

September 8, 2015
6:00 P.M.
Newport, Oregon

The City Council of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Engler, Busby, Saelens, Swanson, Sawyer, and Roumagoux were present.

Staff present was City Manager Nebel, City Manager, City Recorder Hawker, City Attorney Rich, Community Development Director Tokos, Public Works Director Gross, Fire Chief Murphy, Police Chief Miranda, and Parks and Recreation Director Protiva.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

Proclamation - American Legion Day. Roumagoux proclaimed September 16, 2015 as American Legion Day in the City of Newport. David Bowman accepted the proclamation.

Oath of Office for Fire Captain Tom Jackson. Hawker administered the oath of office to Fire Captain Tom Jackson.

CONSENT CALENDAR

The consent calendar consisted of the following:

- A. Approval of minutes from City Council meeting of August 17, 2015, special meeting of August 31, 2015, and executive session of August 31, 2015;
- B. Confirmation of Mayor's appointment of: Lt. Matthew Poore, Contingency Planner USCG Sector North Bend; Virginia Demaris, Emergency Manager Lincoln County Sheriff's Office; Bob Cowen, OSU Hatfield Marine Science Center Director; Carrie Lewis, President and CEO of Oregon Coast Aquarium; Onno Husing, Director Lincoln County Planning and Development; Jason Center, Operations Manager FedEx Express; Kevin Greenwood, Director of the Port of Newport; Jim Shaw, Local Flight Club; Lt. Curtis Landers Lincoln County Sheriff's; Jeff Bertuleit, Airport Committee; Jeff Richie, Airport Planner FAA Northwest Mountain Region; Heather Peck, Oregon Department of Aviation Planning and Projects Manager; Derrick Tokos, Community Development Director for the City of Newport; Lance Vanderbeck, Newport Municipal Airport Operations Manager; Susan Painter, representative from the Regional Airport Review Task Force; Airport Master Plan Planning Advisory Committee for a Term Expiring Upon Completion of the Task;

- C. From the League of Oregon Cities - Voting Delegates for the LOC Annual Membership Meeting - Mayor Roumagoux, Voting Delegate, and Councilor Sawyer, Alternate;
- D. From the Community Development Director - Acceptance of Notice to Taxing Entities Regarding the Proposed Newport Northside and McLean Point Urban Renewal Plans.

Nebel reported that an e-mail from Susan Andersen noted that the reference to OLCV wishing to make a presentation regarding fluoride (reported at the August 31 special meeting), was actually meant to reference Clean Water Newport.

MOTION was made by Engler, seconded by Sawyer, to approve the consent calendar with the changes to the minutes as noted by Allen. The motion carried unanimously in a voice vote.

PUBLIC HEARING

Public Hearing and Possible Adoption of Ordinance No. 2084 Regarding the Nye Beach Design Overlay. Roumagoux reported that testimony would be limited to three minutes per person, and that the timer would be used. Hawker introduced the agenda item. Nebel reported that in 2003, the city created the Nye Beach Design Review Overlay to guide the development in this part of Newport. He stated that the ordinance required a public hearing to be held within ten years of initial adoption to consider whether changes needed to be made to the district. He noted that this required hearing was held on December 16, 2013; changes were suggested; and the issue was referred to the Planning Commission which developed an ad hoc work group to review the existing ordinance and make modifications to it. He added that the changes include a slight boundary adjustment, removing the R-2 zoned property; adding a small amount of C-2 zoned property next to the Whaler Motel; with a small amount of R-4 zoned property being added to the north end of the overlay. He stated that those changes impact approximately nine (9) acres of property. He added that a design review will be required for a greater number of projects; the design guidelines have been updated; guidelines have been developed to address solar impacts; sign standards have been clarified; larger buildings have also satisfied the new standards to ensure they visually align with the scale of existing development in Nye Beach; definitions have been revised to align with similar definitions elsewhere in the Municipal Code; the definition for substantial improvement is changed allowing structural renovations up to 50% of market value before design review is triggered, regardless of whether a building permit is required; and the threshold for review of accessory structures is reduced to align with building code standards that stipulate when a building permit is required. He noted that there was a lot of give and take through the process of developing this standard from the Planning Commission's ad hoc work group. He added that there was a general consensus that these changes will clarify the rules and help protect the nature of Nye Beach without creating unnecessary burdens for future developments in the area.

Roumagoux opened the public hearing at 6:17 P.M. She called for public comment.

