

**MINUTES  
FAIRVIEW CITY COUNCIL REGULAR MEETING  
FAIRVIEW CITY HALL  
1300 NE VILLAGE STREET  
FAIRVIEW, OREGON 97024**

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**June 2, 2004 -- 7:00pm**

**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 James Raze  
Councilor Larry Cooper

ABSENT: Councilor Sherry Lillard  
Councilor Jim Trees

STAFF PRESENT: Mary Jo Briggs, City Administrator  
Ken Johnson, Chief of Police  
Bob Cochran, Public Works Director  
Laura Zentner, Finance Director  
John Andersen, Community Development  
Director  
Caren Huson, City Recorder

Mayor Weatherby announced that Councilors Lillard and Trees were excused.

**II. CITIZEN  
COMMUNICATIONS**

Mayor Weatherby called for persons wishing to speak on non-agenda items. As there was no response, the session continued.

**III. CONSENT AGENDA**

Councilor Cornelius moved and Councilor Owen seconded the motion to approve the Consent Agenda, consisting of: Resolution 14-2004, A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY ADMINISTRATOR TO SIGN AMENDMENT NO. 17 TO INTERGOVERNMENTAL AGREEMENT NO. 3013087 MAINTENANCE ON CITY STREETS; an Intergovernmental Agreement with the Mt. Hood Cable Regulatory Commission; an Award of Contract for Financial Advisor Services; and Award of Contract for Bond Counsel Services; and, the Minutes of April 21, May 5, and May 19, 2004 .

AYES: 5  
NOES: 0

ABSTAINED: 0

**IV. COUNCIL BUSINESS**

**A. MT. HOOD CABLE  
REGULATORY  
COMMISSION  
BUDGET APPROVAL**

Rich Goheen stated that he represents the City of Fairview on the Mt. Hood Cable Regulatory Commission (Commission), and introduced the Deputy Director of the Commission, Mary Beth Henry. Mr. Goheen reported that the Commission was asking Council to approve the Commission's 2004/2005 budget. Mr. Goheen commented that by being a member of the Commission through an Intergovernmental Agreement that Fairview is placed in the position of having talented people who are familiar with cable regulations working for us. The Commission collects all franchise fees, subtracts the cost to operate, and then transmits overages to the cities.

Councilor Raze questioned if satellite dishes were taking quite a bit of business away from cable television. Mr. Goheen responded that he could not put a number to it; however, satellite is becoming popular nation-wide, so cable companies will have to realize they will lose service if they are not competitive.

Councilor Owen asked if Mr. Goheen had any concerns regarding the Commission's proposed budget. Mr. Goheen responded no. Councilor Owen stated that Mr. Goheen's efforts were greatly appreciated.

Councilor Owen moved and Councilor Raze seconded the motion to approve the Mt. Hood Cable Regulatory proposed budget for fiscal year 2004/2005. Councilor Raze commented that there could not be anyone who is more thorough than Mr. Goheen and if he reviewed the budget and was comfortable with it, then so was Councilor Raze.

AYES: 5  
NOES: 0  
ABSTAINED: 0

**B. TRANSFER OF  
APPROPRIATIONS  
FOR FISCAL YEAR  
2003/2004 BUDGET**

Laura Zentner, Finance Director, reported that before the Council was a request to transfer appropriations for Fiscal Year 2003/2004; this is a routine transaction for Oregon cities. As growth has slowed to Fairview, the budget has become tighter and does not contain extra funds for unanticipated items. Unanticipated expenditures for the requested transfer include: formation of a collective bargaining unit; Police Department overtime expenditures related to gang

enforcement; expenditures relating to the vacation payout of the City Administrator; and, expenditures relating to the search for a new City Administrator.

Councilor Cornelius stated that he was not satisfied in doing this transfer as the City would basically be borrowing from next year's budget. Councilor Cornelius questioned if the unanticipated costs could be paid without touching the contingency fund. Director Zentner responded no; she had reviewed the budget and the City does not have the \$18,000 available in the current budget to cover the unanticipated costs. Councilor Cornelius asked what would happen if the Council did not approve the transfer of funds. Director Zentner responded that the expenditures have to occur, and if not approved, Fairview would be out of compliance with Oregon Budget Law and the elected officials and Department Directors would be legally liable for any over-expenditures. In addition, she has never had this happen in her career and would be unhappy if it was not approved. Councilor Cornelius stated that if the City continued to take from contingencies every year, that eventually the contingency funds will erode. Director Zentner commented that the Council will see staff coming to them in the next fiscal year with more transfer requests, as the Budget Committee had made it very clear to staff to make a tight budget. Councilor Cornelius again asked what the effect would be of being out of compliance with Oregon Budget Law. Tom Sponsler, City Attorney, responded that the Council is personally liable for authorizing expenditures and if not under compliance with Oregon Revised Statutes 294.100, if it is intentional, and since Council was discussing this at a public meeting it is intentional non-compliance. Council needs to recognize the difference between a contingency and reserve; contingencies are normally set with the intent that money toward the end of a budget year, such as this one, will be appropriated in this manner to pay for things that were not anticipated. Reserves are monies that are set aside which can not be touched during a fiscal year, they are unappropriated reserves. This is a standard practice.

Councilor Owen mentioned that in the past, Fairview budgets have had more flexibility, and he knows our current budget does not allow for flexibility; in addition, he feels this will become the norm for the City to see more contingencies as we are being very cautious.

Councilor Raze commented that he did not want to see transfers requested on an on-going basis either, but all of the items before Council tonight are committed items that the City is legally required to pay; they were not anticipated, which is the purpose of a contingency fund.

Councilor Cooper moved and Councilor Owen seconded the motion

to adopt Resolution 13-2004 and its Exhibit "A" to maintain an accurate budget in compliance with Oregon Budget Law. Helen Maguire, Fairview resident, stated that as a Budget Committee member, she would suggest that the budget be reviewed once again to see if the monies could not be found somewhere to pay for some of the costs; in addition, perhaps Director Zentner could provide a statement of year-to-date expenditures so that Council could see if in fact there is another place where you might be able to cover some of these costs in the budget.

Councilor Cornelius stated that the approval of this transfer was a bad precedence to set; if the City is going to have a budget, it should have to live within that budget.

Councilor Cooper mentioned that he has been involved in both private and public sector budgets and there are always contingencies. There are always items that pop up that you did not anticipate. In addition, Councilor Cooper stated that the money is available in the contingency fund, it is not being hidden, and contingency funding is good public policy.

Mayor Weatherby called for the vote.

AYES: 4  
NOES: 1 (Cornelius)  
ABSTAINED: 0

**C. ORDINANCE 6-2004  
Amending Alarm  
Ordinance**

Ken Johnson, Chief of Police, reported that before the Council was a request from the Multnomah County Sheriff's Department; they administer the alarm ordinance for all cities in East County. Chief Johnson added that several housekeeping measures are included in Ordinance 6-2004: a request to increase the annual alarm permit fee from \$12.00 to \$25.00, and to increase the fees for false alarms. Gresham adopted the Intergovernmental Agreement in total, including a fee for a first alarm; Troutdale will waive the fee for a first false alarm, with the second false alarm fee to be increased to \$75.00.

Councilor Raze stated that he was in favor of no charge for a first false alarm.

Mayor Weatherby commented that he could not vote on something if he did not know it was a better deal for Fairview, and asked what formula the County was using to distribute funds and how much was charged the City of Fairview in the last five years for false alarms. Chief Johnson responded that, in the past, all funds were thrown in a

pot and distributed to cities based on their population; the new agreement will be a better deal for the City as Fairview will respond first to alarms. Mayor Weatherby questioned why the permit fees were proposed to double. Chief Johnson responded that the fees must pay for the cost of the program and for services.

