CITY COUNCIL MEETING MINUTES
October 20, 2020

The scheduled meeting of the Ontario City Council was called to order by Mayor Riley Hill at 6:00 p.m. on Tuesday, October 20, 2020, in the Council Chambers of City Hall. Council members present in person or attended via telephone were Riley Hill, Michael Braden, Norm Crume, Freddy Rodriguez, Ramon Palomo, and Marty Justus.

Members of staff present in person or via telephone were Adam Brown, Corinna Hysell, Dan Cummings, Peter Hall, Terry Leighton, Steven Romero, Kari Ott, Larry Sullivan, Betsy Roberts, and Al Cablay.

The meeting was recorded, and copies are available at City Hall.

Mayor Hill led everyone in the Pledge of Allegiance.

AGENDA

This Agenda was posted on October 16, 2020. Copies of the Agenda are available from the City Hall Customer Service Counter and on the city's website www.ontariooregon.org.

CRUME moved, PALOMO seconded, **TO ADOPT THE AGENDA AS PRESENTED.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

CONSENT AGENDA

CRUME moved, JUSTUS seconded, **TO ADOPT THE CONSENT AGENDA, WHICH INCLUDED 09-03-2020 COUNCIL WORK SESSION MINUTES; 09-15-2020 COUNCIL MEETING MINUTES; AND 09-18-2020 COUNCIL MEETING MINUTES.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

SPECIAL ACTION

Election of Council President
CRUME moved, JUSTUS seconded, **THE CITY COUNCIL APPOINT MICHAEL BRADEN TO THE POSITION OF CITY COUNCIL PRESIDENT, EFFECTIVE IMMEDIATELY.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

PRESENTATIONS

City of Ontario NPDES Permit – Permit Modification
Paul Woods, Wastewater Engineer, JACOBS, presented.

The City of Ontario was authorized to discharge treated wastewater to the Snake River via NPDES Permit No. 101633. The city recently completed an effluent mixing zone study in accordance with the requirements set forth in the NPDES Permit. The findings of the study indicated that the Snake River had significant dilution capacity to accommodate the city's wastewater discharge without exceeding water quality criteria for ammonia if a diffuser was installed on the city's outfall. Given the findings in the report and the city's commitment to install a diffuser with the dilution characteristics outlined in the study, engineering staff recommends the City of Ontario request that Oregon

DEQ remove the final effluent limit for ammonia listed in the referenced permit. Staff believed this request was consistent with Oregon Administrative Rules and would protect the designated beneficial uses of the Snake River. Through continued discussion and sharing of information, the DEQ was willing to accept the elimination of the final ammonia limits currently required in the city's NPDES permit. To facilitate this process, the City of Ontario must submit an NPDES Permit Modification request to the Oregon Department of Environmental Quality.

Submitting a request to modify the city's current NPDES permit would result in better suited permit for the city. This met the goals of livability and growth. With the change, the city would not risk violating an ammonia limit at the outfall pipe, and growth could continue.

There was a cost associated with permit modification per the state's fee schedule. Modification of the permit was not anticipated during the budgeting process, as the DEQ was transitioning local compliance officers at the time. The Finance Director would have to prepare a resolution to use funds from the Wastewater Contingency fund to cover this cost. Long term savings would far outweigh the cost of the modification.

This matter was urgent, as it also related to the Diffuser design completion deadline. Additionally, as the permit currently stood, the city was in violation of the interim ammonia limit. The DEQ agreed to waive this violation until the permit was modified but moving quickly would be preferred.

INTRODUCTION

Shawn Moffitt, JACOBS, introduced stated they had been doing an extensive search to replace retired Public Works Director Cliff Leeper. They began last December, and while COVID had affected their progress, they were fortunate in their selection of Al Cablay as the new Public Works Director. Mr. Cablay had been involved in Public Works for 40+ years and his expertise in that area was excellent and were thrilled to have the opportunity to bring him on board in this capacity. He would bring knowledge and expertise to the City of Ontario and to Jacobs as a company.