Terry Obteshka spoke in favor of the proposal. He stated that Newport, and Nye Beach, is a magnet for tourists from all over the world. He encouraged support of the overlay zone amendments.

Roumagoux closed the public hearing at 6:21 P.M., for Council deliberation.

It was noted that Ordinance No. 2084 will be included on the Council agenda of September 21, 2015 for action.

Public Hearing and Possible Adoption of Ordinance No. 2085 Regarding the Early Sale of Recreational Marijuana by Medical Marijuana Dispensaries. Hawker introduced the agenda item. Nebel reported that at the August 17, 2015 City Council meeting, Council held a public hearing on an ordinance that would prohibit the early sales of recreational marijuana by medical marijuana dispensaries in accordance with SB460.

Nebel reported that at the public hearing, one individual spoke in support of the medical marijuana dispensaries being allowed to sell recreational marijuana under the provisions of SB460. He stated that this provision allows medical marijuana dispensaries to sell recreational marijuana to a person who is 21 years of age or older. He noted that at the time of the August 17 public hearing, the draft rules for this activity had not been issued by the Oregon Health Authority. He added that it was his recommendation that Council proceed with an ordinance prohibiting the sale of recreational marijuana by dispensaries until it was understood how the rules will likely impact the regulations that were established for medical marijuana dispensaries since these provisions were included as a part of the Municipal Code. He stated that since the August 17 meeting, the Oregon Health Authority has issued its draft rules regarding medical marijuana dispensaries selling recreational marijuana.

Nebel reported that Council requested a work session to better understand the issues surrounding medical marijuana dispensaries selling recreational marijuana. He stated that these sales will occur on October 1 unless Council prohibits medical dispensaries from selling recreational marijuana. He added that in reviewing the draft rules, it appears the regulatory processes adopted by the City Council to deal with dispensaries will remain intact for those dispensaries that choose to sell recreational marijuana. He noted that the only change that Council may want to make to the code relating to this matter would be to change the definition of medical marijuana to clearly reflect the fact that the code provisions apply equally to recreational marijuana sold at medical marijuana dispensaries. He stated that the packet contains a copy of the Oregon Administrative Rules, and that most of the changes, affecting recreational marijuana, begin on page ten. He noted that the packet also contains a copy of the city's medical marijuana facilities code provisions.

Nebel reported that while there are uncertainties as to a number of specific details going forward with the sale of recreational marijuana from medical marijuana dispensaries, it is his opinion that the rules accommodate the provisions that were made by Council as part of the medical marijuana dispensaries, and the sale of recreational marijuana by dispensaries is regulated by existing law and rules. He stated that Council can proceed with allowing dispensaries to sell recreational marijuana in the city should Council desire to do so. He added that in the event Council wishes to proceed with the sale of recreational marijuana by medical marijuana dispensaries, Rich has provided

ordinance language that would tweak the city's business license provisions to acknowledge, in the definitions, that medical marijuana dispensaries are allowed to sell limited marijuana retail products consistent with state laws and under Oregon Health Authority rules.

Nebel reported that Rich has reviewed the language of the city code as it relates generally to business licenses. He noted that NMC Chapter 4.05.010 Purpose and Scope states: "the business license required by this Chapter shall not be construed to constitute a permit to engage in any activity prohibited by law nor as a waiver of any other regularity or license requirement imposed by the city or state law."

Nebel reported that this language indicates that the business license does not trump any existing laws or regulations. He stated that it is up to the business owner to make those judgments to operate their business within the laws and regulations.

Nebel reported that there is some legislative hesitation from the Planning Department and the Police Department in allowing medical dispensaries to sell recreational marijuana. He stated that while the dispensaries have not created significant law enforcement issues to date, proceeding with recreational marijuana sales may end up with a different result. He noted that if Council chooses to prohibit dispensaries from selling recreational marijuana at this time, it would give the staff and Council additional time to review how implementation is occurring on a statewide basis. He added that this may provide an opportunity to further adjust the city code to address unanticipated issues that occur elsewhere in the state. He stated that the packet contains a report from Miranda outlining his thoughts on this issue.

