

**CITY OF OREGON CITY
CITY COMMISSION
MEETING MINUTES
June 4, 2003**

Mayor Alice Norris called the regular meeting of the City Commission to order at 6:58 p.m. on June 4, 2003, at City Hall, 320 Warner Milner Road.

Roll Call: Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris.

2. CITIZEN COMMENTS

Dean Walch and Tim Powell, McLoughlin Neighborhood Association, read a prepared statement updating the Commission on the protest against Sweethearts Porn Shop, pointing out that they are still unable to convince the landlord to evict the proprietor, Mr. Kim. They continued to gather signatures against the business, and asked for the Commissioners' help in forcing Mr. Kim to close the door on his business in order to avoid children having to view the inappropriate contents within the store as they passed by on foot. They also asked the Commission to pass an ordinance like the one in Milwaukie to prohibit such businesses in the community.

Edward J. Sullivan, City Attorney, reminded the Commission of the Constitutional difficulties in dealing with freedom of expression, citing the First Amendment to the Federal Constitution along with Article 1, Section 8 of the Oregon Constitution. He added that the areas that the Commission could regulate were if criminal offenses occurred, which the chronic nuisance ordinance it approved a few weeks ago covered.

Mr. Sullivan explained that the 21st Amendment to the Federal Constitution gave the states strong regulatory power where liquor is involved. However, if one does not have liquor, and one did have expression, then the provisions of the Oregon Constitution allowed for any kind of expressive speech. The ordinance on tonight's agenda was copied from Milwaukie, which was adopted by it in 1982, and never challenged – although it was based on a Portland ordinance that has been challenged and found unconstitutional. **Mr. Sullivan** remained concerned about this ordinance, and asked the Commission to hold the first reading over in order to allow him to consult with the Portland city attorney.

Commissioner Gary Hewitt acknowledged the frustration of the McLoughlin Neighborhood, and wondered about regulation by zoning and required distances; however, he felt that the Commission has done all that it could do on this matter, and he did not want to expend any more resources because the answer remained the same.

Commissioner Doug Neeley remained concerned about the pornographic material visible from the streets, and stated the City has not acted on it.

Mr. Sullivan reiterated that because the shop did not serve liquor, the City could differentiate it on the basis of its expression. He added that the City had the standing but not the authority to require the porn shop to opaque its front door. The outstanding challenge was to figure out how to do something across the board without differentiating on the basis of content.

Commissioner Neeley wanted to know whether the business license application, in a non-regulatory manner, could ask if adult content was involved. **Mr. Sullivan** suggested that he could draft an across the board ordinance requiring businesses to describe in detail the nature of their activity. The business license applications were public record, and people with concerns about such activities could express their concerns.

Tim Powell encouraged the Commission to be more aggressive in implementing the "Milwaukie" ordinance. **Commissioner Bailey** reminded Mr. Powell that, as a Commissioner, he had a duty as a leader to protect the City and its citizens legally, and he said he would not be stampeded into doing something for which the City would pay the price later.

Commissioner Neeley asked that staff provide Article 1, Section 8, in the June 18 packet. **Mr. Sullivan** read the short section out loud to the Commission: “No law shall be passed restraining the free expression of opinion or restricting the right to speak, write or print freely on any subject whatsoever, but every person shall be responsible for abuse of that right.”

Commissioner Lemons expressed concern about expending any more dollars in legal fees for this issue. **Mayor Norris** admitted this has been a huge learning experience for her in understanding the Commission’s legal limitations with regards to the State Constitution on this matter.

Dean Walch asked **Mr. Sullivan** where he should be putting his time and effort. **Mr. Sullivan** responded that he should continue with his existing activity per his First Amendment/ Article 1, Section 8 right to express his feelings on this, and, secondly, to look at changing the Oregon Constitution

Brad Aubry, 1305 JQ Adams Street, presented a framed caricature of Mayor Norris to her that he had drawn.

3. CONSENT AGENDA

Mayor Norris added Report No. 03-128, a deed of dedication, to the Consent Agenda. She pulled Items 3.1, minutes and 3.3, employment actions for discussion.

Commissioners Lemons/Hewitt m/s to approve Consent Agenda items 3.2, 3.4, 3.5, and 5.1a. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting ‘aye.’ 5:0.

3.1 Approval of Regular Meeting Minutes of April 2, 2003

Commissioner Neeley corrected the April 2, 2003, minutes regarding an appeal by the Park Place Neighborhood Association on sight distance. He said that the particular ordinance read, “a developer may address a neighborhood association.” He requested that staff change the language to “can.”

Commissioners Neeley/Hewitt m/s to approve the April 2, 2003, minutes as amended. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting ‘aye.’ 5:0.

3.2 Commission Report No. 03-116, OLCC: Liquor License Application – Full On Premises Sales, Commercial Establishment – Change of Ownership, Applying as Limited Liability Company, Requested by Rodder’s Grub & Pub LLC, Located at 19195 S. Molalla Avenue.

3.3 Commission Report No. 03-117, Consider Approval of Employment Actions Taken by City Manager Pro Tem for Period of May 21, 2003, through June 4, 2003.

Commissioner Hewitt clarified that the new hires were in fact summer hires, and not full time hires.

Commissioners Bailey/Hewitt m/s to approve Consent Agenda item 3.1. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting ‘aye.’ 5:0.

3.4 Commission Report No. 03-121, Restrictive Covenant Non-Remonstrance Agreement for the Clackamas County Public Health Modular Building at 1431 Beavercreek Road – for Entire Red Soils Complex.

3.5 Commission Report No. 03-122, Restrictive Covenant Non-Remonstrance Agreement for the Clackamette Place Subdivision at 16050 Front Avenue, a Project Known as Rowland Subdivision (TP01-03 / CN 03-009).

4. COMMISSION BUSINESS

4.1 Commission Report No. 03-118, Request to Reconsider Pedestrian Pathway Connection between Rilance Lane and Gardiner Middle School

Larry Patterson, Administrative Consultant to the City, reviewed the issues regarding whether to reopen a pedestrian walkway on Rilance Lane. The issues involved compliance with the Transportation System Plan, and access between the neighborhood and Gardiner Middle School, as well as safety. He informed the Commission that Mr. Mark Saxe had provided a letter requesting that the City continue this matter to June 18, 2003, when he could be available to lend testimony.

Nancy Kraushaar, City Engineer and Public Works Director, made herself available to answer questions raised by the Commission. She indicated that a representative from the City's Transportation Advisory Committee (TAC), Julie Hollister was present to provide additional testimony. That committee originally provided the evaluation on the closing/opening of the pathway last summer. She explained that staff noticed the neighbors of this meeting, and that three had provided written testimony in advance.

The City Commission reached consensus to hear testimony tonight, and to continue this item to June 18, 2003, meeting.

Julie Hollister, 13304 Clairmont Way, a member of the TAC, reviewed TAC's conclusion on the pathway closure/opening debate last year. Currently, she felt that the City should reconsider reopening the pathway.

The Commission raised general concerns over damage and liability issues along the pathway as a result of some people climbing over fences and gates.

Lysa Tracy, 930 Rilance Lane, has lived in her home since 1979. Although she originally signed Mark Saxe's petition to close the pathway, she has reconsidered, and now supported its reopening for everyone's enjoyment and safe access. In addition, she has had no trespassers.

Larry Warren, 929 Rilance Lane, admitted originally signing Saxe's petition, but now he wanted the Commission to reopen the pathway for the neighborhood.

Tom Adamson, 970 Rilance Lane, indicated that he has experienced damage to his cedar fence and the area around the pathway with graffiti, trash, and rowdy behavior by the kids. He showed the Commission a copy of color photographs of some of the damage and kids crawling over the fence taken by a motion-detector video system. Mr. Adamson opposed the reopening of the pathway.

Theresa Clemans, 934 Rilance Lane, wanted the pathway reopened in order to allow her children safe and speedy access into the neighborhood from school.

Mark and Kathi Shugert, 967 Rilance Lane, both supported the reopening of the fence for reasons of safety and access. **Mr. Shugert** asked for street lighting along the path in order to prohibit vandalism and loitering. He added that, if the Commission concluded that the City should close the path, then he suggested that the City vacate the path area, deed half to him and the other half to his neighbor on the other side, and have the sidewalk removed. **Mrs. Shugert** expressed concern for the safety of the children who were climbing on some greased fences.

Commissioner Hewitt asked that those who provided testimony tonight return on June 18 in order to refresh the Commission's memory on their concerns. **Mayor Norris** disagreed, and argued that only those with new testimony should come forth on June 18.

Commissioner Neeley recommended that the citizens return in the event that the Commission had questions for them on June 18.

Anita Munn, 955 Rilance Lane, reminded the Commission that the same problem existed in 1980, when a gate went up but was subsequently cut down by someone else. She would like the Regular City Commission

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pathway opened in order to allow access to the schoolyard to exercise. Furthermore, she did not think that closing the pathway would solve the vandalism, which Mr. Saxe has been experiencing. Ms. Munn indicated her puzzlement at why the City required developers to build these pathways, and then have them dead end into a fence.

Gary Avery, 451 Warner Street, is the manager of St. John's Cemetery in Oregon City, observed people acting well behaved in the area. St. John's was concerned about liability with people climbing over their fence to pass through. He supported the reopening of the pathway.

Commissioner Hewitt supported connectivity through out the City.

Mr. Patterson stated this was an issue of compliance with the City's rules relating to access, transportation, connectivity, and safety. He advised the Commission that if the City reopened the walkway, then it would have to repair the fencing and place a gate at the opening in order to deter vagrancy after school hours. He suggested that the Commission consider other access pathways for alleviating the foot traffic into the one neighborhood. Ultimately, it was a question of how far the Commission wished to go with this matter, with regards to staff time, etc. He agreed that, if City closed the path, then City should vacate the property to the contiguous neighbors.

4.2 Commission Report No. 03-113, Second Reading Proposed Ordinance No. 03-1005, Bret Eells, Zone Change from "R-10" Single-Family Dwelling District to "R-8" Single-Family Dwelling District; Clackamas County Map 3S-2E-8CA, Tax Lot 4501 (ZC 03-01).

The City Attorney read the number and title of the ordinance.

Commissioners Lemons/Bailey m/s for second reading and final adoption of Ordinance No. 03-1005. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting 'aye.' 5:0

Commissioner Hewitt encouraged his peers to be aware that, whenever they approved more density (R-10 to R-8) and houses in the City, they impacted infrastructure, which, in turn, caused service prices to go up. Ultimately, housing did not pay for these services, but rather commercial development did.

Discussion ensued on the anticipated growth over the next twenty years with the land supply that the City had, and how this would unfold through either increased density, an expanded regional area, or a combination of the two.

4.3 Commission Report No. 03-115, OLCC: Liquor License Application – Full On Premises Sales, Applying as Individuals, for a New Outlet – El Pitancon, Located at 212 7th Street.

Commissioners Lemons/Hewitt m/s to approve the liquor application. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting 'aye.' 5:0

4.4. Commission Report No. 03-114, Awarding Bid for the Police Department Laundry and Dry Cleaning Service.

Commissioners Bailey/Hewitt m/s to approve the bid award. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting 'aye.' 5:0.

4.5 Commission Report No. 03-120, Proposed Ordinance No. 03-1007, An Ordinance Adopting an Adult Business Licensing Ordinance for the City of Oregon City.

Commissioners Hewitt/Bailey m/s to continue this item to June 18, 2003, to allow the City Attorney time to investigate it further. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting 'aye.' 5:0.

4.6 Commission Report No. 03-119, Road System Maintenance Fee – Update.

Ms. Kraushaar updated the Commission on this road system maintenance fee proposed by Clackamas County. She informed them of the outcome of the RSMF Advisory Committee in anticipation of the Timothy Lake Retreat on June 12, 2003. At the Retreat, the County hoped to get direction from cities on their support on its subsequent adoption of an ordinance establishing the utility and its fees in December. **Ms. Kraushaar** provided a PowerPoint presentation.

The Commission supported moving ahead with this study, and anticipated participating at the Timothy Lake Retreat on June 12, 2003. No vote taken.

4.7 Commission Report No. 03-123, Proposed Budget Oversight Goals and Action Policies FY 2003-04.

Commissioner Bailey introduced this item, describing it as a set of operating principles developed by the Budget Committee to guide the City Commission in managing the budget through the year. There were three major goals: **Goal 1 – Improve the financial health of the City of Oregon City; Goal 2 – Increase accountability to Oregon City taxpayers; and Goal 3 – Improve professional operations of City departments and staff.** Each goal came with a set of action items to implement it.

Mayor Norris suggested that the Commission add this to the five goals adopted by the City Commission in January 2003, and become known as Goal #6, Improve the financial health of the City of Oregon City. She asked that the Commission accept the action plans provided for Goal 6.

Mr. Patterson commended the work developed by Commissioner Bailey as an insightful guide to organizational growth and financial stability. He provided a revised expansion of the action plans provided by Commissioner Bailey.

Commissioner Neeley amended Goal 1, Action 3 (of Mr. Patterson's version) – change the example of "Carnegie Center" to "recreational facilities." In addition, he amended Goal 2, Action 3, change "Commission" to "Budget Committee".

Commissioners Bailey/Hewitt m/s to adopt the Budget Oversight Goals as amended by Larry Patterson and Commissioner Neeley. A roll call vote was taken, and the motion passed with Commissioners Lemons, Bailey, Hewitt, Neeley, and Mayor Norris voting 'aye.' 5:0.

5. COMMISSION / CITY MANAGER INFORMATION

Mr. Sullivan, referencing PZ 03-01 and ZC 02-04 – Tom Skaar, informed the Commission that it could receive a report on the subsequent subdivision application, and that it could take it up on its own motion. The applicant's lawyer said it could not be done, although Sullivan disagreed. The applicant, Tom Skaar, met with the property owner who came before the Commission at the last meeting, and they resolved the matter. **Mr. Sullivan** indicated that the Commission would still get a report on the subdivision once staff provided a final order.

Mr. Patterson provided an update on the City Manager search process. He stated that 58 people submitted applications, and that he narrowed the list down to 6 candidates who would arrive on June 19; they would be briefed, tour the City with Department Heads, attend a reception on June 20, and be interviewed by the City Commission on June 21. Mr. Patterson would provide the Commission with an interview packet towards the end of next week.

Commissioner Lemons wanted assurance that the Commission would have equal access and time with each candidate. **Mr. Patterson and Mayor Norris** assured him that would be the case.

5.2 Commissioner Communications

Mayor Norris announced that she, Commissioner Bailey, and Nancy Kraushaar would appear at a hearing before the Metro Council, advocating for the McLoughlin Boulevard Enhancement Project. She noted that the Amtrak project was dead. In addition, several members of the City Commission have been at the State Legislature advocating for the continuance of the Amtrak Cascade's train, which was now in the Governor's budget.

Mayor Norris informed the Commissioners that Rep. Mitch Greenlake of Portland has formed a Rail Train Caucus. Thirdly, an assorted group of interested leaders would be talking tomorrow night about Willamette River Initiatives at an event organized for the River City Mayors of the Lower Willamette.

Commissioner Neeley provided a report on MPAC on affordable housing coming into Metro. Secondly, he reported on the Green Corridors Committee, which had a plan to maintain rural like corridors between Oregon City and Molalla on Highway 213, and between Oregon City and Canby on 99E.

Commissioner Hewitt raised a concern about inviting the Urban Renewal Commission to the June 10 economic development work session. **Mr. Patterson** asked that the City Commission meet at 4:45 p.m. that evening.

Commissioner Hewitt requested that staff make minutes available at for the following meeting. He asked that the minutes provide the minimum information required by law.

Commissioner Lemons shared that he recently attended the Regional Emergency Management meeting in Portland, which Tualatin Valley Fire & Rescue funded. He wanted to know if the Commission wanted to continue to provide a liaison after the City changed over to Clackamas County Fire District #1. Secondly, he requested that the City Manager invite CCFD#1's upper management to meet with the Commission to discuss staffing the South End Fire Station.

Commissioner Bailey provided a report on the May 26 South Fork Water Board meeting, at which time the Board approved the budget. The budget held the line on the current rates, and provided continuing capital improvements based on available funds without raising rates. The Board sent out an RFP for attorney services, and approved an employee agreement.

6. ADJOURNMENT

Mayor Norris adjourned the regular meeting at 9:30 p.m. to Executive Session.

7. EXECUTIVE SESSION

Mayor Norris convened an Executive Session pursuant to ORS 192.660(1)(d), for deliberations with persons designated by the governing body to conduct labor negotiations. The City Commission did not return to regular session. The Executive Session adjourned at 9:45 p.m.

Respectfully Submitted by,

LEILANI BRONSON-CRELLY, City Recorder