

January 18, 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, Finance Director Marshall, Public Works Director Ritzman, Parks and Recreation Director Protiva, and Police Chief Miranda.

McConnell requested a moment of silence for the folks involved in the Arizona tragedy. He led in the Pledge of Allegiance.

### **PROCLAMATIONS AND RECOGNITIONS**

Voetberg recognized the following employees for their service:

#### **10 Years**

Peggy Hawker  
Dustin Kittel  
Kathy Cline

#### **15 Years**

Pat Dodson  
Tim Studebaker  
Dann Walker  
Greg Evans

#### **20 Years**

Tom Simpson  
Jeff Ingram  
Jim Salisbury

#### **25 Years**

Steve Kittson

#### **35 Years**

Lanny Schulze

Sawyer spoke about Ron Garrison, the former street superintendent, who recently passed away.

McConnell reported that Don Cohen, radio newsperson, passed away last night.

### CONSENT CALENDAR

The consent calendar consisted of the following:

- A. Approval of City Council minutes from the work session and regular meeting of January 3, 2011, and the work session of January 11, 2011;
- B. Police and Fire Department monthly reports for December 2010;
- C. Report of accounts paid for December 2010.

MOTION was made by Bertuleit, seconded by Brusselback, to approve the consent calendar as presented. The motion carried unanimously in a voice vote.

### OFFICER'S REPORTS

**Mayor's Report.** McConnell reported that January 27 is National Chocolate Cake Day, and restaurants and businesses, including city hall, throughout the community will sell chocolate cake for one dollar per slice. The proceeds will be donated to the City of Aumsville for post-tornado clean-up and restoration.

McConnell reported that Council had received a letter from Dick and Vickie Bevans requesting Council consider rescinding the fuel tax. Allen noted that Council needs to be sensitive to fees that it establishes. He suggested community outreach to determine the impact and whether a mutual resolution can be obtained. It was asked that a motion be made to move this matter forward at the next meeting.

McConnell reported that he had met with the Greater Newport Restaurant and Lodging Association, and its members still wish to participate in discussions on the transient room tax and business license ordinances. It was asked that a discussion regarding how to proceed on these matters be discussed at the beginning of the next work session.

McConnell noted that committee appointments, with the exception of the Planning Commission and Budget Committee, will be referred to individual committees for review and recommendation. He appointed Alisha Kern, Patty Murphy, and Elliott Crowder to the Bicycle/Pedestrian Committee; Karen Smith to the Parks and Recreation Advisory Committee; and Michael Rickus to the Senior Advisory Committee. He noted that there are two vacancies on the Parks and Recreation Committee, and one vacancy on the Budget Committee. MOTION was made by Bertuleit, seconded by Beemer, to ratify the Mayor's appointments. The motion carried unanimously in a voice vote.

**City Manager's Report.** Voetberg asked whether Council preferred a written manager's report or a verbal report. It was the consensus of Council that Voetberg review the highlights verbally.

Voetberg reported that the December month-end financial report is included in the packet. He noted that the first page includes highlights of what is going well or not. He asked that specific questions be directed to Marshall. McConnell asked whether there is a way to get the financial information on the website in a more readable format. He added that it would be advantageous to have annotations on other line items. It was agreed that the note space contained in the report could be improved.

Voetberg noted that the updated suggestion/concern/complaint log is included in the packet.

Voetberg reported that the grant application for the Oceanview Drive bike/pedestrian improvements was not recommended for funding.

Voetberg reported that CIS will distribute credits toward property casualty trust, but the dollar amount is unknown at this time.

Voetberg reported that the COG newsletter is included in the packet.

Ritzman reviewed the status of several projects, including the water treatment plant, Naterlin Drive, Nye Beach, and Senior Center.

Ritzman reported that concrete is being poured for the floor sections of the water treatment plant, and it is anticipated that walls will go up during March. He reported that there are no requests for cost increases.