Al Cablay, Public Works Director, stated his pleasure to meet the Council. He loved public service, which is why he was before them representing not only Jacobs, but the industry itself of Public Works. He was a past president of the American Public Works Association, past president of the San Diego County Waterworks Group, and past president of Maintenance Superintendents Association. That was a testament of his commitment to the profession, and what he would bring to Ontario. He and his wife, Charlotte, and their dog, were proud to be new residents of Ontario, and was excited to be a part of the Management Team the City Manager had put together. He had big shoes to fill but was confident he could provide the services they were used to.

OLD BUSINESS

Engineering Design Task Order

Betsy Roberts, City Engineer, presented. presented.

As presented in the September Council workshop, this was the compiled Task Order for Jacobs covering three projects identified and approved in the FY21 adopted budget. Council action was required to approve the task orders.

In 2014, Jacobs (then CH2M HILL) was selected through the competitive public process for Public Works and City Engineering services.

There were three projects covered by three distinct task orders. In summary they were: Task Order #1 - SRCI Lift Station Siphon design. This design effort was funded out of the SRCI infrastructure fund. Design covered the modification of the system from lift station to siphon and all the DEQ permitting required. The design effort would carry through the bidding process.

Task Order #2 - NE Ontario Pavement Evaluation. This evaluation would provide the city with an evaluation of the pavement, sidewalk, and storm system in the NE area, resulting in a work plan that would layout potential work phases and cost estimate that could be used for coming CIP or grant applications. A design effort would still be needed but would be well defined as part of the work plan. Funding Source: $5k from Stormwater and $15k from Streets.

Task Order #3 - Pollutant Source Identification Program. This was specifically required by the NPDES permit. This plan would describe the process for researching and identifying potential pollutant sources within the city (for example, domestic drinking water wells could be a source of arsenic). Project would include coordination with and submittal to DEQ. Funding source for this project was Wastewater Fund.

The Task Orders were prepared for Council review. Approval would mean the Jacobs design team could begin work on each of the projects.

Between all the projects, they covered the city's Strategic Plan for Livability - certainly improvement of the pavement, sidewalk, and storm system in the NE would improve livability; Growth - Fulfilling the city's requirement for the NPDES supported growth, as did the improved pavement, sidewalk, and storm system in the NE area. The modification of the SRCI lift station, by moving away from the size constrained lift station, allowed for current flows more reliably and for increased flows; Beautification - The NE project would support beautification.

Task Order #1 - SRCI Lift Station Siphon design. This design effort was funded out of the SRCI infrastructure fund. The Task Order amount was $43,740, but an allowance for $6k for survey was requested. Recommend approved budget to be $50k total. Public Works staff had been working sharing their concerns about the potential for a spill at the SRCI lift station due to the inadequate size of the wetwell. Conducting this design now would allow a project to be bid and construction to occur in the coming FY.

Task Order #2 - NE Ontario Pavement Evaluation. Funding source was $5k from Stormwater and $15k from Streets. Task Order amount was $19,740. To have a work plan adequately complete for the NE Ontario Pavement project so that the cost estimate could be used as part of the CIP for the coming year, the team needed to start now. They needed to conduct field work before there was snow and to develop the report over the winter months.

Task Order #3 - Pollutant Source Identification Program. Funding source for this project was Wastewater Fund for a Task Order amount of $49,280. This Plan was required by the NPDES permit and was due May 1, 2021. To complete the plan by that time, the team needed to begin immediately.

As an alternative to approving these three Task Orders, the Council could approve them individually. The impact of not approving Task Order #3 would be to jeopardize the team's ability to meet the NPDES deadline for submittal. The SRCI lift station design was part of the contract agreement made with the Department of Corrections to reduce the potential for a spill. The pavement, sidewalk, and storm system work in the NE area of town was becoming a problem for drivers and would only continue to get worse. Being able to fund the project, was likely still several years out.

