

November 18, 2019
6:00 P.M.
Newport, Oregon

CITY COUNCIL MEETING

CALL TO ORDER AND ROLL CALL

The Newport City Council met on the above date and time in the Council Chambers of the Newport City Hall. On roll call, Allen, Goebel, Jacobi, Botello, and Hall were present. Parker and Sawyer were excused.

Staff in attendance was Spencer Nebel, City Manager; Peggy Hawker, City Recorder/Special Projects Director; Derrick Tokos, Community Development Director; Tim Gross, Public Works Director; Michael Murzynsky, Finance Director; Rob Murphy, Fire Chief, and Jason Malloy, Police Chief.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

Oath of Office - Police Officers Dustin Kittel and Sean Nieto. Malloy introduced Kittel and Nieto. Hawker administered the oath of office. Kittel's daughter pinned his badge, and Nieto's wife pinned his badge.

PUBLIC COMMENT

Gary Lahman stated that November 19 is World Toilet Day as designated by the United Nations. He referenced the Eugene Register Guard's editorial of November 16 recognizing this day. He stated that the goal of World Toilet Day is to inspire action to tackle the global sanitation crisis. He added that available toilets and clean water are not just global problems, but an issue in Newport as well. He noted that all Newport residents and visitors should have access to toilets and clean water for sanitation, 24 hours per day. Lahman referenced five of the priority items from the Homelessness Task Force, including the placement of toilets in identified areas, portable shower facility, coordination of an NGO, creation of car camping areas, and consideration of the use of the construction excise tax for homelessness solutions.

Rex Capri reported that NW Nye Street is often used as a bypass to Highway 101. He stated that in places, there is no continuous sidewalk and it is dangerous. He requested, at a minimum, the placement of bike sharrows on this street as a safety precaution.

Nebel reported that on the homelessness issue, there have been successes in a number of issues. He stated that one portable toilet is in place, and that he is in negotiations with Lincoln County on the placement of a second toilet. He noted that county staff is having some difficulty in finding a location that is in view of a security camera. He added that other locations have been reviewed, and either eliminated or are still under review. He stated that a portable shower facility has been placed at Grace Wins Haven.

He added that a coalition of folks, interested in potentially forming an NGO related to homeless issues, have met and will meet again in January.

Nebel reported that the concept of sharrows on 9th Street can be forwarded to the Pedestrian/Bicycle Advisory Committee for review.

CONSENT CALENDAR

The consent calendar consisted of the following issues:

- A. Approval of the minutes of the work session of November 4, 2019;
- B. Approval of the minutes of the regular session of November 4, 2019;
- C. Acceptance of a drainage easement from the Newport Urban Renewal Agency described as parts of Parcels 1 and 2 of the Lincoln County Partition Plat 2010-18, located south of 40th Street and east of Highway 101;
- D. Approval of a recommendation to the Oregon Liquor Control Commission for an Off-Premises Sales License due to a change in ownership for Grocery Outlet, located at 721 North Coast Highway;
- E. Receipt of the monthly financial report;
- F. Receipt of approved committee minutes.

Allen noted several changes to the minutes. MOTION was made by Goebel, seconded by Jacobi, to approve the consent calendar with the changes to the minutes as noted by Allen. The motion carried unanimously in a voice vote.

PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

California Fire Response Presentation by Fire Chief Rob Murphy and Captain Tom Jackson. Jackson and Murphy made a PowerPoint presentation regarding the city's participation, as well as the participation of the State of Oregon, in the Kincade Fire in Sonoma County, California. Nebel reported that staff is reviewing the standardization of state agreements to expedite the deployment of city staff to out of state fires.

CITY MANAGER'S REPORT

Appeal of the Room Tax Determination of Delinquency Issued to Rogue Ales. Hawker introduced the agenda item. Ross Williamson, from Speer Hoyt, legal representative for the City of Newport, took a seat at the dais, and presented a brief biography. Nebel reported that on October 7, 2019, a report was provided to Council on the disposition of the room tax issue related to the operation of vacation rentals in conjunction with the Rogue Ales Bayfront establishment without the business license endorsement for the vacation rentals. He stated that Rogue Ales took steps to address the deficiencies in this vacation rental operation to be allowed to resume using this space as a vacation rental. He noted that as part of the review of this issue, Rogue indicated that it had operated a vacation rental for a number of years, but were unaware of the obligation to pay local room tax.

Nebel reported that Rogue cooperated by providing information to the Finance Department showing historic revenues from renting the three units as vacation rentals.

He stated that in reviewing this matter with Steve Rich, it was Rich's opinion that NMC Section 3.05.090(A)(2) provides the following: "Except in case of fraud or intent to evade room tax, notice of deficiency determination shall be issued within three years of the period for which the deficiency determination is made."

Nebel reported that as a part of the Finance Department investigation, there was no clear evidence of fraud, or intention to evade the room tax, discovered during the review of Rogue's records. He stated that the Finance Department was provided access to all the records they requested. He noted that the report was also forwarded to Ross Williamson for legal review. He added that while Rogue was negligent in not submitting local room tax forms and paying the room tax, there is no evidence that there was willful conduct on the part of Rogue to evade the local room tax.

Nebel reported that as a result of the review, it was the Finance Department's determination that Rogue owes \$16,385.77 for unpaid room tax with interest of \$7,640.35 for a total of \$24,026.12. He stated that staff intends to issue a bill in this amount to resolve the delinquent tax issue with Rogue. Nebel reported that following the report to Council, tax administrator, Mike Murzynsky, forwarded a determination of delinquency to Rogue Ales with the delinquent room tax together with penalties and interest amounting to \$24,026.12.

Nebel reported that while Rogue did not appeal this determination, the city received notice on behalf of Carla Perry of Newport, and Mona Linstromberg of Tidewater, of an appeal of Murzynsky's determination regarding Rogue's room tax delinquency amount. He noted that NMC 3.05.170 indicates that: "any person aggrieved by any decision or action of the tax administrator may appeal to the City Council by filing a written appeal with the tax administrator within twenty days of the serving or mailing of the tax notice or decision of the tax administrator. The tax administrator shall fix a time and place for the hearing the appellant twenty days written notice of the time and place of hearing." He added that the hearing was set for this evening.

Nebel reported that there are a number of issues Council can consider in addressing this appeal. He stated that the first issue is whether Linstromberg and Perry have standing to appeal a tax determination between the tax administrator and Rogue Ales. He added that Council will need to make a determination as to whether the appellants have standing to actually appeal this decision. He noted that in reviewing 3.05.170, it states that "any person aggrieved by the decision or action of the tax administrator may appeal to the City Council." He added that it is his opinion that the persons aggrieved are the individuals that were served or mailed a tax notice or decision from the tax administrator, which is provided for in this section. He stated that he does not believe the intent would be that any citizen can appeal this type of tax decision, and added that if that was the case, it would seem there would be a requirement for public notice of any decisions of the tax administrator by anyone within 20 days of the serving or mailing of the tax notice. He stated that he reviewed this with legal counsel who concurs with this opinion regarding standing.

Nebel reported that if Council concurs with this determination, then the appeal is concluded. He stated that if Council determines the appellants have standing to appeal this issue, then Council should go into the merits of the appeal, and make a determination on the tax administrator's determination regarding the room tax assessment for Rogue Ales. He noted that the packet contains materials from the report on October 7, as well as

the notification letter to Rogue and the appeal from Linstromberg and Perry. He added that NMC 3.05 is also included in the packet.

Nebel recommended that Council break up the appeal process into the following two questions. He stated that the first is whether Perry and Linstromberg have standing to appeal this issue, and the second is the merits of the case if Council determines that the appellants have standing. He asked that Council review the following proposed process:

1. City Manager provides an overview of the appeal.
2. The appellants address the City Council on the issue of standing to appeal the decision of the tax administrator.
3. City Council hears from Ross Williamson, of Speer Hoyt, acting as City Attorney on the legal merits of the standing issue.
4. The City Council makes a determination as to whether the appellants have standing to appeal this determination. (If a determination is made that they do not have standing to appeal this issue, then the hearing is concluded.)
5. If the Council determines that the appellants have standing, then the appellants should present their reasons they are appealing the determination of the tax administrator and any suggested remedies.
6. Rogue Ales should be invited to respond to that issue.
7. The tax administrator, city manager and legal counsel can respond to any items relating to this matter.
8. Council makes a determination on the merits of the appeal.
9. The Council may want to discuss this format before beginning the hearing.

Nebel reported that if Council makes a different determination from the tax administrator, a new notice will be sent to Rogue based on this determination, and Rogue will have 20 days to request an appeal of any redetermination before Council.

Nebel reported that in reviewing NMC 3.05, it is clear there a number of issues that need to be cleaned up, clarified, and corrected. He stated that he believes it would be appropriate for Council to direct staff to work with legal counsel to clean up these provisions.

Nebel reported that this determination, along with the subsequent appeal, is unusual. He stated that while following up on unpaid taxes from known vacation rentals, and hotels is something that staff regularly does, staff has not traditionally collected back taxes on vacation rentals that have been legalized, such as the case with Rogue. He noted that he believes this has been an oversight in the past procedures. He added that staff efforts in code enforcement have been to either legalize an operation, if eligible, or shut down an operation. He stated that he believes the way this was handled was an appropriate resolution of this particular problem.

Council concurred with the process outlined by Nebel.

Allen asked what appeal rights the appellants have if they do not like the Council decision. Williamson noted that there are no further options at the local level, and that the appellants would have to utilize the circuit court.

Allen asked what process would be utilized if Council makes a decision. Williamson stated that the Charter provides for an order for these types of issues.

Sal Catalano, attorney representing Mona Linstromberg and Carla Perry appeared before Council. He stated that the issue before Council has standing. He said if the city wanted to limit the class of appellants to any operator, such as Rogue, they would have stated any operator. He noted that NMC 5.20.080, regarding stormwater tax appeals,

limits the class of appellants to customers. He added that in the room tax provisions, the class is expanded to include any person. He stated the appellants do fall into the class described as any person.

Catalano noted the 1991 Oregon Supreme Court *People for the Ethical Treatment of Animals (PETA)* case provides the context as to what aggrieved means. He stated in that case an aggrieved person could meet any one of three standards. He explained the first standard is the person has suffered an injury to substantial interest resulting directly from the challenged governmental action; the second standard is the person seeks to further an interest of the legislature expressly wished to have considered; and the third is the person has such a personal stake in the outcome of the controversy as to assure concrete adverseness to the proceeding. He summarized, essentially, the appellants must show they were injured by the City Council's decision to not implement the correct code and not enforce the correct fine upon Rogue Ales. He noted NMC 4.25.005 and 14.25.010 describes the purposes behind the city's short-term rental regulation and licensing. He indicated the code expressly states that the city wants to protect the character of residential neighborhoods by addressing potential negative effects, such as excess of noise, overcrowding, illegal parking, and nuisances. He explained the code describes nuisances to include excess refuse, accumulation of refuse, and light pollution.

Catalano stated when the city is shorting itself of funds by not implementing the correct code, they are not able to enforce the provisions of their code. He reported, currently, the appellants and their property rights are being injured, and if the city does not implement the correct code, these injuries will increase. He noted the appellants have been injured on their own properties regarding illegal parking because illegal parking and overcrowding makes it difficult for them and their guests to use their own property. He added the parking and overcrowding also injures them as they go about their normal business throughout the City of Newport. He noted the appellants' neighborhoods are negatively affected by short-term rentals since property values are going down. He indicated property values go down because of accumulation of refuse and light pollution. He reported the appellants on a daily basis pick up trash from these short-term rentals. He noted excess noise means they cannot enjoy the right to quiet enjoyment of their home and properties. He indicated a rough calculation of what the city might fine Rogue is \$80,000. He stated that's a significant sum of money that the city could use to implement their own code.

Linstromberg stated she is an aggrieved person by a decision of Newport's tax administrator. She reported in preparation for this appeal, she submitted comments on the standing and merits of the appeal and will focus on the particular injuries she suffered while caring for her family's home located in a geographically limited, residentially zoned area containing 19 vacation rentals. She explained NMC 4.25 on Short-Term Rental Business License Endorsement states, in part, that the purpose of the code is to, "ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the city's supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and nuisances, for example, accumulation of refuse, light pollution, etc."

Linstromberg stated an accumulation of infractions together have changed the character of the Spring Street, Oceanview Drive neighborhood. She noted litter and overflowing garbage are a health and safety concern, and she must patrol the streets and alleys. She noted another health and safety issue is that neighborhood streets are narrow, making on-street parking with vehicles on both sides of the street like navigating an

obstacle course. She indicated at least one home operating as a vacation rental is unlicensed; there is one non-conforming vacation home; and an additional non-conforming structure is under construction. She stated the homeless have found this area appealing, and, in 2018, there was an out of control fire near a homeless camp in this area. She reported there are not adequate personnel to effectively implement and provide the oversight needed to reduce negative impacts to the neighborhood. She stated this current case is just another illustration of the city's lack of meaningful enforcement. She noted she provided the city with an amortization schedule that is additional to what the city has assessed, an amount close to \$88,000, if not more. She stated she has met the aggrieved standard.

Perry explained her involvement in the community and serving Newport for the past 25 years. She stated she has never had an ax to grind, and has never placed her own interests above the interests of the people in the community. She reported the appeal is due to a city decision that directly negatively impacts the quality of her life in Newport. She said if the city needs specifics about garbage, traffic, lighting, noise, parking, decreased safety, and the destruction of her and Linstromberg's neighborhoods, she will provide that. She noted vacation rentals (VRDs) have had a decidedly negative affect on her life, and enforcement of city code has been lax, which encourages further violations. She added she recommends the city make it a policy to allow anyone to appeal any city decision that negatively impacts their lives.

Williamson reported the term aggrieved is not defined in the city's code, and it is used elsewhere in the code to define an appellant and the appeal processes. He noted the provision under discussion tonight, the tax appeal process, says any person aggrieved. He stated not only does the appellant have to be a person, it also has to be a person who is aggrieved by the decision. He suggested using state law to inform the Council's decision on the meaning of aggrieved since the term is not defined in the code. He suggested drawing from the Administrative Procedures Act (APA) that governs state appeals of agency decisions. He explained if someone is wronged by a state agency, including the department of revenue on state tax issues and other agencies, then they have the right to appeal under the Administrative Procedures Act. He explained the first factor in the definition of aggrieved is whether someone suffered an injury to a substantial interest resulting directly from the challenged government action. He noted that seems to be the factor the appellants and Council are settling on. He added the other factors are if the person seeks to further an interest that the legislature expressly wished to have considered or if the person has such personal stake in the outcome of the controversy as to assure concrete adverseness to the proceeding.

Williamson stated since the appellants haven't spoken about the other factors, the city can concentrate on the first factor of the definition. He explained the government action is an October 9 letter from staff to Rogue that says this is Rogue's assessment for back taxes. He explained the government action is not a general policy discussion about taxes or tax revenue, about municipal code, about VRDs, or about how VRDs impact the city. He emphasized the government action is the letter. He noted it's the staff position the appellants have not made the case for an injury caused directly by that challenged government action. He explained in the 1991 Supreme Court case, the Supreme Court said someone simply dissatisfied with the agency's order or those only having an abstract interest in the agency action are merely bystanders and are not aggrieved. He stated, for this particular action, the appellants are not aggrieved. He explained to be aggrieved, the

Supreme Court continues, requires some articulable personal stake in the outcome, some palpable harm, concrete harm, and injury to self. He reported this has been addressed in state tax cases. He noted the Oregon tax court in a 2008 case determined that to be aggrieved, a person must show pecuniary stake in the dispute, a monetary stake. He emphasized there needs to be some skin the game, something in a wallet, that is being taken away by the government in order to be aggrieved. He urged the Council to follow these cases in state law and apply them at the local level. He stated the staff conclusion is the appellants are not aggrieved and that October 9 letter from staff to Rogue was between the city and Rogue.

Allen recommended an additional step, the attorney for the appellant respond to Williamson's statements and Williamson to give any final statements in response.

Catalano replied the appellants are not objecting to the letter, but the implications of the letter, which is money. He said the letter itself is not something appealable. He noted when looking back at the code that allows for appeals, he finds any person aggrieved by any decision. He noted if the city wanted to say any operator, and limit it to Rogue being the only person who could appeal, they should have said that there and they did not. He indicated that leads one to believe there are others besides just the operator that can appeal this. He emphasized there's more to it than objecting to a letter; they are objecting to what that letter signifies, which is less money to the city. He stated the appeal code clearly does not make Rogue the only person that can be affected here, but Williamson's answer indicates that Rogue is the only entity that could be affected by such a decision. He added he does think the appellants have standing in this case.

Linstromberg stated if the decision has been reduced to a pecuniary measure, there are a lot of financial implications to vacation rentals. She noted the city can't deny there are financial implications involved with the letter that was issued by the tax administrator. She added saying there were no financial implications defies what's been said and her other submittals. She noted diminished quality of life can cause harm.

Catalano stated the state tax case indicates pecuniary, but the Supreme Court case indicates injury. Linstromberg added individuals in the neighborhood have suffered injury, and there are financial implications of Rogue not paying what they owe the city.

Williamson replied his role is to provide the best advice based upon his reading of the code, and whether he agrees with staff is not the issue. He emphasized the appeal is because the city issued a letter on October 9 to assess taxes against Rogue. He explained the whole notion behind saying a person is aggrieved is to do away with the former notion of general taxpayer standing, meaning any person who pays taxes could appeal any tax decision. He noted that is no longer the law in Oregon or in Newport. He stated the reason for the word aggrieved is to do away with the notion that someone has some policy interest in anyone who pays taxes because someone is a fellow taxpayer or benefits from taxes. He reiterated the Oregon Supreme Court says that someone aggrieved is someone with a direct financial interest in the outcome in the actual decision at issue, and the actual decision is the October 9 letter.

Goebel asked for clarification on the appellants' discussion about neighborhoods and VRDs. He stated the issue seems to him to be about the letter and issue of taxes, rather than the VRD issue in general. Williamson replied Goebel's response is correct and illustrates his position that they are not aggrieved. Williamson stated the appellants are not articulating direct injury to them as a result of the tax letter sent to Rogue on October 9. He said they are expressing disagreements with VRDs in general in the community;

they have policy questions, implementation questions, and budget questions, but not direct cause and effect to the October 9 letter. Goebel clarified the letter has nothing to do with whether the appellants have garbage in their neighborhood or overparking. Williamson replied there is no direct correlation between the October 9 letter and code enforcement issues within her neighborhood. He added there may not be any relationship between her neighborhood and Rogue.

Goebel asked under what circumstances would the appellants be aggrieved. Williamson replied that, in this case, only Rogue would be aggrieved. Goebel confirmed with Williamson there is no circumstance where the appellants would be aggrieved by this city action.

Allen clarified with Williamson the applicants can be considered a person as defined in the municipal code. Allen explained the history of how city ordinances were codified. He said separate from this decision, the city should clean up the language in this code for less ambiguity in future. He explained the three-part test for defining aggrieved outlined by Catalano and Williamson. He noted all parties can agree the third factor of the test does not apply. He asked if Williamson would like to comment on the second factor of the test. He asked if even though the appellant did not bring forth that factor, the Council can still consider it.

Williamson replied that the code does need to be cleaned up. He noted the one sentence Council is reading tonight is pretty clear. He explained the second factor in the test has to do with a citizen suit-type provision. He stated there are statutes that constrain administrative agencies at the state level where the legislature has seen fit to directly allow citizen lawsuits against agencies. He gave the example of DEQ making a decision that doesn't harm a plaintiff, but under this factor, the plaintiff is still able to bring suit because the legislature said this is something important for all citizens to be able to enforce. He indicated he does not see that in Newport's code. He added the Council can still make a decision based on the second factor even though the appellants didn't argue for it. He noted the Council can still find the appellants have standing under the second factor even though they didn't really discuss it.

Allen confirmed with Williamson Council can use the three-part test since aggrieved is not defined in the municipal code. He confirmed on the local level the second factor applies to an interest that the City Council expressly wished to have considered. Allen asked where the counsel would find a Council interest expressly wished to be considered. Williamson replied that would be in the municipal code. Allen asked why an ordinance that is still in effect but wasn't codified couldn't be used. Williamson said that kind of ordinance could provide some context.

Allen confirmed with Williamson that the letter was a tax assessment to Rogue to collect room taxes. Allen clarified the room taxes would be used for whatever the budget or room tax provisions indicate as appropriate. Williamson replied that would happen at a later policy process, such as when the budget is adopted by resolution. Allen read the whereas clauses from Ordinance 2023, -- "WHEREAS, the City of Newport collects room tax from lodging establishments within the City, and WHEREAS, tourism is extremely important to the economy of the City of Newport, and WHEREAS, the City desires to support both tourism promotion and tourism-related facilities by making grants of room tax funds available to qualifying applicants, and WHEREAS, the City Council wishes to maintain the current amount of room tax collected by the City and to remove the language in Ordinance No. 1849 limiting the City's ability to make grant funds available to certain

types of tourism promotion and tourism-related facilities, so that all qualified applicants will be eligible for receipt of room tax funds.” Allen asked if Williamson believes these clauses speak to an expressed interest from the City Council to be considered. He explained the history of a room tax increase, the events center fund, and tourism promotion/event grants.

Williamson replied the clauses do not speak to an expressed interest because he said he heard no reference to the appeal process of individual taxes for VRD operators. He noted the clauses and the policies that the appellants identified are very important policies the Oregon Supreme Court would say bystanders would like to see fulfilled. He emphasized the Council is talking about an individual tax assessment, and he doesn't believe those policy statements were directed to individual tax payers to ensure enforcement. He added he doesn't see anything in those statements that ties these two issues together expressly.

Botello stated the Council did not have the opportunity to see the tax decision or letter and expressed a need for time to process this information. Nebel explained from an administrative standpoint, the ordinance is very clear that the decision is a tax administrator decision, not a Council decision. He noted because of interest in this issue, staff did present a report to Council to explain what was happening. He stated the city sought legal counsel, followed counsel's limitations, and acted on the issue. He added the section of the code needs to be cleaned up.

Jacobi stated she understands the decision was administrative, and the city will hire a full-time community service officer to look into enforcement of short-term rental codes. She thanked everyone for their patience and understanding.

Perry stated the October 7 determination letter to Rogue was failure of the city to enforce its own code, which causes residents to be aggrieved. Catalano stated the NMC 4.25.005 and 14.25.010 express the city's purpose.

Allen reported he is trying to interpret the standing issue as broadly as possible to allow Council to hear the merits. He added he understands by allowing the appellants to have standing, the Council is setting precedent. He noted Council can always adjust that by amending the code language later.

Goebel said he agrees with Williamson's determination. Williamson reiterated his interpretation is that the appellants are not a person aggrieved, they do not have direct injury as a result of the October 9 letter, and they do not have standing.

MOTION was made by Goebel, seconded by Jacobi, to dismiss the appeal based on the determination that Mona Linstromberg and Carla Perry are not aggrieved as defined in NMC 3.05.170, relating to the city's October 9, 2019, tax determination for Rogue Ales, and to authorize Council President Allen to sign an order to that effect (2019-2). The motion carried in a voice vote with Allen voting no.

MOTION was made by Hall, seconded by Botello, to direct staff to work with legal counsel to address inconsistencies in NMC 3.05 related to room tax. The motion carried unanimously in a voice vote.

PUBLIC HEARINGS

Public Hearing Related to Management of Public Parking in the Bayfront, Nye Beach, and City Center Areas. Hawker introduced the agenda item. Nebel reported that on October 7, 2019, the City Council received a report and recommendation from the

Planning Commission regarding parking management plans for the Bayfront, Nye Beach, and City Center. He stated the City Council scheduled a public hearing for November 4 and rescheduled that to November 18. He noted it is not the intent for the Council to take any formal action on approving any parking management plan, but to take public comment in order to inform the discussion on what process and next steps it would like to take. He indicated over the past three years, a Parking Study Advisory Committee was established by Council to work with consultants to develop a parking management plan for the Bayfront, Nye Beach, and City Center. He reported this plan seeks to improve the availability of public parking for all users as well as includes wayfinding, lighting, needed parking improvements, transit/van pool options, and City parking standards for new construction. He stated the plan also calls for public parking along the Bayfront, to be managed with the combination of parking meters and permits. He noted there was a similar recommendation considered for Nye Beach, however, the business community in Nye Beach has not been supportive of metering.

Nebel indicated there are no major changes proposed for City Center at this time. He reported, in addition, the recommendation calls for the creation of a City-wide parking committee. He added it was the intent of this process to adopt a plan and then appoint a parking committee to begin the process of implementing the plan. He explained on September 9 the Planning Commission held a public hearing on the proposed amendments. He reported the initial motion was made to forward the recommendations to the City Council as drafted, and that motion failed 3 to 4. He noted a second motion was made to refer the matter back to a newly created committee and have them develop recommendations on how to address parking issues without utilizing meters on the Bayfront.

Nebel stated the Port Commission, who was a partner in the development of these plans, asked the City Council to schedule a public hearing on the recommendations that went before the Planning Commission prior to making a decision. He noted there are a number of interests on the Bayfront that support metering and permitting as a way to address parking congestion there. He explained a number of businesses lose sales because the prime retail parking is used for longer-term parking often times by employees on the Bayfront. He indicated, furthermore, there is a significant investment that needs to be made in parking. He stated there is a group who has concerns about metering on the Bayfront, as well. He added parking meters are not proposed for Nye Beach based on the recommendations of the Parking Study Advisory Committee. He emphasized the only place the plan recommends meters is the Bayfront.

Nebel reported the Finance Work Group has had discussions regarding ways to obtain fees from other sources rather than taxes to pay for some important public improvements. He stated parking fees collect revenue from visitors, as well as, residents to cover the costs of parking in certain areas. He indicated parking fees would cover a higher level of enforcement and would provide money for various improvements to the parking system over time that would not be available from the City's General Fund.

Nebel explained, after taking testimony, the Council could accept the Planning Commission's recommendation to adopt an ordinance establishing a new Parking Advisory Committee, and forward the proposed parking related comprehensive plan amendments to that committee for further work, schedule a work session to review the amendments or schedule a public hearing for consideration and possible adoption of the amendment or an ordinance implementing the recommendations from the Parking Study

Advisory Committee. He recommended Council may be better served by an additional work session to review the comments made at the Planning Commission meeting, and to determine whether there is a consensus on how to proceed with this issue. He suggested holding this work session on January 6.

Allen opened the public hearing at 8:15 P.M. He called for public comment.

Robert Hoefs, a business owner on the Bayfront for 30 years, stated Bayfront parking is a nightmare for business owners. He said meters are definitely not the way to go. He noted even though it is not a summer day, there was no place to park by Port Dock 5. He stated he supports the fishing industry, but he found at Port Dock 7 there were several spots without vehicles. He noted that people access and live on their boats on Port Dock 5 and leave their vehicles at Port Dock 5. He stated the fishing industry parking was designed for Port Dock 7. He indicated there is lots of room tax money not being collected from Bayfront boats. He emphasized the need to address parking without meters.

Sharon Snow, who has worked on the Bayfront in the seafood processing industry for 27 years, stated a lot of work and time was put into coming up with the committee proposals. She noted one of the considerations was raising revenues by parking meters and permits to help maintain the roads and parking areas. She said it was the consensus of Bayfront employees to not oppose paying a fee for permanent parking in lieu of meter fees. She added congestion is a large part of the problem and could be dealt with by adequate enforcement of the four-hour zones and stopping over-length trucks from parking diagonally.

Sandra Litt, who lives in the Nye Beach area, stated business owners in Nye Beach are concerned that meters in Nye Beach area will cause sales to drop off considerably.

Terry Obteshka, a Newport resident, stated he protests putting parking meters in Newport. He indicated he believes meters will chase tourists away and jeopardize the tourism industry. He mentioned the Nye Beach Merchants Association study was ignored. He stated Newport would be the greediest instead of the friendliest. He added a suggestion to put the issue on the ballot.

Eileen Obteshka, who lives in the Nye Beach area, stated she is concerned with changes to parking in Nye Beach. She noted meters will cause parking on the city's narrow side streets.

Linda Neigebauer, who participated as member of the Parking Advisory Committee, explained the committee's work and its recommendations to the Planning Commission. She stated creating a new committee would start the process over, and she didn't think the outcome would be much different.

Jeff Bertuleit, who has served on many city committees, noted places around the world that have done well have bought places to park cars. He stated Newport will not get any money from meters. He suggested getting a trolley to move traffic from hotels to areas with difficult parking situations. He indicated the creation of a citywide parking committee is a good thing.

Gary Ripka, a fisherman who owns several fishing vessels, owns retail on the Bayfront, and served as a member of the parking committee, explained the committee's process to creating recommendations. He noted he wasn't in favor of meters in the beginning, but found them as the best way to turn over traffic on Bayfront. He stated infrastructure is falling apart, and the city has to come up with a way to generate revenue. He added he is not against a trolley in addition to parking. He noted there are 300 plant workers on the

Bayfront, and there is no way to get them to move without meters. He added to start over is to kick the can down the road.

Bill Branigan, a Planning Commissioner and parking committee member, stated the people that were involved on the committee deserve thanks from Council. He echoed Ripka's statement of kicking the can down the road. He recommended to at least give the parking solution in the Bayfront a try.

Robert Waddell, who owns Newport Tradewinds, stated most of his customers need at least seven hours to park. He noted most parking is marked four-hour parking except for a few places with 12-hour parking. He recommended keeping the 12-hour parking.

Cari Brandberg, who owns Chelsea Rose and a member of Newport Fisherman's Wives, stated parking issues have gotten worse. She noted she receives many complaints that customers cannot access her business. She stated she is in favor of the four-hour parking meter and parking permits for fisherman. She emphasized the need to respect committee members time and the city money already spent. She added fishermen deserve a place to park, and businesses deserve a chance for customers to park.

Laura Anderson, who owns Local Ocean Seafoods and served on the parking committee, stated she is not here to dispute potential downsides to meters, but she sees several upsides. She noted the committee's parking plan as a package would open the door for new and redevelopment on the Bayfront. She said the current code requires parking provisions that are impossible to meet. She reported she likes monetizing the parking asset and that generating revenue is an important part of sustainable solutions. She noted transit options like a trolley require money. She stated increasing turnover in summer would be advantageous to her business. She added the downsides are real, but manageable.

Veronica Lundell, who lives in Nye Beach and owns a Nye Beach business, stated she is glad that Nye Beach not being considered for metered parking at this time. She added she supports keeping Nye Beach as it is.

Fran Mathews, who owns Discovery Marine Tours, said Newport has outgrown its Bayfront, and there will need to be changes to continue to have a great quality of life. She suggested looking at each parking spot on the Bayfront and establishing a value. She indicated she doesn't think tourism will take a hit because of meters. She recommended meter kiosks and standardized parking times. She added she is supportive of a trolley.

Greg Morrow, who owns the Tap House, stated a trolley is the solution for getting people from hotels to businesses. He added a transit service such as vans should take fish plant employees from parking areas to the Bayfront.

Brendan Mathews, who owns Surf Town Coffee Company, stated parking challenges happen every day in Newport. He indicated meters are a good direction, but may not be for the whole town. He suggested letting the Bayfront show how it would work. He reported one person to keep track of parking issues now is unrealistic. He added meters would be great first step.

Bob Berman, Planning Commission member, stated the Planning Commission accepted all the recommendations from the committee except metering in the Bayfront. He indicated deciding to implement metering is a permanent decision. He mentioned solutions on the Bayfront including a trolley, shuttle bus, and temporary taxi permits.

Marletta Noe, Nye Beach resident, suggested the city encourage tourism in South Beach so that the Bayfront is just a working bayfront.

Grant Burns, who is an employee of Oregon Bud Company, stated parking is a big issue. He stated parking meters can help solve some of those issues, but some businesses need parking that is shorter than four hours. He added he worked at the Oregon State University parking services department for two years and permits were successful.

Hans Goplen, who co-owns Clearwater, thanked the Council and parking committee for their work. He stated he is in complete support of the parking committee's findings.

Cris Torp, a South Beach resident, stated he has come around to the metered parking idea. He recommended that all angled parking from the west end of Fall Street to Bay Street be remarked as parallel spots. He noted the street would lose some spots, but that could be mitigated by angled spots on Hatfield or John Moore Drive. He added he is in favor of metered parking.

Allen closed the public hearing for Council deliberation at 9:10 P.M.

Nebel stated the Council has a number of options and his recommendation is a work session on the issue. Goebel indicated he would like to have a work session.

Allen asked if the ordinance for a standing committee was well vetted or recently put together based on the Planning Commission's recommendation. Tokos replied it was well vetted by the committee. Allen asked for Nebel's thoughts on holding a public hearing on December 2 to create the standing committee.

Nebel indicated, before creating a committee, people will want to understand what the expectations are. He stated he'd hate to have people apply for a committee, and then the direction of what they applied for changes. He added he has no major objections to proceeding on the public hearing for the committee.

Allen suggested including in the work session the management of public parking and the creation of the standing committee. Goebel stated management of public parking includes the standing committee. He suggested January 6 for the work session and thanked the committee. Allen said the work that was done should be seriously considered, and this work session is not to start from the beginning but to seriously consider it. He indicated he is looking at the committee's work as a baseline to work off of.

MOTION was made by Goebel, seconded by Botello, to schedule a work session to discuss the management of public parking on the Bayfront, Nye Beach, and City Center areas for Monday, January 6, 2020, at 4:00 P.M. The motion carried unanimously in a voice vote.

Public Hearing and Potential Adoption of Resolution No. 3872 Providing for a Supplemental Budget, and Making Appropriations/Total Requirement Changes for the 2019/2020 Fiscal Year. Hawker introduced the agenda item. Nebel reported that the Finance Department has been busy closing up the 2018/2019 Fiscal Year and determining ending balances in the various operating funds, as well as Capital Outlay Projects. He stated, in addition, the department is recognizing some revenues that have been obtained that were not part of the budget that was approved. He noted the vast majority of transactions are related to construction projects. He explained at the time of developing the budget, departments must project what the level of expenditures will be for various projects as of June 30. He reported many of the changes outlined in this resolution are replacing the estimated balances with the actual balances for projects that are ongoing in the 2019/2020 Fiscal Year.

Allen opened the public hearing at 9:20 P.M. He called for public comment. There was none. Allen closed the public hearing for Council deliberation at 9:21 P.M.

Goebel requested the status of the reserve funds for these projects. Murzynsky replied the money isn't coming from reserves, but contingency and reserve for future expenditures. Nebel explained the contingency is something set aside for emergency expenditures in each of the funds, but at the end of the fiscal year any of the contingency left rolls into the fund balance. He noted reserve for future expenditures is required by the state, but the city treats that like contingency and, currently, rolls that back into the fund balance. He added the broader financial trends are being explored and discussed by the Finance Work Group.

Hall asked what is the city's contribution to the skatepark. Nebel explained \$4,900 had been designated by the city for the skatepark. Hall asked what is Rogue's final contribution. Nebel replied the city can ask Rogue for that amount. Hall pointed out an error in Attachment A of the Supplemental Budget.

MOTION was made by Hall, seconded by Jacobi, to adopt Resolution No. 3872, a resolution adopting a supplemental budget for the Fiscal Year 2019-2020, and making appropriation increases and changes for the Fiscal Year 2019-2020, and incorporating Attachment A, as amended, as part of the resolution. The motion carried unanimously in a voice vote.

Gross noted the reopening of the skatepark is Saturday, November 23, at noon.

CITY MANAGER'S REPORT

Consideration and Potential Adoption of an Amendment to the Intergovernmental Agreement between the City of Newport and ODOT for Right-of-Way Services Related to Highway 101 - SE 32nd Street to SE 35th Street Statewide Transportation Improvement Program. Hawker introduced the agenda item. Nebel reported that in 2014, the City of Newport and the Oregon Department of Transportation (ODOT) executed an Intergovernmental Agreement (IGA) No. 30257 for a preliminary design of a signalized intersection at US 101 and SE 35th Street, elimination of the signal at the US 101 and SE 32nd Street intersection, closure of the SE Ferry Slip Road and US 101 intersection, and installation of bike and pedestrian facilities along US 101 between the Yaquina Bay Bridge and SE 35th Street. He noted the agreement was amended in June 2016, and the Council executed IGA No. 31844 for right-of-way services to acquire necessary rights-of-way and easements on the City's behalf, and on August 19, 2019 the City Council adopted Resolution No. 3867 that authorizes the use of eminent domain to acquire a necessary right-of-way for this project. He noted the amendment incorporates Resolution No. 3867 into the right-of-way services agreement, extends the date for right-of-way services to be completed by September 30, 2021, and changes the state's right-of-way agent assigned to this project. He added the project is slated to be bid in September 2020 with construction in 2021. Allen clarified there had been legal review of the amendment.

MOTION was made by Jacobi, seconded by Goebel, to authorize the Mayor and City Manager to execute Amendment No. 1 to IGA No. 31844 for right-of-way services for the US 101- SE 32nd Street to SE 35th Street project in the City of Newport. The motion carried unanimously in a voice vote.

Authorization for the Oregon PERS Employer Incentive Fund. Hawker introduced the agenda item. Nebel reported that in 2019, the Oregon State Legislature approved Senate Bill 1049, which provides funding opportunities for PERS participating employers to create side accounts to help offset employer unfunded actuarial liability (UAL). He noted the state has appropriated matches of up to 25% up to \$300,000 to incentivize units of government to participate in this program. He stated the first eligibilities were for those units of government whose UAL was at 200% or more. He explained governmental units under 200% UAL may begin applying on December 2, 2019. He reported applications will be approved on a first-come, first-serve basis. He noted the application period will remain open until August 31, 2020, or until all available funds have been made.

Nebel indicated he believes it is to the city's benefit to consider fully participating in this program. He explained the maximum contribution to leverage the state funding would be \$1.2 million dollars to leverage \$300,000 in state funding to create a side account for the City of Newport with PERS. He noted Newport's current UAL with PERS is 147% of covered payroll, or \$3.9 million. He stated the city would be able to make contributions into this program in this fiscal year and into the next fiscal year. He reported Finance Director Mike Murzynsky has laid some scenarios in which funds could be utilized from a number of sources and repaid back with savings over a six-year period. He noted, based on the projections from PERS, the annual savings would be in excess of \$200,000 once the contribution was included in the actuarial calculations for the city. He stated the annual savings would be sufficient to pay back any funds obtained through an interfund loan to cover these expenses over this time. He added \$1.2 million dollars is certainly stretching a bit; however, this is a unique opportunity to address some long-term liability costs for the city.

