

May 21, 2012
6:00 P.M.
Newport, OR

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, Allen, Bertuleit, McConnell, Brusselback, Roumagoux, and Sawyer were present. Beemer was excused.

Staff members present included City Manager Voetberg, Executive Assistant Wanda Haney, Community Development Director Tokos, Public Works Director Gross, Public Works Senior Project Manager Jones, Finance Director Marshall, and Police Chief Miranda.

PLEDGE OF ALLEGIANCE

The City Council and audience recited the Pledge of Allegiance.

ADDITIONS/DELETIONS AND APPROVAL OF AGENDA

McConnell noted that there was one item to add to the agenda under "Discussion Items and Presentations." A presentation by Salmon for Oregon was put in as Item C, and Item C moved to Item D.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of Minutes of the City Council Regular Meeting of May 7, 2012, and executive session minutes May 11, 2012;
- B. Report of Accounts Paid for April 2012.

Allen stated that his thought was that since the recent executive session was a special meeting and a public meeting, even though the minutes of the executive session are confidential, we should have minutes expressing the fact that the Council met in a special meeting before going into executive session as a matter of record. The minutes also should site the reason for the executive session.

MOTION was made by Brusselback, seconded by Roumagoux, to approve the consent calendar with the correction to the minutes as suggested by Allen. The motion carried unanimously in a voice vote.

PROCLAMATIONS

McConnell proclaimed the week of May 20 - 26, 2012, as Public Works Week. Gross accepted the proclamation.

McConnell proclaimed July 20 and 21, 2012, as Pathfinder Days commemorating their efforts 100 years ago as part of the good roads movement by the Commercial Club.

OFFICER'S REPORTS

Mayor's Report. McConnell asked Voetberg to communicate with the City Attorney that it was no longer necessary to have the packet review every two weeks.

McConnell noted that the Lincoln County jail will hold a 20-year anniversary observance on July 1 at 10:00 A.M.

McConnell noted that he had received several items of correspondence; one from Joyce Gaffin about the planning process at Coho/Brant; one from a resident about the 6th Street sidewalks; and a letter from a lady from Portland about a ticket. He would make these available to the Councilors.

McConnell noted that he had given the Councilors a blank copy of the City Manager evaluation form. The evaluation will occur at the first work session in June. He asked that Councilors complete the form in preparation for the evaluation. McConnell noted that Council has already received the employee survey report. Allen asked if John Baker could review the report with them before the executive session. Voetberg will set that up with Baker.

McConnell appointed Richard Balzer and Fred Springsteen to the Parks and Recreation Committee. MOTION was made by Roumagoux, seconded by Brusselback, to ratify the Mayor's appointments. The motion passed unanimously in a voice vote.

City Manager's Report. Voetberg noted that the packets contain the suggestion/concern/complaint update.

Voetberg noted that the monthly department reports are also in the packet.

Voetberg reported that the draft tourism grant agreements are included in the packet and are the boiler-plate drafted by the City Attorney. He noted that the Maritime Museum wants to do some phasing, and the agreement is pretty straight forward. Voetberg said that the PAC is becoming an interesting project because it is a city-owned building. They will have to follow prevailing wages and the city's procurement policy. It may have to be worked out with OCCA whether the Council has to approve. Allen noted that page two, section three of the Aquarium contract does not have an expiration date. Voetberg said there will be a date. He said that the Aquarium is ready to proceed.

Voetberg noted that the packet contains the FAA inspection report. He said this is a really good report. Essentially there are only two items of correction; a tabletop exercise for emergency response, which is being done tomorrow morning; and moving some taxi way signs, which is part of an upcoming airport project. Voetberg recognized the employees for their work at the airport.

Voetberg noted that spring cleanup continues. City crews have been working with the business districts, and the city is starting to look nice. Crews cleaned between 20th Street and the bridge. In addition, the Chamber did a really good job with spring cleanup work along the highways.

Voetberg congratulated Jim Protiva and the Parks and Recreation department on the professional job they did for the home and garden show.

Voetberg told the Councilors that the Fire Department will be burning the house at 622 NW Coast on May 30.

Allen said that at the last meeting staff was asked for the materials CIS provided regarding the new health plan. He would like to have a copy to see what the employees saw if the Council goes through with this process.

