

February 22, 2011  
6:00 P.M.  
Newport, Oregon

The City Council of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, McConnell, Bertuleit, Brusselback, Allen, Beemer, Roumagoux, and Sawyer were present.

Staff present was City Manager Voetberg, City Recorder Hawker, City Attorney McCarthy, Community Development Director Tokos, Public Works Director Ritzman, Senior Project Manager Gross, Finance Director Marshall, Parks and Recreation Director Protiva, and Police Chief Miranda.

### PLEDGE OF ALLEGIANCE

Council and audience participated in the Pledge of Allegiance.

### ADDITIONS/DELETIONS AND APPROVAL OF THE AGENDA

McConnell requested that the discussion on solid waste be moved to Item C., and that the discussion regarding the city attorney position be moved to Item D.

The following items were added to the agenda: Item G. the Ocean Beauty lease review and revision; and Item H. creating a task force for the business license and room tax rewrite.

### CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of minutes from the City Council work session, regular meeting, and executive session of February 7, 2011;
- B. Fire and Police Department monthly reports for January 2011;
- C. Report of accounts paid for January 2011.

MOTION was made by Brusselback, seconded by Beemer, to approve the consent calendar as presented. Allen reported and reviewed minor changes to the minutes that Hawker had made. MOTION was made by Brusselback, seconded by Beemer, to approve the consent calendar as amended by the changes to the minutes. The motion carried unanimously in a voice vote.

### OFFICER'S REPORTS

**Mayor's Report.** Appointment of Budget Committee member. McConnell appointed Fred Springsteen to the Budget Committee. Bertuleit and Allen thanked the applicants for their interest in this position. MOTION was made by Roumagoux, seconded by

Brusselback, to ratify the Mayor's appointment. The motion carried unanimously in a voice vote.

Request from Town and Country Fair and Rodeo Association for sponsorship for County Geo-Coin. A written request from the Town and Country Fair and Rodeo Association, requesting \$500 for sponsorship of the County Geo-Coin, is included in the packet. A brief discussion ensued regarding process and past support. MOTION was made by Beemer, seconded by Allen, to deny the request. The motion carried unanimously in a voice vote. It was suggested that the organization be encouraged to make a presentation to the City Council regarding this request, or pursue a marketing grant through the Destination Newport Committee.

McConnell reported that he has received an e-mail from the Winningstad family, and they support the renaming of the street at the airport to CN Winningstad Way. Tokos noted that the matter has been discussed by the Planning Commission and tabled for additional information. It was suggested that a proponent would be helpful during the next discussion.

McConnell reported that the City Council has been invited to attend a 100<sup>th</sup> birthday celebration for the City of Waldport, on March 8, from 3:00 - 6:00 P.M., at the Waldport Community Center.

McConnell reported that the City Council has received a letter from Trish Odell regarding drainage and slippage along NW Rhododendron.

McConnell reported that information had been received regarding solid waste after the last work session.

McConnell reported that he has received a letter from Peter Schannauer proposing interim legal services should the city go that direction.

McConnell reported that he had received a packet of information from the Lincoln County School District regarding the upcoming bond election. He noted that it would be available in the Council office for review.

McConnell stated that he presented the city's resolution supporting a plastic bag ban to state legislators.

McConnell reported that he, Allen, and Voetberg had attended an economic development symposium at the Hatfield Marine Science Center.

McConnell reported that 150 stuffed animals were collected at a recent Cubs basketball game. They will be used by the Police and Fire Departments, Casa, and the Children's Advocacy Center.

McConnell reported that he attended a Chamber board meeting.

McConnell reported that he had spoken to the Lincoln County Board of Realtors.

McConnell reported that the city is holding discussions with SeaPort Air, and working out the final details to continue air service to Newport. He added that the Greater Newport Lodging Restaurant and Association and the Chamber of Commerce will provide support as new flights move forward. He reported that a voucher program is being established, and that advertising will occur when the program is finalized.

**City Manager's Report.** Voetberg reported that the monthly financial report and the updated suggestion/concern/complaint form are included in the packet. McConnell asked about the expenditure to the Ozone Fine Art Gallery, and Voetberg reported that the city is responsible for repairs to the building, and that this expenditure was reimbursement to Ozone for making needed repairs.

Voetberg reported that the packet includes an update on key city projects, including the water treatment plant, Marine Science Drive, and Naterlin Drive.

McConnell asked why the airport fund is over budget. Marshall explained that he does not expect the airport fund to be over budget at the end of the fiscal year.

