

**CANBY CITY COUNCIL
CITY COUNCIL WORK SESSION
June 5, 2013**

Presiding: Mayor Brian Hodson

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

Staff Present: Greg Ellis, City Administrator; Joseph Lindsay, City Attorney; and Kim Scheafer, City Recorder.

Others Present: Matt Michel, Roger Reif, David Soloos, and Duke Dexter.

Mayor Hodson called the Work Session to order at 6:05 p.m. in the City Hall Conference Room.

The Council met in a Work Session to discuss a proposed street cutting ordinance and privilege tax ordinance.

Joe Lindsay, City Attorney, said the proposed street cutting ordinance would add a fee structure when new pavement was cut. The newer the pavement, the larger the fee would be. The penalty was up to \$2,000 a day. This would not be for emergency situations, but for planned projects.

Matt Michel, Canby Utility General Manager, explained his discussions with the former City Attorney regarding repair for water mains, and that Canby Utility would make an application but would not pay the fee as they operated with the full authority of the City.

There was discussion regarding memorializing that discussion and whether or not to assess situation by situation or setting a fee for all.

There was consensus for staff to negotiate with Canby Utility to create a Memorandum of Understanding rather than add an emergency clause for Canby Utility in the ordinance.

Mr. Lindsay then discussed the privilege tax ordinance. He suggested approaching it not for use of right-of-way, but as a utility license or registration fee and suggested charging 5% of the gross revenue for all types to create a level playing field.

There was discussion regarding the concern about over charging businesses and trying to keep a level playing field.

Roger Reif, representing Canby Telcom, thought franchise fees were important to protect the streets, but thought the privilege tax needed more work. He thought staff should come up with several options, such as a two-tiered system.

There was discussion regarding how to encapsulate all of the businesses through a privilege tax and keeping it fair for all, including wireless, and assessing those that were not currently assessed.

There was further discussion regarding the County's dark fiber project and their potential for more service and competition that did not create a level playing field.

David Soloos, Clackamas County Broadband Project Manager, stated Canby was the last City for the dark fiber grant, which expired in July and they were asking for an extension to September. The County was willing to pay the greatest franchise fee of 7% on the greatest base of every penny of revenue. He asked for support of the franchise.

Councilor Dale and Hensley said they would again vote no on this agreement.

Councilor Parker suggested tabling the issue at the Council's regular meeting for more discussion regarding franchises and the privilege tax and to wait for Councilor Ares' return.

Councilor Coleman did not think approving the second reading of the ordinance for a franchise with the County would be disruptive to modifications in the future. The County agreed to pay the maximum amount.

Mayor Hodson adjourned the Work Session at 7:28 p.m.

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
June 5, 2013**

Presiding: Mayor Brian Hodson

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

Staff Present: Greg Ellis, City Administrator; Joseph Lindsay, City Attorney; Renate Mengelberg, Economic Development Director; Jamie Stickel, Main Street Manager; and Kim Scheafer, City Recorder.

Others Present: Bev Doolittle, Roger Reif, Darren Monen, Lauri Bothwell, Doug Sprague, Carla Lane, Mary Schneider, Jon Nicholson, Bob Cornelius, Duke Dexter, Matt Michel, Bill Foster, David Soloos, Kevin O'Connor, and Jay Patel.

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

Canby Livability Day Proclamation – Mayor Hodson read a proclamation proclaiming the last Sunday in June as Canby Livability Day.

COMMUNICATIONS: None.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: Carla Lane, Canby resident, said she lived on SE 3rd Avenue and across the street there was an ongoing problem with car and home stereo noise. She had worked with Code Enforcement, but their hands were tied. She thought the Code needed to be changed for better enforcement.

Mayor Hodson had a conversation with the Code Enforcement Officer today regarding their

response to the complaints. He also discussed it with the City Administrator.

Mary Snyder, Canby resident, lived next to the individuals. The noise was continuous and every day. A new owner took over, but had not tried to solve the problem. Her neighbor was known to be a drug house and she had reported it. This was a triplex and she lived on one end.

Councilor Coleman thought the City should contact the owner and change the noise ordinance.

There was consensus to discuss the issue further in a work session. Mr. Ellis would work with the Police Chief and City Attorney for better enforcement.

MAYOR'S BUSINESS: Mayor Hodson said First Friday and Cash Mob was this Friday. 99E was currently being paved. Changes had been made to parking signs along First Avenue and the Main Street Manager would be forming a downtown committee to discuss parking. He asked when the first Traffic Safety Commission meeting would take place.

Mr. Ellis said it was yet to be scheduled, but would most likely be held during the day.

Mayor Hodson said the SW Neighborhood Association would be meeting on June 6 and the Riverside Neighborhood Association would be meeting on June 13. He asked what was the trigger for reconvening the Budget Committee.

Mr. Ellis said there was no trigger. The Budget Committee would not have to reconvene, but they may have to hold a second public hearing if there were changes up to 10%.

Mayor Hodson thanked the Canby American Legion for their Memorial Day service.

COUNCILOR COMMENTS & LIAISON REPORTS: Councilor Dale said Canby Utility had begun their budget process and the substation was progressing.

Councilor Coleman attended the Main Street meeting where façade improvements were discussed. He attended the Planning Commission meeting where the expansion of Pro Am Sports was approved. He also attended Public Works Week and Budget Committee meetings.

Councilor Hensley attended the Memorial Day service, Bridging Cultures Kick-Off, Canby Wine, Food, and Brew, and Town Hall hosted by Representative Bill Kennemer and Senator Alan Olson.

CONSENT AGENDA: **Councilor Dale moved to adopt the minutes of the May 15, 2013 City Council Regular Meeting. Motion was seconded by Councilor Hensley and passed 5-0.

PUBLIC HEARINGS: Mayor Hodson read the public hearing notice.

Noise Variance Application – Doug Sprague (3500 N Maple) – Kim Scheafer, City Recorder, said the applicant Doug Sprague was requesting a noise variance on July 19, 2013, to allow music at a wedding from 10 PM – 12 AM. The applicant completed the City's new application and the Police Chief had signed off on it.

Mayor Hodson opened the public hearing at 8:08 PM.

Public Testimony:

Applicant: Mr. Sprague said the event was 200-300 feet to the north of the houses nearby. He contacted the property owners and they had no objections. There would be 300-400 people in attendance.

Proponents: None.

Opponents: None.

Mayor Hodson closed the public hearing at 8:10 PM.

****Councilor Coleman moved to grant a Noise Variance to Doug Sprague on July 19, 2013, between the hours of 10 p.m. and 12 a.m. to allow them to provide music outside for a wedding on property located at 3500 N Maple. Motion was seconded by Councilor Dale and passed 5-0.**

Noise Variance Application – Harefest LLC (1190 SW First) – Ms. Scheafer said the applicant was requesting a noise variance on August 2, 2013, from 6 PM – 12:30 AM, August 3, 2013, from 6 PM – 1 AM, and August 16-17, 2013, from 8 PM – 2 AM. The variances were being requested for a music festival. Last summer similar noise variances were granted. No complaints were received at City Hall or the Police Department for last year's events.

Mayor Hodson opened the public hearing at 8:11 PM.

Public Testimony:

Applicant: Darren Monen said last year 1,300 people attended, the majority of which were from out of town.

Proponents: None.

Opponents: None.

Mayor Hodson closed the public hearing at 8:12 PM.

****Councilor Hensley moved to grant Noise Variances to Harefest LLC on August 2, 2013, from 6 p.m. – 12:30 a.m., August 3, 2013, from 6 p.m. – 1 a.m., and August 16-17, 2013, from 8 p.m. – 2 a.m. for a music festival located at 1190 SW First Avenue. Motion was seconded by Councilor Parker and passed 5-0.**

Transient Room Tax – Joe Lindsay, City Attorney, said this was a 9% City transient room tax. The hotel owner could keep 5% of what they collected for administrative purposes. The money would go towards tourism. He discussed how it would affect the camping at the Fairgrounds which was mostly during the Fair for the livestock exhibitors. He gave options the City could do in this situation.

Mr. Ellis said the 9% roughly estimated to an amount of \$18,000.

Mayor Hodson opened the public hearing at 8:24 PM.

Public Testimony:

Proponents: None.

Opponents: Laurie Bothwell, Executive Director Clackamas County Event Center, explained the hotel/motel tax which the Fairgrounds started to charge on January 1, 2013. It had not been imposed because they had signed agreements two or three years out that needed to be changed and they did not have the facilities that RV parks had. Until they really became a hotel or RV Park they did not want to be included as the impact would be great. Other jurisdictions had a Fairground Zone for those who stayed with their livestock during the fair.

Jay Patel, Canby Country Inn owner, questioned the 9% and thought it should be less. They were struggling to recover from the recession. He thought it should be put on hold until the economy improved.

Mayor Hodson closed the public hearing at 8:35 PM.

Councilor Dale thought a Fairground Zone should be explored. He did not want to create a disincentive for people coming to Canby. He was not in support of the tax as it was proposed.

Councilor Hensley thought it should be put on hold based on how it could affect the owner of the hotel and tourists. The economy did not support the tax.

Councilor Coleman thought in this economy they should be building the infrastructure of places tourists could come and it was not done by taxing them.

Additional Fee for Cutting Newer Pavement and Penalty Fee – Mr. Lindsay said a fee would be paid upfront in the permitting process when someone wanted to cut into new pavement. This would discourage cutting up of new pavement. It would be \$5,000 for first year pavement, \$2,000 for second year pavement, and \$1,000 for third year pavement. The purpose was to protect the streets. The amendment would have a punitive effect if the street was not put back the way it should, which could be up to \$2,000.

Mayor Hodson opened the public hearing at 8:46 PM.

Public Testimony:

Proponents: Roger Reif, representing Canby Telcom, asked if there was need for a curb cut for repair, would it be exempt. He hoped the repair and maintenance of existing facilities was not included.

Mr. Lindsay said they were going to pursue a Memorandum of Understanding with Canby Utility to make sure regulations were followed and for whether certain fees would apply. A similar conversation could take place with Canby Telcom.

Opponents: Darren Monen thought this would be a discouragement to people coming to the city. It was expensive to build and live in Canby. The City did not need another fee for entering a road. He suggested the roads be repaired through bonds.

Doug Sprague said the ordinance was too broad to enforce with fairness. The reasons for getting into the streets were varied and the ordinance could create more problems than it would solve. Bonds were a reasonable way to bring accountability.

Mayor Hodson closed the public hearing at 8:55 PM.

Mr. Ellis gave the example of Second Avenue where the repair was not done correctly. Bonds were a way to do it, but failures often did not show up in a year before the bond was over. Did they want to sacrifice the integrity of the streets that would cost more down the road.

Councilor Coleman suggested a conversation between developers and the City to come up with some solutions.

RESOLUTIONS & ORDINANCES: Resolution 1159 – **Councilor Dale moved to adopt Resolution 1159, A RESOLUTION EXTENDING THE CITY OF CANBY'S WORKERS' COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF CANBY AND REPEALING RESOLUTION 1129. Motion was seconded by Councilor Parker and passed 5-0.

Ordinance 1374 – **Councilor Hensley moved to approve Ordinance 1374, AN ORDINANCE ADDING CHAPTER 3.50 TO THE CANBY MUNICIPAL CODE THEREBY ESTABLISHING A TRANSIENT ROOM TAX to come up for second reading on June 19, 2013. Motion was seconded by Councilor Coleman and failed 5-0 with all opposed.

Ordinance 1375 – **Councilor Dale moved to adopt 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. Motion was seconded by Councilor Hensley and passed 5-0 by roll call vote.