Allen noted that at the last meeting Voetberg had mentioned that some applications for Airport Director had been received. Allen suggested that Voetberg reach out to the Airport Committee to assist in reviewing the applications before he makes his final decision.

DISCUSSION ITEMS AND PRESENTATIONS

Newport Police Department Awards. Miranda recognized members of the department who have done outstanding deeds. Officer Keith Garrett received a distinguished service award due to his rescue at a traffic crash scene on the bridge on January 18. Sergeant Tom Simpson received a lifesaving award for his actions tending to an assault victim's wounds on January 15.

Newport Police Department Minor Decoy Program. Sergeant Ken Real made a presentation regarding compliance checks conducted by the Newport Police Department. He explained that in the past, the department would work with OLCC, who provided the decoys, and the police would follow them around. OLCC no longer budgets for this, and the city is required to conduct compliance checks by the national standards. The department will be conducting compliance checks throughout the summer.

Presentation by Salmon for Oregon. Communications Officer Jim Wright gave the presentation. He noted that Don Baker is the organization's president, and board members include former Newport Mayor, John Brenneman. He noted that members of the U-da-man fishing organization and the Long View Hills fishing group were attending as well. Wright explained that Salmon for Oregon is a spring Chinook program for the Yaquina Bay using net pens. The program consists of raising 50,000 spring Chinook in a hatchery. The organization is working directly with the ODFW director's office on this project. They believe a healthy spring Chinook program will enhance the economy in the Bay. To market the program, Salmon for Oregon is asking for support and asking for marketing money. Lincoln County recently gave them \$5,000 for their efforts, and they asked the city to match that.

David Lancam with Oregon Sea Grant noted that aquaculture projects are worthy of consideration.

McConnell said the city has a marketing grant application on the website. There are potential monies there, but there is nothing left this fiscal year. He suggested that Wright talk to Voetberg.

Wright noted that they are leaving the Councilors a newspaper insert they produced, and would appreciate a letter of support.

Planning Commission Recommendation on Vacation Rental Dwellings in R-1 and R-2 Zones. Planning Commission Chair Jim Patrick and Commissioner Rod Croteau were present to discuss the Commission's recommendation. Tokos said that on April 2, the

City Council concluded proceedings on a package of code amendments related to vacation rentals and B&Bs putting a number of new standards into effect. At the end of the process, the Council said to put the package into effect effective July 1; but asked that the Planning Commission look at vacation rentals in R-1 and R-2 and whether it is appropriate to have additional standards in those areas. Tokos noted that the Planning Commission considered this at their April 9 work session and the April 23 session. Councilors had a letter from the Planning Commission in the packet.

Patrick explained that the Planning Commission rehashed everything and ended up where they started. He said that they understand the concern, but they can't come up with a set of objective standards. He said they could do banning, but that would require re-noticing, and there could be a takings issue. They could do some sort of time limiting without having to re-notice. Originally people could do ten weekly rentals. There wasn't a lot of enthusiasm for that because it was the same problem as existed before. Patrick said they also were asked to consider a conditional use; but there are no clear objective standards for doing that in just R-1 and R-2. He said that is why they are coming back with their first recommendation. He added that if the Council wanted the Commission to take it back, the Council would have to give them direction.

McConnell noted that he recalled that the Council position was that the endorsement process in place was enough to create controls. Patrick said that is what the Commission thought. McConnell said that it seemed that there was only one residence that seems to be a big problem. He asked Tokos if there are other areas in town where folks are abusing the process. Tokos said that the city has received a few complaints not specific to R-1 and R-2. R-4. The city also received a lot of testimony that one property owner in R-1 was not playing by the rules. Croteau said that complaints have come from all residential areas. He believes we are trying to do something with R-1 and R-2 because it is a neighborhood problem. He noted however that there are neighborhoods throughout all residential zones. We would have to think of similar relief in R-3 and R-4 as well as thinking of R-1 and R-2; it would have to be broader. Patrick noted that there was sentiment for controlling them in R-1 and R-2, but they couldn't figure out how to get there. However, Patrick noted that the decision was unanimous both times.

