

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
January 2, 2008**

**Presiding:** Mayor Melody Thompson

**Council Present:** Paul Carlson, Teresa Blackwell, Wayne Oliver, Walt Daniels, Randy Carson and Tony Helbling.

**Staff Present:** Mark Adcock, City Administrator; John Kelley, City Attorney; John Williams, Community Development & Planning Director; Dwayne Barnes, Public Works Manager; and Kim Scheafer City Recorder Pro-Tem.

**Others Present:** Jim Brown, Greg Perez, Paul Romain, Danelle Romain, Lee Weigand, Bev Doolittle, Jarret Hamstreet, Chris Taylor, Kathy Hass, Pam Powell, Rick Beko, Lee Wiegand, Janice Rugni, Onni Budni, Erle Grove and Jeff Peters.

**CALL TO ORDER:** Mayor Thompson called the Regular Meeting to order at 7:34 p.m. followed by the opening ceremonies.

Appreciation Presentation to Retiring Planning Commission Members – Mayor Thompson said Jim Brown had been on the Planning Commission for ten years. She spoke about some of his accomplishments over that time. She presented Mr. Brown with a plaque as appreciation for his years of service on the Planning Commission.

Councilor Helbling said there were a lot of things built in town over the last ten years and they looked good because of Mr. Brown's input and guidance on the Planning Commission. Mr. Brown had been a mentor to him over the last five years.

Mr. Brown said it had been a joy to work with staff, administrators, and Council. He thought the Comprehensive Plan needed to be a consensus document. It was created 30 years ago. The overall goals of the plan may not be exactly what members of the community wanted to see.

**COMMUNICATIONS:** None.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** Mayor Thompson said the fuel tax issue had been decided and if people wanted to speak, they could do so under citizen input. If they wanted to speak regarding the street maintenance fee, they could do so when it came up on the agenda and she would reopen the public testimony.

Bev Doolittle, Chamber of Commerce Executive Director, said that the Mayor would be giving the "State of the City" address at the Chamber Luncheon on Tuesday, January 8.

Rick Beko of Beko's Welding said the street fee and fuel tax would benefit his business. That being said, he wanted to know where the money was going and how it was spent. The City already received money for road projects. All of the projects the City had done in years past

came from OITA money or the State Highway fund. They had a small business since 1983 and they had to learn to use their money wisely. He wanted to make sure they were doing the same.

Onni Bugni said he owned the property on the corner of Walnut and Township. The City had not acquired his property yet and it was not put in the bid. In order to put the road in, they would have to take some utilities out of his property. This had not been taken into account in the bid. No one would give him answers.

Mayor Thompson asked if it was a real estate negotiation.

John Kelley, City Attorney, said the money that was going to be paid to the contractor for putting the street in was not related to the money to be paid to Mr. Bugni for the right-of-way. They did not publicly bid to buy the property.

Mr. Bugni said when the City put in the road it would take a third of his property which took out two septic systems, a watering system, water lines, and electrical. All of it would need to be dug up right away to put in the road. No one said how they would take care of that.

Mr. Kelley said Right-of-Way Associates had been hired by the City to purchase the property. They would take into consideration those factors when making an offer on the property. He had just become involved in it and he would be talking with Mr. Bugni's lawyer.

Mr. Bugni said his understanding was they would be starting on it right away.

Mr. Kelley said they could not start on the project until they acquired the property from him.

John Williams, Community Development & Planning Director, said the first stage of the project was getting the utilities along Township Road to American Steel's construction site. His property was not the first stage of the project. The utilities were on the far side of the road. Whatever had to be done on his property would be added to the contractor's contract.

Mr. Bugni said everyone thought the utilities were on his side of the property.

Mr. Williams said they were not going to dig utilities on his property. All the details would be negotiated with him and there would be an agreement about exactly what would be done and when.

Mr. Kelley said that he would contact Mr. Bugni's attorney, Aaron Bell.

