

**CANBY CITY COUNCIL  
REGULAR MEETING  
APRIL 21, 1993**

**WORKSHOP:** The entire Council and City Planning Commission met in workshop session at 6:00 p.m., in the Adult Center to discuss their prospective government roles.

**REGULAR SESSION:** Mayor Scott Taylor presiding. Council members present: Maureen Miltenberger, Dennis Nolder, Terry Prince, Joe Driggers, Cheryl Stark and Walt Daniels, Administrator Michael Jordan, City Attorney John Kelley, Lt. Jim Scharmota, Planner Bob Hoffman, Swim Center Director Scott Nelson, Librarian Beth Saul, City Recorder Marilyn Perkett, Tamara Maher, Gerald & Marion Tharp, Joanna Cope, Thomas Kelly, Dorothy Olsen, Rick Wery, Doris Mathis, Phil Sargent, Dan Robinson, Mike & Cindi Gerkman, Carol Virgil, Mary Herlton, Shirley Macklin, Tony Cenci, Bill Judge, Terry Dolney, Doretta Schrock, Mary Diggles, Charles Celley, Dave House, Pat Smith, Lee Wiegand, Susan Abe, Bonnie Engelman, Florence Johnston, Paul Calhoun, Philip Ramsdell, Roger & Patty Rydquist, Bert Harrison, John Dewar, Lloyd Farnsworth, Virginia Somerville, Edna Norland, Mike & Barbara Harris, Sandy Nichols, Hilary Tyler, Kimberly Churchill, Karen Cederquist, Justin Yuen, Tom Binder, Randy Bright, Tim & Marte Miller, Jason Ross, Ted Ellingboe, Joseph Bitz, Ada Stout, Gay Cilenti, Linda Mihata, Katherine English, Kurt Schrader, Rick Maier, John Watson & others.

Mayor Taylor called the regular session to order at 7:30 p.m., in the Adult Center. The flag salute and a moment of focus were observed.

Roll call of the Council showed a quorum to be present.

**MINUTES OF PREVIOUS SESSION:** \*\*Councilman Daniels moved to approve as distributed the minutes of regular session, April 7, 1993. Motion seconded by Councilwoman Stark and approved 6-0.

**CITIZEN INPUT ON NON-AGENDA ITEMS:** None presented.

**COMMUNICATIONS:** Letter from CUHS, Steve Miller - Administrator Jordan reviewed a letter from Superintendent Miller commending Lieutenant Jim Scharmota and Officer Steve Landis for facilitating a meeting with businesses around the high school site to address potential student problems. Mr. Miller said the meeting was a success and thanked the Police Department for their participation.

Letter from Milt Dennison - Administrator Jordan read a letter from Milt Dennison tendering his resignation as a board member from CUB.

Dave Hoover, local resident, addressed the Council regarding a recent Oregonian article. He reported that a community in Iowa had started a process whereby local citizens encourage businesses to settle in their City. The process uses a monetary award for suggestions and larger awards if the company moves to the community. Mr. Hoover felt this might tend to "focus" community involvement towards economic development.

Mayor Taylor suggested that this process be reviewed and be placed on a later agenda.

**PUBLIC HEARING:** Proposed Historic Preservation Ordinance - Mayor Taylor informed the audience that this agenda item has been rescheduled for public hearing on May 19, 1993.

**NEW BUSINESS:** Accounts Payable - \*\*Councilman Prince moved to pay accounts

payable in the amount of \$97,982.74. Motion seconded by Councilman Daniels and approved by roll call vote, 6-0.

**CUB Appointment** - Mayor Taylor asked that Councilmen Nolder and Daniels act as a committee to screen applicants for the CUB appointment, along with Kermit Scarborough of the CUB Board.

**ORDINANCES & RESOLUTIONS: Resolution No. 534** - Mayor Taylor reported that the purpose tonight is not to debate the initiative issue. The purpose for this agenda results in three choices: select City Attorney's proposed ballot title; accept the proposed title as challenged and prepared by Tamara Maher; or, as a City Council, design their own ballot title.

Attorney Kelley noted that he did not write the ballot title, it was prepared by a group of City Attorneys throughout the state that were also involved in this same initiative. The proposed ballot title is intended to be "true and impartial". Mr. Kelley also referred to a couple recent court rulings. Molalla and Estacada had their ballot title challenged in circuit court and the ruling from Judge Gilroy was to maintain the caption and summary; and modify the question to read, "Should Charter prohibit City from adopting or enforcing laws or policies based on homosexuality?" Judge Nachtigal's ruling on a Klamath County case was to leave the title and caption as presented and then adopted the City of Gresham's summary, with a few minor revisions. Attorney Kelley said that, personally, he did not believe the ballot challenge wording was fairly or impartially composed and did not recommend that choice.

Councilman Driggers asked if our process was different than the challenges that were litigated. Attorney Kelley said the Cities in question followed the ORS and we have our own Municipal Code which we must comply with.

Tamara Maher, Attorney representing Doretta Schrock the petitioner of the ballot challenge, reminded the Council that the two cases Mr. Kelley cited from Judges Gilroy and Nachtigal were appealed to the circuit court and not to a City Council. Ms. Maher said the Council has the authority to make their own decision on what ballot title they want to select and that "findings" are not necessary. She also implied that we had more time to review the issue and a decision was not necessary to be made this evening. Ms. Maher said no one is sure what the measure means and the more information that has been added the more confusion arises. She pointed out three items to focus on for the purpose of the measure: SB 34 and 35 are measures that this initiative would counter (she reviewed sections of those two proposed bills) regarding sexual orientation; she referred to a letter from Pat Smith in today's Canby Herald and said that the two SB's are exactly what this initiative opposes; and she referred to the last meeting when a Milwaukie resident referred to a specific book saying this was not what we wanted in our library and perhaps this is part of the misinformation about the measure. Finally, she referred to the term "minority status" and noting that the OCA group uses the term "No Special Rights" too, she implied that these terms are about denying freedom of speech and active redress to a specific group of individuals.

Mayor Taylor asked for a show of hands for those who wanted to address the Council. Since 13 people expressed a desire to address the Council, Mayor Taylor limited their time. Mayor Taylor read the ballot titles that were approved by Judge's Gilroy and Nachtigal.

Dr. E.E. Davis questioned the City's procedure. Attorney Kelley noted that ORS provides a procedure for ballot title challenges, however, the ORS says, "unless otherwise adopted by ordinance in your own jurisdiction--", therefore we follow our City Charter grant and follow an adopted Ordinance.

Philip Ramsdell, OCA representative from Wilsonville and an author of the initiative, first implied that Ms. Maher's testimony was argumentative, which was not the purpose of this meeting. He reported that in Woodvillage and Gresham their ballot title challenge also wanted to insert the word "discrimination", which is inflammatory and does not exist in the initiative. Those Cities would not allow that wording and opted to choose similar language as submitted by the Canby City Attorney. Mr. Ramsdell requested that Council adopt the wording as submitted by the City Attorney.

Councilman Driggers asked Mr. Ramsdell if the initiative limited library materials for certain citizens. Mr. Ramsdell said there is already a process for parents to object to material for minors. Also, books not appropriate for young children can be put in the "adult section" to be checked out.

Councilman Driggers asked for clarification on rules for adults and children, and asked why the library was mentioned. Mr. Ramsdell said because during Measure 9 this was part of the campaign and they wanted the initiative to have the intent spelled out as he previously described.

Councilman Driggers asked if City funds could be expended for the type of books as shown at the last meeting. Mr. Ramsdell said we could not use public funds (section 2) that would promote homosexuality for children, with an exception for adults. However, if such a book were currently in the library it could be in adult section.

Councilman Driggers asked if checking such a book out would be promoting homosexuality. Mr. Ramsdell replied that it could be. Again, he reiterated the difference between children's and adult's sections in the libraries for distribution of existing books.

Councilman Driggers recapped by saying there is an intent to limit library books and availability to a certain class of citizens. Mr. Ramsdell said only based on age, this was done to protect the children.

