

**NEWBERG CITY COUNCIL MINUTES
REGULAR SESSION
SEPTEMBER 21, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

The work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilors Lesley Woodruff, Stephen McKinney, Scott Essin, Denise Bacon, Mike Corey and Tony Rourke. Also present were City Manager Pro Tem Terry Mahr, City Manager Pro Tem Steve Rhodes, City Attorney Truman Stone, City Recorder Sue Ryan, City Engineer Kaaren Hofmann, Community Development Director Doug Rux and Public Works Director Jay Harris.

REVIEW OF COUNCIL AGENDA:

Mayor Andrews said Council would hear a presentation then recess for the Fire Department promotional ceremony, return and convene the regular meeting. Following the appointments they would have their second Work Session presentation.

COUNCIL BUSINESS:

Councilor Essin wanted to talk about the tree at the library. Mayor Andrews wanted to talk about the strategy session and LOC conference.

PRESENTATION

CE Hofmann presented information on the Infiltration and Inflow Private Lateral Program and why they wanted to reduce the extra flows to the Wastewater Treatment Plant. As a part of the Meridian Street sewer project, the contractor would video the private laterals to determine what the actual impacts were for the system. Staff was also looking at removing cross connections. Most jurisdictions that started an Infiltration and Inflow program found that the private laterals needed to be addressed to get the most benefit of the system. The Code stated property owners were responsible for private laterals. One option to address these would be to continue to have the property owners make the improvements as staff found them and possibly give them a cash incentive or provide financing. The other option was to have the City make the improvements as part of the public project. They needed to decide which option to do and put together a program with public outreach and education. There was discussion about what constituted a failure of a private lateral, the enforcement process, funds that might be available for a loan program, and whether the City could fund replacements.

CMPT Rhodes said in Pacifica, California they had an active I & I Program. They went citywide and had contractors bid for a set price to do the work for the property owners. The property owners worked directly with the contractors but the City got a set price for them. They also put an Inspection On Sale Program in place so when a home sold their lateral had to be inspected and replaced if needed before the sale closed. The City inspected all of the lateral work that was done. Ms. Hofmann thought 40-60% of private laterals were an issue in Newberg.

Mayor Andrews asked Council if they wanted to change the Code and if not, were there some avenues they could provide for property owners especially if the cost was a hardship. There was consensus to leave the Code as it was and for staff to come back with guidelines.

Mayor Andrews adjourned the work session at 6:30 p.m.

CALL MEETING TO ORDER

The Mayor called the meeting to order at 7:10 p.m.

ROLL CALL

Members Present:	Mayor Bob Andrews	Scott Essin	Stephen McKinney
	Lesley Woodruff	Denise Bacon	Mike Corey
	Tony Rourke		

Staff Present:	Terry Mahr, City Manager Pro Tem	Steve Rhodes, City Manager Pro Tem
	Truman Stone, City Attorney	Sue Ryan, City Recorder
	Kaaren Hofmann, City Engineer	Jay Harris, Public Works Director
	Doug Rux, Community Development Director	
	Jessica Pelz, Associate Planner	

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

APPOINTMENTS: Mayor Andrews recommended several appointments and reappointments to City Committees.

MOTION: Bacon/Rourke moved to reappoint Stuart Brown and Terry Emery to the Affordable Housing Commission, appoint E.C. Bell and Mike Gougler to the Affordable Housing Commission, reappoint Blair Didway to the Citizens Rate Review Committee, and to appoint Nick Morace, Holly Bradford and Rick Rogers to the Citizens Rate Review Committee. Motion carried (7 Yes/ 0 No).

PRESENTATIONS:

Public Works Director Jay Harris presented information on street maintenance funding and options. A pavement condition analysis was done and showed the pavement was in fair condition, but was plummeting quickly if funds were not invested in the system. He discussed types of pavement conditions, maintenance techniques and timing, Pavement Condition Index, budget constraints, options and revenue sources, and need for a dedicated and stable funding source. He then explained the potential supplemental funding options such as a street utility fee, general obligation bond, local option levy, local gas tax, and what other jurisdictions were doing. He asked Council if they were interested in identifying funding sources for a pavement program, and if so, which funding level and what kind of funding sources.