Paul Romain from the Oregon Petroleum Association said he was there to request again that the Council refer the measure to the voters instead of passing it outright. It would go to the vote of the people either through their efforts or the Council's effort as a referral. The Petroleum Association would have to get 780 valid signatures. The Street Maintenance Fee affected their people as it was also a tax on them so they would put both measures on a referral. If the Council sent the fuel tax to the voters, the Petroleum Association would have no incentive to refer the Street Maintenance Fee. This would be voted on. They were trying their best to get the City money from the State. It would be a significant phased in gas tax increase. The amount that

would go to local jurisdictions would be negotiated; it would not be the current formula. The more local taxes that were on the ballot, the less chance they had to get the Statewide increase. They had committed to refer every single local tax that came out.

Greg Perez said he understood they could not wait and bank on money in the future, but they were banking on \$178,000 in fuel tax. If it failed, they were going to be short \$178,000 compared to their road maintenance of \$375,000. They had a 20 year plan and there would be roads worse off than they were before, at the end of it. Who wanted to jump on board this plan that 20 years later the roads would be worse?

Mr. Perez said at the December 5 City Council meeting a comment had been made that the police department had moved the gangs to Wilsonville. He thought that was unprofessional and they should take a step back and be careful what they said and how they spoke to people. He said the Council did a superb job, but he wanted them to be careful on what they said on matters like that.

**MAYOR'S BUSINESS:** None.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Daniels said the Historical Society had a fundraiser to sell a book on Elsie Cutsforth's life and experiences in Canby.

Councilor Carson said he would be attending a meeting called Street Smart, a task force with Clackamas County regarding a possible measure for a County road fee on the May ballot.

Councilor Helbling said there were still two openings on the Planning Commission and he encouraged citizens to apply. Canby Business Development was working on the Downtown Design Plan. The Chamber of Commerce would be working on the sign ordinance.

**CONSENT AGENDA: \*\*Councilor Daniels moved to approve the minutes of the December 5, 2007 City Council Regular Meeting; a new Wholesale Malt Beverage and Wine Liquor License Application for Pacific Rim Commodities Group; and Amended Attachment "A" to the Interagency Agreement with the Canby Swim Club. Motion was seconded by Councilor Carson and passed 6-0.**

## **RESOLUTIONS & ORDINANCES:**

Resolution 969 - Mr. Kelley said the Council had directed him to work with the Canby School District on an Intergovernmental Agreement that allowed the City to collect the School Construction Excise Tax. The School District passed a resolution at their last meeting on December 13 in which they said they wanted to enact the School Construction Excise Tax on new construction in Canby and authorized an Intergovernmental Agreement to do so. The Excise Tax was created in the last legislative session for the purpose of establishing the tax on new construction similar to SDC's, but this fund would be dedicated to building new schools or additions. The City would collect the money from new construction applicants.

Councilor Carlson asked what about people outside the City limits. Mr. Kelley said the County would collect it.

Councilor Carlson said if this failed that night, they had other avenues for them to collect it.

Mr. Kelley said the County would only collect for new construction in the County, not within the City.

Councilor Carlson asked what would happen if it didn't pass.

Mr. Kelley said they could go through a local service district to collect the fee, the ESD.

Councilor Carson said if they voted it down staff would still have to be involved as they would have to give the ESD the information on new construction. They would be reimbursed 1% through the Intergovernmental Agreement.

Councilor Blackwell said it was not a City tax but the City was collecting the money for the School District.

**\*\*Councilor Helbling moved to adopt Resolution 969, A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CANBY (CITY) AND CANBY SCHOOL DISTRICT NO. 86 (DISTRICT) FOR THE PURPOSE OF COLLECTING A CONSTRUCTION EXCISE TAX (CET) ON BEHALF OF THE DISTRICT ON NEW CONSTRUCTION IN THE CITY OF CANBY PURSUANT TO OREGON LAWS 2007 CHAPTER 829. Motion was seconded by Councilor Carson and passed 6-0.**

Resolution 970 – Mr. Williams said several roads around Canby were under the jurisdiction of Clackamas County. When they started developments that were in the City but on the County roads, it was difficult as the developers had two sets of standards, Clackamas County standards were rural and the City's standards were urban and it was complicated with permitting. The City had an IGA with the County that set up a system to transfer roads to City jurisdiction. They met with County staff about two sections that had been problematic. One was the piece of Territorial Road between Birch and Holly. They agreed that the appropriate transfer from the County would be \$9,625 to cover the improvements that were not done on that section. The other was the section of Township Road between the railroad tracks east of Mulino Rd. For the purposes of the loan, the City needed to be the owner of the roadway to qualify for the loan source. They were proposing no transfer of funds in that case because development would be done over time by the property owners. The road section currently met the standards. When it was widened under their standards more work would be needed.