CRUME moved, PALOMO seconded, **THE CITY COUNCIL APPROVE THE TASK ORDER FOR JACOBS FOR $118,760, COVERING THE SUBTASKS OF: SRCI SIPHON DESIGN, NE ONTARIO PAVEMENT EVALUATION, AND POLLUTANT SOURCE IDENTIFICATION PROGRAM; AND AUTHORIZE THE CITY MANAGER TO SIGN THE INDIVIDUAL TASK ORDERS.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

NEW BUSINESS

Resolution #2020-137: City of Ontario Administrative Hearing Officer Services Agreement (Mike Pratt)
Steven Romero, Police Chief, presented.

Mike Pratt had been conducting abatement hearings for Code Enforcement for several years, but no written contract had ever been formalized. The proposed resolution was designed to rectify that situation.

Mayor Hill stated the resolution approved a contract, but he wanted to know how the appointment to the position was handled.

Larry Sullivan, City Attorney, stated this was just for a Hearings Officer, it was not a Charter position. It wasn't the person in charge of the city's Municipal Court. That contract was with the Justice of the Peace. The Hearings Officer was just be contract. Was there some other provision the Mayor was questioning?

Mayor Hill stated someone was appointing someone to that position, and he wanted to know who had the authority to make that appointment before entering a contract with that person.

Mr. Sullivan stated by entering a contract, they'd be appointing him into that position and the Council had the authority to do that.

Mayor Hill wanted to know if there was an application process, and if there was, was that sent out to the public.

Mr. Sullivan stated the Council could do that if they would rather through a more competitive process and take applications for the position.

Chief Romero stated Title One, Chapter 15, Section 40 of the Ontario Municipal Code read that the Mayor and City Council had the authority to appoint an individual to the position of Hearings Officer. It did not specify any steps or official protocol to follow. It was all administrative; there were no criminal sanctions involved in the hearings.

Mayor Hill stated it appeared that someone was just being selected without providing the public a chance to give input.

Councilor Crume asked Mr. Brown if he could explain how the individuals had been selected.

Adam Brown, City Manager, stated Mr. Pratt was already a Hearings Officer on the planning side of the city. Because he had a sense of what a Hearings Officer needed to do, he fit into the civil penalties realm. Same thing, different part of the Code.

Mayor Hill stated it appeared that the city advertised for Councilors, or committees and boards, and it seemed like the public should have a shot at this position as well.

Dan Cummings, Community Development Director, stated Mike Pratt had been used by the city as a Hearings Officer mainly for the land use applications for maybe 20 years. For the past 5 years, he, himself, had not used Mr. Pratt's services as it made no sense to have a full-time Planner and a separate Hearings Officer. He had been appointed, by resolution, to act at the Hearings Officer. The next step would be to go the Planning Commission itself.

Councilor Crume wondered if they could approve the names before them that night, but then advertise for other people in the community to also fill the position, maybe having a list of 8 or 10 Hearings Officers.

Mr. Brown stated there were two there now was for a back-up for the one. There were not a lot of hours, and the position was paid on an hourly rate. However, staff would do what the Council directed.

Councilor Crume asked if there was a reason the action needed to occur that evening? Were there pending cases?

Mr. Brown stated yes, there cases ready to go before a Hearings Officer.

Chief Romero stated his agreement, but Mr. Pratt had already declared a conflict with one of the cases. He agreed having a list of Hearings Officers could be a good thing.

Councilor Crume asked if they could continue with these two individuals, without a contract, until such time that an advertisement could be placed, and applicants reviewed.

Councilor Justus stated Council hadn't hired the Police Chief, or the Fire Chief, because that was Adam's job.

Mr. Brown stated this was different than an employee.

Councilor Justus stated they were being paid, so that made them an employee.

Mr. Brown stated Mr. Pratt was selected as a Hearings Officer, and he'd been doing that for a long time. The next resolution would be a new person, and he felt less comfortable with that one without having something approved by the Council. Another option would be to approve the two resolutions (for Mike Pratt and Billy Carter) until the end of the year, and staff would solicit candidates for the position of Hearings Officers beginning in 2021.