Ritzman reported that the Naterlin Drive sidewalk project is expected to go out to bid after the first of February, and that the 90% plans are due Friday. He noted that the Coast Guard was contacted again today and the city should have the necessary easement by the end of the week. Ritzman reported that based on the current estimate, the project will be very close to the budget.

Ritzman reported that the work requested for the Deco Park is greater than the budget, and that the Deco District has opted to pursue installing the pylon and building the park around it as funds become available in the future.

Ritzman reported that the Coast Park project will be ready to bid around the first of February.

Ritzman reported that the storm drain construction at the Senior Center is underway. He reviewed the storm drainage issue. It was noted that some of the costs will be funded through the CDBG grant, and the General Fund. Voetberg noted that the difference will be divided among the various departments at city hall, and that there are sufficient funds to cover the additional costs.

Ritzman reported that there was no local flooding in Nye Beach during the last storm, but that there were four different slide areas. The slides were in Longview Hills, behind Port Dock 4, and two on Big Creek Road.

Ritzman reported that three sewer lift stations overflowed during the storm, including the Big Creek lift station; Schooner Creek lift station, and the Nye Beach lift station. It was noted that the manhole along the Agate Beach Trail may be too low.

Ritzman reported that a hole had been discovered in a sewer conveyance line, and while it is not creating an immediate problem, it is serious, and his staff will conduct further analysis.

Bertuleit reported that the exterior color of the VAC will be shocking yellow.

Allen requested copies of engineering agreements relative to the water treatment plant. Ritzman reported that he has developed a reporting format that Council will receive monthly that will show how much money has been committed, expended, and under contract on the water treatment plant. McConnell noted that a sizeable payment had been made to WT Construction during December, and asked whether that is part of the final payment from GMP #1. Marshall noted that he believes that is for GMP #2. Marshall reported that he is satisfied with the information from the contractor, so far, but that he needs to conduct an audit in Portland. Ritzman noted that Slayden is in the early stages of work on GMP #2, and has completed 95% of the work on GMP #1. It was noted that there could be a surplus of approximately \$100,000 on GMP #1.

Voetberg reported that he has received calls about NOAA, noting that the growing sand pile is a permitted use. He added that the city will work with the port to dispose of the sand.

Voetberg distributed a report prepared by John Stein on the Longview Hills fire investigation. The report also contained a summary prepared by Voetberg, and an incident report prepared by Rick Crook. He summarized the results of the investigation and its conclusions and observations. He reported that the volunteers indicated a commitment, through a letter, to work toward resolving and healing the internal strife existing within the Fire Department; the City Council has his commitment; and that Toby Cole wants to make this work. Bertuleit suggested an outside person assist in working with the group. Voetberg noted that he is looking at this as an option, but wants to make sure Council, and full-time and volunteer firefighters are on board. Allen noted that it would be beneficial for Al Anton to work with the interim chief, and asked whether the interim chief is willing to participate. Voetberg noted that Anton would not be an employee; simply an advisor. He added that Anton, as a retired firefighter, knows how to talk with firefighters and has a passion for the profession, and has agreed to work with the city at no cost. It was noted that a task force could be useful to oversee some of this, but that it is important that everyone understands the issues. Allen asked whether John Stein is a hired consultant, and Voetberg noted that he is a paid consultant, and that it is important because of procedure problems and unsafe conditions. Voetberg reported that there is also an OSHA investigation on this incident, and that the Stein report would be forwarded to the OSHA investigator. Allen asked about Stein's background and experience, and Voetberg reported that he was a fire chief in Dallas for a number of years, and is involved with the Special District Association of Oregon, and in that capacity, assists lots of fire districts. Allen asked what budget the monies would come from to pay the consultant. Voetberg reported that the cost is \$1,000, and it will come from the Fire Department budget. Sawyer noted that the volunteer and paid fire staffs are all dedicated professionals. Voetberg noted that if the problems cannot be handled internally, Council will have to get involved. Roumagoux asked when Anton's report will be available, and Voetberg noted that the interim chief could have the report in two weeks. Allen noted that Council had received a copy of the January 14, 2011 letter from the Newport Volunteer Firefighters Association. Voetberg reiterated that the letter from the volunteers referenced an agreement; and he noted that this is not an agreement but a personal commitment to make this work. He added that he is hoping to get the volunteers and paid staff to make personal commitments to resolve issues in the Fire Department. He noted that he has not talked with the full-time firefighters, but that it is his belief that they want to make this work. Allen asked that Council be kept apprised of

