# CITY OF NEWBERG CITY COUNCIL MINUTES
## DECEMBER 1, 2008
### 7:00 P.M. MEETING
### PUBLIC SAFETY BUILDING TRAINING ROOM
### 401 EAST THIRD STREET

Work Session was held prior to the meeting. Staff gave a presentation on golf carts and slow moving vehicles. Council interviewed two candidates for the vacant Council District #5 position. No decisions were made.

## I. CALL MEETING TO ORDER

Mayor Andrews called the meeting to order at 7:00 PM.

## II. ROLL CALL

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| Members Present: | Mayor Bob Andrews | Mike Boyes | Roger Currier |
| | Bob Larson | Bart Rierson | Marc Shelton |
| Staff Present: | Daniel Danicic, City Manager | | Terrence D. Mahr, City Attorney |
| | Barton Brierley, Planning and Building Director | | Norma I. Alley, City Recorder |
| | Howard Hamilton, Public Works Director | | Jennifer Nelson, Recording Secretary |
| Others Present: | Joanne Wiitala, Nancy L. Werner, Richard Kosesan, Nathan Rietmann, Wendy Buck | | |

## III. *PLEDGE OF ALLEGIANCE*

The Pledge of Allegiance was performed.

## IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported the fire chief recruitment was under way and the deadline is next Tuesday, December 9; nine applications have been received so far from outside of the state of Oregon. He also mentioned it is time for the City to begin discussions with fire union contract and informed the council of his upcoming planned absences.

## V. PUBLIC COMMENTS

Ms. Joanne Wiitala, Newberg Animal Shelter Friends, announced the end of the brick sales this month, the upcoming wine and culinary pairing event at Hunter's Ridge Grill this Sunday evening and the annual holiday bake sale at Darlyn Adams home on December 13 and 14 (see official meeting packet for full report).

## VI. CONSENT CALENDAR

1. Consider a motion denying **Resolution No. 2008-2783** resolving the status of this Resolution regarding the relationship of the 2007 Urban Reserve Area to the Southeast Transportation Plan.

2. Consider a motion approving **Resolution No. 2008-2816** authorizing the city manager to execute an amendment to the agreement with GSI Water Solutions in the amount of $26,508.00.

3. Consider a motion approving **Resolution No. 2008-2819** transferring jurisdiction of a portion of Second Street from Yamhill County to the City of Newberg

4. Consider a motion approving **Resolution No. 2008-2820** accepting the Total Maximum Daily Load Implementation Plan as ordered and accepted by the Oregon Department of Environmental Quality.

5. Consider a motion approving City Council Minutes for November 3, 2008.

**MOTION: Rierson/Currier** to approve the Consent Calendar including **Resolution No. 2008-2783, Resolution No. 2008-2816, Resolution No. 2008-2819, Resolution No. 2008-2820,** City Council Minutes for November 3, 2008. (6 Yes/0 No/1 Vacant) Motion carried.

## VII. PUBLIC HEARING

1. Consider a motion approving **Ordinance No. 2008-2703** establishing provisions for utility access to and use of rights-of-way.

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated.

Mr. Terrence D. Mahr, City Attorney, and Ms. Nancy L. Werner, Attorney for Beery, Elsner, & Hammond, LLP, presented the staff report (see official meeting packet for full report).

Mayor Andrews asked staff for any written testimony to be submitted and addressed later.

Mr. Richard Kosesan, Verizon Wireless, testified he had met with City representatives several times and asked for further amendments for clarity in the future to provide clear exemption for wireless providers. He stated there were no antennae owned or operated by a wireless provider in Newberg that would be associated with the right of way and argued a flat fee per structure as suggested in the draft ordinance rather than a gross percentage because there is a tremendous difference between incumbent providers and wireless providers billing statement totals. The exchange access service, or local dial tone, was also discussed. He suggested the determination of any future access fees to be made by ordinance, not resolution, so it would be subject to voter scrutiny. He wished to encourage wireless providers to be exempt from this ordinance.

Councilor Roger Currier spoke about the 7% fee assessed for the dial tone and asked how he could be charged for this when wireless phones do not have a dial tone.

Mr. Kosesan stated that in terms of the ordinance structure, traditional incumbent provider privilege tax or franchise fee is predicated on what is defined as a local access exchange or dial tone and it is a set percentage. In the future, Council could set a fee structure on wireless providers based on gross revenue and for wireless services the fee is generally three and a half to four times higher in comparison to the fee assessed for telecommunications providers in Oregon.

Councilor Marc Shelton asked why wireless providers should be treated differently.

Mr. Kosesan stated they should because wireless providers do not occupy any portion of the public right of way, which in turn does not create any costs to be incurred by the City as other utilities do. If in the future a wireless provider needed to place something in the public right of way it should be assessed then, until that time he felt wireless should be exempt.

Mr. Nathan Rietmann, AT&T Wireless, shared many of the same concerns and wanted to make sure wireless providers were not essentially taxed twice. He stated if a wireless provider were to place an attachment to a single utility pole in the future they should be allowed to pay a fee proportionate to the extent of the use rather than having their entire gross revenue taxed by 5%. He also felt wireless providers should be treated differently because the industry is different from incumbent providers who are allowed monopolies without competition; the wireless industry is competitive. He also mentioned that taxes on wireless would be paid by the people of Newberg, not by the company, which would be unpopular in light of the current economy. He also spoke of the tax being connected to the right of way but not being dedicated to the management of the right of way, but to general government purposes.

Ms. Wendy Buck, Portland General Electric (PGE), spoke of the long standing relationship with PGE and the City of Newberg and their use of the public right of way with permission. She mentioned other cities passing this type of agreement applying to telecommunications only and noted the Oregon League of Cities (LOC) model did as well. She stated that electricity should not be included as they are a regulated monopoly and do not compete with telecommunications companies. She spoke of the broad language of the ordinance and the citizens bearing the costs. She mentioned the good contract between PGE and Newberg already in terms of good management of the right of way.

Mayor Andrews stated the record would be closed to all further testimony and all written and oral testimony accepted so far would be included but the hearing would be continued on December 15, 2008 to accept staff recommendations and for deliberations.

Councilor Bart Rierson asked for some direction to be given to staff in respect to the charge for wireless providers since the purpose of the utility fee license is to reimburse the City for the actual cost of the use of the right of way. There were issues of the higher bill for wireless providers and looking at a fee for an attachment in the right of way. He did not feel this should be a revenue generating mechanism but just for cost recovery. He also wished for staff to look into the current agreement with PGE and if it is not revenue neutral then PGE should be charged the same costs for a license to use the right of way. He did agree electricity providers may be different than telecommunications but the impact on the City is the same and he did feel it is appropriate to charge the fee on all utilities.

Councilor Currier agreed that anything in the right of way meant the City would need to recoup costs and have control over where and when items placed there needed to be moved. He also agreed that the issue of wireless providers is breaking new ground and spoke of charging for transmittal of radio signals. He did feel providers with one pole should not pay the same charge as another with poles all over town and a fair percentage should be looked at.

Mayor Andrews referred to a typographical error on page 34 referencing a section that did not exist and on page 36 the use of "short and concise" was redundant.

2. Consider a motion approving **Ordinance No. 2008-2708** removing the temporary freeze on zone changes, comprehensive plan designation changes, and amendments to the Urban Growth Boundary and Urban Reserve area for land in Newberg's Bypass Interchange Overlay District.

Mr. Barton Brierley, Planning and Building Director, presented the staff report (see official meeting packet for full report).

Councilor Bob Larson asked if the County had to approve this ordinance before the City. Staff replied they did not have to pass it first but they did need to adopt something similar to it, they did not foresee any problems with the County concerning the proposed language. It would not be effective until the County adopts it.

Mayor Andrews opened and closed public testimony as there were no citizens requesting to testify.

**MOTION: Currier/Larson** to approve **Ordinance No. 2008-2708** removing the temporary freeze on zone changes, comprehensive plan designation changes, and amendments to the Urban Growth Boundary and Urban Reserve area for land in Newberg's Bypass Interchange Overlay District with corrections noted by staff and read by title only. (6 Yes/0 No/1 Vacant) Motion carried.

## VIII. CONTINUED BUSINESS

None.

## IX. NEW BUSINESS

Consider a motion approving **Resolution No. 2008-2818** accepting the annual audit report and financial statements for fiscal year ended June 30, 2008.

Time 8:10 PM

Ms. Elizabeth Comfort, Finance Director, and Ms. Elaine Canutt, Financial Analyst, presented the staff report (see official meeting packet for full report).

Councilor Currier questioned consultant fees and their impact on costs of operating equipment. Staff explained the waste water line is a consolidated part of the operation costs.

Mr. Terrence D. Mahr, City Attorney, asked about a 5% increase in a charge for service and asked what that amount was in terms of actual dollars. Staff did not have those numbers available and would have to provide that information at another time.

Mayor Andrews asked what was anticipated in way of delinquencies. Staff stated there were no thoughts on that at this time, but they are seeing an increase in shut off notices.

Councilor Currier asked if there were any projections to the effect of the increase in foreclosures and bankruptcies. Staff replied there were not projections yet as the City is at the same point now as they were last year and there was nothing new to report; they would keep the Council posted in the monthly financial reports.

Councilor Mike Boyes asked if it was the same auditors that do this every year. Staff replied the City was in the fifth year of the contract. He also asked what the delinquent total was from the traffic courts.

Staff replied they were working with court staff to come up with that number, but difficulties examining the software data have made it impossible to report accurate numbers at this time.

Mayor Andrews questioned the 266.7% increase under general government compared to 2006, 07, and 08. Staff explained that category included a community development block grant for the Headstart program which was a one time deal they City does not typically receive.

Councilor Marc Shelton asked what was included within the public safety expenditures. Staff replied that staffing and overtime as well as cost of living raises and benefits were included.

**MOTION: Larson/Shelton** to approve **Resolution No. 2008-2818** accepting the annual audit report and financial statements for fiscal year ended June 30, 2008. (6 Yes/0 No/1 Vacant) Motion carried.

## X. COUNCIL BUSINESS

Mr. Danicic gave updates on the Villa Road and Oxford estates projects that were awarded to the Saunders Company. The City is being questioned on issues of prevailing wages and with the downturn in the economy it may be more beneficial to continue with a more traditional bidding process.

Councilor Boyes suggested the janitorial services should look into doing some spot cleaning on the carpets in the public safety building.

## XI. EXECUTIVE SESSION

None.

## XII. ADJOURNMENT

**MOTION: Larson/Shelton** to adjourn at 8:57 PM (6 Yes/0 No/1 Vacant) Motion carried.

**ADOPTED** by the Newberg City Council this 5th day of January, 2009.

Norma I. Alley

Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 8th day of January, 2009.

Bob Andrews, Mayor