McConnell asked about the status of the wastewater fund, and Marshall reported that if spending continues at the current rate, it will overrun expenditures. He added that this is a result of many activities including the sewer repairs on Highway 101.

Brusselback asked about capital expenditures on pages 5 and 7, and Marshall noted that these are a reminder to the finance director.

McConnell asked about the status of the policy for pesticide and herbicide use. Protiva reported that the advisory committee members working on this matter were no longer on the committee, so no work has been done in the past few months.

Allen noted that the pre-budget meeting scheduled for tomorrow evening is an opportunity to talk about general issues facing the city, rather than details of the upcoming proposed budget.

McConnell asked whether there is a completion date for the Naterlin project. Gross reported that work will begin on April 1, and is scheduled to be substantially complete by June 1. He added that Naterlin Drive will be closed for the entire construction period, but that detours will be in place.

McConnell asked whether impacted businesses on Highway 101 are aware that sewer work is planned. Ritzman stated that every effort will be made to keep the businesses open, and that he would meet with the owners.

Voetberg reported that during a Council discussion on stormwater needs, capital improvements were identified. He added that stormwater is funded through the general fund and therefore must compete with other general fund needs. He reported that the city has a stormwater fee in its code that contains a methodology based on impervious surface area, and that there is no fee at this time. He asked whether the City Council would like to discuss this fee with other methodology, and hold a public hearing on the matter. Council concurred that a public hearing should be held. Brusselback suggested a list of options that would include the impervious surface methodology, a flat fee, and a possible combination. It was agreed that staff develop options in as much detail as possible, and make this information available to affected parties well ahead of the public hearing, allowing for stakeholders to comment and have suggestions included. It was agreed to hold the public hearing on March 21, 2011. McConnell suggested including information about how stormwater issues are handled now, and what the fee might pay for, as well as needs.

McConnell asked about the Bayfront Parking District. Tokos reported that a meeting is scheduled for March 1, and progress is anticipated at that meeting. It was noted that Bayfront restriping would occur within the next month.

Voetberg reported that he, Sawyer, Ritzman, and Dave White had met with homeowners at Lakewood Hills. He noted that the owners had several concerns, but primarily they are to keep Big Creek Road and 31<sup>st</sup> Street open. He added that FEMA funding will be available for Big Creek Road, but that the amount has not been established. He noted that he anticipates a gap between the actual cost of the repair and the FEMA funds, and that he will come back to Council with a report.

## DISCUSSION ITEMS AND PRESENTATIONS

**Presentation by PAADA - Teen Court.** Jim Upton and Debra Spoelstra appeared before Council and discussed the Teen Court and asked for Council support. It was noted that the support of the city can be used to leverage grant requests. Beemer volunteered his medical expertise to the program once it begins anew.

**Presentation by Guy Faust on Community Development Block Grant.** Guy Faust reported on the use of last year's funding, and asked Council to consider including \$7,500 in this year's budget for program support. Ron Spisso reviewed the Small Business Management Program. Bertuleit suggested that OCCC request volunteers to work on the business license task force, and to make folks aware that the city will be soliciting proposals for advertising services.

**Amendment to Newport Municipal Code Chapter 7.05 - Solid Waste.** McCarthy reported that this issue came before Council in October as a result of complaints from contractors regarding the hauling of construction debris. She reported that, during the summer of 2010, the city issued two citations for violating this code. At that time, McCarthy was directed to work with Thompson's Sanitary Service to look at the city's code and that of other jurisdictions. She reported that other codes are included in the packet. She added that the city has an agreement with Thompson's Sanitary that was signed in 2007, and is a rolling seven-year contract. She reported that there are some exclusions to the franchise, and she reviewed them. She noted that enforcement of the code is a fairly recent event. She added that most recently, she had been asked to work with Brusselback and Beemer on the issue. She reported that a recent meeting was held with approximately 45 contractors, city staff, and representatives from Thompson's Sanitary to discuss the code and the exclusive franchise arrangement. As a result of these meetings, the suggested changes to the code are included in the packet for review. It was noted that the major change is to subsection 4.

Rob Thompson and Ken Riley appeared before Council. Thompson reported that the ordinance was adopted in 1986 and restated in 2003 to accommodate rate reporting language. He added that 25 years is a long time, and there needs to be flexibility. He reviewed the provisions of other codes in Lincoln County. He noted that the rate report is due by April 1, and the recycling report will be available at the beginning of March. He suggested Council go slowly and make small changes to the code over time.