McConnell wondered why the notification couldn't go out prior to the endorsement being in effect. Tokos said that the VRD either meets the standards or not. If neighbors are notified in advance there is nothing for them to respond to, and if we give them notice and they can't do anything that is frustrating to them. Allen noted that the code has a notification and a complaint process in place. He suggested tracking complaints and making it clear that after a period of time, this comes back to the Planning Commission and City Council to look at the complaints and see what have been filed with the city. We can find out what the bases for the complaints are and what zoning districts they have taken place in. He said that maybe a year's history is needed to get a better sense. He suggested keeping the status quo and see how things check out for the residential areas over the course of a year. Then we can see if complaints filed reflect a problem in R-1 and R-2.

Bertuleit said that if we allowed ten uses at a time, it's not like we are taking away from them. He said vacation rentals are mini-hotels. We are not taking any use away from them living in that unit. He also noted that he misunderstood the original vote.

McConnell asked if there would be a way to do a pilot program. Tokos said that typically how it is done is to get a report back from staff after a period of time so that we

can see how the program has been working. McConnell said that he appreciates the Commissioner's work on this. It has been long and hard, but they did a nice job.

Bertuleit asked if there was something in the code about daytime and nighttime occupancies. Tokos said it puts in place a maximum overnight occupancy and the maximum building occupancy as part of the endorsement.

Allen noted that under the former standard, they had a limit of ten weekly rentals. He wondered if, with this new ordinance without that limitation in place, Tokos thought there would be a proliferation in R-1 and R-2 or if we won't see a lot more people applying for this endorsement. Tokos said that most of those who were engaged in the process were vacation rental owners. There were not a large number that wanted to know about the new rules so they could start a vacation rental. The present code allowed ten weekly rentals; essentially up to seventy days. Tokos said his sense is that we won't see a huge jump. We may get a few more because we will get some in the process that weren't licensed before. Allen said if there is not going to be a huge jump, we should stay the way we are and see how things check out in the next year. See if we get more and how this process works. He said we have the checks in place of notification and the complaints log. Barring no recommendation on any changes at this time, he would say to stay status quo. He thought that the Planning Commission vetted this very closely. He doesn't know what more the Council can do at this point. Patrick said he didn't think we will see a great increase. If a residence is not close to the beach or doesn't have an ocean view, it won't be a vacation rental. He said there is a very small segment that fall into an area that can sustain a vacation rental. McConnell thought the city will have more awareness of vacation rentals out there. They will become licensed and more legit. Croteau thought it might bring some out from where they were hiding, which will increase numbers. He said that if someone is underwater on their mortgage, there is no greater way to bring in income. Bertuleit said that if they become a vacation rental, they usually stay one. He added that it looks as if the city doesn't care about the high-end housing market; this will change the oceanfront. McConnell argued that he doesn't think it will change our population. Bertuleit said that he would like another vote. Allen said the Council couldn't have another vote; it had to be at the following meeting under Council Rules, and it is already past that time. He suggested that, if there is no further recommendation from the Planning Commission, we go with what we have. McConnell thought it was workable, and we can keep close tabs on it.

Allen summed up that what the Council has determined is to keep what the Council adopted last month and that it is the consensus of the Council that by next year to have an opportunity to revisit this based on complaints filed and what has transpired over the year.

Bertuleit asked that the record reflect that he had voted yes on this matter, but was mistaken and should have voted no.

PUBLIC HEARINGS

Public Hearing on an Amendment to Newport Municipal Code 5.20-Stormwater Drainage Utility. McConnell opened the public hearing at 7:25 P.M. Gross explained that the packet included an amended code establishing a stormwater fee that changes from one based on impervious surfaces to a flat fee. Rather than applying to each account, which could be multiple properties, it will be applied based on the number of meters; but

irrigation meters are exempt. The fee will be set at \$6.80/meter. Gross said it remains to be seen if the most efficient method is to establish the fee by resolution or in the ordinance itself. Allen said that rather than changing an ordinance every time, it could be set in a resolution as long as the link between them will not affect it for a yearly basis change. Gross said he could bring a resolution back based on the contemplation of the language. Voetberg added that the Council will also hold as a public hearing so everyone can see how to assess the fee.