Councilor Corey asked if enough money would come in from a street utility fee. PWSD Harris explained they needed to receive at least \$1.9 million per year in order to maintain the roads, although staff would not recommend starting that high and try to reduce costs. These fees did not have a sunset clause, but they would need to check in and make sure they were catching up and getting ahead of the curve. A \$10 million dollar general obligation bond would be \$190 per year for a \$225,000 house.

Councilor McKinney asked if there was a hybrid option. PWSD Harris explained the different funding level options. He recommended maintaining the existing PCI, using a little less than \$1.9 million per year and finding a funding option or combination of funding options and bringing a consultant to do a check in a few years to reevaluate. There was discussion on the different funding levels and options.

CITY MANAGER PRO TEM'S REPORT:

CMPT Mahr said he was leaving as City Manager Pro Tem as Mr. Rhodes was taking over as of today. They had been maintaining services well and keeping business going. CMPT Rhodes was happy to be there and was looking forward to working with the Council.

PUBLIC COMMENTS: None.

CONSENT CALENDAR:

MOTION: Bacon/Rourke moved to adopt the Consent Calendar, including convening the Citizens Rate Review Committee and instruct the committee to begin the rate review process under the authority as described in Newberg Municipal Code 2.15.130, and that the committee meet on October 15, 2015 and set a schedule to accomplish these tasks. Motion carried (7 Yes/ 0 No).

PUBLIC HEARING:

Ordinance 2015-2787, Recreational Marijuana Ban on early sales by Medical Marijuana Dispensaries:

Mayor Andrews opened the public hearing and called for any abstentions, conflicts of interest, or objections to jurisdiction. There were none.

City Attorney Truman Stone gave the staff report. This issue came from statutes passed in the last legislative session. The immediate issue was whether the City would allow or ban early sales of Recreational Marijuana by Medical Marijuana Dispensaries. The Council directed staff to return with an ordinance to ban the early sales.

Proponents:

Doug Heuer was in favor of the ordinance to ban the early sale of Recreational Marijuana. It wasn't about the safety of the schoolchildren as much more dangerous products, such as alcohol and tobacco, were being sold near schools. His testimony to the legislature was about the lawlessness of the League of Oregon Cities and asking law enforcement to not return the marijuana they seized. If they wanted to keep prohibition longer, they needed to keep banning it.

Opponents:

Joe Weil was a Medical Marijuana grower. Since the passing of the early recreational measure, he found his patients had been approached by recreational users to get marijuana. Currently there was no access to Recreational Marijuana, but people were allowed to possess it. Without the access they were pushing people into the black market or asking people to break the rules.

Joe Consani said he and his wife, Sheri Ralston, had a Medical Marijuana Dispensary. If they delayed the sale of Recreational Marijuana, it was delaying the resolution to the problem. It needed to be legal, regulated, and a safe supply. He said the rollout had already been done in Colorado and Washington and the problems that were thought to happen had not happened. Recreational sales took away the black market business. He thought early sales would benefit the community.

Ryan Hardy was an opponent to the ordinance on the ban. The recreational substances available for people to partake of were lethal. This was shown with alcohol and tobacco products, and they took more lives than marijuana. He didn't see why they would ban something that had health benefits to it. It was a healthier substitute for those who smoked tobacco. A lot of people had medical conditions and were not able to obtain the medicinal cannabis. He thought it was ironic that at age 18 someone could get tobacco but not marijuana.

Tonya Killion was a daily pot user because of a severe back and hip injury. She said prescription medicines had not helped her but using marijuana and yoga had helped her. She could get her card medically but she had lots of friends who used marijuana for things such as anxiety and depression who did not qualify for a card and needed to have access to Recreational Marijuana. There was a black market that people were using. She thought Recreational Marijuana should be sold legally as soon as possible and they should provide people a safe place to get it.

Aimee Reeves was opposed to the ban. Her whole life she had suffered from depression and anxiety. She had been prescribed many different antidepressants that did not work well. She had begun using marijuana and used it daily. She was able to earn a college degree and work for a multimillion dollar industry all while using marijuana daily. She did not want to have to go to the black market, but to a clean, safe place. Her ailment didn't qualify for a card. She encouraged early Recreational Marijuana sales. It was unfair to be able to have it legally, but have nowhere to get it.

Sheri Ralston said she and her husband were opening a Medical Marijuana Dispensary off Springbrook Road. She would like the option of selling marijuana recreationally. The current laws and security measures to run a Medical Marijuana Dispensary were strict. There had not been crime at these facilities, except internal theft by employees. Nothing would change if they sold Recreational Marijuana. Cash would not be stored at her facility and there would be a sign out front that said that. People used Recreational Marijuana for a wide range of reasons that were not necessarily recreational, but had to buy on the black market or ask other medical marijuana card holders to obtain it for them. They had a right to get safe product. The reason early recreational sales were put into place was to mitigate black market sales. She encouraged the Council to allow them to have recreational sales in Newberg. The closest dispensaries were 30 or more minutes away.

Abdullah Naimi was a cannabis farmer. There was an outdated view of what a marijuana user was. A Medical Marijuana Dispensary was a place to be educated and change the negative view of it.

Nithasha Koukoumanos had been a special ed teacher and had gone through a major car crash and two back surgeries. She had to leave work to try and recover. Conventional medicine had not helped her but all other types of alternative medicine including the use of marijuana had helped her. She came from a conservative family and she had researched marijuana extensively. Cannabis had helped her recovery process and was her only form of pain management. She had to rely on friends or family members to get her marijuana for a year while she was trying to get her card, but could not go to a dispensary yet. Not all marijuana was equal, there were different strains for different ailments, and you didn't always

know what you were getting when you got it from a friend. It was important to realize how marijuana could help various people.

CA Stone said the City had received written communication from Ms. Ralston and Mr. Heuer. He had drafted the ordinance at Council's direction and did not have a recommendation. If the ordinance passed, the ban could last until the end of 2016. If it did not pass, beginning October 1 Recreational Marijuana could be sold in Medical Marijuana Dispensaries. He discussed other jurisdictions that had and had not imposed a ban on early recreational sales.

Mayor Andrews closed the public hearing.

Council Deliberations:

MOTION: McKinney/Corey moved to waive the second reading of the ordinance. Motion passed (5 Yes/ 2 No [Bacon/Rourke]).

Councilor Essin wanted clarification that the City was able to ban the early sales. CA Stone said this ordinance related to Senate Bill 460 regarding the opting out of the early sale period. It would have no effect once OLCC licensed retail outlets. Councilor Essin asked where the money would go from the sales.

CA Stone said for early sales the State would impose a 25 percent tax to be collected on a statewide basis and distributed accordingly. A moratorium on early sales would not prohibit the City from receiving revenue from the State. If the City banned any activities after the full recreational program was up and going, then it would bar the City from receiving State revenue.

Councilor Essin said it was a tempting situation because of the 25 percent tax. He had done research about marijuana causing brain damage to young people with developing minds. It was not the same as alcohol. While it could be beneficial as a controlled substance to people with illness, it was sending a message to our youth that it was a drug that could be taken lightly. He would be voting on the side of supporting the ban.

Councilor Bacon would be voting to oppose the ban. She had received a number of calls from women ages 50-70 who were not comfortable coming that evening to the meeting to speak in public. They were supportive of obtaining marijuana in a safe, secure place and were not comfortable growing it themselves and did not want to buy it on the black market. She shared her personal experience with health and how her doctor recommended marijuana. As far as kids were concerned, it wasn't up to the City Council to regulate everything that kids were exposed to.

Councilor Corey would be voting for the Ordinance because the City needed to get more information from the State. He thought it should be licensed, but the State had not yet come up with the regulations yet.

Councilor Rourke said whether the Council banned it or not didn't do anything for the children. There was a black market, but people could grow it now if they wanted. If people wanted it they would find it. He was struggling with why the Council wanted to ban it. The State had clear guidance to this one provision for early sales and Medical Marijuana Dispensaries were regulated. A ban would not prevent children from getting marijuana.

Councilor Corey said part of what was not solved was how the tax structure would be made up. He had no issue against Medical Marijuana Dispensaries. His issue was recreational use being sold at the dispensaries and how the oversight would be controlled.