the resolution of the OSHA complaints. McConnell noted that Council had received letters from paid and volunteer firefighters, and both groups had asked for Council involvement at some level. A discussion ensued regarding having a group comprised of three Councilors, city manager, city attorney, and fire representatives meet to discuss issues. Brusselback questioned Council participation at this level, noting that it is important to wait for the Anton report. Voetberg noted that the report will come from Toby Cole. He added that Cole should be able to identify issues and develop a work plan on how the department can move forward working together within two weeks. Allen noted that it is important for Cole and Anton to work together and engage the volunteers and paid staff to sort out the issues internally and develop a plan they can live with. He added that once a plan is developed, the matter can come back to Council for a public update on how things will proceed. Council concurred.

**City Attorney's Report.** McCarthy reported that the city has a franchise with Thompson's Sanitary Service, and this agreement allows individuals and the federal government to haul its own refuse. Other trash and recycling must be hauled by Thompson's, and this has created an issue for contractors. She reported that the city had not enforced the agreement relative to contractors until recently, and many contractors were hauling construction debris themselves. She noted that she has been meeting with Thompson's representatives, Brusselback, Beemer, and staff regarding the matters. She noted that she has modified the code for internal review; will be meeting with a contractor's group later this week; and has provided the draft to contractors. She reported that she will bring the matter to Council in the near future.

McCarthy reported that the developer of the Meritage development has decided to provide his own solid waste services to homeowners. She noted that she has been working with Thompson's and the city's community service officer on this matter. She noted that some of the Meritage homeowners want to use Thompson's, and that the developer's provision of solid waste disposal services is a violation of the code. She noted that dumpsters have been placed in the right-of-way of 33<sup>rd</sup> Street, and eight of the homeowners are satisfied with this arrangement. She stated that work on the enforcement issue will continue, and additional information will be provided to Council in the future.

Bertuleit noted that another issue is the cleanliness of the dump. McCarthy reported that the land belongs to the city and the buildings belong to Thompson's, and consequently the land lease is limited regarding the city's enforcement rights. She reported that the community service officer will be looking at the transfer station site and a report will be made to Council.

McCarthy reported that the city has three collective bargaining agreements, with Public Works, Fire, and Police Departments, and all are open this year. She noted that none of the bargaining unit members received a COLA increase last year, and only the Fire Department received a step increase. She noted that the Newport Employee's Association was formed in December, and its members are former AFSCME members. She reviewed the number of individuals in each bargaining unit, and past negotiations. MOTION was made by Allen, seconded by Brusselback, to designate McCarthy as the city's labor negotiator, subject to further changes as the City Council deems appropriate. The motion carried unanimously in a voice vote.