Councilor Owen asked what the average response time was for alarms. Chief Johnson responded that alarms were their first priority and the average response time was four minutes or less.

Mayor Weatherby questioned how many homes in Fairview had alarms. Chief Johnson responded that he thought it was about 313, adding that he had thought about Fairview administering their own alarm program, but the cost was prohibitive.

Councilor Raze moved and Councilor Cornelius seconded the motion to read Ordinance 6-2004 by title only, with the amendment that there would be no charge for the first false alarm.

AYES: 4  
NOES: 1 (Weatherby)  
ABSTAINED: 0

Caren Huson, City Recorder, read Ordinance 6-2004 by title only, and announced that since the first vote was not unanimous, that the second reading would occur at the next regularly scheduled Council meeting.

## **V. PUBLIC HEARINGS**

### **A. RESOLUTION 11-2004 Adoption of Fiscal Year 2004/2005 Fairview Budget**

Director Zentner reported that staff and the Budget Committee had been working on the 2004/2005 budget for the past several months. The Budget Committee had approved the 2004/2005 City of Fairview budget on April 19, 2004, with the budget then being submitted to the Tax Supervisory and Conservation Commission (TSCC) for comments. A certification letter was received from TSCC which stated, "the 2004-05 budget, filed April 29, 2004, is hereby certified by the Commission with no objections or recommendations. Estimates were judged to be reasonable for the purpose shown and the document was found to be in substantial compliance with Local Budget Law."

Councilor Raze commented that he has been through several

budgets and he thought this last year was the most thorough.

Councilor Cornelius stated that a number of items show unappropriated balances. Director Zentner responded that that amount could not be spent during the fiscal year and is shown just for the purpose of balancing the budget; they are actually the reserves for the City.

Mayor Weatherby opened the public hearing; receiving no comments, Mayor Weatherby closed the public hearing.

Councilor Cornelius mentioned that he would like to see some type of report in the future, near the end of the third quarter, which shows where the City stands in its budgeting. Director Zentner responded that quarterly financial reports were on her list to submit to Council so that there would be no surprises.

Councilor Owen moved and Councilor Raze seconded the motion to approve Resolution 11, 2004, A RESOLUTION ADOPTING BUDGET, MAKING APPROPRIATIONS, LEVYING TAXES AND CATEGORIZING THE LEVY.

AYES: 5  
NOES: 0  
ABSTAINED: 0

**B. ORDINANCE 3-2004/  
4-2004  
Village Street Parking  
Ordinance Alternatives**

John Andersen, Community Development Director, reported that the Planning Commission held hearings on Ordinance 3-2004 (formerly 7-2003) and their findings and report are contained in the Council's packet. The Planning Commission was recommending that Ordinance 3-2004 not be adopted. One of the alternative approaches that grew from the public meetings and hearings on parking issues is Ordinance 4-2004. This ordinance reorganizes some of the permitted uses in the Village Commercial and Village Mixed Use Zones and formally places in the Code the Type I and Type II processes that have been successful in calming many of the concerns about parking adequacy. The Planning Commission recommends adoption of Ordinance 4-2004.

Mayor Weatherby opened the public hearing.

Helen Maguire, Fairview, read from a prepared statement into the record which is attached and incorporated into these minutes. Ms. Maguire mentioned that he had been misquoted in Planning Commission minutes, and had requested a copy of the tape recording. Ms. Maguire replayed the tape of the Commission meeting for Council to prove that she was misquoted. Voices could not be heard on the tape as the tape recorder being used at the meeting was incapable of picking up voices. Ms. Maguire stated that

she was quoted as saying there “was no problem”, but she knows she would never have said that. Ms. Maguire added that she felt like Alice in the Looking Glass where her world is upside down, or a victim of a shell game.