Councilor McKinney would support the ban. There were strict regulations for dispensaries, but there was still considerable ambiguity regarding who, when, and how the laws would be enforced. They wanted to ban the sales because of these ambiguities. There had not been discussion regarding people who were operating under the influence of marijuana and the impact they would have on the community.

Councilor Woodruff would be in support of the ban. She had the same questions and concerns as Councilor McKinney.

Mayor Andrews would be voting in favor of the ban. They were not saying no to Recreational Marijuana, but that they were not ready for the early sales.

MOTION: McKinney/Corey moved to adopt Ordinance 2015-2787, an Ordinance of the City of Newberg declaring a ban on the early sale of Recreational Marijuana by Medical Marijuana Dispensaries and declaring an emergency to be read by title only. Motion passed (5 Yes/ 2 No [Bacon/Rourke]).

NEW BUSINESS:

Resolution 2015-3218, TSP amendment initiation

Associate Planner Jessica Pelz said the City received an application from ODOT to amend the Transportation System Plan to reflect two things that had happened since the 2013 TSP amendment to adopt the Phase 1 Bypass details. Since the amendment, the lane configuration of Highway 219 had changed and the Ladd Hill Neighborhood Association raised issues about the Bypass/Wilsonville Road intersection for a no-through movement. Staff was asking Council to initiate the process for these two amendments, which would then go through a public hearing with the Planning Commission and then back to Council. Staff recommended adoption of the resolution.

Councilor Woodruff asked if there was an estimate of how long the public hearing process would take and if it would affect the bypass completion. AP Pelz said Planning Commission would hear the issue in November, and the Council in December. At this time ODOT was moving forward with the existing construction plans showing the through movement. If the Council approved the resolution, it would require changing the construction plans.

Councilor McKinney asked for clarification on Figures 1 and 2. Community Development Director Doug Rux explained Figure 1 was a configuration of two south bound lanes on Highway 219 that ODOT concluded they did not need. Figure 2 was the current proposal from the Ladd Hill Neighborhood Association. Councilor Essin asked if this was the time to discuss whether the no-through movement was a good idea. AP Pelz explained the process. This was not making a decision on the amendments, it was to direct staff to study the issue and bring it to the Planning Commission for a public hearing and the Planning Commission would forward a recommendation to the Council, and the Council would make the final decision. Councilor Essin was satisfied with what was already in place.

Hillery Crew, Newberg resident, was concerned about through traffic in her neighborhood. She did not support looking at a change because any traffic that was diverted to Wilsonville Road would impact her ability to get out and move around. She thought Springbrook would be the next Dundee. Those who wanted the change did not live on Wilsonville Road and would not be impacted.

Charles Conniry, Newberg resident, was concerned about the impact to Fernwood Road if traffic was directed onto Wilsonville into Newberg. Currently it was a safe road with pedestrians and golf carts often using it. It would be a safety hazard, detract from the ambiance of the golf course, and they all had to make sacrifices for progress. He asked the Council not to consider moving forward with investigation on this option.

Gary Bliss, Newberg resident, had reviewed the plan and did not think it merited further study as it would not function as intended. In his 45 years as a Civil Engineer, he had built many arterial roads with intersections such as the one proposed. It had been his experience that they did not work. People ignored signs and would make illegal turns. He used Wilsonville Road often and there was traffic and speeding on the road. This proposal would eliminate the cross traffic so anyone in west or north Newberg would not have access to Wilsonville Road unless they traveled other roads that were not intended for that much traffic. Wilsonville Road was meant to join the community and this proposal would deny that. The City allowed golf carts on Brutscher and Fernwood, and now they were proposing to mix transient traffic with those. There were 250 homes in the proximity of the golf course that could use the same roads with golf carts. He recommended the City not proceed with considering this design.

Elaina Medina, Newberg resident, opposed initiating the amendment. The no-through option would be dangerous and disruptive to her neighborhood. They were already going to see increased traffic on Fernwood with the new apartment complex that was being constructed with 180 units. She commuted on Fernwood to Wilsonville and in the winter Corral Creek Road could be a very dangerous country road. It was often closed in the winter and could be very icy. Drivers would still access Wilsonville Road by going through neighborhoods where children, golf carts, and seniors used the streets. She asked that Council not initiate the resolution.

Jessica Moretti, Newberg resident, was opposed to the resolution. It would take more time and money, and they wanted to get the bypass done. She was opposed on behalf of all the skate boarders, stroller pushers, dog walkers, golfers, tractor drivers, joggers, and moms like her that did not want any more noise or traffic on Fernwood.

Alex Rix, Newberg resident, said there was a senior community on Fernwood and a large field nearby that was used for youth sport events. He urged Council to take that into consideration and reject this proposal.

Darryl Palmer, Newberg resident, was against the amendment for all of the reasons that had been stated that night.

Roger Kuhlman, Newberg resident, had followed the public presentations with ODOT and recently learned of the proposed changes. He was concerned about the short construction timeline, and that it would take time to fully vet other options. He supported not considering this amendment and leaving the plans the way they were.

Stan Halle, a County resident, was a proponent for the resolution. The intent of the bypass was to redirect traffic either south to McKay Road or north to Springbrook and back to 99W. It was never to use Wilsonville Road as a de-facto extension of the bypass. When the amendment to include Wilsonville Road was approved by Council in 2013, ODOT made misrepresentations that had been proven incorrect. ODOT violated the National Environmental Protection Act by claiming that they had done analysis modeling when they had not. They were in support of the bypass, but not in support of Wilsonville Road becoming the extension. Many children crossed Wilsonville Road and there were schools, private driveways, farms, garbage trucks, and school buses on the road and it already was unsafe. They had prepared a lawsuit to take to district court, but wanted to work with the City, School District, and County to come to a resolution. There would be unintended consequences and he requested that the resolution be adopted. ODOT did not think it would affect the construction timeline as Wilsonville Road construction would be the last thing to be done. In the amendment ODOT put in that they would continue to monitor and mitigate problems when and if they arose.

Councilor McKinney asked if there was an environmental question or was this just being used as a delay? Mr. Halle said there was an environmental question and they were not trying to delay the project. He said changing it to Wilsonville Road without doing the proper modeling analysis was a violation of NEPA. ODOT came up with the no-through design to mitigate the problem.

Councilor Essin asked CA Stone about the lawsuit. CA Stone had not seen the proposed lawsuit and did not think the City would be a party to the lawsuit. It would be an issue between ODOT and those contesting ODOT's action. Litigation took time and if it ended up in court, it could result in a delay until it was resolved.

Councilor Essin asked CDD Rux about making these changes. CDD Rux explained if Council initiated the process, staff would look at the information prepared by ODOT and other options for the configuration. Staff would have to review the pros and cons before making a recommendation to the Planning Commission on this proposal. Councilor Essin asked about the repercussions of keeping what was already in place. CDD Rux said possible repercussions could include filing legal proceedings and not proceeding with the construction timeline for the project.

Councilor McKinney discussed the bypass design. What were the impacts for Springbrook Road? CDD Rux said if ODOT did not move forward with the Springbrook Road improvements, the Wilsonville Road connection would not be removed. Staff had discussed the movement that would occur in these intersections and would have to look into the options further. The option brought forward by ODOT was one option, but there might be others to look at.

Councilor Bacon clarified a compromise that was good for both parties could happen. CDD Rux said it was possible, but would require a discussion among all the parties and review of the traffic analysis and Transportation System Plan. The other option was what was in the TSP needed to be constructed.

Councilor Essin did not think they should make any changes. There was a threat of a lawsuit if they wanted to go with a different option than the Ladd Hill Neighborhood Association suggested. The City was already going to spend a lot of time on side routes because the original bypass was not constructed. They would not find a solution to prevent traffic from going on Wilsonville Road.

MOTION: Essin moved to deny Resolution 2015-3218, A Resolution initiating an amendment to the Transportation System Plan for changes to the road and lane configuration of Highway 219 and the Highway 219/Phase 1 Bypass/Wilsonville Road intersection. Motion died for lack of a second.

Councilor Rourke said this was happening because ODOT made a mistake. Passing the resolution gave them a chance to fix the mistake, but they did not have to approve the no-through option. He did not have a problem with the current configuration, but was inclined to go through the hoops with the intent that the result would benefit Newberg and its citizens.