Goebel noted, looking at the scenarios, some funding would come from the general fund, and the general fund had a deficit this year. Nebel replied the general fund finished above what had been budgeted, so there is some buffer, and the scenario uses some of that buffer. Nebel added if the city can't justify \$1.2 million, the city may contribute something less than that.

Goebel asked about the projections for the general fund next fiscal year. Nebel replied there are rough projections that the Finance Work Group is reviewing, and the general fund declines several years out based on current expenditures. Goebel asked if the scenario using money from the land fund means the city would sell land. Nebel replied that is not the case, and the land fund is reserves for land purchases.

Goebel asked if the scenarios would take the money set aside for the Performing Arts Center. Nebel replied in the scenario, the city would borrow from that this year, and the city does not anticipate the PAC needing the funding in this fiscal year. He emphasized the city has made a commitment to the PAC. Goebel asked if the Fire Department wouldn't buy a truck in the scenario. Nebel replied that funds would shift, but the Fire Department would buy a truck.

Goebel asked where the money goes once it's given to the state. Nebel replied the money goes into a side account with PERS. He explained the city has \$3.6 million in unfunded liability with PERS and contributing \$1.2 million in this program will reduce that liability by \$1.5 million. He noted the city's PERs rates are calculated on that liability. He emphasized in the short run, the program is going to reduce the city's PERs contributions, and the city will get these funds back over five years. Nebel clarified the money will go into a PERs side account for the City of Newport. Goebel indicated he doesn't trust the

state when it comes to PERs. Nebel replied that is a valid concern. He noted side accounts have existed before, but the risk is the city will be giving money it controls to an agency it doesn't control.

Hall clarified the program does not affect employees, only employers.

Allen asked what the city's obligations to the funding would be after staff apply for the program and money is awarded. Nebel replied at this time he is unsure what the program's funding obligations are, and if there would be penalties for not fully funding the program. Allen suggested changing the motion at the end to include contingent upon further clarification on obligations to funding. After further discussion, Allen suggested the motion read, "I move to authorize the Finance Director to make application for the December 2, 2019 round of the PERS Employee Incentive Fund at an amount up to \$1.2 million dollars contingent upon the City Manager confirming prior to making application that the city can discontinue placing additional funds in that account prior to reaching \$1.2 million without incurring any penalty or additional cost."

Nebel clarified that any payments would have to be an appropriation approved by the Council

MOTION was made by Goebel, seconded by Hall, to authorize the Finance Director to make application for the December 2, 2019 round of the PERS Employee Incentive Fund at an amount up to \$1.2 million dollars contingent upon the City Manager confirming prior to making application that the city can discontinue placing additional funds in that account prior to reaching \$1.2 million without incurring any penalty or additional cost." The motion carried unanimously in a voice vote.

Nebel clarified if there are penalties, staff would bring this issue back to Council in order to apply for another amount and take its chances that the monies would not be available.

Verbal Report from Public Works Director/City Engineer, Tim Gross, on Federal Lobbying Efforts Regarding Big Creek Dam Funding. Hawker introduced the agenda item. Nebel reported a delegation including Mayor Sawyer, Councilor Hall, Gross, and consultants visited Washington D.C. last week. He noted they covered a lot of ground in building the foundation for some meaningful discussions going forward about securing funding for the dam.

Gross reported the delegation met with several members of congress and congressional committees. He noted they met with the Senate Environment and Public Works Committee, House Transportation and Infrastructure committee, the House Natural Resources Committee, the State Energy and Natural Resources Committee, and federal agencies including the Office of Management and Budget, the Army Corps of Engineers, and the U.S. Bureau of Reclamation.

Gross stated there are several initiatives the city is looking at right now including Water Resources Development Act (WRDA). He indicated the dam project doesn't align super well in this program, but there is a 7001 Report to Congress that's helpful to be able to get word out about the project. He reported the Water Infrastructure Improvements for the Nation Act (WIINA) expires in 2021. He noted the Water Infrastructure Finance and Innovation Act (WIFIA) works together with WIINA to allow projects to access low interest loans in combination with grant funds. He emphasized the need for the congressional delegation to be in support of keeping WIINA going forward because there is no other funding mechanism for non-federal dams besides the Corps of Engineers.

Gross reported WINA funds the FEMA high hazard dam program, the funding mechanism that makes the most sense for funding Newport's dam. He added the trip was enlightening and a great opportunity to make good relationships. He noted lobbying efforts are paying off as funding is released to the city early.

Allen asked when another delegation would go back. Gross replied the city will need to go once, if not twice more, because they are interested in talking with elected officials. He commended Sawyer's and Hall's efforts. He added the delegation made two key contacts, one of Merkley's staffers and one person at the Bureau of Reclamation. Hall added she appreciated Gross' scientific expertise.

REPORT FROM MAYOR AND COUNCIL

Council Reports. Allen clarified the Farmers Market has relocated to the County Fairgrounds. Goebel noted the Humane Society is thinking of moving to the airport. Nebel stated discussions are in progress, and the county is willing to assist with water infrastructure issues at the airport as well.

ADJOURNMENT

Having no further business, the meeting adjourned at 10:17 P.M.

Margaret M. Hawker, City Recorder

David N. Allen, Council President