**\*\*Councilor Carson moved to adopt Resolution 970, A RESOLUTION REQUESTING CLACKAMAS COUNTY TO SURRENDER JURISDICTION OF APPROXIMATELY 0.27 MILES OF NW TERRITORIAL ROAD AND APPROXIMATELY 0.48 MILES OF S. TOWNSHIP ROAD TO THE CITY OF CANBY. Motion was seconded by Councilor Blackwell.**

Councilor Daniels thanked Mr. Williams for working with the County.

**Motion passed 6-0.**

Ordinance 1261 - **\*\*Councilor Helbling moved to adopt Ordinance 1261, AN ORDINANCE CREATING AND IMPOSING A TAX ON MOTOR VEHICLE FUEL DEALERS; PROVIDING FOR ENFORCEMENT, ADMINISTRATION, AND COLLECTION OF THE TAX; AND AMENDING THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.40, "MOTOR VEHICLE FUEL TAX". Motion was seconded by Councilor Daniels and passed 4-3 by roll call vote with Councilors Carlson, Blackwell, and Carson opposed and Mayor Thompson voting in favor.**

Ordinance 1262 - Mark Adcock, City Administrator, reviewed the changes in the ordinance that the Council had requested be made.

Mayor Thompson opened the public hearing for public testimony at 8:25 p.m.

Bev Doolittle said they did a survey of their members on the issue. The results of the survey were 63% opposed, 31% in favor, and 6% taking no position. Two years ago they did the same survey, and the results were almost identical. The business community was requesting that the fee be taken to the voters. She gave them a copy of the comments the members submitted.

Councilor Helbing asked how many people had responded.

Ms. Doolittle said 80 had responded two years ago and this time 42 responded. They had 346 members.

Lee Weigand said his concern was a fee to the churches. He said that according to minutes from the task force in reference to the difference between a fee and a tax, a fee had to apply to all organizations, apply evenly, and they could not have exemptions. Was it legally possible to exempt churches from this fee.

Mr. Kelley said he did not know without researching it. As a general rule they wanted to impose the fees across the board equally.

Mr. Weigand said if it was possible, he would not want to impose the fee on churches. If it was not possible, he thought they should vote no because of the first amendment, prohibiting free exercise of churches.

Greg Perez said that one of the councilors stated on December 5 that they could not wait until 2009 for a State wide gas tax since they had waited before and they didn't know if they would get it or not. With the proposed funding, they might not get the money they needed. He asked how much money they received from the gas tax and how it was used.

Paul Romain asked about the difference between a convenience market with gas pump and a gasoline service station with convenience market. He was trying to figure out the fairness of it, because it punished the local businesses. Every time you put something like this out it hurt the local businesses. The more they could spread it over a larger base the better off they were. They were asking not to double or triple tax the people who owned service stations and lived in their community.

Jeff Peters said regarding churches being legally exempt and Mr. Kelley was not sure, he thought before any final decision be made they would like to know what the legal position was.

Mayor Thompson closed the public hearing at 8:35 p.m.

Councilor Carson asked how they would make changes if they wanted to exempt someone or change the formula.

Mr. Kelley said they would amend the Ordinance.

Councilor Carson asked if they could make an amendment later to exempt churches, but if a business was confused about being a convenience market with a gas pump or gasoline service station with convenience market, that would be a staff decision.

Mr. Kelley said that was correct, although it could potentially come to the Council.

Councilor Daniels said they could pass the Ordinance while Mr. Kelley did his research and then amend the Ordinance if they decided to at a later date.

Councilor Carson asked if they wanted staff to give a review of the process in 12 months.

Councilor Carlson said with the two ordinances, what would happen if one ordinance passed and the other didn't. The fuel tax would not fund what was needed. It had been set up to use both ways of gathering funds in order to capture who used the services.