MOTION: Rourke/Corey moved to adopt Resolution 2015-3218, A Resolution initiating an amendment to the Transportation System Plan for changes to the road and lane configuration of Highway 219 and the Highway 219/Phase 1 Bypass/Wilsonville Road intersection.

Councilor Essin cautioned the Council that even if they could come up with a solution, the Ladd Hill neighborhood still might sue. He was opposed to the resolution.

Councilor Corey said he supported the resolution because they were sending it back to consider the options. Unfortunately the bypass was not going to go through to 99W and there would be a lot of problems on Newberg streets.

Councilor McKinney thought this was ODOT's solution to the problem, and they would force it to happen. The initiation of this process would make things worse for Newberg. Staff needed to find a suitable solution to the problem regardless of what Ladd Hill or ODOT had to say.

Councilor Rourke said staff would not be able to do anything until this process was initiated. AP Pelz said the way it had been done in the past was for Council to initiate an amendment to the TSP. CDD Rux explained the process was the same as used in the 2012 TSP amendment. Staff did not have all of the information yet to make a recommendation. Councilor McKinney thought staff could come up with a better solution to the problem. Rather than passing this resolution, they should leave it to staff to find a solution that did not sacrifice Newberg. What the citizens said was important and he hoped the resolution would fail.

Mayor Andrews said they were not supporting one option by passing the resolution. They were initiating examination of an amendment. He was in support of the resolution.

Councilor Bacon was in support of the resolution. She hoped that they could come up with a plan that was safe for everyone. If it came back in the form that had been presented by ODOT, she would not support it.

Motion passed (4 Yes/ 3 No [Essin/Rourke/McKinney]).

Resolution 2015-3228, Initiation of Comp Plan amendment

AP Pelz said this resolution would initiate Comprehensive Plan and Development Code amendments to adopt the Transportation System Plan as a whole. All of the draft materials would be presented at the upcoming joint Council/Planning Commission meeting on September 28.

Councilor Rourke asked whether the two amendments would end up correlating? AP Pelz said they had anticipated getting the ODOT amendments earlier so it would not be an issue. The TSP project was a separate project with ODOT and expired the end of February. Councilor Rourke thought they should wait until the other issue was resolved before proceeding with the Comprehensive Plan amendment.

CDD Rux said the contract between ODOT and DKS Associates ran out at the end of December, but they were negotiating an extension to the end of February. If they were to wait until January to initiate it, it would go to the Planning Commission in February when the contract ran out. Delaying it until the other issue was resolved might put them be in the position where they would not have a consultant to help through the hearing process and make changes to the documents.

Councilor Corey agreed with Councilor Rourke about not going forward with the resolution at this time.

Councilor Bacon said this was the 20-year plan for all of the City's streets and transportation network. She did not think it should be stopped because of one intersection.

MOTION: Bacon/Woodruff moved to approve Resolution 2015-3228, A Resolution initiating Comprehensive Plan and Development Code amendments to adopt the Transportation System Plan and associated policies and regulations. Motion carried (6 Yes/ 1 No [Essin]).

COUNCIL BUSINESS:

Mayor Andrews reminded City Council about the Visioning Session on October 3rd and confirmed that everyone could attend. He asked if there were any issues with the LOC Conference.

Councilor Essin said the tree at the Library had been evaluated by an arborist and they would be able to save the tree. He wanted to look at the arborist report.

Councilor Woodruff announced the FISH Community Open House to celebrate the opening of the waiting room since the Council helped fund its renovation.

Mayor Andrews said after the LOC Conference he would be coming out with the charges for the two subcommittees he had appointed at the last meeting, one regarding marijuana and the other regarding City Manager recruitment. Staff needed direction regarding funding options for street maintenance.

PWSD Harris would prepare a memorandum with options for the next Council meeting. There was discussion on routing it through the Rate Review Committee.

ADJOURNMENT: The meeting was adjourned at 10:45 p.m.

ADOPTED by the Newberg City Council this 19th day of October, 2015.



Sue Ryan, City Recorder

ATTESTED by the Mayor this 22nd day of October, 2015.



Bob Andrews, Mayor