

STAYTON CITY COUNCIL
Meeting Minutes
July 5, 2011

CALL TO ORDER

7:00 pm

Mayor Vigil

FLAG SALUTE

ROLL CALL/STAFF INTRODUCTIONS

Mayor Scott Vigil

Councilor Larry Emery

Councilor James Loftus

Councilor Jennifer Niegel

Councilor Henry Porter

Councilor Brian Quigley

STAFF

Don Eubank, City Administrator, excused

Christine Shaffer, Finance Director

Rich Sebens, Chief of Police

Dan Fleishman, Director of Planning and Development

Louise Meyers, Library Director

David Kinney, Public Works Director

David A. Rhoten, City Attorney

Debbie Layman, Police Records Supervisor

PRESENTATIONS/COMMENTS FROM THE PUBLIC

SPOTLIGHT: Fishing Derby – Administrative Sgt. Wetzel

Administrative Sgt. Wetzel gave a power point presentation on the 29th Annual Junior Police Fishing Derby. She described this year's event which was held at Detroit Reservoir. The Junior Police Fishing Derby allows children between the ages of 8 and 11 to spend a day in the outdoors fishing and interacting in a positive way with police officers. Administrative Sgt Wetzel gave a brief history and recognized several volunteers and other sponsoring law enforcement agencies and groups. Questions were fielded by both Chief Sebens and Administrative Sergeant Wetzel.

COMMENTS FROM THE PUBLIC

a. Leo Negrette, 918 W. Darby St. Apt. #2: Mr. Negrette spoke in opposition to Ordinance No. 936. Mr. Negrette stated he strongly disagrees with the proposed ordinance to ban smoking in City of Stayton parks. He asked if the ordinance was voluntary compliance. Mayor Vigil replied yes. Chief Sebens stated the ordinance is voluntary since the police department does not have the staffing to respond to complaints of smoking in the parks unless there is a problem. However, if police are on routine park patrol and see people smoking, police officers will tell the park goers about the ordinance and request the cigarettes be extinguished. Mr. Negrette stated he felt the ordinance is, generally speaking, not voluntary; if the ordinance was voluntary it could not be enforced. The ordinance can be enforced; therefore the wording in the ordinance is wrong.

Mr. Negrette expressed his strong opposition to all laws, including smoking in bars, parks, limitations on perfume, that place limits or controls on people's behaviors. In closing, Mr. Negrette stated he doesn't use tobacco in any shape or form.

ANNOUNCEMENTS

- a. **Additions to the Agenda:** Councilor Loftus stated he was not sure of the procedure, but he understands the planning commission has approved the Wampler Subdivision and he would like to invoke the councilor's option to call the issue up at a future council meeting.

Mayor Vigil asked Mr. Fleishman to provide Councilor Loftus with the proper form to initiate this request. Dan Fleishman stated that he has provided the Mayor and Councilors with an electronic version of the form. Mayor Vigil asked Mr. Fleishman to review this with Councilor Loftus again after the meeting.

- b. **Declaration of Ex Parte Contacts, Conflict of Interest, Bias, etc.:** None

CONSENT AGENDA

- a. **City Council Meeting Minutes of June 20, 2011**

MOTION: From Councilor Emery, seconded by Councilor Niegel, to adopt the Consent Agenda. **MOTION PASSED: 5:0.**

PUBLIC HEARINGS - None

UNFINISHED BUSINESS

Ordinance 936 Amending SMC Title 8.12.620 & 650 Relating to Prohibiting (Smoking/Use of Tobacco) in City Parks

- a. **Continuation of Council Deliberation:**

Mayor Vigil stated this ordinance has been discussed several times by the City Council and was sent back to staff for modifications. Mayor Vigil stated the staff has presented two different ordinances; option A "No Tobacco Use in City Parks" and option B "No Smoking in City Parks". Mayor Vigil asked Public Works Director Kinney to reference the minutes we just adopted; several motions were made, however, it was clear to the Mayor we were going to go with just no smoking. The only change that needed to be made was to clarify the ordinance applies only in City parks. Now it has been brought back again with both the original and the ordinance the council asked for. Mr. Kinney indicated that was correct.

