CANBY CITY COUNCIL
SPECIAL SESSION
NOVEMBER 29, 2000

Mayor Scott Taylor presiding. Council members present Walt Daniels, Barry Lucas, Roger Harris, Terry Prince, and Shirley Strong.

Also present: City Administrator Mark Adcock, City Attorney John Kelley, Community Development Director Jerry Pineau, Planning Director John Williams, Councilors-elect Patrick Johnson and Teresa Blackwell, David Howell, Steven Amick, Buzz Weygandt, Ron Yarbrough, Dan Mowry, Craig Lewelling, and Marty Moretty.

Mayor Taylor called the special session to order at 7:30 p.m., followed by the opening ceremonies.

CITIZEN INPUT ON NON-AGENDA ITEMS:

Dan Mowry spoke about the excessive cost of the M & M towing charges after his son was involved in an accident and his truck needed to be towed. It was towed to their Canby lot from Central Point Road and S. End Road approximately 5-6 miles. The truck was retrieved the next day at a cost of $585.00. Mr. Mowry compared that cost with Whitman's Towing and Bud's Towing and a company in Wilsonville and found their costs to be in the $350-$359 range. He felt that the bill reflected double charges.

Attorney John Kelley explained that the City does not have a contract with M & M although the City does use their company. Towing has been an issue for a number of years; at one time a rotation system was used but it was hard to get consistent service when companies were only called every five or six tows. The Police Department then went to utilizing one service primarily to get better response time for police tows.

Councilor Lucas asked Mr. Mowry to clarify the charges on his bill.

Mr. Mowry stated that the bill showed charges for two men when there had been only one man at the scene; double billing for the hook-up, and excessive charges for wenching and pulling out of a ditch when there had been none. His frustration lies in the fact that there is nothing legally he can do because there are no restrictions on what the towing company can charge.

Attorney Kelley felt that the charges could be looked into and comparable study done if the Council requested. In the past, Mr. Whitman did not wish to do our towing and Mr. Kelley was not sure why this company was chosen over the others, although this company is local.

Mayor Taylor expressed that they were probably under the impression that costs were relatively the same for towing services regardless of which company.

Lt. Pagano had expressed to Mr. Mowry that he would be glad to offer any help since he was there at the time of the accident. Mr. Mowry also stated that he had learned that if an accident is blocking the road so traffic cannot pass, the purpose is to clear the accident as quickly as possible. But a citizen does have the right to tell officers who can or cannot tow his personal vehicle. Mr. Mowry wants everyone to be aware of the citizen's right to determine who tows his vehicle.

Attorney John Kelley verified that Mr. Mowry would contact Lt. Pagano.

Councilor Lucas remembered that several years ago the problem had been that the cars were being towed too far away and hard for people to get the cars and bring them back to Canby and had wanted to keep it local, if possible, but that it certainly needed to be competitive.

City Administrator Adcock assured the Council that he would get information back to them and double check with Lt. Pagano on Mr. Mowry's behalf.

Mayor Taylor let the Council know that prior to the meeting tonight, he had signed a twenty year lease on the parking lot with Union Pacific at a cost of $500.

UNFINISHED BUSINESS: Ballot Initiative Measure 7 Discussion -

Mayor Taylor stated that they had asked for a special meeting to primarily deal with Measure 7 which goes into effect December 7, 2000. After attending the League of Oregon Cities Conference and reviewing other options, Council felt it was in the best interest to have a process in place for those who felt they had a claim.

City Attorney John Kelley gave some history of what staff had done to prepare the ordinance before the Council tonight. At the League of Oregon Cities Conference, there was much talk about Measure 7, what is the implication, what does it mean, and how to break it out. The League of Oregon Cities initially said they would get together with some of their member city lawyers and create a model ordinance to be ready for cities. The League executive body decided that there were too many issues with Measure 7 and too many conflicting opinions by all the attorneys who had looked at it to create a model ordinance. Instead, they said they would provide sample ordinances, as they become available, from any jurisdiction that send them samples of what they are going to enact. After compiling sample ordinances that have been sent or obtained from web sites including Gresham, Eugene, Gladstone, Milton-Freewater, Albany, Multnomah County, Pendleton, Cottage Grove, Newport, Ashland and West Linn, Mr. Kelley and Planning Director John Williams came up with Ordinance 1063 that is before them tonight. The ordinance that was sent out in last week's packet has been altered slightly and Mr. Williams and Mr. Kelley will walk the Council through the changes.

Mayor Taylor wanted to advise everyone that the Council is working under a time deadline and at this time is trying to get a process on the books before that deadline. As more experience is realized, the future Council will have the opportunity to go back and refine, review and adjust the ordinance.

