

MINUTES  
FAIRVIEW CITY COUNCIL REGULAR MEETING  
September 17, 2003  
FAIRVIEW CITY HALL  
1300 NE VILLAGE STREET  
FAIRVIEW, OREGON 97024

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I. CALL TO ORDER/  
ROLL CALL

Mayor Weatherby called the meeting to order at 7:00pm

PRESENT: Mayor Mike Weatherby  
Councilor Darrell Cornelius  
Councilor Steve Owen  
Councilor Len Edwards  
Councilor Sherry Lillard  
Councilor James Raze  
Councilor Jim Trees

STAFF PRESENT: Mary Jo Briggs, City Administrator  
Gilbert Jackson, Chief of Police  
Bob Cochran, Public Works Director  
John Andersen, Community Development  
Director  
Eric Underwood, Management Analyst  
Tammy Shannon, Administrative Assistant  
Roy Wall

II. CITIZEN COMMUNICATIONS`  
UPDATE  
Citizen/Council Alliance Committee

Francis Doo, Citizen/Council Alliance Committee chair, introduced the committee members present and gave a brief report to Council regarding the committee. Mr. Doo stated that the committee's purpose was to serve as a liaison between the citizens of Fairview and the City Council. He reported that the committee had met three times and had discussed topics ranging from water quality to crime. Mr. Doo asked for direction from Council with regards to potential projects for the committee.

Councilor Lillard thanked the members of the committee for their help and hard work in planning the regional Street Faires held in the city.

Councilor Raze suggested the members of the committee get involved in the neighborhood watch programs sponsored by the Police Department.

Councilor Cornelius reported that he had attended three of the committee meetings and found the committee to be constructive and goal oriented. Cornelius indicated that topics such as bus service and heightened nuisance code enforcement had also been discussed.

Mr. Doo told Council that he was proud to be a part of the committee and the community.

Councilor Jim Raze introduced Robert Steenbergen, a high school junior working to replace the porches on the Heslin House for an Eagle

Scout project. Councilor Raze reported that his son, Steven Raze, had volunteered to be the contractor for the project.

Mr. Steenbergen informed Council that the porches on the Heslin House would be replaced in keeping with the historical character of the property. He said the original porches had been torn down because they were unsafe.

Councilor Raze informed all that donations of materials for the project were needed. He also stated that he was working on getting the building permit fees waived for the project.

III. CONSENT AGENDA

Councilor Owen moved and Councilor Raze seconded the motion to approve the Consent Agenda, consisting of: PURCHASE AUTHORIZATION, Landscape Tractor Purchase – Kubota B2910 HSD.

AYES: 7  
NOES: 0  
ABSTAINED: 0

IV. COUNCIL BUSINESS  
A. ORDINANCE 11-2003  
PGE Franchise (Wall)

Roy Wall reported to Council that the current 10-year PGE Franchise Fee Agreement to conduct electric utility business in the city was set to expire on December 31, 2003. Wall stated that the new Franchise Fee Agreement before Council would run through December 2013 and would continue the current franchise fee of 3.5%. Wall informed Council that the new agreement had one additional provision allowing the imposition by the city of an additional 1.5% privilege tax after giving PGE 60 days' notice. Wall explained that the privilege tax could not automatically be put in place- it would have to come as a separate initiative to council. Additionally, Wall reported that in fiscal year 2002-2003, the franchise fee payment to the city from PGE was approximately \$150,000.

Councilor Cornelius asked if the consumer paid the franchise fee and privilege tax. Mr. Wall responded that the franchise fee was built in to PGE's electric rates and that the privilege tax, if ever imposed, would end up as a line item on a customer's PGE bill.

Councilor Cornelius also inquired if the total combined amount of franchise fee and privilege tax could exceed 5%. City Attorney Tom Sponsler responded no. Councilor Cornelius stated that he thought that because the language used in the ordinance was tied to the state statutes, the combined total of the franchise fee and privilege tax might, in the future, exceed 5% depending on what happened in future legislative sessions. For an example, Cornelius explained that if, in the next legislative session, the total amount permitted was raised from 5% to 10%, the city would automatically be permitting some future city council to enact an increase in the privilege tax to 6.5%. Wall responded that the agreement would allow whatever maximum was permitted through state statutes.

Councilor Cornelius asked if the city would be precluded from assessing the provision for the privilege tax at any time during the 10-year franchise agreement period if it was not included with the adoption of this ordinance. Attorney Sponsler responded that the option of the Council to impose the privilege tax in the future would be preserved by keeping the provision in the franchise agreement.

Councilor Cornelius stated that he was against having the privilege tax provision in the franchise agreement because he felt that it was basically a regressive user tax that would adversely affect some of the citizens of Fairview. Cornelius stated that by removing the privilege tax section in the ordinance, Council could prevent the first step in imposing a tax on the citizens. He felt that Council should look for money elsewhere as the privilege tax would punish the poorer citizens of Fairview more than anyone else. Councilor Trees agreed, citing that taxes should be on luxury items and not on necessities.

