320
4 CADD	4 @ \$65 =	\$260
5 Administrative	2 @ \$50 =	\$100

TOTAL = \$1,280

AGENDA REPORT
November 1, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: **ORDINANCE #2652-2010: AN ORDINANCE DECRIMINALIZING THE ONTARIO CITY CODE (FIRST READING)**

DATE: October 25, 2010

SUMMARY:

Attached is the following document:

- Ordinance #2652-2010

This ordinance is a housekeeping measure intended to remove all references to misdemeanor penalties in the Ontario City Code and replace them with references to violations instead.

PREVIOUS COUNCIL ACTION:

None.

DISCUSSION

Chapter 4 of Title 1 of the City Code sets forth the general penalty for violation of City Code provisions in which the penalty is 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 this Code section was to decriminalize Code offenses by making them subject only to civil fines. However, numerous City Code sections continue to describe various offenses as misdemeanors. Misdemeanors are crimes under Oregon law for which an offender may 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 new Ordinance #2652-2010 is to change any remaining Code penalty references from misdemeanors to violations, which are punishable only by fines under Code Section 1-4-1. Most of the existing references to misdemeanors are in error, because they continue to define the penalty only by reference to the General Penalty in Chapter 4 of Title 1, which no longer has a criminal penalty. In order to avoid confusion and potential legal challenges to these Code sections, all such misdemeanor references are removed by Ordinance #2652-2010.

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

STAFF RECOMMENDATION:

Staff recommends the Council approve a first reading of Ordinance #2652-2010.

PROPOSED MOTION:

“I move that the Mayor and City Council approve **ORDINANCE #2652-2010, AN ORDINANCE DECRIMINALIZING THE ONTARIO CITY CODE, on First Reading by Title Only.**”

ORDINANCE NO. 2652-2010

AN ORDINANCE DECRIMINALIZING THE ONTARIO CITY CODE

- WHEREAS,** the City Council passed Ordinance #2587-2006 on December 4, 2006, which was intended to decriminalize numerous offenses under the City Code by repealing Code Section 1-4-1B, which set a criminal penalty as one of the general penalties under the City Code; and
- WHEREAS,** many Code sections continue to refer to various City Code offenses as “misdemeanors”, which carry criminal penalties of fines and imprisonment under Oregon law, rather than as “violations”, which impose fines only, despite the fact that there is no longer a general penalty section in the City Code that imposes a criminal penalty; and
- WHEREAS,** these City Code references to misdemeanors are not only confusing but are potentially costly to the City, because a City Code offense that has a criminal penalty requires a court to appoint attorneys for indigent defendants at City expense; and
- WHEREAS,** in order to complete the decriminalization of the City Code, any penalty provisions in the City Code that refer to misdemeanors should be changed to violations and all references to imprisonment as a penalty should be removed.

NOW THEREFORE, The Common Council For The City Of Ontario Ordains As Follows:

Section 1. Any references in the following City Code Sections to the word “misdemeanor” shall be deleted and the word “violation” shall be inserted instead:

- A. Section 3-1-4;
- B. Section 3-11-20;
- C. Section 3-18-20;
- D. Section 4-4-8;
- E. Section 4-8-9;
- F. Section 5-2-9;
- G. Section 5-3-1;
- H. Section 6-1-5;

- I. Section 6-1-8;
- J. Section 6-1-10;
- K. Section 6-1-12;
- L. Section 6-1-12A;
- M. Section 6-1-15;
- N. Section 6-1-16;
- O. Section 6-1-19;
- P. Section 6-1-21;
- Q. Section 6-1-22;
- R. Section 6-1-26;
- S. Section 8-3-8;
- T. Section 8-3-10;
- U. Section 8-3-11;
- V. Section 8-5-7;
- W. Section 8-6-3;
- X. Section 8-7-6;
- Y. Section 9-1-16; and
- Z. Section 10A-60-05.

Section 2. Section 7-3-13 of the City Code is amended by deleting those portions that are stricken and adding those portions that are underlined:

7-3-13 Penalty.

Violation by any person of the provisions of this Chapter shall be deemed to be a Class A Violation ~~misdemeanor and shall be punishable upon conviction by a fine of not more than five hundred dollars (\$500.00) or by imprisonment of not more than six (6) months in the County Jail, or by both such fine and imprisonment.~~

Section 3. Section 9-7-3 of the City Code is amended by deleting those portions that are stricken and adding those portions that are underlined:

9-7-3 Enforcement.

(A) The violation of a provision of this Chapter relating to the operation of a motor vehicle on other property open to public travel shall be a Class A Violation, municipal offense and shall subject the violator to arrest by a police officer or a private citizen if the violation takes place in the presence of the officer or citizen or by a police officer acting under the authority of a Municipal Court warrant.

~~(B) ORS 133.310(3) and 484.105 shall not apply to offenses on other property open to public travel. The Oregon Uniform Traffic Citation and Complaint Form shall not be used and convictions for offenses occurring on other property open to public travel shall not be reported to the Department of Motor Vehicles.~~

~~(C) A misdemeanor citation may be issued in lieu of custody.~~

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____, 2010, by the following vote:

AYES:

NAYS:

ABSENT:

APPROVED by the Mayor this ____ day of _____, 2010.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder