

**CITY OF NEWBERG CITY COUNCIL MINUTES  
MAY 17, 2010  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM  
401 EAST THIRD STREET**

Work Session was held prior to the meeting. A discussion on the Urban Reserve updates and the LCDC Remand occurred. No decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:11 PM.

**II. ROLL CALL**

Members

Present:	Mayor Bob Andrews	Denise Bacon	Stephen McKinney
	Bart Rierson	Marc Shelton	Wade Witherspoon

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Janelle Nordyke, Finance Director
	Howard Hamilton, Public Works Director	Jennifer Nelson, Recording Secretary
	David Beam, Economic Development Planner	

Others

Present: Pat Haight, Hank Grum, and Rob Felton

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, City Manager, announced the 2<sup>nd</sup> Street Project is underway and gave updates on the process to acquire the right of way on the south side to install sidewalk before the end of the project. He gave a reminder for the Budget Committee meeting tomorrow night at 7:00 PM in the Public Safety Building (PSB). He stated the Public Works Maintenance department will be hosting the Friday Greeters meeting at 8:00 AM; the Farmer's Market starts on May 25<sup>th</sup>; the City is also looking to establish a booth for the sustainability committee and other agencies with a conservation message. He will be out of the office this Wednesday through Friday.

**V. PUBLIC COMMENTS**

Ms. Pat Haight expressed concerns for the City's procedures in regards to records requests. She spoke of her recent desire to view the Accounts Payable ledger to see where monies are being spent and her opinion that reasonable access to city records was not being maintained because records cannot be accessed through the library anymore and only online, which is not updated. She also spoke of the city's response time to the records requests and the fact there was a charge of \$25.14 to have the information emailed to her. She said she just wanted to sit with the ledger for ten minutes to look at it and thought the whole process was grossly unfair to the people.

Councilor Bart Rierson asked staff why the records situation was this way.

Mr. Danicic stated he was unsure when the policy changed to remove the city records from the library and explained there were too many to keep duplicates so at some point there was a shift to back up records electronically and post the information to the internet. It does take time and is based on staff availability so there are gaps; he was not sure of this particular records request.

Councilor Wade Witherspoon asked if there is normally a fee to access public records. Staff replied obtaining records is not always an easy task and certain items are kept readily available; but, the City does not have a general ledger as may be imagined. If a specific request is needed, then the information has to be researched, compiled, and prepared which creates an expense.

Mayor Andrews asked if all records were available through the internet. Staff replied they are not, but they are in that process.

Councilor Rierson asked for staff to come back with as much information as possible on what the plan is and what resources are available to access city records.

Councilor Marc Shelton added there is a distinction between meeting minutes and every city document being accessible; he felt there should not be any missing minutes.

Mr. Hank Grum addressed concerns about the process of getting a loan to purchase property from Baker Rock being paid for through the water funds because of the fact that capital funds raised by water rates can only be used for that purpose; to fund expenses related to water. He does not understand how funds can be transferred from the water fund to pay for the animal shelter property if this is the case. He wondered why water rates were raised to pay for current debt if the money is being used for a secondary use, not a primary one. He did not agree with the idea of borrowing from one fund to pay for another fund's expenses.

Mr. Danicic explained that the resolution to authorizing funds to be transferred to the general fund cover the costs of the land used for the animal shelter which is a small parcel of the larger parcel of land already purchased by the waste water fund for the purposes of expanding the waste water treatment plant. This is to ensure that waste water is not paying for land not being used by the waste water plant but by the general fund for the portion used by the animal shelter instead.

A discussion followed with a more details of the transfer and how it actually prevents fund commingling and how the raise in rates was not affected and does not contribute to the animal shelter; it is merely a way of accounting for what was spent.

## VI. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2010-2899** approving the 2010 annual evaluation of the city manager.
2. Considering a motion adopting **Resolution No. 2010-2896** authorizing an interfund loan between the General Fund and Wastewater Fund for the new Animal Shelter facility.
3. Consider a motion adopting **Resolution No. 2010-2900** authorizing the City Manager to procure three required pumps for the Highway 240 Pump Station and Force Main Project from Mortenson Construction, in the amount of \$59,538.00.
4. Consider a motion approving **City Council Minutes** for April 19, 2010.

**MOTION:** Shelton/McKinney approving the Consent Calendar including **Resolution No. 2010-2899** approving the 2010 annual evaluation of the city manager, **Resolution No. 2010-2896** authorizing an interfund loan between the General Fund and Wastewater Fund for the new Animal Shelter facility, **Resolution No. 2010-2900** authorizing the City Manager to procure three required pumps for the Highway 240 Pump Station and Force Main Project from Mortenson Construction, in the amount of \$59,538.00, and the City Council Minutes for April 19, 2010 as amended. (6 Yes/0 No/1 Vacant) Motion carried.

## VII. PUBLIC HEARING

1. Consider a motion adopting **Resolution No. 2010-2897** approving the Supplemental Budget #2 transfer to reimburse Wastewater Fund for Animal Shelter facility, transfer to fund expenses for mailer to District 6, transfer to fund additional IT and legal expenses, transfer project revenues to SDC funds and recognize revenues for 2<sup>nd</sup> Street Capital Project.

TIME – 7:45 PM

Mayor Andrews opened the public hearing and called for any conflicts of interests or abstentions; none appeared.

Ms. Janelle Nordyke, Finance Director, presented the staff report (see official meeting packet for full report).

Mayor Andrews opened public testimony.

Ms. Haight said she did not understand why the City was only six months into the budget year and there was already a second supplemental budget. She was also confused why money was being transferred from the General Fund to the Wastewater Fund when the money was loaned from the Wastewater Fund to the General Fund and the check goes to US Bank for the purchase of the Baker Rock property.

Mr. Danicic said that in essence it does both; the previous action in the Consent Calendar has Wastewater loaning the General Fund the money to extend credit to pay back the cost of the property over five years. This second action needs to recognize that the General Fund will be paying those payments to the Wastewater Fund.

Councilor Shelton continued by explaining the supplemental budget being a process required by law and although he understands her frustration, as elected officials they have heard the reasoning behind this, communicated any concerns from the constituents, and are prepared to approve it as a part of due process. He agreed that part of the funds used to purchase the property and to replenish the Wastewater Fund does come from the rate payer's pocket, but also stated that was part of being part of a city and part of a nation.

Mr. Grum stated that if they have to pay the money back anyway then there should not be any need to get a loan to pay back the Wastewater; they should just leave it alone and pay back the loan with the General Fund.

Mayor Andrews closed the public testimony. Staff recommended adopting the resolution.

Councilor Shelton clarified with staff that once the five years transpires the Wastewater Fund will be paid back with no gain or loss at 4.2% because that is what the loan is from US Bank.

Councilor Stephen McKinney complimented staff for the presentation of the material. He was glad that the necessary steps were being taken to ensure Wastewater funds were not being commingled with something else; that the Animal Shelter will be paying for its fair portion of the purchased twenty acres; and that the City is meeting the State requirements for how to account for these funds.

Mayor Andrews closed the public hearing.

**MOTION: Rierson/McKinney** approving **Resolution No. 2010-2897** approving the Supplemental Budget #2 transfer to reimburse Wastewater Fund for Animal Shelter facility, transfer to fund expenses for mailer to District 6, transfer to fund additional IT and legal expenses, transfer project revenues to SDC funds and recognize revenues for 2<sup>nd</sup> Street Capital Project.

Discussions followed about the purchase of the Baker Rock property, the Council vacancy, and the legal expenses related to the City's law suit being unanticipated expenses after the 2009/10 Budget was approved and the formal process to account for monies used from contingency funds.

Councilor McKinney asked the City Attorney if additional funding other than the requested \$12,000.00 will be need to deal with upcoming legal expenses of referendum and petition.

Mr. Terry Mahr, City Attorney, stated he did not think this amount would cover the costs of the entire law suit and an additional \$10,000.00 from this fiscal year is anticipated at least, depending on the hearing on May 24, 2010.

**MOTION: McKinney/Rierson** amending **Resolution No. 2010-2897** to increase the amount monies for legal professional services from \$12,000.00 to \$22,000.00 and to reduce the contingency by a like amount. (6 Yes/0 No/1 Vacant) Motion carried.

**VOTE:** To approve **Resolution No. 2010-2897** as amended. (6 Yes/0 No/1 Vacant) Motion carried.

2. Consider a motion adopting **Ordinance No. 2010-2726** revising the existing prohibition use regulations for Francis Square.

TIME – 8:23 PM

Mayor Andrews opened the public hearing and called for any conflicts of interests or abstentions; none appeared.

Mr. David Beam, Economic Development Planner, and Mr. Rob Felton, Newberg Downtown Revitalization Committee (NDRC) Chair, presented the staff report (see official meeting packet for full report).

Councilor Denise Bacon questioned how people attending an ARTwalk event would be kept within the parameters of Francis Square while drinking alcohol. Staff replied methods of control must be defined when applying for the liquor license to serve.

Councilor Witherspoon asked if wine can be sold by the bottle at the event and if a consumer could drink that purchased bottle on site. Staff again stated the Oregon Liquor Control Commission (OLCC) dictates what can be done with the request to serve.

Councilor Shelton spoke of the City Manager having final approval on any application and although this is all very specific for the ARTwalk being allowed, the City Manager would approve other events. He was concerned that whoever is providing the wine has certain responsibilities, the property is still City owned and he wondered about the need for insurance.

Councilor McKinney felt the language was too vague in reference to discernable parameters and what the term "intoxicants" included. He felt everything should be more defined to ensure what the City wants and does not want to happen on the property.

Councilor Rierson asked what the mechanism would be for policing this practice and how the City would know the person serving the alcohol has obtained their OLCC permit.

Councilor McKinney spoke of having the defined process for Francis Square similar to the one for the Library.

Mayor Andrews opened public testimony.

Ms. Haight said she wants to see profits for downtown businesses and agreed they need to bring people downtown; but, this city was not founded on wine tasting and the namesake for Francis Square would roll over in his grave if he knew the City was considering serving alcohol there. She said it was decided long ago what this area would look like and what could be done there and she did not feel Council should consider sacrificing the intent of Francis Square for any business. She was concerned for the number of people that could end up in this space, drinking alcohol, and being that close to downtown traffic. She felt it would be dangerous and that the Square should be left alone to be the quiet place it was intended to be in the midst of downtown traffic.

Mr. Grum felt certain types of businesses could be singled out and he felt this was hypocritical since he is not allowed to sit in Francis Square and smoke his pipe, so why would others be allowed to drink alcohol there.

Mayor Andrews closed the public testimony.

Mayor Andrews wondered how other businesses felt about the competition of having another tasting coming in and occurring at this new venue.

Mr. Felton explained that ARTwalk in its nature allows for a number of general invites to the downtown in various facilities and the basic feeling of participants is “the more, the merrier” so there is more of a reason for people to come downtown and visit the participating businesses.

Mayor Andrews spoke of what other communities with a “city living room” allow. Staff could not respond to this matter at the time.

Discussions followed about ensuring the vendors are properly insured and permitted by the OLCC to distribute alcohol on the site and if the City Manager would have to approve every event.

Councilor McKinney had several reservations such as the vague list of intoxicants, the insurance requirements, the ability to keep people within the confines of Francis Square, the culpability of the City because it is city property if an accident occurs, and why alcohol would be prohibited in city buildings vs. public parks.

Mayor Andrews closed the public hearing.

Councilor Shelton stated he supported Ms. Haight’s testimony on this issue and spoke of there being a different standard on community outdoor spaces than using the library after-hours to host an event. He did not feel he could support the ordinance for issues of liability and he agreed it should be maintained as it is.

Councilor Bacon did not have any huge issues with selling things within the Square, like artwork; but she felt there were enough wine tastings going on during ARTwalk that she could not see a huge benefit. She did not think allowing alcohol was necessary.

Councilor Witherspoon stated he was in favor of ordinance because it ties into who the City is going to become as the gateway to the wine community. He felt there were social benefits and potential economic development to embracing this. He felt the ordinance could use some tightening up in the criteria and he would be more in favor of all the applications going through the City Manger for more policing issues.

Councilor McKinney also felt the proposed ordinance was too ambiguous and that there were ample other opportunities to sample wine. He said he understands Newberg is said to be the gateway to wine country, but there is also more to Newberg than just wine.

**MOTION: Rierson/Shelton** denying **Ordinance No. 2010-2726** revising the existing prohibition use regulations for Francis Square.

Mayor Andrews asked staff to look into what other communities are doing and wished to further discuss how to handle city open spaces regarding prohibitions to alcohol, smoking, and other items.

Councilor Witherspoon wished to know if the ordinance was denied now, would there be any opportunity for it to come back.

Mayor Andrews stated he would still vote against it if it were packaged again as an ordinance.

Mr. Danicic suggested voting on the ordinance and then requesting staff to return with information and policies for all open spaces during a future work session.

Mr. Mahr added that by not adopting the changes they are not really leaving anything in place because all the City has is a draft document that stalled ten years ago and the NDRC is looking for guidance.

**VOTE: To deny Ordinance No. 2010-2726. (6 Yes/0 No/1 Vacant) Motion carried.**

Mayor Andrews recessed at 9:19 PM for seven minutes.

## VIII. NEW BUSINESS

Consider a motion approving **Resolution No. 2010-2901** approving the revised City Manager position description.

TIME – 9:25 PM

Mayor Andrews presented the staff report (see official meeting packet for full report).

Councilor Shelton noted his appreciation for the Mayor making sure the annual evaluations for both the City Manager and the City Attorney are completed and he wished to continue the updates to the position descriptions with the evaluations for both.

**MOTION: McKinney/Witherspoon** approving **Resolution No. 2010-2901** approving the revised City Manager position description. (6 Yes/0 No/1 Vacant) Motion carried.

## IX. COUNCIL BUSINESS

TIME – 9:36 PM

Councilor McKinney asked staff to send updates about the sidewalk for the 2<sup>nd</sup> Street project and how funds would be appropriated. Staff said it would be addressed through capital improvement project dollars.

Councilor Rierson asked about a future NW Natural Gas project and its affect on the 2<sup>nd</sup> Street project. Staff spoke of a five year moratorium.

Councilor Witherspoon asked for an update on the public access channel. Staff said cable connection preparations have been made, staff is researching necessary hardware to be purchased; there are no firm deadlines.

Councilor Rierson spoke of the Animal Shelter Sub-Committee meeting on Wednesday, May 26, 2010, to discuss the 30% completion update. He spoke about the Hess Creek Fence and the different heights of the installed posts, the contractor is not finished and that will be taken care of. Suggestions were made to see if there is any use for the chain link fencing material taken out of there for use for an outside dog run at the animal shelter.

**MOTION: Shelton/Rierson** to direct staff to come back with recommendations for the use of public spaces, including Francis Square. (6 Yes/0 No/1 Vacant) Motion carried.

**X. EXECUTIVE SESSION**

2. Executive Session pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation.

TIME – 10:41 PM

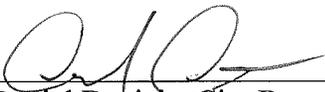
1. Executive Session pursuant to ORS 192.660(2)(e) relating to a real property transaction.

TIME – 11:12 PM

**XI. ADJOURNMENT**

The meeting adjourned at 11:47 PM.

**ADOPTED** by the Newberg City Council this 21<sup>st</sup> day of June, 2010.

  
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Daniel Danicic, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of June, 2010.

  
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Bob Andrews, Mayor