

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
May 15, 2013**

**Presiding:** Mayor Brian Hodson

**Council Present:** Rich Ares, Traci Hensley, Clint Coleman, Tim Dale, Greg Parker, and Ken Rider.

**Staff Present:** Greg Ellis, City Administrator; Joseph Lindsay, City Attorney; Haley Fish, Finance Director; Jerry Nelzen, Public Works Lead; Sol Jacobsen, City Arborist; Julie Wehling, Transit Director; Renate Mengelberg, Economic Development Director; Jamie Stickel, Main Street Manager; Bryan Brown, Planning Director; and Kim Scheafer, City Recorder.

**Others Present:** Mary Walsh, Sean and Rita Patterson, Carol Meeuwsen, Greg Perez, Bob Cornelius, Keith Galitz, Bob Backstrom, Roger Reif, Don Smeback, Teresa Sasse, Tom Olson, Bev Doolittle, David Soloos, Kevin O'Connor, Jon and Marla Sweningson, Sandra Cranston, and Jon Nicholson.

**CALL TO ORDER:** Mayor Hodson called the Regular Meeting to order at 7:30 p.m. in the Council Chambers followed by opening ceremonies.

Home Town Hero Award Presentation – Mayor Hodson read the criteria for the Home Town Hero Award along with the nomination letter from the Transit Advisory Committee nominating Judy Patterson posthumously. The Home Town Hero Award Certificate was presented to Judy's son Sean Patterson.

Mr. Patterson thanked the Council for the Award and said that his mother had passed away a year ago today.

Public Works Week Proclamation – Mayor Hodson read a proclamation proclaiming May 19-25, 2013, as Public Works Week in Canby. He presented the proclamation to Jerry Nelzen, Public Works Lead. On May 23 starting at 10 a.m. Holly Street would be closed between 1<sup>st</sup> Avenue and 2<sup>nd</sup> Avenue. Some of the equipment the Public Works Department used would be on display for the public.

City Tree Display on Sequoia Parkway – Sol Jacobsen, City Arborist, said trees had been planted on Sequoia Parkway to display all of the trees on the City's tree list. There were 87 varieties of trees on the list. Placards would be put on the trees that denoted what type of tree they were.

Canby Educational Foundation Presentation – Mary Walsh, Canby Educational Foundation Executive Director, said since 1997 the Foundation had provided over \$400,000 in grants to go back into the schools.

Carol Meeuwsen and Tom Olson, Canby Educational Foundation Board Members, gave a PowerPoint presentation about the benefits, grants, and endowments of the Foundation as well as funding impacts and the new Teacher Adoption Program.

**COMMUNICATIONS:** None.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** Greg Perez, Canby resident, appreciated all the work that was done on First Avenue. He asked if the First Avenue improvements could be continued in front of Grand Central Station restaurant.

The Council thought it was a good idea and would look into it.

Mr. Perez said there was a problem of owners parking in the parking lot or in front of businesses on First Avenue, which took away from customer parking. He suggested from 8 to 5 p.m. having 2 hour parking or some other options.

Greg Ellis, City Administrator, had spoken with the Code Enforcement Officer to start intermittent enforcement of the two hour parking areas. The business owners would be informed before the enforcement began.

**MAYOR'S BUSINESS:** Mayor Hodson reminded Council to RSVP for the Dragonberry Produce grand opening on June 29. ODOT would be paving 99E by Oregon City and in Canby in June. He reported on the Mayor's Prayer Breakfast, C4's Transportation Funding Plan, Exporting Clackamas County Breakfast, launching of the Traffic Safety Commission, and Doris Caudle's 100<sup>th</sup> birthday celebration. The City's first Budget Committee meeting was held last night. There was an opening on the Budget Committee.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Hensley attended the Mayor's Prayer Breakfast and Chamber Luncheon where water rates were discussed. She discussed the Adopt a Teacher Program and said a School Board meeting would be held on May 16.

Councilor Coleman attended the Mayor's Prayer Breakfast, Budget Committee meeting, and Industrial Forum at Johnson Controls.

Councilor Dale also attended the Mayor's Prayer Breakfast. Canby Utility would increase the water rates effective July 1. On May 29 at 6:30 in the Hope Village Community Center, there would be a Community Meeting regarding the SE 13<sup>th</sup> Avenue Pedestrian Safety Study.

Councilor Parker said the Historic Review Committee was being reestablished and the first meeting would be held on June 3. The Bike and Pedestrian Committee would meet on May 28 where bicycle tourism would be discussed.

Councilor Rider also attended the Mayor's Prayer Breakfast and Budget Committee meeting.

**CONSENT AGENDA:** **\*\*Councilor Dale moved to adopt the minutes of the May 1, 2013 City Council Regular Meeting; appointment of Robert Backstrom and Leonard Walker to the Traffic Safety Commission for terms to expire on June 30, 2016; appointment of Daniel Leischner and Jack Pendleton to the Traffic Safety Commission for terms to expire on June 30, 2015; reappointment of Andrey Chernishov to the Parks and Recreation Advisory Board for a term to expire on June 30, 2016; and a Change of Ownership Liquor License for Backstop Bar and Grill. Motion was seconded by Councilor Hensley and passed 6-0.**

**PUBLIC HEARING:** Transient Room Tax – Greg Ellis, City Administrator, said the State allowed cities to enact a Transient Room Tax. The proposal was for a 9% tax, which would

generate around \$16,000 over one year. Seventy percent would need to be directed toward tourism which could be used for the Main Street Program. The other 30% was discretionary. He had received an email from Councilor Dale who was concerned the motel in town was used by friends and family visitors instead of tourists. The tax also applied to Recreation Vehicle parks. He explained how the money could be used.

Mayor Hodson was concerned about too narrow of a scope for tourism and other areas that could benefit from the money.

Councilor Hensley didn't want to see the whole 70% go toward Main Street as there were a lot of other tourism opportunities in the City.

Councilor Dale did not want to limit the scope and thought they should look innovatively about how to get the word out about Canby.

Mayor Hodson opened the public hearing at 8:48 p.m.

### **Public Testimony:**

Proponents: Keith Galitz, Canby Telcom President, was in favor of the tax. He hoped they would consider using some of the money for the Slice of Summer and Canby Concert Series.

Opponents: Bev Doolittle, Executive Director Canby Chamber of Commerce, said the \$16,000 was a hardship on the one motel in town. She asked if the motel owner had been notified of the proposal.

Mr. Ellis had tried to contact the motel owner but did not get a response. The owner would be able to keep a 5% administrative fee.

Raeline Kammeyer, Clackamas County Fair Board, asked what was considered an RV park.

Mr. Ellis said if a fee was collected to allow RVs on the property, the tax could be collected.

Ms. Kammeyer said people who came to the Fair generated a lot of money for Canby and if the tax was implemented, what would persuade them to stay here.

Joseph Lindsay, City Attorney, explained how the tax worked. There was a question as to whether the RV park on the County fairgrounds was exempt.

Councilor Dale suggested delaying the decision to have further discussion with the County.

Robert Backstrom, Canby resident, objected to using the tax for the Main Street program. He did not think tourists used the motel, but it was family members who would have to pay an extra 9% to visit. Just because other cities had a tax, he did not think Canby should. The Main Street program should be self-sustaining and not need the funding.

Mayor Hodson closed the public hearing at 9:04 p.m.

There was consensus to consult with Clackamas County Event Center on the impact to the fairgrounds and bring back the ordinance for another public hearing on June 5 after the details were worked out.

Update to Master Fee Schedule Including Updated Fees for Sanitary and Storm Sewer Service – Haley Fish, Finance Director, said it was procedure to update the Master Fee Schedule every year. The biggest change was the 5% increase to the sewer rate.

There was discussion regarding various fees.

Mayor Hodson opened the public hearing at 9:10 p.m.

**Public Testimony:** None.

Mayor Hodson closed the public hearing at 9:10 p.m.

**RESOLUTIONS & ORDINANCES:** Resolution 1157 – **\*\*Councilor Hensley moved to adopt Resolution 1157, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, SETTING FEES FOR SERVICES INCLUDING UPDATED FEES FOR SANITARY AND STORM SEWER SERVICE. Motion was seconded by Councilor Rider and passed 6-0.**

Resolution 1158 – Mr. Nelzen explained his department was getting rid of old equipment to trade in for a mini excavator.

**\*\*Councilor Dale moved to adopt Resolution 1158, A RESOLUTION DECLARING CITY ITEMS AS SURPLUS PROPERTY AND INDICATING INTENT AND METHOD FOR DISPOSAL OF SUCH PROPERTY. Motion was seconded by Councilor Ares and passed 6-0.**

Ordinance 1374 – This Ordinance would be brought back for a new public hearing and first reading on June 5.

Ordinance 1375 – Mr. Nelzen said 2.8 miles of street would be completed this year.

**\*\*Councilor Ares moved to approve Ordinance 1375, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH S-2 CONTRACTORS, INC. IN THE AMOUNT OF \$671,821.10 FOR CONSTRUCTION OF THE 2013 STREET MAINTENANCE PROGRAM; AND DECLARING AN EMERGENCY to come up for second reading on June 5, 2013. Motion was seconded by Councilor Coleman and passed 6-0.**

Ordinance 1376 – **\*\*Councilor Ares moved to approve Ordinance 1376, AN ORDINANCE AUTHORIZING THE PURCHASE OF A CASE CX50B MINI EXCAVATOR FROM SONSRAY MACHINERY, LLC to come up for second reading on June 5, 2013. Motion was seconded by Councilor Hensley and passed 6-0.**

Ordinance 1378 – Mr. Lindsay said the wording for the two franchises was similar to other telecommunications franchises to establish a level playing field. The one change was the potential for a privilege tax. The proposed franchise agreements incorporated the current Code.

Keith Galitz, president of Canby Telcom, read an email he sent to Mr. Ellis regarding the franchise agreements. He was concerned about inequities compared to what Canby Telcom was obligated to pay, inadequacies of the City's current franchise agreements, and the City's need for revenue and support for the use of the City's streets and easements. He suggested charging a usage fee for access to the City's streets and right-of-ways. Approval of any new franchise should be held in abeyance until the City ordinance was reviewed and addressed. He explained how much the County and Wave were paying compared to what Canby Telcom was paying, which was substantially less. They were asking for a level playing field.

Roger Reif, Canby Telcom Attorney, agreed the City had a right to charge reasonable fees for access to the streets. He thought the City was trying to provide a level playing field. The ordinance needed to be reviewed and addressed before new franchises were approved. Technology was changing and court cases also changed things and he thought the franchises could wait a month while the fee structure was discussed.

Councilor Ares discussed the 7% privilege tax based on revenue for all providers.

David Soloos, Clackamas County Broadband Project Manager, said the County's franchise fees were based on the total revenues, which would be far greater than just the services Canby Telcom was paying for.

Mr. Galitz said Clackamas County was going to be in the streets without any payment until they received revenue. It was unfair that there was no fee being paid for entry into the streets. A minimum fee should be set for the County like the City of Oregon City did.

Mr. Soloos explained the County received a grant to build fiber optic cables around the County. The original plan was to bring fiber to connect anchor sites. They were not going to be a retail service provider. The County was planning to bring service to Baker Prairie School and the Providence Hospital Clinic. They were willing to pay 7% of their revenues. Their grant expired June 30. The agreement was identical to LS Networks and they would abide by any future changes to the Code.

Councilor Dale thought the ordinance should be in place before the franchises were awarded and that a minimum fee should be explored as well.

Councilor Hensley was also concerned about making changes to the agreements once they were approved.

There was discussion regarding the idea of a minimum fee and the unique situation with the County and Oregon City.

Jon Nicholson, Vice President/General Manager of tw telecom of oregon llc, said between the fee charged in the franchise agreement and the 7% privilege tax, it was a wash. The one that would hurt the most if they changed to the privilege tax was Canby Telcom because they were not paying on their total revenues. Tw telcom was willing to pay the 7% of total revenues. Most of

what Clackamas County was doing was providing nearly free service to clients other companies would normally sell service to.

Mr. Galitz said if Canby Telcom had to pay 7% of the total revenues they would lose their good customers and keep those that could barely pay. The new structure needed further discussion as it would mostly drive them out of business. It was not a good solution across all services.

Chair Ares thought the agreements had enough flexibility that if a different solution was found, they could be changed. It would not change the other franchises at this time. A Work Session would be held to explore all of the options.

**\*\*Councilor Ares moved to approve Ordinance 1378, AN ORDINANCE GRANTING TO CLACKAMAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OREGON, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY to come up for second reading on June 5, 2013. Motion was seconded by Councilor Coleman and passed 4-2 on first reading with Councilors Hensley and Dale opposed.**

**Ordinance 1381 – \*\*Councilor Ares moved to approve Ordinance 1381, AN ORDINANCE GRANTING TO TW TELECOM OF OREGON LLC (“TWTC”) A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY to come up for second reading on June 5, 2013. Motion was seconded by Councilor Coleman and passed 4-2 on first reading with Councilors Hensley and Dale opposed.**

**NEW BUSINESS:** Third Quarter Financial Update – Ms. Fish gave highlights on the third quarter financial analysis by fund. A supplemental budget would be done to pay back the interfund loan from the Transit fund to the Sewer fund.

**ADMINISTRATOR’S BUSINESS & STAFF REPORTS:** Mr. Ellis said at Monday night’s Planning Commission meeting the application for the new library was denied due to three reasons: lack of owner consent for the application, development standards were not satisfied for the building height, and variance criteria was not satisfied to reduce the landscaping. A land use attorney stated they could remand this back to the Planning Commission. Things had changed as information came in today from Canby Utility and staff had a meeting with the Library architects.

Mr. Lindsay explained the procedure for remanding the decision. It would be heard by the Planning Commission again on June 10.

**\*\*Councilor Ares moved to approve the Order Calling up and Remanding Planning Commission Decision DR 13-01/VAR 13-01. Motion was seconded by Councilor Coleman and passed 6-0.**

**CITIZEN INPUT:** None.



## **ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Adopted Resolution 1157.
3. Adopted Resolution 1158.
4. Ordinance 1374 will be brought back for a new public hearing and first reading on June 5, 2013.
5. Approved Ordinance 1375 to come up for second reading on June 5, 2013.
6. Approved Ordinance 1376 to come up for second reading on June 5, 2013.
7. Approved Ordinance 1378 to come up for second reading on June 5, 2013.
8. Approved Ordinance 1381 to come up for second reading on June 5, 2013.
9. Remanded Planning Commission Decision DR 13-01/VAR 13-01 back to the Planning Commission.

There was no Executive Session.

Mayor Hodson adjourned the Regular Meeting at 10:51 p.m.



Kimberly Scheafer, MMC  
City Recorder



Brian Hodson  
Mayor

Assisted with Preparation of Minutes - Susan Wood