Bertuleit stated that initially the contractors were told they could not do what they had been doing for years, and now a rate increase. He asked for justification of the rate increase. He also noted that reports had been received that the transfer station was not up to par. Thompson encouraged a tour of the transfer station facilities. He also suggested Council obtain the most current rate report prior to making a decision on the ordinance. Allen stated that he thinks it is important to obtain the current Lincoln City code. He also provided copies of the Waldport and Toledo codes which are similar to Newport's. He noted that he does not have enough information to make a decision at this time. Brusselback asked Thompson to state his main objection to the franchise agreement at this point. Thompson stated that he is not opposed to what is being discussed, but that he wants to make sure the City Council understands the impacts associated with that.

Paul LaMont, a general contractor, thanked McCarthy, Brusselback, and Beemer for the time they spent meeting with involved parties. He noted that the big change during the past year is the enforcement of previously unenforced rules. He stated that he likes the revision as it will allow contractors to work in the most cost-effective way. He added that construction debris in the city limits would be taken to the nearest location, and Thompson's use would not be reduced. He stated that, as contractors, it is to our advantage to recycle as much as possible, rather than have debris hauled away.

Kurt Freitag, developer of Meritage, stated that he is not concerned about garbage, but the reduction of the amount of garbage anyone has to haul on his behalf. He stated that the city has an objection to this and he does not understand it. He added that he wants to sort things into the right container so that Thompson's can pick them up and that is against the law. Beemer suggested that it is reasonable to wait for Thompson's report.

Ron Meadows stated that contractors are bound by standards to separate all hazardous waste, and if everything goes into a dumpster; he asked who is separating the waste.

Mark Hanrahan, a building contractor, stated that the construction debris hauling requirement affects a contractor's ability to do his job.

Bernie Stoll, a local contractor, thanked City Council and staff for listening to the contractors on this issue. He stated that after reading the proposed ordinance, there is no way he could disagree with it, and he urged Council to move forward and adopt it.

Interim City Attorney discussion. It was agreed to discuss this matter at the end of the meeting.

Council took a five minute break.

## ACTION ITEMS

Rocky Creek water supply development. Ritzman made a PowerPoint presentation regarding the city's water system and the potential Rocky Creek project. He reported that in 2002, the Central Coast Water Council was formed, and Newport and Lincoln City filed an application for water rights. He added that the application was on administrative hold several times for various reasons. In 2003, Lincoln City began pursuing surface water rights on Drift Creek, and the project has been on hold since. He stated that in one year, the application must be acted upon or the Department of Water Resources will make a recommended finding. He recommended updating the application over the next year or risk starting over. He noted that the city needs a water supply alternatives analysis. He added that Polk County is looking at reestablishing a dam in Valsetz. He stated that an update is needed for design costs and designs in light of current seismic standards, and an evaluation of transmission and treatment alternatives. The regulatory information also needs to be updated. He noted that a requirement exists to mitigate impacts on fish and wildlife, but before anything is done, he recommended re-engaging the project partners. He stated that each of the cities must update its water management and conservation plans, and that project financing needs to be investigated. He proposed a three-phase work plan. The first phase is to update the application for submission and review, and that the issue before Council is