Nebel reviewed the history of this issue. He stated that in November 2014, voters passed Measure 91. He reported that this law provides for personal growing, possession of limited amounts of non-medical marijuana, and directs the OLCC to administer a licensing system for the production, processing, and the wholesale and retail sale of recreational marijuana. He noted that since that time, the state legislature approved four separate bills that provide guidance to local governments as to what actions local governments can take regarding the regulation of recreational marijuana. He added that the combination of state laws recently approved by the legislature, along with the voter approved initiative, have the following impacts: on July 1, 2015, personal possession of limited amounts of recreational marijuana is allowed for those 21 of age and older; on October 1, 2015, sale of recreational marijuana from medical marijuana dispensaries can begin unless the city enacts an ordinance prohibiting early sales prior to that time; by January 4, 2016, the OLCC must approve or deny recreational license applications as soon as practical after this date; November 8, 2016 is the next statewide general election where measures on the prohibition of marijuana activities in local taxes will be voted on by the local voters; and December 31, 2016, early sales of recreational marijuana from medical marijuana dispensaries end.

Nebel reviewed regulatory options. He reported that SB460, which was recently signed into law by the Governor allows medical marijuana dispensaries to sell recreational marijuana to a person who is 21 years of age or older. He stated that SB460 also allows cities to adopt an ordinance prohibiting the early sale of recreational marijuana from a medical marijuana dispensary within its jurisdiction without voter approval. He added that the ordinance has to be adopted and effective by October 1, 2015 which would mean Council would need to approve an ordinance

prohibiting the early sale of recreational marijuana from medical marijuana dispensaries with an emergency clause.

Nebel reported that the next major decision that Council will need to make regarding recreational marijuana is whether to prohibit any of the six types of marijuana activities regulated under HB3400A, which include: medical marijuana processing, medical marijuana dispensaries, commercial marijuana processors, commercial marijuana growers, commercial marijuana wholesalers, or commercial marijuana retailers. He stated that if Council wishes to pursue banning any of these six activities, Council will have to adopt an ordinance indicating which of the six marijuana activities are prohibited in the city. He noted that since Newport is located in Lincoln County, which approved the use of recreational marijuana on the November 13, 2014 ballot, in a statewide election, the city's ban on any of the components of recreational marijuana would remain in effect until a city voter referendum is held in November of 2016, with the voters determining whether the ban will be permanent. He reported that to effectively prohibit any of these six activities in the city, the Council would need to approve an ordinance with the effective date occurring prior to the end of 2015. He stated that this would prevent the Oregon Health Authority (if prohibiting medical marijuana activities), and/or the Oregon Liquor Control Commission (if prohibiting medical marijuana activities) from registering and licensing the prohibited activities until the local voters could vote in November 2016 and either affirm the ban or allow for the activities prohibited by the ordinance.

Nebel reported that the city can regulate certain aspects regarding the location of the four types of recreational licenses; can create a buffer of no more than a 1,000 feet between retail licenses; regulate the manner of operation of the four types of commercial licenses; and other issues as allowed by law. He stated that it would appear to be important that Council have any regulations in effect prior to the end of this calendar year to properly regulate various aspects of recreational marijuana in the community, unless the City Council enacts an outright ban.

Nebel reviewed the issue of taxation. He reported that if the city does not prohibit marijuana activities through a local ban, the city can adopt an ordinance imposing a three percent tax on the sales made by commercial retail licensees. He stated that this provision apparently trumps the local ordinances that were approved by many cities in Oregon leading up to the November 14 election, including the city's ordinance. He noted that to collect the three percent sales tax, the issue requires voter approval at the next statewide general election in November 2016. He stated that Council would need to meet the appropriate election schedules to have this issue on the November 2016 ballot for consideration by the voters of the city.

Nebel reported that if Council prohibits any of the six types of marijuana activities, it appears that the city could not implement the sales tax and would not be entitled to receive a portion of the taxes collected by the state in accordance with the recently passed state law.

Nebel reviewed city options related to this issue. He reported that Council has several strategies that can be pursued regarding the implementation of HB3400, HB2041, SB460, and SB844, related to commercial marijuana activities in Oregon. He stated that with this legislation, local governments and the state have a number of potential paths to follow in implementing these laws in local governments. He

noted that the biggest challenge, relating to local regulation, relates to the fact that the rules for the growing, production, distribution, and sales of recreational marijuana have not been issued by the OLCC, and are not anticipated until the end of the calendar year at the earliest.

Nebel reported that the options that Council could pursue range from an outright ban on any or all of the following activities related to marijuana, including medical marijuana processors, medical marijuana dispensaries, commercial marijuana processors, commercial marijuana producers, commercial marijuana wholesalers, or commercial marijuana retailers. He stated that Council would also have the option of not enacting any prohibition on any of these items, and not implementing any time or place regulations as allowed by state law. He added that in this case, Council would not have to take any actions at all and allow any state regulations to govern marijuana production, sales, etc. in the city.