Ordinance 1376 – **Councilor Hensley moved to adopt Ordinance 1376, AN ORDINANCE AUTHORIZING THE PURCHASE OF A CASE CX50B MINI EXCAVATOR FROM SONSRAY MACHINERY, LLC. Motion was seconded by Councilor Dale and passed 5-0 by roll call vote.

Ordinance 1377 – Mr. Lindsay said the contract was the same as last year's contract.

****Councilor Dale moved to approve Ordinance 1377, AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO AN AMENDED CONTRACT WITH KINTECHNOLOGY INCORPORATED TO CONTINUE TO PROVIDE COMPUTER TECHNICAL SERVICES FOR THE CITY; AND DECLARING AN EMERGENCY to come up for second reading on June 19, 2013. Motion was seconded by Councilor Hensley.**

Councilor Dale said the prices were normal for the industry.

Motion passed 5-0.

Ordinance 1378 – Councilor Coleman thought the franchise could be approved as the County had agreed to pay the maximum and were open to the ongoing research to level the playing field.

****Councilor Coleman moved to adopt 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. Motion was seconded by Councilor Parker and failed 3-2 by roll call vote with Councilors Parker and Coleman in favor.**

Ordinance 1379 – Mr. Ellis explained this would be for playground equipment for Northwood Park. The funding came from the Parks Development Fund.

****Councilor Hensley moved to approve Ordinance 1379, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO AWARD A CONTRACT WITH C.R. WOODS TRUCKING, INC. IN THE AMOUNT OF \$229,800.50 FOR CONSTRUCTION OF THE NORTHWOOD PARK PROJECT; AND DECLARING AN EMERGENCY to come up for second reading on June 19, 2013. Motion was seconded by Councilor Coleman and passed 5-0.**

Ordinance 1380 – ****Councilor Dale moved to approve Ordinance 1380, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 12 CREATING SECTION 12.08.065 AN ADDITIONAL FEE FOR CUTTING NEWER PAVEMENT AND AMENDING SECTION 12.08.200 to come up for second reading on June 19, 2013. Motion was seconded by Councilor Parker and failed 3-2 with Councilors Parker and Dale in favor.**

Ordinance 1381 – ****Councilor Hensley moved to adopt 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. Motion was seconded by Councilor Parker and failed 3-2 by roll call vote with Councilors Coleman and Parker in favor.**

Ordinance 1382 – ****Councilor Parker moved to approved Ordinance 1382, AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH HEARD FARMS FOR WASTEWATER SLUDGE REMOVAL; AND DECLARING AN EMERGENCY to come up for second reading on June 19, 2013. Motion seconded by Councilor Hensley.**

****Councilor Dale moved to amend the motion to include Paragraph 10 in Exhibit A that stated ownership of the sludge would transfer to Heard Farms upon pickup. The amendment was seconded by Councilor Hensley and passed 5-0.**

Main Motion to approve Ordinance 1382 as amended passed 5-0.

NEW BUSINESS: None.

CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS: None.

CITIZEN INPUT: None.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Adopted Resolution 1159.
3. Ordinance 1374 failed.
4. Adopted Ordinance 1375.
5. Adopted Ordinance 1376.
6. Approved Ordinance 1377 to come up for second reading on June 19, 2013.
7. Ordinance 1378 failed.
8. Approved Ordinance 1379 to come up for second reading on June 19, 2013.
9. Ordinance 1380 failed.
10. Ordinance 1381 failed.
11. Approved Ordinance 1382 to come up for second reading on June 19, 2013.

Mayor Hodson read the Executive Session Statement and recessed the regular meeting at 9:36 p.m.

****Councilor Dale moved to go into Executive Session pursuant to ORS 192.660(2)(h) Pending Litigation. Motion was seconded by Councilor Hensley and passed 5-0.**

Mayor Hodson reconvened the Regular Meeting at 10:10 p.m. and immediately adjourned.



Kimberly Scheafer, MMC
City Recorder



Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood