

March 21, 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, Brusselback, Allen, Beemer, Roumagoux, Bertuleit, and Sawyer were present.

Staff present was City Manager Voetberg, City Recorder Hawker, Community Development Director Tokos, Public Works Director Ritzman, Senior Projects Manager Gross, Finance Director Marshall, and Police Chief Miranda.

PLEDGE OF ALLEGIANCE

Council and audience participated in the Pledge of Allegiance.

ADDITIONS/DELETIONS AND APPROVAL OF THE AGENDA

The following items were added to the agenda:

McConnell reported that Item E. would be removed from the consent calendar and moved to action Item E.; Item F. would be added regarding how to proceed with legal services with LGLG; and Item G. would be added regarding Amendment #1 to the city manager's employment contract regarding scheduled evaluations.

PROCLAMATIONS AND RECOGNITIONS

McConnell proclaimed May 2011 as National Bike Month in the City of Newport. Ken Dennis accepted the proclamation. McConnell reported that he has committed to ride his bike on May 20 while folks ride to work or school. Dennis reported that more activities are scheduled this year.

PUBLIC COMMENT

Terry Obteshka thanked Council for the signage that is currently being installed as a part of the wayfinding project. He noted that more signage is needed, and Voetberg reported that the second phase is underway.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of City Council minutes from the work session and regular meeting of March 7, 2011 and the special meeting of March 10, 2011;
- B. Police and Fire Department monthly reports for February 2011;

- C. Report of accounts paid for February 2011;
- D. OLCC application – Nye Beach Market.

Allen and Bertuleit pointed out corrections to the minutes. MOTION was made by Brusselback, seconded by Beemer, to approve the consent calendar as amended to include the corrections to the minutes. The motion carried unanimously in a voice vote.

OFFICER'S REPORTS

Mayor's Report. McConnell reported that he received letters from Lyle Mattson and Dennis Bartoldus regarding the stormwater utility fee. He also received a letter from Pat Linstromberg regarding tsunami alerts. He noted that he received the annual report on the emergency warming shelter; information regarding emissions from the Japanese nuclear power plants affected by the recent earthquake; and a letter from Shangri La requesting support.

McConnell reported that he attended a meeting of the LOC regional teams coastal section and referred several Council questions to the group.

McConnell reported that he welcomed a group to a marine science workshop.

He reported that the business license/room tax task force meets every Monday at 8:30 A.M.

McConnell reported that he had attended a recent meeting of the Airport Committee, and a meeting of the Fishermen Involved in Natural Energy (FINE).

He reported that he had made a presentation on finances to the Rotary Club. He also had a discussion on emergency response and fishery issues with local officials.

McConnell reported that the Sister City group would be meeting tomorrow to discuss a summer visit from a Mombetsu delegation. He noted that Mombetsu did not suffer earthquake damage. He added that Newport has been invited to send a delegation to Mombetsu next February during the Ice Festival.

McConnell noted that Representative Shrader will hold meetings in Newport on Thursday.

City Manager's Report. Voetberg reported that the February financial report is included in the packet, and that expenditures are favorable. He noted that staff is watching some items closely, and Council action will be required if expenditures are exceeded.

Voetberg reported that the monthly suggestion/concern/complaint form update is included in the packet. He added that the Parks and Recreation Department spray policy will be on the April 4 agenda for discussion.

Voetberg reported that the packet includes an update on key public works projects.

Voetberg reported that the fire chief recruitment has started, and it is hoped the position will be filled by July 1. Hawker reported that advertisements were placed with the LOC, News-Times, Washington Fire Chiefs, Oregon Fire Chiefs, and the Association of Washington Cities.

It was asked whether the retirements of the city attorney and executive assistant would recognize savings that will offset overruns by the Police Department. Marshall explained that due to the method of forecasting, it appears that there will not be an overrun in the Police Department, and that the cost center for the fire chief will also under run.

Voetberg reported that staff hopes to resolve the issues surrounding water billing within the next few meetings.

A discussion ensued regarding the city's engagement in the territorial sea plan. Tokos reported that a joint meeting of the city and county Planning Commission's had occurred, and it included a presentation by Aquamarine Power regarding the installation of large clamshell devices in the ocean but close to the beach. He noted that this is an opportune time for the city to become involved in this issue, and that the Planning Commission is offering itself as a forum for sorting through the local issues. He added that Lincoln County is best suited to take the lead role. He asked for Council approval to engage in this process. He noted that he would prepare a letter for Council consideration that would indicate a desire on the part of the city to engage in the process, with the Planning Commission serving as the forum for vetting local issues. Council concurred that Tokos should proceed in drafting a letter for its consideration.

Voetberg reported that the owner of the property in South Beach that was to be donated in support of the municipal pool is willing to pay the lien.

Voetberg reported that a childhood hunger awareness flag display will be installed on the city hall lawn during the week of April 3.

Voetberg reported that in previous negotiations with SeaPort Airlines, the city was trying to achieve a 90-day notice from SeaPort. He noted that in January, SeaPort had concerns with the entire agreement, particularly the notice provision. In February, the confidential component was included in the agreement. He stated that the intent was for the airport staff to have as much notice as possible of SeaPort's departure so that it could plan accordingly. He added that the language relative to "confidential" was removed from the agreement, and the document has been signed.

Voetberg reported that a part of the former city attorney's job duties included the handling of higher level human resource services. He noted that Speer Hoyt has indicated that there should be a separation between human resource and attorney issues. He added that there are consultants available on an as-needed basis to handle higher level human resource issues, and asked for Council approval to hire someone to handle these duties on an hourly and as-needed basis. Brusselback asked about the number of hours, and Voetberg reported that it is difficult to anticipate, but possibly a few hours weekly at most. Allen asked whether there are other individuals or groups available, and Voetberg reported that LGPI and Bob Gibson could perform these services. McConnell asked whether someone needs to maintain office hours. Voetberg noted that if an employee has a concern, there are prescribed steps. After following procedures, if the issue is unresolved, Cheryl Ewing would perform an intake and advise Voetberg, and he will decide what to do at that point. Allen asked whether Speer Hoyt is comfortable with the consultant approach, and Voetberg reported that they are comfortable with this procedure. Council concurred that the higher level human resource matters be handled in this manner, and that Council will be kept informed.

Voetberg reported that the city's labor negotiator has requested an executive session to update Council on the requests of the bargaining units. It was agreed to hold this session on March 25, 2011 at noon.

Miranda talked about the emergency response during the recent tsunami. He noted that a debriefing with the county and other jurisdictions had occurred, and that it was concluded that communication is the main issue. He reviewed the notifications, noting that

he responded to the county's emergency operations center after 2:00 A.M. He reiterated that the biggest issue was the notification of people in low-lying areas. He reported that the county initiated the reverse 911 system from south to north, and that the system failed to work as advertised. He stated that the school district notification system worked better, as the reverse 911 calls did not even reach South Beach. He noted that police and fire units drove on streets in certain areas with sirens on to wake people. He added that people were confused and did not know what to do. He recommended that everyone obtain a NOAA weather radio for first-hand knowledge of the alerts. He added that some hoteliers have a NOAA weather radio in the front offices. He noted that sirens could be installed throughout the community, but that many would be needed due to the topography, and sirens are quite costly. He added that in the end, the city dodged a bullet, as surges had come into the bay. He stated that the county is processing the information from the debriefing, and a report may be prepared. McConnell suggested a formal plan for the future. McConnell stated that in a near shore earthquake, the recent notifications would not be sufficient. Beemer agreed that more needs to be done. He added that the Ash Street extension and the trail to the community college would help residents in South Beach evacuate. It was noted that there are things that could be done at the stairway at the south end of the bridge. Roumagoux reported that people were lined up at the college by 4:30 A.M., and that the college is working with the Red Cross to make the school an official evacuation site. Voetberg reported that a part of next year's goals should be to look at everything that has been talked about and move forward with the easier things. It was noted that there are signage issues. It was reported that NOAA is interested in knowing what to do with employees in the event an evacuation is necessary. Brusselback suggested obtaining costs for an alarm system prior to the goal setting session. Roumagoux suggested drills. It was noted that a work session or group could be helpful.

McConnell noted that Council had received a memo from Christy Monson with comments from the last meeting packet. Allen commented on the method of communication with the contracted city attorney.

DISCUSSION ITEMS AND PRESENTATIONS

PowerPoint presentation by Rob Bovett, District Attorney. Bovett reviewed the work and accomplishments of the District Attorney's office over the past year. He responded to Council questions.

Presentation on Lincoln County School District Bond Measure. Liz Martin and Rich Belloni appeared before Council on behalf of the Lincoln County School District bond measure. McConnell reported that there is information in the Council office. Allen reported an actual conflict of interest because the firm that he is associated with of counsel is currently providing legal advice to the school board with respect to the bond issue. Martin and Belloni made a presentation in support of the issue and answered Council questions. They asked for Council support of the bond issue noting that the Mayor has a sample proclamation of support.