Nebel reported that another option is allowing some or all of the marijuana activities outlined in HB3400A and implement appropriate and reasonable regulations on such things as hours of operations or any of the aspects of marijuana production or sales, zoning locations for the four (4) types of commercial licenses, medical marijuana grow sites, and implementing buffers up to a 1,000 feet between retail licenses.

Nebel reported that at the August 17, 2015 meeting, Council referred issues related to the permanent facilities that will be licensed by the OLCC in 2016 to the Planning Commission. He stated that it is estimated by the OLCC that retail outlets will be licensed by the state in the fall of 2016. He noted that two ordinances have been prepared for the Council consideration. Ordinance No. 2083 would prohibit the sale of recreational marijuana by medical marijuana dispensaries. Ordinance No. 2085 would modify the definition for medical marijuana dispensaries and would allow dispensaries to sell recreational marijuana after October 1. He recommended that based on the overall review of the proposed rules issued by OHA, and the desire of the people of Oregon, and Lincoln County, to have legal sources of recreational marijuana as indicated in the 2014 election, that Council approve Ordinance No. 2085.

Nebel reported that the packet contains a report from Miranda outlining the dilemmas facing law enforcement staff. He added that the packet also contains a summary of the 2015 marijuana legislation from the League of Oregon Cities.

Roumagoux opened the public hearing at 6:30 P.M.

Speaking in support of Ordinance No. 2085 were:

Sheri Levit;

Brian Perkins;

Ben Poling;

Robert Whitman;

Kay Klose;

Richard Rainery;

Michael Cawley; and

Will Black.

No one spoke in opposition to Ordinance No. 2085.

(The meeting packet contained several comments related to this issue.)

Roumagoux closed the public hearing for Council deliberation at 6:45 P.M.

Allen asked Michael Cawley why other veterans do not register for the medical marijuana program. Cawley reported that it is difficult for veterans to admit they have an issue. He added that he had family support when he returned, and it was recommended that he see a counselor for his PTSD. He noted that his counselor recommended medical marijuana, and he talked about the difficulty in obtaining the medical marijuana card as the VA doctor could not issue it. Cawley stated, in response to a question from Allen, that it is his sense that the sale of recreational marijuana at medical marijuana dispensaries would allow other veterans to use marijuana medically, but who may not have the support to get a medical card.

Busby stated that he fully condones legalizing the sale of recreational marijuana, noting that Council has an obligation to represent the public, and nearly 70% of the voters in Newport voted to legalize recreational marijuana.

Swanson asked what would happen when the recreational sale of marijuana becomes legal. Nebel noted that during the period of October 1, 2015 to December 31, 2016, medical marijuana dispensaries would be able to sell recreational marijuana. He stated that he expects that, after the OLCC rules are finalized, there will be new outlets for recreational marijuana, and some of the medical marijuana dispensaries may wish to continue selling recreational marijuana.

Saelens stated that this is a difficult decision for him as he has friends on both sides of the issue. He added that for more than 40 years, he has been writing federal and state rules. He noted that if we roll back the clock, and asked people who voted for medical marijuana whether they also voted for the legalization of recreational marijuana, they may not be the same. He added that there has been no discussion regarding the interplay between medical and recreational marijuana. He added that there is a distinct difference between going to pharmacy and going to a medical marijuana dispensary. He stated that some people may not want to use a medical marijuana dispensary that is selling recreational marijuana. He noted that he has heard enough about the black market concept, adding that marijuana has been a part of the fabric of Oregon for as long as he can remember. He added that he did not hear about experiences in other states regarding a large part of the population utilizing the same black market to avoid taxes. He mused that if there is a distinction between medical and recreational marijuana, why medical marijuana was legalized initially.

Allen stated that at the last meeting, he was concerned about not having the OHA rules. He noted that the draft rules are now available, and while there may be minor adjustments, he is comfortable that essentially these rules will be used to regulate the sale of recreational marijuana through medical marijuana dispensaries. He added that the other issue is whether local rules for recreational marijuana sales can be applied to medical marijuana dispensaries selling recreational marijuana if the city revises its business license requirements. Rich confirmed that conditions on business licenses could be modified. He reviewed how the federal law is addressed in Chapter 4.15 of the Newport Municipal Code, noting that it does not create a privilege to violate federal law. Allen stated that based on current information, he believes that it is reasonable to move forward with the sale of recreational marijuana from medical marijuana dispensaries. He added that as OLCC develops the recreational marijuana rules, these should be tied to the city's business license

requirements.

