CITY COUNCIL MEETING MINUTES
November 23, 2021

The scheduled meeting of the Ontario City Council was called to order by Mayor Riley Hill at 6:00 p.m. on Tuesday, November 23, 2021, in the Council Chambers of City Hall. Council members present in person or by call-in were Riley Hill, Sam Baker, John Kirby, Michael Braden, Susann Mills, and Eddie Melendrez. Ken Hart arrived at 6:36 p.m.

Members of staff present in person or by call-in were Adam Brown, Tori Barnett, Terry Leighton, Jason Cooper, Larry Sullivan, and Marc Berg.

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 November 19, 2021. Copies of the Agenda are available from the City Hall Customer Service Counter and on the city's website www.ontariooregon.org.

Mayor Hill pulled item 9A, Public Works Quarterly Report, and item 13B, Executive Session under ORS 192.660(2)(a) Employment Consideration.

BRADEN moved, BAKER seconded, **TO ADOPT THE AGENDA AS AMENDED.** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-out; Melendrez-yes; Hill-yes. Motion carried 6/0/1.

CONSENT AGENDA

BRADEN moved, MILLS seconded, **TO ADOPT THE CONSENT AGENDA, WHICH INCLUDED CITY COUNCIL MEETING MINUTES OF OCTOBER 12, 2021, AND OCTOBER 22, 2021; AND APPOINTMENT TO THE PARKS COMMITTEE: EFREN GARZA (KIWANIS CLUB REPRESENTATIVE).** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-out; Melendrez-yes; Hill-yes. Motion carried 6/0/1.

Efren Garza, newly appointed Parks Committee member, stated he was a retired nurse manager and also a clergyperson. Today was his 22nd year anniversary. He had retired in Ontario with his partner, and was also now a member of the Kiwanis, which he found very exciting because he wanted to compliment the city on so many civic organizations that exist within this small town. The civic spirit here is very large, and so are the hearts of the citizens, and he looked forward to working in this community in this type of manner.

OLD BUSINESS

Economic Impact of Second Bridge Crossing

Adam Brown, City Manager, presented.

KIRBY moved, MILLS seconded, **THE CITY COUNCIL APPROVE THE PROPOSAL BY THE FCS GROUP TO PERFORM AN ECONOMIC ANALYSIS OF A SECOND BRIDGE CROSSING OVER THE SNAKE RIVER FOR A PRICE NOT TO EXCEED $15,770.** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-out; Melendrez-yes; Hill-yes. Motion carried 6/0/1.

NEW BUSINESS

Acceptance of Public Utility Easement
Dan Cummings, Community Development Director, presented.

MILLS moved, KIRBY seconded, **THE CITY COUNCIL ACCEPT THE PUBLIC UTILITY EASEMENT AS SHOWN ON ATTACHMENT 1 AND AUTHORIZE THE MAYOR TO SIGN THE PUBLIC UTILITY EASEMENT AND FURTHER INSTRUCT THE CITY RECORDER TO RECORD SAID EASEMENT WITHIN THE MALHEUR COUNTY CLERK'S LAND RECORDS.** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-out; Melendrez-yes; Hill-yes. Motion carried 6/0/1.

Construction of Power Lines at the Ontario Municipal Airport
Dan Cummings, Community Development Director, presented. *(See also new attached handouts)*

KIRBY moved, MILLS seconded, **THE CITY COUNCIL APPROVE THE PROJECT IN THE NOT-TO-EXCEED AMOUNT OF $35,000 FOR THE CONSTRUCTION OF POWER LINES TO THE TWO HANGER PAD AREAS AS SHOWN ON ATTACHMENTS 1 AND 2 OF THIS REPORT.** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-out; Melendrez-yes; Hill-yes. Motion carried 6/0/1.

Councilor Ken Hart arrived at the meeting.

BRADEN moved, HART seconded, **THAT THE CITY COUNCIL WAIVE THE IDAHO POWER RECAPTURE AND INITIATE A PROPORTIONAL RECAPTURE TO EACH HANGAR RECAPTURE FEE OF A PROPORTION COST OF THE POWER COSTS TO EACH HANGAR.** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-yes; Melendrez-yes; Hill-yes. Motion carried 7/0/0.