Mayor Thompson said the fuel tax would cost the average driver \$1.50 per month based on 12,000 miles driven annually and if they bought all their gas in Canby.

Councilor Daniels said they had a task force that worked a long time on this and was a cross section of the community that came up with this plan.

**\*\*Councilor Helbling moved to approve Ordinance 1262, AN ORDINANCE AMENDING THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.30, "STREET MAINTENANCE PROGRAM," AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE to come up for second reading on January 16, 2008. Motion was seconded by Councilor Daniels.**

Mayor Thompson said there was Council consensus to have staff review and give a status report to the Council in a year. There was also consensus to have the City Attorney look at the legality of waiving the fee for churches.

**Motion passed 4-2 with Councilors Carlson and Blackwell opposed.**

Ordinance 1264 – Councilor Carson asked where the money was coming from.

Mr. Williams said it was a transportation system development project and they had enough money in the fund to carry out the engineering and the construction. This would cost about a million dollars to reconstruct.

**\*\*Councilor Daniels moved to approve Ordinance 1264, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES ON THE RECONSTRUCTION OF APPROXIMATELY 2,500 LINEAL FEET OF KNIGHTS BRIDGE ROAD to come up for second reading on January 16, 2008. Motion was seconded by Councilor Carson and passed 6-0.**

Ordinance 1265 – Mr. Williams said the reason for the timeline was the need to extend the utility lines. Later when they secured the right-of-way, they would move forward with the construction. They received 23 bids on the project and received an excellent price. The project was funded by Urban Renewal dollars.

**\*\*Councilor Carson moved to approve Ordinance 1265, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH PARKER NORTHWEST PAVING COMPANY FOR CONSTRUCTION OF SEQUOIA PARKWAY STAGES 5 & 6 AND TOWNSHIP ROAD STREET IMPROVEMENTS; AND DECLARING AN EMERGENCY to come up for second reading on January 16, 2008. Motion was seconded by Councilor Daniels and passed 6-0.**

Ordinance 1266 - **\*\*Councilor Daniels moved to approve Ordinance 1266, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY SAND & GRAVEL/SOUTH COUNTY ASPHALT FOR SUPPLYING ROCK PRODUCT; AND DECLARING AN EMERGENCY to come up for second reading on January 16, 2008. Motion was seconded by Councilor Carson and passed 6-0.**

Ordinance 1268 - **\*\*Councilor Daniels moved to approve Ordinance 1268, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY SAND & GRAVEL/SOUTH COUNTY ASPHALT FOR SUPPLYING HOT MIX ASPHALTIC CONCRETE MATERIALS; AND DECLARING AN EMERGENCY to come up for second reading on January 16, 2008. Motion was seconded by Councilor Carson and passed 6-0.**

Ordinance 1269 – Dwayne Barnes, Public Works Manager, said the repair was to replace a screw system with a conveyor system. It was a better and simpler system.

**\*\*Councilor Carlson moved to approve Ordinance 1269, AN ORDINANCE RATIFYING A CONTRACT WITH PETERSON EQUIPMENT SERVICES LLC OF CANBY, OREGON FOR THE PURCHASE OF A MIXING SCREW CONVEYOR FOR THE WASTE WATER TREATMENT FACILITY OF THE CITY; AND DECLARING AN EMERGENCY to come up for second reading on January 16, 2008. Motion was seconded by Councilor Blackwell and passed 6-0.**

**NEW BUSINESS: Creation of No Parking Area on the Easterly Side of N. Redwood Street Beginning at the Northerly Side of NE 11<sup>th</sup> Avenue and Extending 100 Feet North** – Councilor Carson asked if the 100 feet of sight line distance would change when the street right of way was built out on the east side. They had two or three parking spaces on 30 to 40 feet on a corner radius, was it because of the higher speeds.

Mr. Barnes said it was a standard sight distance that he received from Curran-McLeod. The street had a strange off set to it. It was desperately needed.

Mr. Adcock said when they brought recommendations to the Council they were based on accepted traffic engineering standards.