PUBLIC HEARINGS

Public hearing regarding a proposed storm drainage utility fee. McConnell noted that public comment would be limited to three minutes per person, and he asked that speakers not repeat testimony that has previously been presented. He added that this is the beginning of a discussion on this subject, and that there would be several more hearings before a decision is made. Ritzman and Gross appeared before Council and made a PowerPoint presentation regarding the matter. Ritzman responded to Council questions. A discussion ensued regarding waivers. It was asked whether other Lincoln County communities collect this fee, and Ritzman reported that he is unaware of any. Allen asked how the City of Lincoln City handles stormwater issues with respect to the budget, noting that it would be beneficial to compare what is happening in Lincoln City, Tillamook, and other coastal communities. McConnell noted that Council needs a comprehensive look at utility rates and projections. Voetberg reported that a five percent increase in water and wastewater might be unnecessary next year. A discussion ensued regarding SDC's. Allen asked whether a master plan is needed to fix the problems in Nye Beach, suggesting that short and long-term problems could be identified, planned, and funded, and the master plan could be a separate issue. Ritzman reported that staff looked at quick fixes in Nye Beach, but that would not eliminate flooding in serious situations. Allen suggested looking at the most pressing problems and asked whether the city has the money to deal with these issues. Gross noted that the recent sanitary sewer project cost \$60,000, and there is very little money now to deal with stormwater issues. He added that dozens of projects need to be dealt with now, and that the city is experiencing repercussions due to many years of tacking onto the system. He stated that the Nye Beach storm sewer is not adequately sized to handle storm water, and added that the city needs a consistent funding source. He stated that staff will not get a good handle on the issues without a comprehensive look. McConnell opened the public hearing at 7:29 P.M.

Terry Obteshka stated that he is a small business and property owner, and that some small businesses have difficulty paying the light bill. He added that he does not believe people will accept any kind of fee, but that if a fee is imposed, he believes that everyone should pay into the system. He asked about the accuracy of the numbers presented, and inquired about how non-profits, churches, and schools would be handled. He suggested short and long-term strategies, and spoke on a potential plan, beach bacterial count, smoke testing, and the need for a tree ordinance, grant possibilities, and utilizing the National Guard to assist with part of the projects.

James Patrick noted that credit is typically offered for property owners handling stormwater on their own property. He stated that he believes that the fees should be based on the surface area. He agreed that a master plan is needed before doing anything. He noted that there is opportunity to do something in Agate Beach, and added that he believes that lots of storm sewers are still connected to the sanitary sewers. He added that due to the economy, now is not a good time to impose a fee, but that projects cost money and a fee might be the best solution. He suggested a graduated implementation of the fee.

Mark Watkins addressed the potentially negative impact the fee would have on economic development.

Kathy Cleary, a business owner in Nye Beach, thanked Council for looking at this issue, and asked where money could be found to perform small fixes now. She suggested looking at the availability of FEMA money, as no one can afford a new fee at this time.

Mike Schulz, of Sunwest Motors, stated that the impervious surfaces are primarily owned by public agencies, and that the storm drains being discussed now are owned by the public and under public easements. He stated that the fee needs to be spread throughout the public

Lou Limbrunner expressed opposition to the proposed stormwater utility fee. He also addressed water bills.

Steve Snow appeared on behalf of the Surfrider's Association. He stated that the Surfrider's Association wants to approach the problem as individually as possible. He pointed out the installation of the rain garden at city hall. He suggested a partnership where Surfrider members could provide design, engineering, and labor, and effectively lower the cost of some of the projects. A discussion ensued regarding slippage as a result of additional water going into the ground. It was asked that Surfrider's provide a list of storm water related projects that it has been involved with on the Oregon Coast. Snow will relay the request to Charlie Plybon.

Sunetta Ransom appeared representing the Embarcadero Unit Owners Association. She noted that Council had received a letter from the attorney representing the Embarcadero Unit Owners Association. She stated that the stormwater at the Embarcadero drains into the bay. She noted that she appreciates the suggestion to examine individual situations, and looking at what can be done in the short-term while keeping an eye on the long-term. She stated that she hopes that she can continue to ask the city for help with the storm drain and sinkhole.

Doug Fitts asked whether there had been any follow-up to a City Council visit to Nye Beach several weeks ago. This was added to the list to follow-up, and Allen noted that if legal issues arise, they should be reviewed by the interim city attorney for liabilities and reimbursement issues.