Garth Everhart, Fairview, stated that he, too, felt a little bit like Alice in Wonderland after a year and a half of discussing parking in Fairview Village. Mr. Everhart referred directly to Ordinance 3-2004; from his perspective, he has attended all the meetings and several workshops on the topic and their position as developer of the Village is that removing on-street parking at this stage of the Village creates disparity between properties in the same zoning district. Certain properties have benefitted from on-street parking, and other properties have not been allowed to benefit from on-street parking. Further, it removes predictability from their perspective as a developer, as now they would have to come back to Planning Commission every time they had a proposal to see what the temperature would be with the Commission and whether or not they could or could not include on-street parking in a proposal. There is flexibility in the design of the Village and many of Holt & Everhart’s projects do not count on-street parking; they have used on-street parking recently on the Market Place live/work project. Holt & Everhart wished to make it clear that they do not use on-street parking all the time to count towards their projects, but it was nice to have it available when they are creating their designs and it has been a fundamental intent of the zoning code from day one in terms of the Fairview Village Plan. As he remembers the DKS study, the findings were that there was adequate parking today, adequate parking in the long term, but there may be some parking concerns in the mid-term. Mr. Everhart disputed a couple of Ms. Maguire’s comments; his memory of the discussion of solutions was that the City would facilitate finding more parking privately for local businesses when the need occurred; he never understood the City would guarantee that another parking lot would be created for the businesses, and they dispute that there was ever a deal made that they would give up using their tract parking which they have set aside for future projects. In regards to Ordinance 4-2004, at the end of the Planning Commission meeting, Mr. Everhart stated that he had testified at the hearing. They are fine with the Code the way it is if Council chooses not to adopt Ordinance 4-2004; they have always viewed parking as a housekeeping item. In conclusion, Mr. Everhart respectfully asked the Council to take no action on Ordinance 3-2004 and to approve Ordinance 4-2004.

Councilor Cornelius asked about the office building that was approved near Target as he believed there were 22 parking spaces off-street required for that; subsequently, he understood a mistake was made in the decision when written up by the Planning

Commission with only 16 off-street spaces being required, so now it will be six spaces short. Councilor Cornelius asked if Mr. Everhart had made any arrangements with the apartment complex to share six parking spaces. Mr. Everhart responded that they have not because the apartment complex is under private ownership and not obligated to share parking with a separate property. Mr. Everhart added that he believes the zoning code stipulated 16 parking stalls and they supplied 18; the Planning Commission did not rely on on-street parking.

Councilor Cornelius commented that Holt & Everhart has four commercial sites currently for sale and asked if they were intending to pull out of the Village development. Mr. Everhart responded that Council had expressed their lack of patience with their progress, so his partner decided to place several lots on the market. Councilor Cornelius asked if an ordinance was adopted tonight that would eliminate on-street parking credit, would that diminish the value of the lots for sale. Mr. Everhart responded yes.

Councilor Raze mentioned that Ms. Maguire had commented that Fairview could take a lesson from Wood Village, but in fact the Wood Village City Council had denied the proposal that Ms. Maguire eluded to, even though the Wood Village Planning Commission had recommended approval. Ms. Maguire stated that there were certain things the City needed to recognize in tweaking the Fairview Village Plan. Councilor Raze stressed that the entire citizenry in Fairview has paid to discuss the parking topic over and over; there is no new information. Everybody came to the table and all have had an opinion; Council needs to consolidate a lot of fact, emotions, and all different types of ingredients to come up with the best solution. In addition, the City did not agree "to partner with" another entity to provide a parking lot. Ms. Maguire stated that Planning Commissioner Shearer had made it very clear that the City could not contribute monetarily in constructing a parking lot.

Councilor Cornelius thanked Ms. Maguire for compiling the history as she did on the parking topic as it had not been provided in the staff report, and thanked Ms. Maguire for reminding Council of the direction they gave to the Planning Director.

Councilor Owen asked Ms. Maguire for her position on Ordinance 3-2004. Ms. Maguire responded that the way Code reads now is that on-street parking must be counted; the ordinance Council tabled last year is where they instructed staff that all future construction and development in the Village no longer be able to use on-street parking to satisfy their parking requirements. Now, staff was coming before Council tonight with rewording and three alternatives and are recommending that nothing be implemented. Ms. Maguire added

that her recommendation was that Council implement the ordinance that was tabled six months ago. Councilor Owen stated that in regards to the Council giving instructions, they had instructed the Planning Commission to hold hearings and public discussions on parking; if Council had been telling them what to do, there would have been no reason for them to hold hearings. Councilor Owen asked if Ms. Maguire approved of Ordinance 4-2004. Ms. Maguire responded no.

Steve Kaufman, Fairview Planning Commission Chairman, stated that parking has been discussed for years. Councilor Cornelius asked if there was a problem having the Planning Commission Chair testify before Council. Attorney Sponsler responded no. Mr. Kaufman wished to cover a couple issues: citizens, Council, and the Commission all understand that when the properties were initially being sold, there were business owners in the Village who believe they bought something that the Commission does not believe was the intent. A lot of changes have been made recently to the Village Plan and there is no parking problem to warrant changing our zoning codes. Councilor Owen asked if Mr. Kaufman was in favor of Ordinance 3-2004. Mr. Kaufman responded no; he was in favor of Ordinance 4-2004.

Councilor Cornelius asked why Mr. Kaufman was in favor of Ordinance 4-2004. Mr. Kaufman responded that it makes everything much easier and we all agree there are places in the Village where we do not need theaters, etc. Councilor Cornelius asked if Ordinance 4-2004 was basically written from a proposal submitted by Holt and Everhart. Mr. Kaufman responded yes, and that it sets a clear line. Councilor Raze questioned if the Planning Commission had voted unanimously on the recommendation of Ordinance 4-2004.

Ken Heiner, Fairview Planning Commissioner, stated that he was the one dissenting vote. Mr. Heiner added that a number of people had testified that there was not adequate parking in their opinion. Recent projects approved in the Village did not count off-street parking and that seemed like a useful tool for those projects. Mr. Heiner indicated that his dissenting vote was to acknowledge that the flexibility of being able to make a decision should be a tool that the planning staff has at their disposal and not to change the current code. Further, with the uncertainty of allowing or not-allowing on-street parking to count, further delineation would occur in setting up conditions of why or why not on-street parking should be considered.

Councilor Raze commented that he wanted to get the parking issue over with; there has been thousands of hours spent on parking and he was afraid that no matter what was done, the topic would keep coming back. It needs to be finished.. Council was not being fair to all Fairview citizens in making this the major issue on an on-going

basis.

Mayor Weatherby stated that he has a great deal of faith in the work the Planning Commission performs

Receiving no further testimony, Mayor Weatherby closed the public hearing.

Councilor Cornelius stated that Ordinance 4-2004 does not make it clear how it will change the existing City zoning code. Director Andersen commented that changes are shown in bold type. Councilor Cornelius asked what the purpose was of Section 2 in Ordinance 4-2004. Director Andersen responded that the deleted language in Section 2 identified that uses could be up to a maximum of 10,000 square feet for those items identified as permitted uses. Ordinance 4-2004 is proposing that VMU areas shall be occupied by townhomes and commercial uses because that recognizes what is happening in Section 3; rather than having a specific amount, the Council had directed that there by a Type I process and then changes beyond a certain date would have to go through a Type II process. Councilor Cornelius asked how that would effect the current owners of the Village Street rowhouses. Director Andersen responded that he did not see how it could effect the current rowhouse owners. Councilor Cornelius asked if the rowhouse owners received notice of tonight's public hearing. Director Andersen responded yes; each owner was mailed a notice, the notice was posted around the City and also advertised in the newspaper. Councilor Cornelius commented that the last time something similar to Ordinance 4-2004 was before the Council that Director Andersen had been told that the Council did not want discretionary language, which was currently before them. The language Council wanted was to be "mandatory" and eliminate on-street parking as being counted toward parking requirements on new construction only. Director Andersen responded that he recalls that the Council asked that Ordinance 7-2003 be tabled with hearings held on that Ordinance. Staff has come back with "elimination" of on-street parking as an alternative to include in the Ordinance for the Planning Commission to consider. Councilor Cornelius stated that he was annoyed that what has been brought to Council tonight is not what they asked for.

Councilor Raze commented that his recollection was that there were several options for the Planning Commission to consider, and that he does not recall Council giving direction that no on-street parking be allowed. The final decision is for Council to make tonight. The Planning Commission has come forward with their recommendation and Council needs to make the final decision tonight.

Councilor Cooper questioned if the Council's vote tonight would end

the parking discussion, or will it be regurgitated over and over again. Director Andersen responded that it was his hope that Council's decision tonight would end the parking discussion. Councilor Cooper stated that he did not see a parking problem in Fairview Village.

Councilor Cornelius stressed that Council told the Planning Director that they wanted the ordinance to provide specifically that no on-street parking would be considered for future construction and that he was stunned that that ordinance was not before Council tonight and he was annoyed. Councilor Owen asked that the minutes be researched where Council directed the Planning Director to bring that particular language forward. Councilor Cornelius asked for a transcription of the tape.

Attorney Sponsler commented that he thought that it was a bad precedent to set with Council relying on their memories or to make directives. There is no legal action that Council can take that is a directive to staff; the Council never voted, and unless the Council votes, the Council does not make a decision. You simply expressed your personal opinions, but you have no legal authority as individual City Councilors to instruct staff to do anything. If the Council voted to do something, that is a different matter. There are various interpretations of a proposed ordinance that was never voted on and it has no legal consequence. Councilor Cornelius stated that the City Attorney was out of order. Attorney Sponsler stressed that Council would receive legal advice from him tonight, and if Council cares to make a decision tonight, all they had to do was make a motion to adopt Ordinance 3-2004 with option number three and that would put an end to this charade.

Councilor Owen moved and Councilor Raze seconded the motion to permanently table Ordinance 3-2004.

AYES: 5  
NOES: 0  
ABSTAINED: 0

Councilor Cooper moved and Councilor Raze seconded the motion to read Ordinance 4-2004 by title only.

AYES: 3  
NOES: 2 (Cornelius, Owen)  
ABSTAINED: 0

Recorder Huson stated that since the vote was not unanimous for a first reading, that the second reading would be held at the Council's next regularly scheduled meeting.

**VI. CITY ADMINISTRATOR REPORT**

City Administrator Mary Jo Briggs stated that a lot of time has been spent in discussing the various options for fire service for the City of Fairview, and a joint Council Work Session will be held between Fairview, Troutdale, and Wood Village to review the fire issue and options. The Work Session will take place on June 10, 2004, 6:30pm, Fairview Council Chamber.

**VII. MAYOR/COMMITTEE REPORTS AND COUNCIL CONCERNS**

Councilor Cornelius thanked Planning Commission member Sam Asbury for serving his country in the naval reserve in Kuwait and that he was very proud of him and appreciated what he did for the citizens. Councilor Cornelius stated that he has enjoyed working with Administrator Briggs and that he would not be attending the next Council Work Session which will be her last Council meeting with Fairview.

Councilor Owen reported that he and Councilor Cornelius attended a Citizen/Council Alliance meeting where the citizen involvement section of the comprehensive plan was reviewed.

Councilor Raze reported that the Heslin House porches were framed in and that the Boy Scouts were working hard on the project. Councilor Raze stated that he had attended a meeting today on the proposed soccer field to be located at Woodland Elementary School and that it was hoped to have approvable plans in the near future.

Councilor Cooper and Mayor Weatherby had no reports or concerns.

**VIII. ADJOURNMENT**

Councilor Owen moved and Councilor Raze seconded the motion to adjourn. Mayor Weatherby adjourned the meeting at 9:20pm.

AYES: 5  
NOES: 0  
ABSTAINED: 0

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Mayor Mike Weatherby

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Dated:

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Caren C. Huson Quiniones  
City Recorder