Councilor Loftus asked why there wasn't a third option. Mr. Kinney stated the 3rd option is in the memo that says the Council may do nothing and adopt no ordinance.

Mayor Vigil asks if there is any further deliberation with Ordinance 936.

Councilor Loftus stated he has tried to reason with the council. He has asked if this is really an issue and has been astounded by some of the answer from fellow councilors. Mr. Loftus felt there are a lot of things that affects others: how we drive, whether we waive at someone or flip them the high sign. Councilor Loftus stated he thinks the inducement of Marion County coming to us with \$600.00 or \$700.00 for signage to ban smoking in our parks or tobacco use is not needed. Councilor Loftus stated smokers are tax payers, and probably pay more taxes because they smoke. He indicated the point is as we had testimonies earlier today, if someone wears perfume that has an affect on others, its odorous, it can move across the room and bother people. There are people with severe allergies. Councilor Loftus asked if this was the next step, should we ban perfume from all public meetings. Councilor Loftus stated the real question here is how far do we want to go regulating personal behaviors?

Councilor Emery requested to clarify, since he was on the Parks Board when this proposal was initiated. In no way did Marion County come to the City of Stayton to promote non-tobacco use or non smoking use. The Parks Board asked Marion County Health Division staff to present information to the Parks Board.

Councilor Loftus asked Councilor Emery if he had read the staff report, stating it is clear in the staff report that Marion County did come and make the presentation to the parks board. Councilor Emery agreed, Marion County Health Division staff did come and speak to the parks board because they were asked to.

Mayor Vigil asks if there is any further deliberation. The Mayor indicated he is not a smoker. Mayor Vigil stated he has thought that banning smoking in park is a good idea as it is a proven fact that second hand smoke is harmful to those around us.

b. Council Decision:

MOTION: From Councilor Loftus to adopt motion B, *NO SMOKING IN CITY PARK.*
Motion dies for lack of second.

MOTION: From Councilor Loftus to adopt item 2. *NO SMOKING IN CITY PARKS;*
Ordinance 936, Amending Stayton Municipal Code Title 8, Chapter 12, Sections
620 and 650 Relating to Prohibiting Smoking in City Parks.
Motion dies for lack of second.

Councilor Porter inquired as to whether that was option B. Mayor Vigil clarified that was correct no smoking.

MOTION: From Councilor Emery, seconded by Councilor Niegel; to approve ordinance 936 to prohibit tobacco use in the City of Stayton Parks.

DISCUSSION:

Councilor Quigley asked how we could adopt this ordinance since we approved the minutes from last time where staff was directed to come back with a no smoking in parks ordinance, not option A. Councilor Loftus stated it is council prerogative. Mayor Vigil stated that was a good question. Councilor Loftus again stated it is council prerogative. Councilor Loftus noted there are two options in front of the Council: the first being option B which was just stated and died for lack of a second. The next one Option A, being no tobacco completely, which now has a second.

Mayor Vigil stated that was correct, asking for any further discussion.

Mr. Kinney stated if you look at the June 6th minutes, the council approved the first reading of a no tobacco use ordinance. Then at the June 20th meeting the council gave staff direction to come back and modify the ordinance to include a no smoking option. Mayor Vigil, stated that was correct and staff came back with both options.

Councilor Loftus commented that this leads us right back to where we were a month ago; stating the Mayor could have killed this with his tie vote, however decided he wanted to haggle it out.

Mayor Vigil stated he still believes that second hand smoke is not good.

Council Porter stated that tobacco use in city parks is a health issue.

Mayor Vigil agreed, stating the issue of smoking use versus tobacco use was hashed out at June 20th meeting. Smokeless tobacco use is a health issue for the person using it, but it does not harm the people around them.

Council Loftus asked the Mayor what he is suggesting, if we should go back to no smoking.

Mayor Vigil stated he supports no smoking due to the second hand smoke concern; the use of other tobacco products does not harm those around the tobacco user.

Mayor Vigil stated there is a motion on the table that has a second to approve Ordinance 936 No Tobacco Use in the Parks.

MOTION PASSED: 3:2 (Councilor Quigley & Councilor Loftus opposed)

Ordinance 937 re: Flagpole Heights

a. Continuation of Council Deliberation:

Mayor Vigil stated changes were made to address Council Emery's concern in residential areas and asked if there were any other concerns. Councilor Emery stated he didn't understand section 1, page 1 and read from the ordinance regarding exemptions. Council Emery wondered why we are making regulations if someone can erect a flagpole that doesn't have to meet provisions.

Mr. Fleishman stated Councilor Emery needed to look at the context of the entire section of the code. Subsection "F" is part of list of permitted signs. The code starts with a paragraph that says subject to the limitations listed in this subsection the following signs and sign erection and alterations are permitted in all zones. These signs shall not require permit and shall not be included when determining compliance with total allowed area, A-B-C-D-E-F gets to the flag then it goes on to G through L.

Councilor Emery thanked Mr. Fleishman and stated he understood.

b. Council Decision:

MOTION: From Councilor Loftus, seconded by Councilor Emery; to approve Ordinance 937.

MOTION PASSED: 5:0

9. NEW BUSINESS

Ordinance 938 Finalizing Annexation of Land On Shaff Road

a. Staff Report – Dan Fleishman

Mr. Fleishman reviewed Ordinance 938. He stated the ordinance will finalize the annexation of 17.5 acres of the Roger Roberts property located north of Shaff Rd. and east of the Middle School. Mr. Fleishman stated this issue came before the previous council in December 2010 as a land use case. At that time the Council approved it and sent it to the voters in accordance with the City Charter. At the last meeting council certified those votes and the majority of the voters in the City approved of the annexation. The last step according to the code is the enactment of this ordinance that sets the boundaries of the City. This ordinance includes exhibit 1, which includes a legal description of the area to be annexed and exhibit 2 includes a map of the area. The action before the Council is consideration of the ordinance which finalizes the annexation.

b. Council Deliberation:

Councilor Loftus asked what would happen if the council did not approve this ordinance and tabled the issue. Mr. Fleishman explained that if the council tabled the ordinance it would come back before the council at a later date. Mr. Fleishman indicated the ramifications of failure to approve the ordinance may mean the City may be liable for some action by the applicant because we've gone through the land use process, the planning commission recommended approval, it was approved by the previous council who made findings that all the criteria of the code were met. The annexation proposal was then sent to the voters and the voters by a majority accepted it as an addition to the city.

Councilor Loftus stated it was a fair answer he was just curious. Councilor Loftus noted the packet indicates we could adopt this ordinance but we could modify it. He asked if Mr. Fleishman could explain what type of modification could be made. Mr. Fleishman stated modifications could

be made if a typographical error was found or if Council wanted to add another recital to the introduction. Mr. Fleishman stated if he had a modification in mind he would have put it before the council. Mr. Loftus stated he was just curious as to procedure. Mr. Fleishman stated he is not going to bring something before the Council and say here do this. Councilor Loftus thanked Mr. Fleishman.

c. Council Decision:

MOTION: From Councilor Loftus, seconded by Councilor Niegel to adopt Ordinance No. 938 approving the annexation of the property commonly referred to as the Roger Roberts property.

MOTION PASSED: 5:0

Mr. Kinney stated in the memo it asks for a calling of the role for each council member and asked Mr. Fleishman if that was a requirement of the Charter or is a unanimous vote acceptable. Mr. Rhoten, City Attorney stated it is an appropriate practice and it would be a good idea.

Ms. Layman polled the council:

Councilor Emery: Yes
Councilor Loftus : Yes
Councilor Porter: Yes
Councilor Quigley: Yes
Councilor Niegel: Yes

MOTION PASSED: 5:0

Professional Engineering Services for 10th Avenue Area Public Improvements

a. Staff Report – Dave Kinney

Mr. Kinney explained the City solicited proposals from qualified engineering firms for engineering services, including design and construction management services for the 10th Avenue water, storm sewer, and street improvement project. The project scope includes 10th Avenue street improvements, water line and storm drainage improvements and a pedestrian path on E. Hollister St. to the hospital. The City received six proposals for professional engineering services from the following engineering firms:

- HHPR
- Keller Associates
- Balhizer Hubbard
- Murray Smith Associates
- Westech Engineering
- LEI Engineering

The City's review committee ranked the proposals and requested supplemental information from HHPR and Keller Associates. After receipt of that information, HHPR was rated as the top

proposal. No action is recommended at this meeting, but Mr. Kinney asked for questions from the City Council.

b. Council Deliberation:

Councilor Loftus inquired as to the breakdown between engineering on roadway versus the water and sewer work. Councilor Loftus stated this was brought to his attention our ordinance states the property owner is responsible for taking a street that is at level D and moving it up a level to C; that burden is then shifted to the property owner. Mr. Loftus indicated it appears we have a conflict with our ordinance on 10th Avenue, we are using SDC funds, we are using private money, we are using state and federal money. Mr. Loftus asked Mr. Kinney to try and help him understand money we are submitting in these bids, how we are breaking it down so we have a cost accrued to the hospital. Then how do we adjust it so that we are not in conflict with our ordinance.

Mr. Kinney explained the City has several financing options available to finance street improvements including (1) creating a Local Improvement District where the City assesses costs to property owners, (2) use of City street funds, e.g. gas taxes, (3) SDC funds to pay for oversizing of a street, (4) grants, (5) developer financed improvements for new developments/subdivisions, such as the Wampler development, or combinations of various funding sources. In this case, the City is using SDC funds, street funds, a state grant due to the economic importance and job creation of the hospital addition and a developer share from Santiam Hospital. He added the City always has the option of using its own funds for street improvement projects, such as the recently completed High Street project, which has a large community benefit. Mr. Kinney added that about 3 or 4 years ago the City did try to create a Local Improvement District for 10th Avenue, but the property owners were strongly opposed and testified to the City Council that they did not want to participate in the project and were opposed to assessments.

Councilor Emery stated HHPR is doing the hospital project and it looks like they know what they are doing. He asked Mr. Kinney what their experience is with street and underground engineering. Mr. Kinney stated staff was pleased with HHPR's extensive experience in Southwest Washington, Clark County as well as in most of the Portland Metropolitan suburbs. HHPR has completed a large number of municipal projects including water, sewer, and storm system improvements. He added that HHPR has also completed an extensive list of major street improvements that are arterial and collector streets, particularly east of I-205. Staff felt that of the engineers who proposed on this project HHPR and Murray Smith Associates (MSA) had the strongest experience in doing street projects. Councilor Emery stated he was glad to see a firm from Oregon.

Mr. Kinney stated he was not asking for action tonight, just answering questions. Mayor Vigil thanked Mr. Kinney

c. Council Decision: None

STAFF/COMMISSION REPORTS - None

PRESENTATIONS/COMMENTS FROM THE PUBLIC - None.

BUSINESS FROM THE MAYOR - None

BUSINESS FROM THE COUNCIL

Councilor Porter asked to clarify as he thought he heard that Councilor Loftus want to call up the Council's approval of the Wampler property. Councilor Loftus stated yes. Councilor Porter asked if this will be for the next meeting. Councilor Loftus stated he has to fill out a form.

Mr. Kinney stated that during City Administrator Eubank's vacation the Mayor and Councilors should feel free to contact him on general issues and to direct finance questions to Finance Director Shaffer.

There being no further business, the meeting was adjourned at 7:42 p.m.

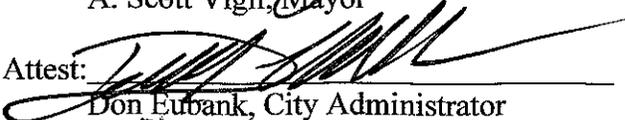
APPROVED BY THE STAYTON CITY COUNCIL THIS 1st DAY OF AUGUST 2011, BY A 4:0
VOTE OF THE STAYTON CITY COUNCIL.

CITY OF STAYTON

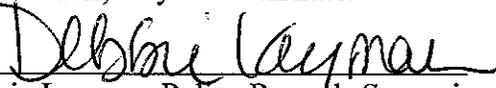
Date: 08/01/2011

By: 
A. Scott Vigil, Mayor

Date: 8/2/2011

Attest: 
Don Eubank, City Administrator

Date: 080311

Transcribed by: 
Debbie Layman, Police Records Supervisor