whether to authorize up to \$125,000, over the next 12 months, to continue the application process for procurement of water rights on Rocky Creek. Brusselback asked whether the Rocky Creek Dam would be an earthen dam, and Ritzman stated that it would be roller compacted concrete. Bertuleit asked for the estimated cost of the dam, and Ritzman noted that in 1997, the estimated cost was \$13,000,000. Ritzman noted that it must be determined whether it is convenient to put a treatment plant at that site or to install a raw water pipeline to the north and south. Brusselback asked whether an increase in height to the Big Creek Dam is under investigation, and Ritzman noted that it is not currently under review. Allen declared a potential conflict of interest because the law firm which he is associated with of counsel represents the Cities of Toledo, Waldport, Siletz, and the Southwest Lincoln County Water District. It was noted that the intergovernmental agreement addresses preconstruction activities as well as construction costs. It was noted that a final order from water resources does not mean that a decision has been made to go forward with construction. Allen noted that what is being looked at now is the preservation of the permit application so it is not lost, which will allow a decision next year on construction. Allen asked whether there would be additional costs if the city opts not to move forward now, but wishes to restart the process in a few years, and whether there is information that could be reused from the first application. Allen asked whether there is a big added cost to stop the process and begin anew later. Ritzman stated that some of the studies would still be viable, but it opens it up to the public hearing process again. Allen noted that there is no guarantee that the project will move forward even if both Newport and Lincoln City move forward at this point. Allen noted that construction is a very large cost, and looking forward, there is no certainty that either city has determined whether it would move forward. Ritzman stated that the advantage to having the final order is that we will have the water rights. Allen asked whether additional information is available now that was not available ten years ago. Ritzman stated that he does not believe so. Ritzman stated that Big Creek is considered a salmon stream. Bertuleit expressed concern about spending this amount of money to complete a form. McConnell stated that it appears that what has been spent so far would not go to waste if the project was tabled for now and the city returned to it in the future. He added that the uncertainty of moving forward seems to rank higher than the certainty of moving forward. Voetberg reported that Lincoln City is struggling with the same thing and has viable short and mid-term solutions to their water needs. The concern is what will happen 40 or 50 years out. He added that some of the assumptions ten years ago are different due to conservation efforts. He added that he does not think this is a must do right now, as the cities have bought some time. He added that Council is not under the gun right now to make a decision either way. If we proceed, it is a good long-term position, but if we do not proceed, we will get by. McConnell noted that conservation will be the key. Allen noted there is a lot of cost now with no certainty. Allen asked Ritzman whether the work will go to waste if we decide to renew in a few years. Allen added that given the cost, and lack of certainty, and other things we could do, and the fact that this could be renewed, he is willing to table the matter now and look at short-term needs and renew the discussion in the next year or the year after. Beemer agreed with Allen, noting that for several years, the city has been trying to determine how to get an adequate water supply to the airport. Sawyer stated he would feel more comfortable with other cities at the table, and that it does not sound like Lincoln City is very strong on the issue. Roumagoux stated that she is worried about the future water

supply and that \$125,000 is a lot of money now. Brusselback stated that in the interim, the money could better be applied to something else. Sawyer stated that he would like to see interest from other districts. MOTION was made by Bertuleit to table the matter, and if there is interest from Lincoln City, to come back with a different figure if Lincoln City does not want to come up with the full amount. There was no second. Allen asked Ritzman what is necessary to finish this process, and whether the cost estimates are accurate. Ritzman stated that he must rely on the experts in this field. He noted that simply completing a form is not as simple as it would appear. Motion was made by Brusselback, seconded by Allen, to table the proposal of \$125,000 for an indefinite period, and within that indefinite period, he would like concrete options presented to Council so that we can see what we are up against. The motion carried unanimously in a voice vote.

It was agreed to table the discussion on the local contracting rules until the next meeting.

### **ACTION ITEMS**

**Consideration of a request for a Special Event Fee Waiver for Loyalty Days.** Patty Louisiana addressed Council regarding the fee waiver request for Loyalty Days. The association has requested the support it traditionally receives from the city, which includes assistance from the Police and Public Works Departments. The Police Department estimated costs are \$6,000, and the estimated costs of the Public Works Department are \$2,405. Since this is a combination of a local and tourism event, it is believed that an equitable division of costs is 50% to the General Fund and 50% to the Transient Room Tax Fund. MOTION was made by Bertuleit, seconded by Beemer, to approve the fee waiver requested by the Newport Loyalty Day and Sea Fair Festival Association, Inc., in the amount of \$8,405, for this event to be held on Saturday, April 30, 2011, and that the general fund be reimbursed by the transient room tax fund in the amount of \$4,202.50. The motion carried unanimously in a voice vote.

**Deco Park construction direction for Phase One at Highway 101 and Hurbert Street.** Protiva reported that the issue before Council is the consideration of construction of a partial park design at Deco Park. He noted that the project cannot be built as originally thought, and there are two options for Council consideration, and that Option A is to proceed with the construction of the pylon as Phase One; and that Option B is to proceed with the construction of the flat work for Phase One. Option A. would allow for the construction of a deco style pylon, and provide the first step in completion of the proposed design. It was added that the City Center Newport Association prefers Option A. Option B would allow for the construction of the level flat area with retaining walls and a bench, and would require a partial deconstruction if a deco style pylon were to be added in the future. He added that \$100,000 is about half of what is needed for the project. Allen asked whether it is a fair assumption that the option chosen may be in place as a stand-alone option for some time. Roumagoux noted that this has been discussed for four years, and that the merchants selected Option A. Sawyer asked how this project compares to other projects in the community. Beemer asked whether the

pylon would be added later if Option B. is selected. Allen asked whether the picture of the flatwork is accurate.

Pete McKeeman, president of the City Center Newport Association distributed a handout, and made a PowerPoint presentation containing several conceptual ideas. Allen asked McKeeman whether CCNA has considered a new design that would cost \$100,000. Gross reported that the project could be bid to include the closing of the curb cut and the pylon. Allen asked whether this is aesthetically sufficient to be the final project for the next four or five years. Lou Limbrunner stated that he paid \$2,388 in parks SDC's when building his house. He suggested using original and unused bridge parts for the park. MOTION was made by Roumagoux, seconded by Brusselback, to proceed with the construction of Option A and to include Gross' recommendation to close off the curb cut as part of the bid. Allen asked whether this will be sufficient, and stated that he would be interested to see whether there are other options that might fill the needs. He stated that he will vote no because other options have not been considered. The motion carried in a voice vote with Allen voting no.

**Appointment of an advisory committee for the City Center Commercial Parking District.** Tokos reported that the issue before Council is the consideration of appointing Jim Weir, Frank Geltner, and Bill Bain as the advisory committee for the City Center Commercial Parking District. It was noted that two additional members could be added at a later date. MOTION was made by Beemer, seconded by Sawyer, to adopt Resolution No. 3531, appointing Jim Weir, Frank Geltner, and Bill Bain, as the advisory committee for the City Center Commercial Parking District. Allen noted that it would be nice to have the majority of the members from within the district. The motion carried unanimously in a voice vote.

**Notice of intent to award the visitor wayfinding signs, Phase II.** Ritzman reported that the issue before Council is whether to issue a notice of intent to award for the City of Newport's Visitor Wayfinding Signs, Phase II. He recommended that the notice of intent to award be issued to the low bidder, ES&A Sign and Awning Company of Eugene, Oregon, in the amount of \$52,074.00. Ritzman stated that he is not proposing to award signs in South Beach because locations have not been secured. MOTION was made by Bertuleit, seconded by Allen, to authorize the Public Works Department to issue a Notice of Intent to Award for the City of Newport's Visitor Wayfinding Signs, Phase II, to ES&A Sign and Awning Company of Eugene, Oregon, in the amount of \$52,074.00. The motion carried unanimously in a voice vote.

**Assignment of and amendment 2 for a lease of 813 SW Bay Boulevard property.** McCarthy reported that the issue before the Council is whether to authorize the assignment of the lease between the city and Ocean Beauty Seafoods, LLC to Bornstein Seafoods, Inc., and further approve amendment 2 of the lease between the city and Bornstein Seafoods, Inc. She reported that Ocean Beauty plans to leave the area and Bornstein wants property, and that the closing date is March 1. She noted that the city has a waterway lease with the Department of State Lands that DSL has to approve. She added that there is a \$750 filing fee for the assignment of lease that Bornstein has already paid. MOTION was made by Bertuleit, seconded by Beemer, to authorize and approve the assignment of the lease between the city and Ocean Beauty

Seafoods, LLC to Bornstein Seafoods, Inc., and further approve amendment 2 of the lease between the city and Bornstein Seafoods and authorize the city manager to execute all necessary documents related thereto. The motion carried unanimously in a voice vote.

Resolution creating a task force relating to business license and room tax code revisions. McConnell reviewed Resolution No. 3532, noting that an organizational meeting of the Task Force will be held on March 8, from 5:30 - 7:00 P.M., at which the group can make recommendations regarding appointees to the Task Force. MOTION was made by Bertuleit, seconded by Brusselback, to approve Resolution No. 3532 creating a task force to review revisions to the business license and room tax codes. The motion carried unanimously in a voice vote.

### PUBLIC COMMENT

Lou Limbrunner addressed Council regarding water shut-off notifications and fees. He stated that previously a landlord could register to be notified when water to a rental unit was to be turned off, but that the ordinance has changed, and it leaves the property owner or manager in an untenable position if water is left on. He suggested the policy be revisited by Council, and that the rules be rolled back to those previously in place.

Herb Goblirsch stated that he has rental house in Newport, and that he had a tenant who knew all the legal loopholes. He reported that when he went to city hall to have the water turned on to clean the unit, he was told that he owed a \$300 water bill incurred by the tenant. He asked Council to address this matter. It was the consensus of Council that staff review these concerns in greater detail, and return to Council with recommendations on how to address the issue under the current code.

Council agreed to hold a short work session on Tuesday, March 1, at 9:00 A.M., to discuss the process to replace the city attorney.

### ADJOURNMENT

Having no further business, the meeting adjourned at 10:32 P.M.

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Margaret M. Hawker, City Recorder

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Mark McConnell, Mayor