Patricia Patrick-Joling stated that there were lots of good comments tonight. She noted that one thing Council needs to consider is the bad economy and empty storefronts. She stated that aside from the stormwater fee, the water treatment plant went over budget, and one of the recommendations to cover the overage was to increase the water rates. She stated that staff needs to return with a long and short-term comprehensive analysis.

McConnell stated that the hearing would remain open, and be placed on the agenda of the next meeting. It was asked that staff consider the testimony and return with a better plan. It was noted that information from other coastal communities; a list of services that the Surfrider Association could provide; and a list of funding sources would be helpful to further consider this issue.

Public hearing on city's proposed financial reserve policy. McConnell opened the public hearing at 8:55 P.M. Marshall explained the proposed financial reserve policy as presented at the last work session. Minor wording changes were pointed out. Marshall reported that he used 8.33% in his calculations because it is one month's expenditures. He added that the city must adopt and implement this policy as it will have an impact on this and future budgets in what the city actually spends. McConnell asked whether the city would have exceeded 8.33% if it had begun the year with this policy. Marshall noted that

he wished to defer this discussion until the audit presentation as it addresses that issue. He noted that the city has exceeded 8.33% in the general fund, but there are other funds with serious deficiencies. He noted that his recommendation would be to pay off the funds that are in the negative and reduce the general fund balance to four or five percent. Voetberg noted that the 2.2.5 of the policy states that if the city cannot achieve the reserves, it does not mean that it stops, but it places a burden on staff to return to Council with a plan forward. It was noted that the contingency funds are in good shape this year. Adoption of this policy will formalize the process so that there is a goal. McConnell asked for public comment. It was agreed to place this policy on the next City Council agenda for adoption by resolution.

ACTION ITEMS

Further consideration of utilizing tourism marketing grant funds for the Friends of the Oregon Coast Aquatic Park's half-marathon walk/run. McConnell reported that Council had received a letter from Katherine Pedersen of FOCAP. Allen declared a potential conflict of interest as an attorney in the firm with which he is associated with of counsel has provided pro bono legal services to FOCAP. He noted that there has been no financial benefit, but services have been provided. Bertuleit stated that he is on the board of the FOCAP group, but does not derive any benefit. He stated that this request relates to a general fundraiser, and the group's future plans may or may not approach property that he owns. It was noted that the issue before Council is consideration of expending \$1,300 of tourism marketing grant monies for the Friends of the Oregon Coast Aquatic Park's half-marathon to be held on September 17, 2011. Allen stated that based on what happened at the last meeting, he wanted to put his issues in writing. He noted that he had sent an e-mail regarding general issues about how to approach these matters and laid out a possible course of action. MOTION was made by Beemer, seconded by Allen, to approve the expenditure of \$1,300 from the Room Tax Fund, Event Start-Up Grant line item to fund the grant request submitted by the Friends of the Oregon Coast Aquatic Park for its Half-Marathon Walk/Run and 10- Mile Fun Run to be held on September 17, 2011. Allen noted that the city has a process in place for these grant funds, and that certain information is required of the applicants and sent to the Destination Newport Committee for review and recommendation. He noted that Council usually accepts the recommendation of the DNC. He added that the application seemed to be filled out completely, and additional information requested over and above what is required. He noted that if Council looks at requiring additional information in the future, it should make that a future, rather than a retroactive requirement. Bertuleit agreed with Allen. Brusselback asked whether Council is working at cross-purposes as FOCAP is not interested in a municipal pool. He asked whether the community could support two pools. McConnell noted that the letter from FOCAP requests a time to talk with Council. The motion carried in a voice vote with Bertuleit abstaining.

Recommend notice of intent to award Naterlin Drive Sidewalk and Bicycle Improvement Project. Gross reported that the issue before Council is whether to issue a notice of intent to award the SW Naterlin Drive Sidewalk and Bicycle Improvements Project. He reviewed the project and bid process, and recommended issuing an intent to

award the bid of the Naterlin Drive Sidewalk and Bicycle Improvement Project to Devil's Lake Rock Company. A discussion ensued regarding whether the bid eats into the contingency, and Gross said that he budgeted a bit more and that should accommodate the project costs. MOTION was made by Bertuleit, seconded by Beemer, that the City of Newport Public Works Department issue a notice of intent to award the Naterlin Drive Sidewalk and Bicycle Improvements Project to Devil's Lake Rock Company in the amount of \$409,234.75, and contingent upon no protest, authorize award of the bid and direct the city manager to execute the contract on behalf of the City of Newport. Gross reported that substantial completion is expected by June 1. The motion carried unanimously in a voice vote.

Motion to facilitate transition from former City Attorney, Penelope McCarthy to the Local Government Law Group. MOTION was made by Brusselback, seconded by Allen, that in order to facilitate a seamless transition from the former city attorney to the interim city attorney, the City Council grant former City Attorney, Penelope McCarthy, permission to divulge, discuss, or provide any and all information that may be confidential or subject to attorney/client privilege to any attorney working with the Local Government Law Group while the firm is serving as Newport's attorney. The motion carried unanimously in a voice vote.

Ordinance No. 2012 eliminating the Newport Urban Renewal Advisory Committee. Tokos explained that the issue before Council is the consideration of whether it is in the public interest to eliminate the Newport Urban Renewal Advisory Committee. He recommended that Council either adopt Ordinance No. 2012 or direct staff to seek volunteers to serve on the Committee so that committee appointments can be made at a future Council meeting. Bertuleit stated that he is comfortable eliminating the committee. Tokos noted that there is substantial public outreach on issues. Allen stated that he was leaning toward a task force option to advise the URA on specific issues. He noted that procedurally, the URA and Council must be kept separate, and asked which body would be the appointing body. MOTION was made by Bertuleit, seconded by Sawyer, to read Ordinance No. 2012 by title only and place for final passage. The motion carried unanimously in a voice vote. Voetberg read the title of Ordinance No. 2012. Voting aye on the adoption of Ordinance No. 2012 were Bertuleit, McConnell, Allen, Sawyer, Roumagoux, Brusselback, and Beemer.

Approval of severance package for Penelope McCarthy, City Attorney, in the amount of \$4,929.38. McConnell reported that this is a voluntary severance package and not required by contract. He added that it amounts to three months of medical insurance premiums until the end of June, and withholding taxes that the city is required to pay. A discussion ensued regarding the availability of insurance continuation through COBRA. Allen asked whether there is a way for the city to receive consideration for this payment, such as McCarthy handling routine matters during the transition without compensation. He stated that he would like to see an agreement from McCarthy that she would provide whatever legal services are necessary, at no charge, during the transition. Brusselback asked whether the amount of transition time was known. Allen noted that health insurance costs are important, and that the message and perception should be consistent. Voetberg

will communicate with the interim city attorney to provide a quick sentence for Council to review. MOTION was made by Allen, seconded by Sawyer, to provide three months health insurance premium payments to the former city attorney, and in consideration, work out an agreement by which the former city attorney will provide transitional legal services with the interim city attorney, and provide those services at no charge. The motion carried unanimously in a voice vote.

Discussion of memo from Christy Monson on how to proceed with communications with new legal services. It was reported that the interim city attorney had provided three communication models for Council review. They are the city manager model, the city manager/mayor model, and the city manager/city council model. Allen noted that all the models have merits, and he noted that he thinks the city manager/mayor model is a good baseline to work from. He added that there should be the ability for individual Councilors to go to the city attorney if they believe their issues are not being addressed. It was noted that this language could be included in the Council Rules. After discussion, staff was asked to prepare a resolution incorporating the city manager/mayor model with language loose enough to allow flexibility. Council asked that they receive the monthly invoice from the city attorney.

Amendment #1 to the employment agreement between the city and city manager. It was noted that this amendment would realign the city manager's evaluation schedule. Allen stated that proposed evaluation forms would be available at the April 4 work session. It was asked that the city manager and others review the evaluation document for input. MOTION was made by Bertuleit, seconded by Brusselback, to accept amendment #1 to the employment agreement of Jim Voetberg, City Manager. The motion carried unanimously in a voice vote.

Presentation on city's 2009-10 audit by David Marshall, Finance Director. Marshall presented the city's 2009-10 annual audit and responded to Council questions. Council agreed that more time is needed to review the monthly financial report, and Council agreed to hold a work session after the March 25 executive session, to review the financial reports.

COUNCIL REPORTS AND COMMENTS

Allen noted that the city attorney is seeking Council direction regarding her review of the City Council packets as a safety net. He noted that she strongly suggests that whoever is working on the volunteer firefighter agreement contact her before negotiating or drafting this agreement any further. Voetberg stated that it is his understanding from Council that this agreement is on hold until after a new chief is hired. McConnell noted that the city attorney will need to be included on the revision to the model contracting rules. Bertuleit suggested that the attorney spend minimal time reviewing packets. It was the general consensus of Council that the city attorney should minimally review Council packets.

ADJOURNMENT

Having no further business, the meeting adjourned at 10:34 P.M.

Margaret M. Hawker, City Recorder

Mark McConnell, Mayor