PUBLIC HEARING

Ordinance #2799-2021: Planning Action 2021-07-28AZ – A Request by Gold Thumb Investments, LLC, for the Annexation and Rezone of Property from Urban Growth Area Industrial (UGA-I) to City Light Industrial (I-1)
It being the date advertised for public hearing on the matter stated above, the Hearing was declared open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and no declarations of conflict of interest.

Dan Cummings, Community Development Director, reminded the Council that the issue was tabled at the previous meeting, pending an opinion from the City Attorney.

Larry Sullivan, City Attorney, stated he held several discussions with Mr. Cummings, and it was possible that there might be some loophole that would allow the city to move ahead without approving the annexation. It was possible to have an election for an annexation, rather than have it approved by the Council; however, Mr. Cummings did not like that approach. It was the position of Mr. Cummings that if the criteria were all met for the annexation, the Council would be acting contrary to the evidence if it made a decision that did not support the annexation. He agreed with that statement except there was a history in Oregon of having annexations done be elections instead of done by cities. The Oregon Statute that allowed cities to do annexations without an election had some requirements imposed, mainly that all the property owners and a majority of the electors within the area to be annexed had to support the annexation. In the current case, there was 100% of both property owners and electors who were in support of the annexation, therefore, the criteria were met for doing the annexation. The question was if that obligated the city to move forward with the annexation. There were cases in Oregon that read there was a political component to annexations. Not only were annexations land use issues, but they were also a political decision, that voters could be given the opportunity to vote on the action. The only loophole that the city might be able to pursue, if a majority of the Council was not in favor of the annexation, they could call for an election of the annexation, which could be placed on the May 2022 primary.

Mr. Cummings stated he was not in favor of holding an election for this annexation was because the Council was then setting a precedent. The city had already annexed several properties, and he had three more waiting in his office to move forward. The city had a Comprehensive Plan, regulations in place on the requirements for annexation, and there was a development code which dictated what could happen within those codes. It made no sense for the city to send it forward for an election. However, it was the choice of the Council to send all annexations now to a vote of the people, which would slow up development in the Urban Growth Boundary.

Councilor Mills stated it was her understanding there was property around the subject property that had already been put into Light Industrial and the property owners around the subject property had not voiced disapproval for the annexation.

Mr. Cummings stated the city had already completed two actions identical to the proposed action. Pointing to the map, he indicated "this" property sat "right here", the city had already annexed in a piece of property "right here" under the same rules and regulations and had already annexed "this" piece of property "here" under the same rules and regulations. These two were identical that were recently done, "this" one was coming, "this" was the other one he was speaking of, which would be on the next agenda depending on which route the Council took. The same thing being asked in the current action occurred right "here" and right "here" over the last two years.

Councilor Hart stated that was his point. He did not know that had occurred since his appointment to the Council. There had been an election held, there were new members, along with another appointment, so the question of was did the actions of prior Councils bind the current Council to do the same thing, to not make any changes. The was like saying this group of seven was the same as who was there before, and that was not the case.

Mr. Cummings agreed, but his argument was that the city was constantly annexing properties into the Urban Growth. He'd done at least 10 or 12 over the past two years. The Council could start a new precedent that any annexation would go to the electors.

Mayor Hill asked if the annexation and rezone were two separate issues.

Mr. Sullivan stated they were two separate issues, to some extent. The rules governing each are different. There was a bit of an overlap as annexations were a type of land use decision, but they were also determined to be political, which land use issue were not supposed to be. Anybody could vote against an annexation for any reason. When an applicant makes an application for an annexation, they are not required to inform the city as to what they intended to do with the property as long as it was going to follow the zoning regulations. If there was an area in the UGA that was Light Industrial, and someone wanted to annex that in, and all they told the city was that they wanted more Light Industrial land so they wanted to annex, the city might not be in a position to determine that it should go to the voters because there was a dispensary that might be built on the property. That would be true of any potential annexation involving Light Industrial property if it was outside the buffer zones that would prohibit the dispensary on the parcel. The city might end up with a situation where people were requesting to annex, but refusing to tell the city why, if they believed some of the Councilors might use that as an excuse to put it up for a vote of the citizens.

Mr. Cummings stated Mr. Sullivan was correct; part of the annexation application did not require – and he'd guess that if the Council wanted to send it to a vote of the people, the applicant was not going to list what they were going to develop. The requirement was to annex it and rezone the property to what the city's Comprehensive Plan dictated.

Mayor Hill stated it was currently in county as UGA-1, but when it came into the city, it became city Light Industrial as dictated by the Comprehensive Plan.

Mr. Cummings stated it would be Urban Growth Light Industrial by the county. When it was annexed by the city, the city had to give it a city zone, which would be City I-1, or City Light Industrial. The city code worked in the UGA, but once annexed into the city, there was a requirement to hook into city water and sewer services.

Councilor Hart stated the retail donut shop could be put in under the county rules?

Mr. Cummings stated yes, it could, but under the county rules and it would be on septic.

Councilor Hart asked if they'd have to ask for an exception to put a retail location in?

Mr. Cummings stated one retail marijuana facility they could not have in the county; everything else they could, because the county had not lifted the marijuana ban.

MELENDREZ moved, BRADEN seconded, **THAT THE CITY COUNCIL APPROVE THE FINDING OF FACTS AND THE PLANNING COMMISSION RECOMMENDATION FOR THE ANNEXATION AND REZONE OF THE SUBJECT PROPERTY FROM URBAN GROWTH AREA INDUSTRIAL (UGA-I) TO CITY LIGHT INDUSTRIAL (I-1), AS SET FORTH IN ACTION 2021-07-28AZ BASED ON THE INFORMATION, FINDINGS, AND CONCLUSIONS SET FORTH IN SECTIONS I THROUGH IV OF THIS REPORT.** No vote.

Councilor Hart wanted to clarify to the City Attorney the reason this action had been tabled at the previous meeting was the bar associated with the Findings of Fact was higher, specifically there was a Fact that he disagreed with, versus the second, if this were to pass, the second motion on annexation, to use Mr. Sullivan's term, was more political, more of a Council decision, with some separation from the Finding of Fact. Was that correct?

Mr. Sullivan stated the political component entered if the Council decided to have an election. If there were no election, the Council would be bound by the Findings of Fact as presented.

Councilor Hart verified that voting for one meant voting for both?

Mr. Sullivan stated yes, unless the Council referred it to the voters, because the Council had no Facts they could offer that would support a land use issue, but denial of the annexation. Unless they did have a Fact that they believed supported a denial of the annexation based on the city's land use regulations, that would be worth discussing. But, if the Council voted to approve the Findings of Fact that had been submitted, the Council was locking themselves into having to vote either to grant or deny the annexation. If they denied it, they were opening the city up to a LUBA challenge that would probably overturn the city's denial.

Mr. Cummings added that if that was what they wanted, they needed to do it at this motion. They should deny the Findings and then develop new Findings of why it was denied. They would have to establish legal reasons for denial.

Mr. Sullivan stated there was currently a motion and second on the floor to Approve the Findings of Fact. That needed a vote on that motion before having a competing motion to not approve them.

Mayor Hill stated that supposing the Council approved the Findings; then there'd be no election?

Mr. Sullivan stated no, they'd could have an election then. The second motion would be, because what they'd be finding would that this property was suitable for annexation. The city could not move forward with an election if the applicants for the annexation had not satisfied the city's requirements for annexation through the Findings of Fact.

Councilor Kirby stated they had established buffer zones following the election to allow marijuana into the city. However, in his mind, the audience chairs should be all filled with other dispensary owners opposing this current action because another dispensary would increase supply of marijuana and their portion of the pie would decrease.

The Planning Commission had approved the Findings of Fact, so he didn't think the Council was hurting themselves, but the dispensary owners that were no in attendance, were the ones getting their throats cut.

Mr. Sullivan stated ultimately if the Council passed a motion to refer this to the voters for an election, there was a case in Oregon that read that decision could be challenged through LUBA. The challenging of that decision wouldn't be the same as the challenge for denial, but that was a land use decision, to refer an annexation to the voters, so it could be appealed to LUBA. He wasn't saying this was a way to avoid a legal challenge to what the city was doing if the city referred it to the voters, the applicant for the annexation could decide to challenge that decision and appeal it to LUBA. That correctness of that decision would be easier to uphold before LUBA, over a denial of the annexation. The city was recognizing there was a political component to an annexation and the voters should have a right to deny or approve it, in this particular case, if that was the decision of the Council.

RETYPED MOTION:
MELENDREZ moved, BRADEN seconded, **THAT THE CITY COUNCIL APPROVE THE FINDING OF FACTS AND THE PLANNING COMMISSION RECOMMENDATION FOR THE ANNEXATION AND REZONE OF THE SUBJECT PROPERTY FROM URBAN GROWTH AREA INDUSTRIAL (UGA-I) TO CITY LIGHT INDUSTRIAL (I-1), AS SET FORTH IN ACTION 2021-07-28AZ BASED ON THE INFORMATION, FINDINGS, AND CONCLUSIONS SET FORTH IN SECTIONS I THROUGH IV OF THIS REPORT.** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-no; Melendrez-yes; Hill-yes. Motion carried 6/1/0.

HART moved **TO REFER THE ANNEXATION OF THIS PROPERTY TO A VOTE OF THE PEOPLE IN MAY OF NEXT YEAR.** Motion died for lack of second.

MELENDREZ moved, BRADEN seconded, **THAT THE CITY COUNCIL APPROVE ORDINANCE #2799-2021, AN ORDINANCE PROCLAIMING THE ANNEXATION AND REZONING OF CERTAIN TERRITORY TO THE CITY OF ONTARIO FROM URBAN GROWTH AREA INDUSTRIAL (UGA-I) TO CITY LIGHT INDUSTRIAL (I-1), BEING A PARCEL WITHIN THE SW¼ NW¼ SECTION 33, TOWNSHIP 17 SOUTH RANGE 47 EAST, W.M., ON FIRST READING BY TITLE ONLY.** Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-no; Melendrez-yes; Hill-yes. Motion carried 6/1/0.

DISCUSSION ITEMS

Downtown Attraction
Adam Brown, City Manager, stated this was a preview that would be back before Council for action at the December 14th meeting. The designers for the Moore Park project reached the limits of their expertise and wanted to bring on a landscape architect. They spoke with GGLO, out of Boise, who helped them with Indian Creek Plaza and Cherry Park. In the files submitted for review, they provided a comparison of the park space the city had to work with versus what they worked with at Indian Creek and Cherry Park, and both had public entertainment spaces and were generally park areas. The proposal would be to bring GGLO on for $45K, who would work with Trademark to create a plan that would be close to a final. This would all be done within the budget established this year for the park, which was $200K.

Mayor Hill stated he would be meeting with his attorney on Wednesday to discuss a more permanent arrangement for the piece of land, continuing to work with the city.

City Attorney Proposals
Adam Brown stated the candidate was ill, so she'd be at the 14th meeting.

Evidence Purge Proposal

Adam Brown stated the proposal was currently being developed between Interim Chief Steve Bartol and Lt. Cooper. They were giving information back to a company, who appeared to be the only one of its type that could be found, who conducted purges of evidence rooms. In speaking with Lt. Duncan, OSP, they discovered the state used a service on the other side of the state. Once the paperwork was completed, they filled a container, sent it over to them, and it was incinerated. Lt. Cooper got moving on that piece. They were still seeking out other companies.

Mayor Hill stated he thought he heard that when the new chief took over, the interim chief could purge, or the new chief coming in could do the purge before taking over official duties. Had he imagined that?

Mr. Brown stated that might have been a hope. There had been several conversations about it, and the hope was that this could be the primary focus of the interim chief to give Lt. Cooper an extra set of hands. Currently, the department was struggling to keep up with the intake of new evidence, as well as running out of space. The main goal was to locate an entity that could take care of this.

Mayor Hill stated for the future, how long after a trial was done, did the city have to retain evidence? Could it be disposed of immediately to prevent the buildup of 16,000+ pieces of evidence? What was the procedure?

Mr. Brown stated it needed to be built into the SOP for intake and regular purging. Each item had its own retention requirement based on the type of case.