Dean Bristo asked if he understood correctly that a property that generates a considerable amount of rainwater runoff is assessed the same as any other; and that was confirmed. McConnell added that most of the runoff is coming from public streets, and everyone uses those. Bristo asked if that means that a large parking lot like Walmart's has the same impact as his two lots. McConnell said it ends up going into the same places and causes the same problems for everybody. Gross explained that there has been discussion about a stormwater utility fee over the last three years. Originally, it was thought it should be based on the impact of a particular property. Backlash from that was that it was too heavy a fee to be absorbed by larger properties. When the discussion came around again, the consensus was that a fixed fee across each utility bill would be the most palatable way of addressing the issue. It's not necessarily the most equitable; but the most preferred. Allen added that this is where we are based on input we have received. Gross said calculating on property square footage or exemptions for alternative stormwater methods on a property gets very complicated, and a fixed fee is a very simple method. McConnell noted that even if someone has a rain garden, they are still driving on city streets, and that is where the problem is for stormwater infrastructure that is ailing with no way to fix it. He said this seems to be the best way to get there.

Nyla Jebousek said that as a citizen showing up at this meeting, when staff does a presentation, it should be as if you are having a conversation with the audience. She said it is not exactly citizen-friendly. She said that the technical conversations are difficult to follow. She said it is challenging for a regular person. Gross said he had tried to include the information in a packet that was available on the front table so people can take it home, look at it, and come back at the next meeting when the City Council is taking action. Jebousek asked who was part of the group that reached consensus on the fee. Gross explained that the stormwater ordinance was drafted in 2008, and the initial discussion was at that point. In the 2010 budget, it was talked about in detail. It was in the last fiscal year's discussion. There was input from the public on the fee structure. The consensus then was to wait and take a look at it again. Staff talked with residents over the year and came to a consensus. Tonight is a look at language to implement the fee.

Allen added that at the past budget, we had a public meeting and raised consensus that we want to place in the proposed budget a fixed fee for public input. This is follow-up to the budget for public hearing.

Jebousek summed up that what she understood was that it was the Council with citizen input over three years. Gross said in the January meeting there was a consensus that "a stormwater fee is a necessary evil; and a fixed fee is the most palatable."

Gross explained that before the 60s and 70s, the stormwater and sanitary lines were combined and discharged directly into the ocean. The sanitary sewer was first installed

in the 70s, and only then was the combined changed. The combined pipes are still in ground and operating as the stormwater in many areas.

Jebousek noted that her water bill would more than double in less than six years, and the city has no vacation rate as other utilities do. To show the quality of the water, Jebousek brought a water filter from her system, and asked that the filter be entered into the record. Gross said we should see better water with the new plant. Jebousek said that she realizes the need for infrastructure improvement, but wondered what kind of investigation has been done to look for funds other than from residents. McConnell said that every time he talks to representatives and senators, he tells them we need money for infrastructure; and that we are looking for grant monies. He said if you talk to any city in the state, they say that money has dried up. Allen recalled that at the last meeting, there was talk about funding from the federal government that is no longer available. Jebousek asked if water and sewer rates will go up as well. McConnell said the infrastructure needs are the same for water, sewer, and stormwater.

Public Hearing on a Consideration of an Adjustment to Utility Rate and Implementation of a Storm Drainage Fee. Gross showed a PowerPoint presentation, which was also available in hard copy. He noted that the previous hearing was about the wording of the ordinance; and this is a discussion of the impact of those fees based on previous discussion. He said that after a thorough analysis of utility rates, the Council discussed taking a look at raising fees for five years. This is the proposal of how this will work. Gross showed the chart projecting how the typical user fees over the next few fiscal years will look. He said that over the course of the past several weeks, he gave an explanation of the intention of what we are trying to do. He said we are not trying to cast blame on previous generations; but are trying to set it up for our children and grandchildren to have an infrastructure system that can operate. Gross noted that his staff does everything they can. The first wastewater plant built was in the late 60s or 70s and was discharged right to the ocean. We live in a different world today, and DEQ has a lot to say. Gross noted that in 2011, the city had twelve water main breaks; and in 2012, there have already been eleven. In 2011, there were nine sanitary sewer overflows.

Gross noted that there are no dedicated funds for stormwater. The consideration is to charge \$6.80 to everybody that has a meter, except for irrigation. The proposed water rates are broken down to within city and out of city but still served by the city's water system. The impact on next fiscal year would be a 15% increase to the base rate and the usage charge per 1,000 gallons. Within the base rate is allocated a certain amount of gallons; which currently is 1,000 in a typical single-family home and 41,000 gallons for large meters. Under the proposal, all meters would include the same usage in the base rate, which would be 1,000 gallons. From past discussions, the consensus was that we want to place a more equitable burden on higher users and have them pay more than light users. The rate structure in the Seal Rock area was left the same as when it was purchased, which is different and higher than the rest of Newport. Seal Rock generates approximately 2.4% of the overall revenue. There are only about 104 users within that area; so it doesn't come close to paying off the purchase. Seal Rock users are not getting any better benefit than anybody else. The proposal is to make rates standard across the board for all users in the system, which make utility billing clearer. Some water rates would actually go down; the cost per gallon would go up to be the same.

Commercial rates outside the city would go up, and the Seal Rock designation would go away. This shifts the burden to heavier users. That is why the base rate is high. It would be an incentive to conserve water. Allen thought it would be helpful to know if other jurisdictions with heavy industrial users typically allow more gallon usage in their base rates. Gross said he prefers to look at others across the country to have a larger area than just our neighbors. McConnell said that if we switch to a 1,000 gallon minimum, we need to take a closer look at the large users and see if we can get direct information on the impact on them. Gross said one fish plant will use 1 million gallons a month. It places more burden on them. It doesn't impact industrial users at all. He said that in a year, we could take a look at how to deal with them in the future. There is flexibility in the billing system; we are not under any bonds. Plus, we will have better records. The new system will be searchable for use and revenue summaries based upon meter size, where the current billing system is not.

Gross said that for wastewater rates the proposed adjustment is a 20% increase to both the base rate and the usage charge per 1,000 gallons. He said that wastewater is far more underfunded than water. He is trying to get the enterprise fund to where it can generate \$1.5 million for capital projects per year. Gross said it is a five-year plan, and each year we can analyze what we have spent and what we need to spend. The rates need to be looked at annually, the proposed amount of increase may not be necessary. He said that is the amount the city needs to invest in a system of this size to keep it going.

Using his utility bill as an example, Gross showed the difference between what the current water bill looks like and what a new bill would look like and what information it will contain. McConnell noted that the bill could also show what projects the city has undertaken. Allen added that we could break it down to what we have done and how we have progressed over a period of six months or a year.

Nyla Jebousek said that in twelve years her water bill will increase from \$30 to \$130. She noted that there are a lot of senior citizens in this community. This isn't even at the top rate. In 2022, her bill would be \$165.77. She wondered if the city didn't want to take a look at other communities to see what their water bills are. She said she understands the need for infrastructure improvement, but she doesn't see how the city can raise rates that high that fast. She thinks the city has to come up with some other funding source. McConnell said this is a 5-year scenario, but there is also a 10-year plan. Allen agreed that there were other options talked about during the budget process, like revenue bonds. The other option was for infrastructure improvements that need to be dealt with immediately, we go to the public with a general obligation bond. Urban Renewal could be another option. There are other approaches, but this is the one we are focusing on. He said he is getting from Gross that this is not a specific improvement; this is a wide-spread system-wide need. Jebousek said that maybe it needs to be a combination of funding. She said that she had a conversation with a city worker ten years ago who told her he could tell her exactly where the problem areas were. McConnell said that if we have no funding help coming from outside, this is what we are doing; but if we do, these fee increases are not locked into place. Jebousek said that she realizes the problem, but there has been a ton of money wasted and the proper investments weren't made. She said the city is assuming her bill can rise from \$30 to \$130 in twelve years; but that is not realistic for the citizens of Newport. There needs to be some combination of things.

Allen said he is struggling with this issue. He likes this approach, but on the other hand there will be a big impact on the citizens. Jebousek said that her general overview is that there are specific areas in town where there are problems we know about. Maybe those things should be identified. Do what Allen is talking about by combining other funding with some increase in the rates. She urged Council to think about this.

Marletta Noe said that she can understand why the questions brought up at the Budget Committee meeting have been brought up again. She is concerned about having the rates go up. She agrees that something has to be done. She said a lot of work has gone into this. She urges people to come to the meetings.