Councilor Raze stated that Council was not enacting the tax at the present time and he felt the provision shouldn't be removed as an option. Raze said he saw no value in removing the provision.

Councilor Owen stated that this section of the agreement did not enact a 1.5% privilege tax immediately- it would be basically putting PGE on notice that the Council could, if it chose to at a later time, impose a 1.5% privilege tax.

Councilor Owen moved and Councilor Lillard seconded the motion that Ordinance 11-2003, PGE Franchise, be read by title only.

AYES: 7  
NOES: 0  
ABSTAINED: 0

Administrative Assistant Tammy Shannon read Ordinance 11-2003 by title only.

Councilor Cornelius moved and Councilor Trees seconded the motion to amend Ordinance 11-2003, PGE Franchise, by deleting section 9E, *“The City shall retain the right as Permitted by Oregon Law to charge a privilege tax in addition to the Franchise fee set forth herein. PGE agrees to pay the city’s privilege tax so long as the combined franchise fee and privilege tax does not exceed the maximum limit set by ORS 221.450 for utilities operating without a franchise. The city agrees to notify PGE of the privilege tax in writing 60 days prior to the date the tax goes into effect. The privilege tax is paid by customers within the city and is separately stated on the regular billings pursuant to the regulations of the Oregon Public Utility Commission”*.

Councilor Owen once again stated that the language that Councilor Cornelius was requesting be removed from the ordinance was only a placeholder and that by having the language remain, Council would not be authorizing a privilege tax to go into effect. If Council chose to enact the 1.5% tax, it would have to come before Council at a later date.

Mayor Weatherby called for a vote on the approval of Ordinance 11-2003 with the amended language cited by Councilor Cornelius.

AYES: 2 (Cornelius, Trees)  
NOES: 5  
ABSTAINED: 0

Mayor Weatherby called for a vote on the approval of Ordinance 11-2003 as presented to Council in the Staff Report.

AYES: 5  
NOES: 2 (Cornelius, Trees)  
ABSTAINED: 0

**B. POLICY STATEMENT**  
Regional Partners (Underwood)

Economic Development Coordinator Eric Underwood provided a brief background regarding the Regional Economic Development Partners, a coalition of regional economic development practitioners that have informally worked together for the past decade. Underwood reported that the organization had been recently formalized and that membership consisted of various jurisdictions throughout the Portland metro area. Underwood stated that the City of Fairview had recently signed on to be a full member and that the purpose of this partnership was to engage in regional economic development activity.

Councilor Owen asked who represented Fairview in this partnership. Underwood reported that he had been assigned as Fairview's representative.

Councilor Raze asked about the costs involved in belonging to the association. Underwood replied that the annual dues were \$1,000 and were based on the population of the jurisdiction.

Councilor Owen moved and Councilor Raze seconded the motion to authorize Mayor Weatherby to sign the Regional Economic Development Policy Statement.

AYES: 7  
NOES: 0  
ABSTAINED: 0

**C. REPORT**  
Parks System Development Charges  
(Sponsler)

City Attorney Tom Sponsler reported to Council that he had originally been asked to review city documentation to determine whether there had been a possible contract between the city and Holt & Everhart regarding construction of the Community Park and 8 pocket parks in Fairview Village. On July 8, 2003, Attorney Sponsler issued a written opinion in which he concluded that he could find no evidence of a contract between the city and Holt & Everhart concerning construction of these parks. Sponsler stated that his opinion was that the city had no claim or defense against paying the remaining balance on the SDC funds that were collected from development within Fairview Village.

Attorney Sponsler reported that following this, he had been asked to examine additional documentation consisting of agendas and minutes from Parks Advisory Committee meetings, minutes from City Council meetings, documents presented at those meetings, staff memos and

financial spreadsheets. Attorney Sponsler stated that this additional information still did not show the existence of a contract or a legal basis for a claim, but that it did substantiate Council's decision to build the Community Park rather than have the park be constructed by Holt & Everhart.

Councilor Cornelius said that he had raised this issue because the costs in the Village area ran \$658,000 and the amount that was originally projected was \$486,000. Cornelius said he understood that without written contracts, there was no basis to collect from Holt & Everhart but that he was concerned that the city learns from this and not let anything like it happen again in the future. Councilor Cornelius also asked if there was any way to hold Holt & Everhart to the amount listed in the spreadsheet document from March 1997 concerning the cost of the land for all of the parks. Attorney Sponsler Responded that from a legal point of view, the significant event happened with the city's agreement to reimburse Holt & Everhart \$401,540.

City Administrator Mary Jo Briggs asked Council for direction as to whether or not the city should proceed with reimbursement to Holt & Everhart on the balance owed to them. Council gave Administrator Briggs informal direction to proceed with paying the balance owed to Holt & Everhart.

## V. DEPARTMENTAL REPORTS

### A. Police (Jackson)

Police Chief Gilbert Jackson reported that he had compiled some statistics about activities occurring in Salish Ponds Wetlands Park. After patrolling the area for three years, the Fairview Police Department had issued 96 exclusions to the park. Of the people dealt with in the park who were engaged in prohibited activity, 56% came from Portland, 23% came from Gresham, 8% came from Fairview and the balance came from other areas such as Sandy, Boring and even Beaverton. Chief Jackson acknowledged that many non-Fairview residents were using Fairview resources to maintain order in the park.

Councilor Lillard asked about the graffiti on 223<sup>rd</sup> Avenue and wondered if there was still a vandalism committee or group of people who took care of removing graffiti. Chief Jackson responded that there used to be a group of very good people who helped combat graffiti, but that some had moved away and the group had disbanded. Chief Jackson invited any person who would like to volunteer to help remove graffiti to contact him and the city would provide the equipment and training for the project.

Councilor Cornelius asked if there were any recommendations Chief Jackson could give regarding the problems at Salish Ponds Park. Chief Jackson responded that more resources were needed to combat problems in the park.

### B. Public Works (Cochran)

Public Works Director Bob Cochran reported to council that the Marjorie Meadows project was almost complete. Director Cochran also reported that the Water Quality Survey form had been implemented and placed on the front counters at city hall for people to voice their opinions regarding Fairview's water. Also, Cochran relayed

that the Community Center survey was done and had been submitted to the engineer and architect for them to modify the Plaza design.

C. Community Development (Andersen)

Community Development Director John Andersen reported that activities in the last month had focused on Economic Development. Additionally, staff had been working on an evaluation of the Development Code to determine how business friendly the code was. Andersen also reported that building activity had continued at the same pace as the prior month.

D. Administration (Briggs)

City Administrator Mary Jo Briggs reported that the city had received an announcement that there would be an organizing meeting for Fairview Village Businesses on Friday, September 19 at 7:30pm at Fairview City Hall.

Administrator Briggs also reported that she had looked at the 35 applications for the Police Chief position and that the selection committee would be meeting in the near future to short list the applications and decide which candidates would be coming forward for interviews.

E. Legal (Sponsler)

City Attorney Tom Sponsler informed Council that his report was before them and offered to answer any questions they might have.

VI. MAYOR/COMMITTEE REPORTS  
& COUNCIL CONCERNS

Councilor Cornelius reported that he had attended a meeting of the Oregon Downtown Association and that attendance had been very good. Cornelius also said that the meeting was very constructive.

Councilor Lillard officially requested Council to respectfully consider naming the new Plaza at the Community Center after Bonita Jenkins.

Councilor Owen stated that during employment negotiations with City Administrator Mary Jo Briggs in October 2001, a section of the contract had been misstated as to what the original intent was. Councilor Owen read the following statement:

“Last year the Council gave City Administrator Mary Jo Briggs a merit bonus of \$4,000 in recognition of her superior performance for the year 2001-2002. It was an error not to have this amount added to her base pay and I believe the error should now be corrected.”

Councilor Owen moved and Councilor Raze seconded the motion that City Administrator Mary Jo Briggs’ base pay be increased by \$4,000 to reflect City Council’s evaluation of her performance for the year 2001-2002 and that future merit increases be added to her base pay.

Councilor Cornelius noted that he had no objection to this motion but because he was not a member of the Council until January 2003 and that this action was correcting an action that had been taken prior to then, he felt he should not participate in the vote. Councilor Trees also noted that he should not participate in the vote for the same reasons.

Mayor Weatherby called for a vote on Councilor Owen’s motion.

AYES: 5  
NOES: 0  
ABSTAINED: 2 (Cornelius, Trees)

Councilor Edwards asked that if possible, the chair at the back of the Council Chambers used by Bonita Jenkins be kept vacant until the end of the year in remembrance of her. Councilor Edwards also said that he would like to see the city do everything in its power to help complete the work on the Heslin House in honor of Bonita Jenkins.

Councilor Raze moved and Councilor Cornelius seconded the motion to waive the building permit fee charged by the city for ongoing work at the Heslin House. City Administrator Mary Jo Briggs said that with Council's approval, the 80% portion of the fees paid to Troutdale could be obtained from a discretionary fund in the budget.

AYES: 7  
NOES: 0  
ABSTAINED: 0

Councilor Trees reminded everyone about the Children's Theater group that he was forming and that there would be more information available in the City's next newsletter. Trees mentioned that if anyone was interested in helping they should contact him.

Mayor Weatherby wanted to thank Sergeant Bernie Meyer for letting him go on a ride along. Mayor Weatherby also said he appreciated all of the city staff's hard work and dedication.

VII. ADJOURNMENT

Councilor Owen moved and Councilor Lillard seconded the motion to Adjourn into Executive Session per ORS 192.60(1)(C).

AYES: 7  
NOES: 0  
ABSTAINED: 0

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Mayor Mike Weatherby

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Dated:

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Tammy Shannon  
Administrative Assistant