Attorney Kelley also reminded the Council that it is possible that the ordinance may never be utilized due to pending litigation. The first lawsuit was filed in Marion County Circuit Court on November 24, 2000 by Audrey McCall, widow of former Governor Tom McCall, Hector McPherson, the author of SB 100, Michael Swaim, Mayor of Salem and James Lewis, Mayor of Jacksonville. Their claim is based on the inadequacy of Measure 7 with a remedy of a judicial declaration that Ballot Measure 7 was not properly enacted and is therefore invalid in its entirety. There have also been press releases from the cities of Eugene and Corvallis. Eugene has indicated that their city will be filing its own lawsuit challenging the validity of the ballot measure primarily because the measure was defeated in their area and the taxpayers would support their action. The measure also failed in both Benton County and Corvallis, so at this time the City of Corvallis plans to join in a lawsuit brought by the League of Oregon Cities. Although there has been talk that the League plans to do this, at this time, Mr. Kelley has not seen anything other than what was mentioned in the press release. The Executive Director of the League, Dick Townsend, has been quoted as saying that a lawsuit would likely be filed by next week and participation in the lawsuit would be voluntary but not mandatory by its member cities. There is also talk that the 1000 Friends of Oregon is also going to be bringing its own lawsuit.

For any further information, there is a League website available with excellent resources at www.orlocalgov.org. Planning Commissioner Corey Park is a litigation attorney involved through his law firm with this issue and was able to share some of his thoughts after reviewing the first draft of the ordinance.

In many of the sample ordinances, there were issues of who reviews the completeness of the application; how the completeness date is determined; whether there should be an application fee; how much the fee should be and should it be refunded if the claim is valid; whether it should be noticed and what the distance of the notice should be; whether there should be public notice and should it be the newspaper; and who initially reviews the claim whether it be the city administrator, a hearings panel, the Planning Commission, or Community Development Director. There is also the question of whether it is an on-the-record review of a prior hearing before the Council or if it should be an open evidentiary hearing in front of the City Council where all issues are discussed following recommendation from staff.

In the newly revised version of Ordinance 1063, Section 1.20.070 (B) items 1-9 were added which innumerate findings that the Council must make in order to deny a claim. These are requirements that the statute imposes upon a claimant under Measure 7.

Section 1.20.070 (E) was added in its entirety and in Section 1.20.080 (A), the word "relevant conditions" was changed to "reasonable conditions". In Section 1.20.090 (A) "or to avoid potential litigation" was added. In Section 1.20.100, the last two paragraphs were stricken on the advise of Corey Parks to leave the language more simple and concise.

Mayor Taylor wanted the group to walk through the document and raise questions as they went along.

On page 3, the Mayor raised a concern on Section 1.20.050 (B) because it appears that if the

applicant refuses to correct deficiencies, the application shall be deemed complete.

John Kelley admitted that this issue is a very contentious point in all the sample ordinances. Most of the lawyers interpreted that the Measure states that the claim must be paid within 90 days of the submittal of an application, whether or not a "completed" application was filed.

Mayor Taylor read under the definitions in the first two pages of our ordinance, that we were establishing a process so that when that 90 days went into effect, the information necessary by the claimant was all there at the time of submittal. Otherwise, an incomplete application is submitted and the clock is running without all the requested information.

Attorney Kelley said that the concern is that if we were to say to a claimant, who had not submitted an application according to our standards, that we did not consider them to have filed a claim until properly submitted with all necessary information, and we lose, we most likely will have gone past the 90 day period and would set ourselves up for attorney fees and other costs incurred in arguing that point.

For a scenario, the Mayor proposed that a citizen comes in with what he considers to be a legitimate complaint but hasn't had his property appraised. In Section 1.20.050 (A) that would be considered an incomplete application but the citizen doesn't care, so under 1.20.050 (B) the clock is running. Now, the citizen comes before the Council as the hearing body and the Council at that point would be able to say that without the appraisal, the claim is without merit. Under this scenario and with the way the wording is now stated, the hearing body would not be able to make a decision on the citizen's behalf because the application is deemed incomplete. Then, when this would get appealed to the court, our argument would be based on why the application was inappropriate rather than the time line argument which is set in the terms of the measure itself. So, then it would become apparent that the only reason a person would do (A) is to be able to have a better chance of having a successful approval.

Planning Director John Williams noted that Measure 7 does not even mention a process for completion. This is just an ordinance trying to create some sort of process to implement the measure. He questioned whether there was the ability to deny an application based on not having enough information and if something could be added to criteria No.3 of Section 1.20.070(B) such as "not timely filed"? Although it wouldn't help resolve what our standing would be in the courts, it would offer some coverage.

Councilor Prince followed up the Mayor's concern and read from a *Gazette Times Reporter* bulletin from the League stating that under their draft ordinance to handle claims, Corvallis property owners would need to pay $1000 and submit 15 other pieces of detailed property information before the City of Corvallis would accept their claims for review. So perhaps there is something written into the Corvallis ordinance that sets up a process before they would accept an application and it would be helpful to review.

Attorney Kelley stated that we could just take out that language. Or, it could say that if someone refuses to comply with our request for additional information, it could run from the submittal

date even though it is incomplete and it may be denied because it is incomplete.