Jason Cooper, OPD Lt., stated each piece of evidence had to receive a disposition from the District Attorney if it related to a case, and they were the authorizing agent who allowed OPD to either release the property back to the owner or destroy it. Some of the articles of evidence, depending on age, they might already have a disposition or there might be one that existed that wasn't held in house, but that was how they moved forward. Depending on the severity or type of crime, there were retention periods associated with that which the department had to follow before disposing of any evidence. Certain cases had timelines where they were appealed, and the department still had to maintain the evidence until that time passed.

Mayor Hill asked whose hand that was in? Was that through the District Attorney, who might need prompting, or was there an automatic notification?

Lt. Cooper stated that was a combination. In the past, it was case specific. Sometime the department received dispositions, other times there might be a disposition that existed, but it hadn't been submitted to the department. It might be on record, but it hadn't been provided yet. Sometimes his department had to ask for it. Some of that had to do with the type of property that was being held, like if there was an owner associated with it, they could ask about getting their property back. That could prompt a discussion between OPD and the DA's office.

Mayor Hill asked how long the purge was expected to take, and at what cost?

Lt. Cooper stated he could not provide that; he'd need to research that. There were many factors that tied into that. The size of the team was a big factor.

Mr. Brown stated their goal was to something in place as soon as possible. They were actively working on it.

North South Trail ODOT Agreement

Adam Brown stated this was a grant received from Oregon Community Paths Program, for $75K to do a planning of how they got from the end of the State Park, located north of town, to Lion's Park, to connect to the Treasure Valley Connector. This was for preview, and it would be back before them for action at the December 14th meeting. It was an IGA between the State of Oregon and the City of Ontario. It was a federal project, so ODOT would be running the project.

HAND OUTS

Minutes *(Attached)*
County Court 11-03-2021

CORRESPONDENCE, COMMENTS AND EX-OFFICIO REPORTS

- Councilor Mills asked for an update on the Code Enforcement Review Committee.

  Councilor Kirby stated the committee met last week and will meet again on December 2nd. They were going to have attorney Zach Olson make a 20-minute presentation.

  Mayor Hill stated that Mr. Olson was there of his own volition, he was not representing the Mayor.

  Larry Sullivan voiced his agreement that the fine structure needed to be re-evaluated.

  Councilor Mills stated there were numerous complaints on speeding around the hospital and business zones and asked if that would be addressed by the code committee.

  Ada Brown asked her to pass those complaints to him and he'd work with OPD on the issues.

- Councilor Kirby stated with regard to the blue tank that was sitting across from the Cultural Center, he knew who it belonged to, and why it's there. He'd share that information with the City Manager.

- Mayor Hill asked for an update on the BLM facility.

  Adam Brown stated it was under design, using an existing building format. The building was currently owned by the city and the possibility of renting the space for the FBO had been discussed. There was plenty of room for an office and for storing equipment. Space in front could be designed for more pads.

- Mayor Hill asked for an update on the right-of-way on Park Avenue.

  Dan Cummings stated Jacobs needed to finish the contract.

  Mayor Hill asked about the cost.

  Mr. Cummings stated he had no idea.

  Mayor Hill asked staff to bring a ballpark number to the next meeting. Merchant McIntyre should get moving on that.

  Mr. Cummings stated staff would get something put together.

- Mayor Hill asked about the grant status for the Ladder Truck or Rescue One?

  Chief Terry Leighton stated he had just been informed that both grant requests were denied; however, staff was moving forward on attempting to purchase Rescue One. The same grant was now in the process again but had a quicker closing time.

  Mayor Hill asked if Chief Leighton would be reapplying for both grants.

  Chief Leighton stated he most surely would.

EXECUTIVE SESSION

EXECUTIVE SESSION: ORS 192.660(2)(d)
An executive session was called at 7:31 p.m. under provisions of ORS 192.660(2)(d) to discuss labor issues. The Council reconvened back into regular session at 8:07 p.m.

ADJOURN

MILLS moved, KIRBY seconded, **THAT THE MEETING BE ADJOURNED**. Roll call vote: Mills-yes; Baker-yes; Kirby-yes; Braden-yes; Hart-yes; Melendrez-yes; Hill-yes. Motion carried 7/0/0.

ACCEPTED:

Riley Hill

Riley J. Hill, Mayor

ATTEST

Tori Barnett

Tori Barnett, MMC, City Recorder