Councilor Rodriguez verified the ordinance or Charter read that the City Manager made the decision for Police Chief, or the other positions that Councilor Justus was speaking to.

Mr. Brown stated, by ordinance, the Hearings Officer was appointed by the Council, and they were not considered employees. They were independent contractors.

Councilor Rodriguez stated a person approved by the Council was who he presented to them.

Mr. Brown stated Mr. Pratt had been chosen many years ago. He had been recommended by Dan Cummings because he had been involved as a Hearings Officer before.

Mr. Sullivan stated as an attorney who had appeared before many Hearings Officers and judgers over the years, it was a rare skill that took time to develop. If they pulled someone off the street and gave them the authority to make decisions as a Hearings Officer, they were going to get unpredictable results if someone had no experience in the position. It required an understanding of the ordinances and laws, as well as a temperament to be able to apply in situations with offending people. They had to deal with facts and make a decision that correctly applied the law without insulting people when being done, and that was a rare skill. If they had someone in mind for that position that had never done it before, there was a going to be a learning curve. There were probably many bright people who were very willing, but it might be difficult to find people who would be good for it.

Mr. Brown stated if that was the direction of the Council, to open it and interview potential candidates, he would make that happen.

CRUME moved, JUSTUS seconded, **THE CITY COUNCIL APPROVE RESOLUTION #2020-137: A RESOLUTION TO ADOPT AN ADMINISTRATIVE HEARING OFFICER AGREEMENT (CONTRACT) FOR USE BY THE ONTARIO POLICE DEPARTMENT CODE ENFORCEMENT DIVISION; THIS CONTRACT WOULD INCLUDE MICHAEL PRATT FOR THE TERM OF THE REMAINDER OF YEAR 2020 ANDTO BE REVISTED AT THE BEGINNING OF YEAR 2021 AT THE FIRST COUNCIL MEETING, WITH ADVERTISEMENTS SET OUT BY THE CITY MANAGER FOR PEOPLE THAT MIGHT BE INTERESTED IN AN ADMINISTRATIVE HEARINGS OFFICER AGREEMENT/CONTRACT.** ***No vote.***

JUSTUS moved to amend the motion to include that it went out for people to apply for it, but it required certain qualifications, such as public service of some kind, like serving on a committee, or previous experience, or even an attorney.

Mr. Sullivan stated an easier motion would be to appoint Mike Pratt as the Hearings Officer for the remainder of 2020.

CRUME withdrew his motion. JUSTUS withdrew his second.

CRUME moved, BRADEN seconded, **THE CITY COUNCIL APPROVE MR. MIKE PRATT FOR ADMINISTRATIVE HEARINGS OFFICER FOR THE REMAINDER OF THE YEAR 2020.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

Resolution #2020-138: City of Ontario Administrative Hearing Officer Services Agreement (Billy Carter)
Councilor Crume asked what type of background did Mr. Carter have?

Mr. Brown stated Mr. Carter was prior Code Enforcement for Ontario and was well versed in enforcement rules and laws.

CRUME moved, JUSTUS seconded, **THE CITY COUNCIL APPROVE MR. BILLY CARTER FOR ADMINISTRATIVE HEARINGS OFFICER FOR THE REMAINDER OF THE YEAR 2020.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

Mr. Sullivan stated that because Mr. Carter was previously an Ontario Code Enforcement Officer, his cases should be screened. He should not sit on any cases in which he ever cited anyone as an Ordinance Officer.

Councilor Paloma verified that Mr. Carter was just the back up for Mr. Pratt, so unless Mr. Pratt had a conflict, Mr. Carter wouldn't be used.

Chief Romero stated they would make it however the Council wanted it.