Attorney Kelley asked for a clarification if the City is prohibited from buying books for the adult section of the library that promote homosexuality. Mr. Ramsdell said no, the City can buy whatever it wants to buy for adults. The initiative does not mention children because of the process that is already in place.

Councilman Driggers said he was confused about the spending of City funds for buying these books. Mr. Ramsdell said that is why there is an exception for adults.

Councilman Driggers asked about the rights to petition for grievance be addressed, specifically if a group of homosexuals is treated unfairly and came to the Council to ask for a redress of those grievances. Mr. Ramsdell said it does not prevent them from submitting any initiative, they don't lose any rights. The initiative basically separates us due to sexual preference. He cited a U.S. Supreme Court case law from 1986 which states that sodomy is not a civil right.

Councilman Driggers asked if they considered the issue as a "belief". Mr. Ramsdell said it is a "preference."

Councilman Driggers stated that we are going to "target" these folks because of their belief. Mr. Ramsdell replied that "target" was a very harsh word.

Mayor Taylor interjected that the specific purpose was to make a selection of the ballot title.

Councilman Driggers stated that he felt there was doubt on the constitutionality when

certain citizens were limited to have redress or have ordinances passed. Mr. Ramsdell reiterated that sexual orientation was the concern. However, Mayor Taylor interjected that the question was regarding constitutional rights. Mr. Ramsdell said everyone has the same constitutional rights.

Councilman Prince said the wording of Section F confused him. Mr. Ramsdell said the employer cannot discriminate based upon sexual orientation on job related circumstances.

Attorney Kelley said actually if the City Council wanted to pass an ordinance to keep employers from not hiring someone based on their sexual preference, we can do that. Mr. Ramsdell agreed.

Roger Rydquist, local resident, addressed the Council saying that he felt it was the Council's duty to accept the City Attorney's ballot title. He felt that the new ballot title, in reality, said the "City wanted to discriminate based on sexual orientation" and this was not the intent of the measure.

Edmund Davies, 170 N.E. 11th, reminded the Council that the voters will decide the issue and the only question for the evening is the ballot title. He implied that Mr. Kelley had no interest pro or con and his title was impartial; the challenging title was introduced by the opponents of the measure and is in their best interest to make the title unpalatable. He strongly urged that the Council select the City Attorney's ballot title.

Ken Celley, Haines Road, implied that the process was backwards. Most of the people would not have signed the petitions if the title were changed to that suggested by the challengers. He strongly urged that we change the City's procedure, as well as support the title submitted by the City Attorney.

Attorney Kelley pointed out that whatever ballot title is approved, will not become law, the "act" will become law as a part of the City Charter.

Mr. Celley said the campaign will be based on the title and that is very important and germane.

Doretta Schrock, petitioner of the challenge, implied that "minority status" is inflammatory and hides the real meaning of the measure. She requested that those two words be taken out of the title. She also pointed out that Mr. Kelley's ballot did not exist when the petitions were circulated.

Catherine English, an attorney who works for the state and county pact that fights these initiatives and a county resident, wanted to make some suggestions for a compromise on the proposed measure. She implied that Ms. Maher's ballot title was true and Mr. Kelley's was slightly inaccurate and inflammatory. Ms. English suggested that the caption have "minority status" omitted and use Judge Gilroy's language; on the question, again remove "minority status" and adopt that part of Judge Gilroy's wording; and the summary, which is most critical, has conflicting parts regarding spending of City funds and yet allowing library materials to be purchased. She also suggested the wording in the summary to be "prohibits the granting of civil rights based on sexual orientation", in lieu of the words "does not nullify civil rights based on race, religion, color, sex, etc...." She also said if they petitioned for redress, the Council could not do anything about it, and therefore wanted the following sentence omitted, "Does not limit constitutional rights." Finally, Ms. English referred to the library book provision, saying it was extremely complicated.

Mike Gerkman, N.E. 14th, respectfully requested that the Council consider a few points: the initiative process is one the few ways the people have of governing themselves and is provided by the state constitution. He urged the Council not to change the wording of the

measure and let the people express their rights at the ballot box.

Pat Smith, Canby, commented that all people are equal, however, not all behavior is equal, which is what the initiative addresses. Ms. Smith read from the "Diversity Action Plan" from Portland, specifically about employers and landlords. She said the homosexual agenda wants minority status. Ms. Smith asked that the Council adopt Attorney Kelley's ballot title.

Councilwoman Miltenberger questioned how the Council would address complaints of citizens based on sexual orientation. Ms. Smith said the initiative did not prevent these types of rights.

Dr. Brindley, 652 NW Dahlia and Pastor of the Baptist Church, reiterated that Attorney Kelley's ballot title was correct wording. He said that, personally, he did not feel minority status is an inflammatory statement and asked the Attorney for clarification.

Attorney Kelley said if people are extended "minority status" you would be a protected group and treated as other minorities.

Dr. Brindley asked if minority rights would give them a quota system. Attorney Kelley said he did not know, but presumed that it would.

Councilman Driggers asked why were women and blacks given minority status. Dr. Brindley said, at this point, he felt we should only discuss the wording of the title.

Tamara Maher interjected that quotas are a remedy, if needed.

Phil Sargent, Laurelwood Loop, commented on tests for minority status as being: unchangeable characteristics; deprived of social, educational or economic privileges; and a history of discrimination.

Rick Wery, N.E. 8th, recommended that the City Attorney's ballot title be adopted as a true meaning of the proposed act.

Joe Bitz, Mulino, expressed that he is in favor of the ballot title prepared by the City Attorney. He read the dictionary meaning for "homosexual" and said that it was sexual sodomy behavior and this behavior is not protected by law.

John Dewar, Canby, expressed concern about changing the title and suggested the Council adopt the ballot title submitted by the City Attorney. He referred to an incident 21 years ago in Minnesota when homosexual rights were being questioned, he didn't approve of special rights for them due to their behavior and he still has those beliefs. He feels this is a "double standard" and he doesn't approve of that type of lifestyle.

Mayor Taylor called for a short recess at 9:30 p.m. The regular session was reconvened at 9:40 p.m.

Mayor Taylor informed the Council that at this time there was a choice of selecting Attorney Kelly's ballot title, accepting the proposed ballot title of the challengers or creating one of their own.

Councilwoman Stark remarked that she had received many letters regarding this issue. However, she suggested that the issue be presented to the voters and she supported Attorney Kelley's ballot title.

**\*\*Councilwoman Stark moved to adopt the ballot title for the proposed initiative as**

proposed by the City Attorney for the June 29, 1993 election. Motion seconded by Councilman Nolder.

Councilman Prince asked if the measure presented to Canby is the same as the one the two judges ruled on. Attorney Kelley said the "act" is the same, the titles were different.

Councilman Driggers expressed concern about the Attorney's ballot title because he felt "minority status" was inflammatory. He suggested using Judge Gilroy's caption.

Councilwoman Miltenberger agreed with Councilman Driggers.

Councilman Daniels pointed out that we were in discussion on a motion and an amendment would be in order if that is what they want.

**\*\*Councilman Driggers moved to amend the motion on the floor to have the caption read, "City Charter amendment relating to homosexuality." The motion to amend was seconded by Councilwoman Miltenberger.**

Councilman Driggers argued that this proposed caption did not have adjectives that would prejudice one way or another.

Councilman Prince felt the minority status should stay in the caption.

Councilwoman Stark was against the amendment and hoped that all voters would read the act to familiarize themselves with what they are voting on.

Councilman Nolder agreed with Ms. Stark.

Councilman Daniels was opposed to the amendment saying the caption really doesn't tell us anything.

**\*\*The vote on the amendment was not passed, 2 to 4, with Councilman Driggers and Councilwoman Miltenberger voting yea; and the remaining Council voting nay.**

**\*\*The vote on the original motion to approve the City Attorney's ballot title was approved 4-2, with Councilman Driggers and Councilwoman Miltenberger voting nay.**

**\*\*Councilwoman Stark moved to adopt Resolution No. 534, A RESOLUTION PRESCRIBING A BALLOT TITLE BY THE CITY COUNCIL FOR THE INITIATIVE TO BE PLACED ON THE JUNE 29, 1993 BALLOT. Seconded by Councilman Daniels. Motion was approved 4-2, with Councilman Driggers and Councilwoman miltenberger voting nay.**

Mayor Taylor thanked the audience for the very "civil participation". Mr. Taylor hoped that the City would not lose our harmony due to this issue. He informed the audience of a forum to instruct people to work together after the events of this election. The forum will be Thursday, May 20th from 7 - 9 pm at the Canby Adult Center and facilitated by the "Leadership Canby" group.

Ordinance No. 885 - **\*\*Councilman Daniels moved that Ordinance No. 885 be taken from the table. Motion seconded by Councilman Driggers. Motion approved 6-0.**

**\*\*Councilman Daniels moved to RESCIND Ordinance No. 885. Seconded by Councilman Prince and approved 6-0.**

Ordinance No. 887 - Administrator Jordan reminded the Council that this was due for final

action on purchase of a piece of property for alignment of a sewer main in the south area of town.

**\*\*Councilman Daniels moved to adopt on final reading Ordinance No. 887, AN ORDINANCE AUTHORIZING PURCHASE OF REAL PROPERTY FOR STREET AND UTILITY PURPOSES TO SERVE AN INDUSTRIAL PARK DEVELOPMENT; AND DECLARING AN EMERGENCY. Motion seconded by Councilman Driggers and approved by roll call vote, 6-0.**

Ordinance No. 889 - Rusty Klem informed the Council that a call for bids had been made for the in-line television equipment. Two bids were received, Q Cues and Sreco Flexible. Mr. Klem recommended that the Sreco Flexible bid of \$95,000 be accepted since the other bid did not meet specifications. Mr. Klem said his memo outlined 15-20 differences in the bids that were not met by Q Cues. Also, he checked with four other agencies regarding their experience with Q Cues versus Flexible, and in every case support was for any entity other than Q Cues.

**\*\*Councilman Prince moved that Ordinance No. 889, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER TO EXECUTE A CONTRACT FOR THE ACQUISITION OF AN IN-LINE TELEVISION INSPECTION EQUIPMENT; AND DECLARING AN EMERGENCY be posted and come up for final action on May 6, 1993. Motion seconded by Councilman Nolder.**

Councilman Driggers asked if ORS purchasing requirements had been met. Mr. Jordan said he was confident that they were met.

Councilman Daniels asked about the financing. Administrator Jordan said that the most cost effective would be through the Molalla Branch of the U.S. National Bank.

Councilman Nolder asked if other communities have expressed interest to rent the unit. Mr. Klem said he had copies of letters from communities that were interested, specifically Molalla and Wilsonville.

Councilman Daniels questioned the maintenance of the equipment. Tom Binder, Sreco, showed the Council a piece of the equipment worth \$26,000 and noted that maintenance is minimal. Randy Bright, Canby businessman and former Lake Oswego employee on such equipment, said that the tracks are usually replaced after about 60,000 feet of use for an approximate cost of \$500. Mr. Bright said when he ran the Q Cues system it cost 65 cents a foot and after implementing Sreco's system the cost went to 27 cents a foot, as well as tripling production.

Councilman Prince questioned the warranty. Mr. Binder said it would be two years on the electrical equipment and one year on the mechanical.

**\*\*The motion on the floor was approved 6-0.**

Resolution No. 535 & 536 - Bob Hoffman, City Planner, reminded the Council that this development was approved sometime ago and as part of that approval, a condition was set that the adjacent wetlands be dedicated to the City and the adjacent uplands on a separate lot be dedicated to the City as a parkland. Mr. Hoffman noted that SDC fee credit can be given for the dedicated lands. A professional appraisal gave no value to the wetlands and a value of \$34,000 for the upland portions that could be used for a park. He also noted that a bridge would need to be constructed to access the proposed park area. Staff recommended adoption of the proposed resolutions.

Councilman Nolder asked if staff was satisfied with the appraisals and was told yes.

Councilman Prince asked about the bridge and Mr. Hoffman said the bridge was a condition of approval for the developer. Also, Mr. Prince asked if the City needed to fence the area and would there be a maintenance. Mr. Hoffman said limited maintenance cost. Councilman Prince asked why the developer doesn't provide the fencing. Mr. Hoffman said it was not a condition for approval.

Councilman Nolder said he thought he had read that a fence was part of the conditions for the apartments. Mr. Hoffman said he wasn't sure of that, but could research the issue.

**\*\*Councilman Daniels moved to adopt Resolution No. 535, A RESOLUTION TO ACCEPT DEDICATION OF REDWOOD MEADOWS SUBDIVISION WETLANDS AND PARKLAND. Motion seconded by Councilman Prince.**

Councilman Driggers expressed a concern about fencing to separate the wetlands from usage. Mayor Taylor asked if we could deal with this type of issue. Mr. Hoffman said it could be a condition for approval, however, it was not for this development.

**\*\*Motion was approved 6-0.**

**\*\*Councilman Prince moved to adopt Resolution No. 536, A RESOLUTION TO ACCEPT DEDICATION OF REDWOOD TERRACE APARTMENT WETLANDS. Motion seconded by Councilman Nolder and approved 6-0.**

**UNFINISHED BUSINESS:** None presented.

**OTHER REPORTS OR ANNOUNCEMENTS:** Swim Center Update - Scott Nelson, Aquatics Director, updated the Council on some of the swim centers activities.

- \* school lessons are going strong and Canby schools are participating this year, hopefully the proposed budget cuts will not affect the swimming program.
- \* public lessons are continuing to grow with a waiting list of 70 for the evening lessons.
- \* the pool has about six rentals of the pool each month, it is becoming more popular.
- \* water exercise are very popular, two classes back to back twice a week with up to 25 students.
- \* the pool is open on all City holidays, except Christmas and Thanksgiving.
- \* attendance is up 15% from last year (increased fees has not affected attendance), income last year was \$103,000 and this year they are targeted for \$120,000.
- \* last year the pool was 50% on tax support, this year should be 45%.
- \* training and certification for lifeguards and instructors will soon begin.
- \* semi-private lessons will be available this summer, with 2 or 3 in a class.

Administrator Jordan informed the Council that he would be attending a Legislative session Monday in Salem and will be meeting Representative Shiprack for dinner. Mayor Taylor reminded Mr. Jordan to touch base with Mr. Shiprack regarding the Boundary Commission issue.

**ACTION REVIEW:** 1. Placing Dave Hoover's economic development idea on a future agenda.



2. Recruit a CUB board member.
3. Sending John Kelley's version of the initiative caption, question and summary to the Elections Department.
4. Bring back Ordinance 889 for second reading.
5. Implementing Resolutions 535 and 536 accepting dedications for wetlands and parklands.
6. Research funding mechanisms for access restrictions on wetlands.

**\*\*Councilman Prince moved to go into Executive Session under ORS 192.660 (1)(i), to evaluate the performance of a public employee. Motion seconded by Councilman Nolder and approved 6-0.**

Mayor Taylor recessed the regular session at 10:40 p.m. to go into Executive Session. The regular session was reconvened at 12:30 a.m. and immediately adjourned.

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**EXECUTIVE SESSION  
APRIL 21, 1993**


**Present:** Mayor Taylor, Council members Nolder, Miltenberger, Prince, Stark, Daniels and Driggers, Administrator Jordan and Rusty Klem.

Mayor Taylor called the session to order in a classroom at the Adult Center at 10:55 p.m.

ORS 192.660 (1)(i) - the Council discussed the evaluation of a City employee.

Mr. Klem left the session at 11:15 p.m.

Mayor Taylor adjourned the session at 12:30 p.m.

  
Marilyn K. Perkett  
City Recorder

  
Scott Taylor  
Mayor