## PUBLIC HEARINGS

Public hearing on proposed amendments to the accessory use and home occupation sections of the zoning code. McConnell asked Council to declare any actual or potential financial interest that they might have related to this agenda item. Bertuleit, Roumagoux, and Brusselback reported that they work out of their homes. There was no objection to individual Councilors or the City Council as a whole in hearing this matter. McConnell read the public hearing procedure and opened the public hearing at 7:35 P.M. McConnell asked for public testimony. There was none. Tokos reported that the issue before Council is the consideration of whether it is in the public interest to amend the accessory use, home occupation, and enforcement sections of the zoning code. He noted that the Planning Commission had voted unanimously to recommend adoption of the changes. Tokos noted that these amendments are a part of the complete review of the zoning code. He added that the Planning Commission and its Citizen's Advisory Committee had determined that amendments are needed to clarify the process for determining when a structure is accessory to a primary use, provide for placement of accessory structures on parcels or lots adjacent to a primary use, and allow for larger structures if they meet setbacks. The updates to the home occupation rules include the elimination of outdated requirements, clarification of standards, and the addition of revocation provisions if standards are not followed. Changes to the enforcement language clarify that code enforcement staff may inspect properties at reasonable times. Tokos reported that there are several minor changes to the citation reference under Section 5 of the ordinance, and to the subsection numbering for Exhibit A of the ordinance. He noted that these corrections would be made to the final version of the ordinance, and prior to signature. A discussion ensued regarding the height of an accessory building not exceeding that of the primary structure. Tokos noted that staff would have some discretion in this situation. Allen asked about the section related to appeal to the City Council, and whether this change had been reviewed and recommended by the Planning Commission. Tokos noted that this change was made after the Planning Commission review and in consultation with the city attorney. Allen noted that he would prefer having the input of the Planning Commission on this issue. Tokos noted that the Planning Commission generally does not get involved in enforcement issues. Tokos noted that the Planning Commission will be reviewing three or more sections of the code, and suggested that this particular issue could be vetted by the Planning Commission, and if changed, included in the final adopting ordinance of the overall code. McConnell closed the public hearing at 7:52 P.M. MOTION was made by Allen, seconded by Bertuleit, to read Ordinance No. 2011, amending the accessory use, home occupation, and enforcement sections of the Newport Zoning Ordinance, by title only, and place for final passage, with the final version subject to the one change, in 2-6-8, changing the City Council to the Planning Commission, and the citation corrections that staff brought to our attention. The motion carried unanimously in a voice vote. Voetberg read the title of Ordinance No. 2011. Voting aye on the adoption of Ordinance No. 2011 were Allen, Beemer, Bertuleit, Brusselback, McConnell, Roumagoux, and Sawyer.

## ACTION ITEMS

**Appoint Oregon Coastal Zone Management Association, Oregon Cascades West Council of Governments, and Cascades West Area Commission on Transportation representative and alternate.** MOTION was made by, Bertuleit, seconded by Brusselback, to appoint Allen as representative, and Roumagoux as alternate to the OCZMA; appoint Sawyer as representative, and McConnell as alternate to COG, and Sawyer as representative, and McConnell as alternate to the CWACTION. The motion carried unanimously in a voice vote.

**Recommendation from the Destination Newport Committee regarding a marketing grant application from Jazz at Newport.** Hawker explained that the issue before Council is a request for tourism marketing grant funding, from the Oregon Coast Council for the Arts, for \$5,000 for assistance with national/regional marketing and graphic services for Jazz at Newport. Catherine Rickbone and David Jones appeared in support of the request. MOTION was made by Roumagoux, seconded by Bertuleit, to approve the tourism marketing grant fund application, submitted by the Oregon Coast Council for the Arts, for assistance with national/regional marketing and graphic services for Jazz at Newport, in the amount of \$5,000. The motion carried unanimously in a voice vote.

**Recommendation from the Destination Newport Committee regarding a marketing grant application from the Celtic Festival and Highland Games.** Hawker explained that the issue before Council is a request for tourism marketing grant funding, from the Newport Parks and Recreation Department for \$5,000 for assistance with marketing the first Newport Celtic Festival and Highland Games, scheduled for the second weekend of June 2011. MOTION was made by Roumagoux, seconded by Bertuleit, to approve the tourism marketing grant fund application submitted by the Newport Celtic Festival and Highland Games, for assistance with marketing the first annual Newport Celtic Festival and Highland Games, in the amount of \$5,000. The motion carried unanimously in a voice vote.

**Termination of utility easements on property located at 160 NW 25<sup>th</sup> Street.** Tokos reported that the issue before Council is whether it is in the public interest to terminate utility easements that were reserved over portions of NW 26<sup>th</sup>, NW 27<sup>th</sup>, and NW Nye Street when those streets were vacated through Ordinance No. 1668. He noted that a consultant for Wal-Mart has requested the release of these utility easements, noting that they do not contain any public utilities and contain no infrastructure. He added that the 15-foot wide water line easement that crosses the easements requested to be vacated will be retained. MOTION was made by Brusselback, seconded by Allen, to terminate the utility easements reserved by City of Newport Ordinance No. 1668, and authorize the city manager to execute a quit claim deed transferring the city's rights to the easements over to the property owner, Wal-Mart Real Estate Business Trust. The motion carried unanimously in a voice vote.

**Repair/replacement of sewer line in Highway 101 between NW 12<sup>th</sup> and 13<sup>th</sup> Streets.** Ritzman reported that the issue before Council is the authorization for staff to seek a minimum of three informal bids and award a contract to replace the eight-inch sewer line

in the westerly side of Highway 101 between NW 12<sup>th</sup> and NW 13<sup>th</sup> Streets. He reported that the sewer line was constructed in 1957, and is immediately upstream from the section of pipe that recently collapsed. He noted that this line has failed, but the overlying soils remain bridged over the areas of failure, but the soil could easily collapse at any time. A discussion ensued regarding the use of the infrastructure fees. Ritzman reported that the city has been using the infrastructure monies for sewer projects, and that if there are insufficient funds, sewer construction money is available. MOTION was made by Beemer, seconded by Roumagoux, to authorize the city staff to seek a minimum of three informal bids, and to award a contract to the lowest qualified bidder for replacement of the sanitary sewer line in the westerly side of Highway 101 between NW 12<sup>th</sup> and NW 13<sup>th</sup> Streets. The motion carried unanimously in a voice vote. Ritzman reported that the work would be completed prior to the Seafood and Wine Festival if the weather holds.

### **COUNCIL COMMENTS**

McConnell reported that the Destination Newport Committee had met and discussed the advertising and fulfillment RFP's, along with the two tourism marketing grants that appeared on this evening's agenda.

Brusselback reported that the Bicycle/Pedestrian Committee had met and identified three priority projects: upgraded bike route signs along designated bike routes; lighted crosswalks; and high visibility crosswalk signs. A discussion ensued regarding the participation of ODOT in crosswalk changes at signalized intersections. Ritzman reported that he could write to ODOT regarding the crosswalk issues.

Allen reported that the OPAC working group will be meeting Friday to discuss issues including the siting of wave energy devices, fishing ground mapping, habitats, and non-fishing recreation uses. He will keep Council apprised.

McConnell reported that he had a call last from an aide to the Canadian ambassador on shared fisheries, who is planning to be in Newport on January 25. He will keep Council apprised.

### **ADJOURNMENT**

Having no further business, the meeting adjourned to an Urban Renewal Agency meeting at 8:25 P.M.

Council reconvened at 8:59 P.M.

MOTION was made by Brusselback, seconded by Bertuleit, to enter executive session pursuant to 192.660(2)(d) and (h) to discuss labor negotiations and to consult with legal counsel regarding litigation or litigation likely to be filed. Allen recused himself during the review of the Reno and Ewing lawsuits. The motion carried unanimously in a voice vote, and Council entered executive session at 9:00 P.M.

The meeting adjourned at 10:28 P.M.

Council reconvened at 10:29 P.M.

MOTION was made by Beemer, seconded by Brusselback, to allow the city attorney to proceed with LGPI, and talk with them about which is the best negotiator; look at alternatives to LGPI, and move forward with LGPI unless additional information indicates otherwise, and to keep Council apprised. The motion carried unanimously in a voice vote.

Council agreed to hold a work session on January 31, 2011, from 9:00 A.M. until noon.

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Margaret M. Hawker, City Recorder

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Mark McConnell, Mayor