Palomo moved, JUSTUS seconded, **TO AMEND THE MOTION TO STATE MR. PRATT WOULD BE THE MAIN OFFICER, AND BILLY CARTER WOULD JUST REPLACE OR SIT IN HIS ABSENCE IF THERE WAS A CONFLICT.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

Councilor Braden stated because they were saying through 2020, without approving any contracts, it was done through direct appointment, were they going to direct the City Manager to come back to them with a pool of potential contractors before the expiration of 2020?

CRUME moved, JUSTUS seconded, **THE CITY COUNCIL APPROVE MR. BILLY CARTER FOR ALTERNATE ADMINISTRATIVE HEARINGS OFFICER FOR THE REMAINDER OF THE YEAR 2020; MICHAEL PRATT WOULD BE THE MAIN OFFICER, AND BILLY CARTER WOULD REPLACE OR SIT IN HIS ABSENCE IF THERE WAS A CONFLICT THROUGH 2020.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

Resolution #2020-139: City of Ontario Nuisance Abatement Agreement (Grass Roots Ontario, LLC)
Steven Romero, Police Chief, presented.

Councilor Braden stated in reviewing the agreement, it was indicating they were an agent of the city and they'd do the work as directed by the city.
Mr. Sullivan stated under the last paragraph of the agreement, under V, it read that they were an independent contractor and not an agent of the city.

Councilor Braden stated under definitions, #1, was contradictory to that section.

Mr. Sullivan stated the advantage of them being an agent of the city was that the city was acting under the City Code to send someone on private property to do work that the owner might now want done. That independent contractor could be charged with trespassing unless they were an agent of the city and acting under the authority granted by the city. He would work with the City Manager on different language in the contract.

Mr. Brown asked to bring this back to Council after review and some modifications and clarifications.

Councilor Braden asked to have the contracts for the position and a slate of potential Hearings Officers back before Council in December.

Council consensus to have that occur.

Resolution #2020-140: Shooting Range Storage Unit
Steven Romero, Police Chief, presented.

BRADEN moved, PALOMO seconded, **THE CITY COUNCIL APPROVE RESOLUTION #2020-140: A RESOUTION APPROPRIATING FUNDING TO PURCHASE A STORAGE CONTAINER AT THE SHOOTING RANGE.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

PUBLIC HEARING

Accept Right of Way for a Portion of Sunset Drive on SW 7th Avenue and SW 16th Street, Per Approved Plat of Brockside Subdivision, Approved Under Planning Action 2019-09-66 SUB
It being the date advertised for public hearing on the above stated matter, the Hearing was declared open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and one declaration of a conflict of interest.

Dan Cummings, Community Development Director, presented.

The Hearing was opened for public testimony. Opponents: None. Proponents: None. There being no Proponent and no Opponent testimony, the Hearing was closed.

CRUME moved, JUSTUS seconded, **THE CITY COUNCIL APPROVE THE DEDICATION OF THE RIGHT OF WAY FOR A PORTION OF SUNSET DRIVE, SW 7TH AVENUE AND SW 16TH STREET AS SHOWN ON THE PLAT OF BROCKSIDE SUBDIVISION, SAID SUBDIVISION BEING APPROVED BY AN ADMINISTRATIVE ACTION ON APRIL 17, 2019, UNDER PLANNING FILE 2019-09-66SUB AND AUTHORIZE THE MAYOR TO EXECUTE HIS SIGNATURE ON THE FINAL PLAT ACCEPTING THE DEDICATED RIGHT OF WAY.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

Accept a Portion of Right of Way for Future Extension of SE 6th Avenue as Per the Approved Partition Under Planning Action 2020-09-35 PTN
It being the date advertised for public hearing on the above stated matter, the Hearing was declared open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and one declaration of a conflict of interest.

Dan Cummings, Community Development Director, presented.

The Hearing was opened for public testimony. Opponents: None. Proponents: None. There being no Proponent and no Opponent testimony, the Hearing was closed.