**\*\*Councilor Blackwell moved to authorize the installation of signage and yellow curb paint to create a no parking area on the easterly side of North Redwood street beginning at the northerly side of the intersection with 11<sup>th</sup> Avenue and extending 100 feet north. Motion was seconded by Councilor Carlson and passed 6-0.**

**Discussion Regarding Failure of Measure 3-271 Adopting a Revised Home Rule Charter –**

**\*\*Councilor Helbling moved to approve payment of \$2,648.77 in election costs to be paid from the contingency fund. Motion was seconded by Councilor Blackwell and passed 6-0.**

Mayor Thompson said they needed to decide if they wanted to pursue charter changes and, if they did, if they wanted to keep them in the form that they were or make changes.

Councilor Daniels said he was in favor of going back to the voters in the next election. He thought maybe they needed to do some more education and explain why they were doing some of the things especially those things that would bring them into compliance with State law.

Councilor Carlson said the charter needed to be cleaned up, especially housekeeping issues.

Councilor Blackwell agreed.

Councilor Helbling said the change of bringing contracts to the Council from \$15,000 to \$50,000, if they looked at the raw numbers it looked like a big jump. They were keeping pace with the rate of inflation, and he thought they should change the wording so that the \$15,000 be adjusted for inflation to net present value. It told people they were not spending any more money, they were spending the same amount they were in 1983 when the charter was last written.

Councilor Carson said there might have been a misconception that it would allow staff a free checkbook of \$50,000. Most of the things in the general budget were budgeted items.

Mr. Adcock said the expenditures had already been scrutinized within the framework of the budget. They wanted to change the amount so it would be more streamlined and more convenient in terms of procurement. They would work on the wording.

Councilor Helbling thought it should go on the May ballot with a concerted effort on the Council's part to communicate to the citizenry about the importance of changing the charter.

Mayor Thompson said there was direction that the Council wanted to go out in May.

Mr. Kelley asked about clarification on changing the fee figure.

Councilor Helbling said they could do it two ways, change the charter so it was the \$15,000 from 1983 adjusted for the rate of inflation, but that could be construed as hiding the value. The other way was to leave it as \$50,000, but in the explanation to the citizenry, explain to them what the net present value of \$15,000 was today.

Mayor Thompson said the reality was virtually everything was in the budget. She asked if they wanted to pursue an inflation tied relationship, \$15,000 adjusted for inflation, and put that language in the charter or would they want to do the \$50,000 and do a better sales job.

Council consensus was to keep it at \$50,000 and explain it better.

Mayor Thompson said they also needed to explain better the change of a few employees from supervision of the Council to the City Administrator. They were classified as officers, which says they are answerable to the Council. In reality, these people were reporting to the City Administrator. That was the way it worked in most cities that had a charter that was not 25 years old.

Mr. Kelley said another thing that happened was the charter amendment was on the back page of the ballot and he missed it. There were 420 under votes, so he thought some people did not know it was there and did not vote on it.

**CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS:** None.

**CITIZEN INPUT:** None.

**ACTION REVIEW:**

1. Approved the consent agenda.
2. Adopted Resolution 969.
3. Adopted Resolution 970.
4. Adopted Ordinance 1261 on second reading.
5. Approved Ordinance 1262 to come up for second reading on January 16, 2008.
6. Approved Ordinance 1264 to come up for second reading on January 16, 2008.
7. Approved Ordinance 1265 to come up for second reading on January 16, 2008.
8. Approved Ordinance 1266 to come up for second reading on January 16, 2008.
9. Approved Ordinance 1268 to come up for second reading on January 16, 2008.
10. Approved Ordinance 1269 to come up for second reading on January 16, 2008.
11. Creation of a no parking area on N. Redwood Street.

12. Approved payment of \$2,648.77 from the contingency fund to pay for the November ballot measure.

Mr. Kelley said the motor vehicle fuel tax went into effect 30 days from the date adopted. The implementation of the gas tax and street maintenance fee would be July 1.

There was no Executive Session.

Mayor Thompson adjourned the Regular Meeting at 9:15 p.m.



Kimberly Scheafer, CMC  
City Recorder Pro Tem



Melody Thompson  
Mayor

Assisted with preparation of minutes – Susan Wood