McConnell noted that he had received an email from Mike Larsen giving input as well, which he provided to the other Councilors.

At 8:50 P.M. the Mayor called a short break. The meeting resumed at 9:00 P.M.

Public Hearing on Legalization of NE 56th St. Tokos explained that this is a public hearing to determine if it is in public interest to legalize a portion of NE 56th Street adjacent to NE Lucky Gap Road. The section of street abuts tax lots 1701, 1800, 2000, 2099, and 2401. He noted that in the packet was the preliminary survey showing the area to be legalized. He said this process is set out in city statutes, which are also included in the packet. He explained that in November 2011, the Hales did some landscaping and set boulders on a portion of the road. The city received complaints that it narrowed the road and was unsafe. The Hales had done that based on a survey.

In January, the city initiated the legalization process. Tokos noted that the state calls out how to legalize roads. One reason is if it extends beyond the dedicated right-of-way. Another reason is if there is doubt as to the legal establishment of roads at all. A third reason is if there are discrepancies or unknown boundaries. All of these were the case here. He noted that there have been problems in this area before. He explained that basically what the city did was work with the Hales and had the alignment surveyed. The city paid to relocate the boulders, which is not entirely out of the area of legalization. They were moved so as not to be an impediment. Brusselback asked if the boulders were still in the right-of-way. Tokos said slightly; but they are not an issue to maintain the road and utility lines.

Tokos said the County Surveyor disagrees with the legalization process. He believes the city shouldn't be increasing the width of the right-of-way. He said that if we go any wider, we should be acquiring that. Tokos said the city explored that. The city's legalization statutes are different than the county's. Tokos said that the City Attorney's memo explains this. The county's statutes do restrict; but that same limitation is not in the city's. The City Attorney advised that this proposal conforms to city statute based on the fact that it is in the public interest.

Tokos said that in terms of next steps, if the Council agrees that it is in the public interest, they can direct staff to prepare a final order to legalize the right-of-way. The survey will be finalized, and the legalized area will be monumented, and it would be complete. If the Council doesn't agree, that also can be put in the final order.

Tokos said that there are no plans to do road work. The city typically wouldn't pave the right-of-way from edge to edge. The gravel area can stay there. That is where cars are traveling. Gross agreed that the city has never paved to the edge of the right-of-way.

Brusselback asked if there would be physical changes. Tokos said not beyond what the city just did by moving the boulders back. That was as the road was traveled and

was where the utility lines were. Beyond that, nothing else is going to happen in the foreseeable future.

County Surveyor Tom Hamilton said that he is opposed to the legalization. He said he must interpret the legalization process, and in the past he has helped the city with two or three others that fit within the statute. He said this clearly isn't that. He said this is taking of private property for public use, and that is against the fifth amendment rights. He said that the city has been talking about ORS 223.930 to 223.950, but should be proceeding with a different part of the statutes, ORS 223.005. Hamilton said that the legalization proceeding has three questions to ask. It qualifies if it meets any one of the three questions that Tokos laid out; but Hamilton believes not one of those conditions is met in this case. Hamilton said Tokos talks about the City Council opinion about what rights you have. Under the county legalization codes it is restricted; it is spelled out clearly. With the city, it isn't spelled out. He said the City Council still can't take private property for public use. The original dedication of NE 56th was first a county road. All the city got were the rights the county had. He said if you look at the deeds, the county acquired it in 1951, and it says 30 feet, and the city has no right to any property outside 30 feet. He said you might question where the 30 feet is. If you go back through surveys, you will find that line on 56th Street has been well established on many surveys. The 1964 survey showed a 30-foot roadway and monuments along the south side. A private survey in 1985 identified the north line of 56th Street. There is no question how it was established, where it is, and the width. Allen mentioned that the road as traveled does not conform to the description. Hamilton said the only question at all is the fact that traffic is now cutting across Hale's property, which is private property. People have been traveling on private property. Instead of taking Hale's property, the city should be telling the public to get off their property. There is no doubt about where it is established, only where the public has been using it. The public has traveled outside the right-of-way, and they need to get back in it. Hamilton believes the ORS regarding eminent domain is the right way, and he will be willing to hear that. The city doesn't have the right to do it under legalization. Brusselback asked if the City Attorney was privy to Hamilton's opinion, and Tokos confirmed she was, that she has given the memo that this complies with legalization statutes. Hamilton said that one other issue that the city will have to deal with is that the last review of this is not up to the City Council; the county surveyor is the one that decides it in the end. Allen asked if he has looked to the county's legal counsel on this and if this is on behalf of the county or his personal opinion. Hamilton said that as county surveyor, he sets policies. He had conference with the county counsel. Allen asked for confirmation that this is the county surveyor on behalf of Lincoln County and county legal advice. Hamilton said he didn't ask. He sets that. He has the power to do that. He informs county counsel. Tokos said he thinks this is the appropriate process. It is not clear where the boundary is, and this is setting that. Hamilton said there are surveys; one the city commissioned that was done in 1985. So, it is clear. As far as historical use, take a look at the water meter and the driveway. Tokos said that Mr. Hale has been a great resident in changing the boulders. To his knowledge, Hale has no issues. Tokos said that clearly was the way the road was traveled for more than ten years.