PALOMO moved, CRUME seconded, **THE CITY COUNCIL APPROVE THE DEDICATION OF THE RIGHT OF WAY FOR A PORTION OF SE 6TH AVENUE AS SHOWN ON THE PARTITION PLAT OF ROCKING R INVESTMENTS, LLC, SAID PARTITION BEING APPROVED BY AN ADMINISTRATIVE ACTION ON SEPTEMBER 14, 2020, UNDER PLANNING FILE 2020-09-35PTN AND AUTHORIZE THE MAYOR TO EXECUTE HIS SIGNATURE ON THE FINAL PLAT ACCEPTING THE DEDICATED RIGHT OF WAY.** Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

HAND-OUTS

Check Register: *(Attached)*
Sep-Oct 16, 2020

Minutes: *(Attached)*
County Court 09-30-2020; 10-07-2020
SREDA 10-06-2020

CORRESPONDENCE, COMMENTS AND EX-OFFICIO REPORTS

- Councilor Crume stated at their last meeting, Councilor Justus had suggested he submit his name to fill the vacancy left by Dan Capron for the remaining two years of his term. While he was thankful to have it suggested, for personal and medical reasons, he respectfully declined.

  Mayor Hill asked for an update on the applications for the vacancy.

  Mr. Brown stated the applications were coming in. He was aware of three, but there was a possibility of two more. There was a second meeting scheduled for October, so Council could review them then, or it could be scheduled for the November work session.

  Councilor Crume stated he wanted time to review the applications, not to receive them and make a decision in the same night with the applicants in attendance. He'd like to handle it at the first work session in November, and have the applications emailed to the Council.

  Mayor Hill asked if there was a time limit they had to continue receiving applications?

  Mr. Sullivan stated no, it was a vacancy until filled by the Council.

  Councilor Braden stated he had a planned absence for the November Council meeting, and as this was an important decision, he'd like to be involved. He would like to receive the applications and invite the applicants to attend the October 27th Council meeting. They could review the applicants, speak with the applicants, and either make a decision that night, or postpone to the work session in November.

  Consensus to move forward with Councilor Braden's suggestion.

- Councilor Justus commented on the traffic boxes, sponsored by Revitalize Ontario and Hotbox Farms. If anyone was interested in the artists, there were QR codes on each box. Charlotte Fugate was the reason that was finally done and deserved thanks for her work on the project.

- Councilor Crume stated the Airport Committee met and was bringing forward a plan to fix the problems surrounding the fuel sales at the airport.
- Mr. Sullivan stated he had been contacted by Clyde Esplin's lawyer, who told him he was going to send him documents proving that Mr. Esplin was acting as an agent for Beck's Spray Service, so that would deal with

the eviction that he informed Mr. Esplin would be starting on November 2nd. He was going to hold to that deadline unless he received some documents that indicated he was acting as an agent. At that point, he'd have to proceed with the arbitration under the Beck lease to terminate the Beck lease with the city.

Councilor Crume stated he understood that DEQ had been involved at the airport with a spill. Did that put blame on someone, or where the liability was?

Mr. Sullivan stated he had not discussed that with Mr. Beaubien, and he had not received any new information on that.

Mr. Brown stated the Fire Marshall was trying to set an appointment with all the applicators. There was also some testing that needed to be discussed with the tenant.

EXECUTIVE SESSION

Executive Session: ORS 192.660(2)(h)

An executive session was called at 7:50 p.m. under provisions of ORS 192.660(1)(h) to discuss current or potential litigation. The Council entered a second executive session at 8:05 p.m.

Executive Session: ORS 192.660(2)(d)

An executive session was called at 8:06 p.m. under provisions of ORS 192.660(1)(d) to discuss labor negotiations. The Council reconvened into regular session at 8:25 p.m.

ADJOURN

CAPRON moved, JUSTUS seconded, **THAT THE MEETING BE ADJOURNED**. Roll call vote: Rodriguez-yes; Justus-yes; Palomo-yes; Braden-yes; Crume-yes; Hill-yes. Motion carried 6/0/0.

ACCEPTED:

Riley Hill

Riley J. Hill, Mayor

ATTEST

Tori Barnett

Tori Barnett, MMC, City Recorder