Mayor Taylor wants to make sure that what we are requiring is reasonable and makes sense. He does not want to make the process impossible to file. The Mayor would prefer to start with the process that says this is what you need to have before the clock is started. Then, let someone take us to court and show that we did it wrong as opposed to bringing in incomplete applications and having them denied on the basis that they are incomplete and not based on the merits of the claim. It seems easier to let them know up front what they need to submit and then a way, in certain cases, to not require all the necessary steps.

Councilor Lucas reiterated that the process certainly should not be vague when people are coming in with $750 to submit an application. There should be set reasons why an application is denied and be given the time to complete the process. Only after the application is completed to our specifications, will the 90 day period start.

Councilor Prince was in agreement with those ideas. He felt that compared to even the City of Corvallis, our requirements were not very stringent.

Given the discussion so far, Mayor Taylor felt that 1.20.050 (B) should be stricken and leave everything in (A). The way (A) is now written, if people file an application and it is deemed complete, the time would start from the day you turn it in.

A citizen from the audience, later identified as Mr. Earl Walker, questioned how long the City had to advise an applicant if an application were "deemed incomplete". Mayor Taylor responded that the City had 15 days to advise an applicant of any deficiencies in the application. Mr. Walker questioned "regulations" in Section 1.20.030 since nothing in that section specifies whether it has to be a current regulation in order to apply for a waiver. Mr. Kelley stated that under Measure 7, it is still unclear if it applies to regulations that have already been repealed. Mr. Kelley believes it applies only to a regulation that is currently on the books. It still has yet to be decided how it is going to be applied as previous regulations.

Councilor Prince said that the Attorney General will be looking at it in the next few weeks to decide how the State will be going.

Planning Director John Williams stated that how retroactive it will be depends on when a citizen bought his property. If the property was purchased since the regulation was adopted or enforced, then most likely it will be covered under Measure 7. If the regulation was passed ten years ago and you bought your property five years ago, then a claim might not be possible. John Kelley reiterated that you had to be the owner of the property at the time the regulation was enacted, according to his interpretation. 1.20.050 (B) will be stricken and (C) and (D) will move up respectively with the wording in the last paragraph to be changed to "as specified in section A or B above".

Councilor Prince questioned if the $750 was adequate for the cost of the application process. If a claim is paid, will the fee be refunded? Our ordinance does not allow for a refund because of the

cost of preparing, arguing or hearing a claim. The counter argument is that the claim could just have been paid and processed without staff research. There are jurisdictions that are recommending or including within their ordinances that if a claim is paid, the application fee is refundable.

Councilor Daniels asked why have a fee if it were to be returned, was it to make sure the applicant completed the process? Attorney Kelley answered that was the case and also to compensate staff if the claim proved not to be valid. The only way it would be returned is if the claim were meritorious and the City pays on it.

Councilor Harris commented that his inclination was that if a citizen had a legitimate claim and paid an application fee in order to collect on the claim and the final decision was that the claim were legitimate, fairness would dictate that whatever fee had been paid, should be refunded.

Consensus was to leave the wording and the amount of the fee the same as is already written in the ordinance.

Mayor Taylor asked Attorney Kelley to clarify the difference in the language of Section 1.20.080 (A) from "relevant" to "reasonable". Attorney Kelley stated that from a legal standpoint "reasonable" is more defensible; that "relevant" is more difficult to understand and too vague.

Attorney Kelley also referred to Section 1.20.110 as being a section that appeared in many of the other sample ordinances and he felt it should be included.

ORDINANCES AND RESOLUTIONS:

Ordinance No. 1063-

****Councilor Daniels moved to adopt Ordinance 1063, AN ORDINANCE AMENDING TITLE 1 OF THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER, 1.20, ADOPTING A PROCEDURE FOR PROCESSING CLAIMS MADE PURSUANT TO ARTICLE 1, SECTION 18 OF THE OREGON CONSTITUTION AS AMENDED BY INITIATIVE MEASURE 7; AND DECLARING AN EMERGENCY be posted and come up for final reading on December 6, 2000. Motion seconded by Councilor Prince and passed 5-0 on first reading.**

Councilor Prince expressed a hope that there would be more information coming from the Attorney General's Office and reiterated what City Attorney John Kelley had previously stated that this measure might not "see the light of day" for a while but that at least the City would have something in place to fairly evaluate whatever claims come before us.

City Attorney John Kelley stated that the information was to be out by December 6th from the Attorney General.

ACTION REVIEW:

1. Following up with Mr. Mowry's towing concern.
2. Bringing back Ordinance 1063 for second reading on December 6, 2000.

Mayor Taylor adjourned the special session at 8:29 p.m.

There was no Executive Session.

Chaunee Seifried,
City recorder pro tem

Scott Taylor,
Mayor

Prepared by Marty Moretty,
Office Specialist