Allen asked Hamilton since in his opinion we are not looking at ORS 223.930-223.950, if the city submitted this to him as the county surveyor, he would have the discretion to decide if it is appropriate or if he has to accept it. Hamilton said it says he

redoes them and then files them. Allen asked if the city is going to have a dispute with the county on this. He asked if the county legal counsel has weighed in with an opinion. Hamilton said that he confers with counsel; but it is his (Hamilton's) job to decide. He said that the county counsel has no say in policy analysis. Allen said it might be beneficial to have something from the county's legal counsel. Tokos said that he had a brief conversation with Lincoln County Counsel, Wayne Belmont, and it was his understanding that Belmont would get involved if there was a problem when the survey is filed with the county surveyor. Tokos said that if the Council is inclined to proceed, he can check with the county attorney's parameter and have that in front of the Council at the time they have the final order. He said the assumption is that if the survey is properly monumented, the county surveyor has to accept it.

Hamilton said that if the city brings the survey to his office, he will reject it.

Allen said that the City Council really honors legal counsel, and it would be nice to see if the county's legal counsel has a different opinion. Sawyer asked Hamilton if he still had the authority to reject this whole process, and Hamilton confirmed he did. Bertuleit suggested going with Tokos' proposal to move forward but with the contingency. Tokos said he could seek something in writing from the county counsel. He will be happy to make that contact and request the county counsel's opinion to provide at the next meeting with the final order.

MOTION was made by Allen, seconded by Roumagoux, that the Council find it in the public interest to legalize the portion of NE 56th Street depicted on the preliminary survey prepared by Denison Surveying, Inc., dated May 13, 2012, and direct staff to prepare a final order completing the legalization procedure for consideration at a future Council meeting and to also direct staff to contact County Counsel to ask them to prepare an opinion on the adequacy and validity of this process before a final decision is reached. The motion carried unanimously in a voice vote.

ACTION ITEMS

Ordinance No. 2037 Regarding Electronic Message Signs. Tokos said that the Council's request is an ordinance for their consideration and possible adoption. He said it is very similar to the one presented at the public hearing with just a few minor changes; primarily what the Council requested. At the suggestion of the City Attorney, one change was to make it clear that prohibited types of signs still apply as long as it doesn't mean electronic message signs authorized elsewhere in the code. In order to make it clearer, Allen suggested adding the following language to Item K on page 10: While "electronic message signs are" subject to these prohibitions. . . and then continue on with the rest of the sentence. Tokos continued that some language was added noting that electronic message signs are not permitted in the Historic Nye Beach area or in the marine districts. Also language was added that requires that these signs not be illuminated when the business is closed. The City Attorney indicated that would be acceptable constitutionally. McConnell asked about public properties, and Tokos noted that the allowance of these signs would not apply to public lands. The Planning Commission determined that this type of signage would be appropriate in commercial and industrial, and they didn't expand it beyond that. Tokos said that another thing is that public lands can be in established residential areas. McConnell said that in all respects because of the time period before the message can change, people are not

going to see them change; they will look static to most people. Tokos noted that the Councilors did have a letter from Walgreens that they would commit to using their sign for public announcements, even though they didn't want to sign an MOU. Allen said that this commitment is part of the record, so that letter is probably something the city can rely on. He said the intent is essential to finalize the vote; and this shows they are committed to making it happen. He said that, even in letter form, he would be happy to rely on it. Sawyer said that even though the code specifies a time of two seconds for the message to change, the type of transition may need to be kept on the city's radar scope. Tokos said the applicant borrowed this language from an established code.

Brusselback suggested a comprehensive sign code update. Allen said the city could look at this and then a comprehensive change. He said it could be worded that we are willing to move ahead with the understanding that we will be looking at things more comprehensively later. Brusselback said he is afraid we are moving backward. Allen said to look at the City Attorney's memo and why we are making this change.

Chamber of Commerce Director Lorna Davis noted that there is a sign on the armory property that the Chamber uses for community events, and it blew down in a wind storm. The Chamber is looking to put that sign back up, but thought it would be more beneficial to move it back on their property. At a recent board meeting, they had members that wondered why they couldn't have an electronic sign. Davis said that the Chamber of Commerce office is actually in a public zone, but their board wants to pursue this. Allen said that one of the findings for proceeding discusses how these signs may facilitate private economic development by allowing business to convey messages in a cost-effective manner. He said that Davis' testimony is consistent with that finding.

Seth King, on behalf of the developer, Thomas Fox, spoke in favor of the request. King said they are requesting approval of the amendment. They relied upon the reasons in the findings; that it meets a public necessity and promotes general welfare. This updates the city's sign regulations. King noted that this type of sign can provide economic development. As written, this code will further the purpose and intent of the sign regulations. It can help improve aesthetics and could facilitate removal of nonconforming signage. The code is consistent with the purpose and intent of the commercial and industrial zones. It is consistent with the comprehensive plan goals and statewide planning goals.

Allen said the letter from Walgreens spoke to allowing public announcements. The best that Walgreens could do is say it is their intent. They indicate they have partnered in other locations without having written arrangements.

McConnell said that an aesthetics change along Highway 101 is high on the list of the economic development task force. He thinks the city has a clear mandate. He added that the Council could decide to have a sign ordinance task force.

MOTION was made by Roumagoux, seconded by Sawyer, for reading by title only the ordinance amending Chapter 10.10 to allow electronic message signs on certain commercial and industrial zoned properties. Bertuleit said that he doesn't have a good grasp on it. He thinks it is on a piece-meal basis. He said Walgreens may be a good neighbor, but others may not. Voetberg read the title of Ordinance No. 2037. The motion carried 5 to 1 on a roll call vote, with Allen, McConnell, Brusselback, Roumagoux, and Sawyer in favor; and Bertuleit opposed. McConnell, Brusselback, and Bertuleit volunteered to form a small work group to start taking a comprehensive look at the sign code.

Consideration of Destination Newport contract with CBS Outdoor Signs. Voetberg noted that the DNC has forwarded a favorable recommendation for a 45' x 40' rooftop sign on West Burnside in Portland facing Tom McCall Waterfront Park for a 16-week campaign from June 4 to September 23. Funds would come from room tax fund tourism dollars. Chamber of Commerce Director Lorna Davis said that we do have other signs in Portland, but that waterfront is a prime position.

MOTION was made by Brusselback, seconded by Sawyer, to approve the request. The motion carried unanimously in a voice vote.

Consideration of Resolution No. 3590 Extending Workers Compensation Coverage to Volunteers. Voetberg said this is a housekeeping item that allows the city to make sure our volunteers are covered with workers compensation coverage.

MOTION was made by Allen, seconded by Bertuleit, to adopt Resolution 3590 extending City of Newport workers' compensation insurance coverage to city volunteers. The motion carried unanimously in a voice vote.

COUNCIL REPORTS AND COMMENTS

Sawyer reported that at the Destination Newport committee meeting, they received a report from OSU HMSC on the grant we gave them for their event. They had 3,500-4,000 attendees. He said that Maryann Bozza wanted to thank all of the City Council members.

Brusselback asked to be excused for the month of June. MOTION was made by Bertuleit, seconded by Roumagoux to excuse Brusselback. The motion carried unanimously in a voice vote.

McConnell reported that Saturday is "free trash day."

ADJOURNMENT

Having no further business, the meeting adjourned at 10:10 p.m.

Wanda Haney, Executive Assistant

Mark McConnell, Mayor