Saelens stated that this is the mixing and matching of medical and recreational marijuana sales. He added that he does not want to see the medical marijuana dispensaries discouraging recreational sales outlets because there are sufficient outlets. He noted that the voters voted on two separate issues - medical and recreational marijuana - and the legislature decided to mix and match which does no good.

Nebel noted that the City Council has referred to the Planning Commission the issue of recommending additional rules related to recreational marijuana. It was noted that once OLCC develops the state rules, the city will have a better framework from which to develop local regulations related to the sales, processing, and growing of recreational marijuana.

MOTION was made by Engler, seconded by Swanson, that Ordinance No. 2085, allowing the sale of recreational marijuana by medical marijuana dispensaries, be read by title only and placed for final passage with the amendment to the language definition made by Allen. The motion carried in a voice vote with Saelens voting no. Hawker read the title of Ordinance No. 2085. Voting aye on the adoption of Ordinance No. 2085 were: Engler, Busby, Roumagoux, Allen, Swanson, and Sawyer. Saelens voted no and added that he hoped that his previous comments help to explain his reasons for voting no.

Public Hearing Regarding Fluoridation of City of Newport Water. Hawker introduced the agenda item. Nebel reported that at the July 20, 2015 meeting, the City Council reviewed a report on the history of fluoridation of the city's water supply. He stated that following the report, Council requested that a public hearing be held to determine whether provisions should be made to add fluoride to the city's drinking water, and that hearing is this evening.

Nebel reported that earlier this year, Gary Lahman and Bill Wiist, of the Lincoln County Public Health Advisory Board, met with him regarding the addition of fluoride to the city's drinking water. He stated that they indicated that fluoride appears to have been discontinued by a former Water Treatment Plant Supervisor who had safety concerns regarding how the system was set up in the old water plant. He noted that as a result of that action, and a decision not to add fluoridation equipment to the new water treatment plant, fluoride has not been part of the city's water system for the past decade.

Nebel reported that the history of fluoride in Newport dates back to August 23, 1960, when the city called for a special election to obtain the advice of citizens on whether to add fluoride to the city's drinking water. He stated that this election was approved by the voters with 1,070 voting yes and 1,049 voting no. He noted that Council initiated various steps to go forward with the necessary equipment to add fluoride to the drinking water. He added that a citizen group, at that time, petitioned the Council not to proceed with this change, and ultimately, the citizen group obtained enough signatures on a petition to initiate a vote to amend the City Charter to prohibit fluoridation of the city water system. He reported that the citizens turned down this amendment by a vote of 704 yes to 789 no. He stated that in anticipation of a favorable outcome, the City Council had bid the necessary equipment to fluoridate the water system conditioned upon being able to cancel the order if the Charter provision, prohibiting the addition of fluoride to the water system, was approved by the voters.

Nebel reported that fluoridation continued uninterrupted until 2005 when it was

discontinued. He stated that as part of the budget deliberations, he requested that Gross provide an estimate on the cost of providing the necessary containment room for adding fluoride to the water, fluoride, as well as the fluoridation equipment for the water plant, and the estimate was \$300,000. He noted that he did not recommend the \$300,000 be included in the budget, and the budget, adopted in June, does not contain funding for the fluoride equipment. He added that he indicated to the Budget Committee that he felt this issue would be better served outside of the budget discussions, since there are strong feelings on both sides of the issue. He noted that he also indicated that he would provide a report to the City Council at the July 20 meeting to kick off a discussion on how to proceed with this public policy issue.

Nebel reported that Hawker and others have done research to fill in some of the gaps that existed on how the decision to cease adding fluoride was made. He noted that Patricia Patrick-Joling recalls a discussion, while she served on the City Council, regarding fluoridation of the city's water system. He added that Hawker has checked past minutes and can find no discussion items where Council took any action on discontinuing fluoridation of the city's water system. He noted that he spoke with former Councilor Peggy Sabanskas who also recalled a discussion regarding this issue. He added that, again, in checking past Council minutes, there was no reference found to this effect. He stated that there was a task force on the drinking water quality that met, but staff is unable to find any notes from those discussions regarding fluoride. He added that the conclusion is that the discussion on fluoridation, recalled by former Councilors, may have been at that type of meeting instead of a Council meeting.

Nebel reported that in regard to the design process for the new plant, former Public Works Director, Lee Ritzman, indicated that there was an intent to include fluoride to the new plant during discussions with the design engineers, but when it became clear that the plant was over budget, decisions were made as to what components would be eliminated from the project during the design phase. He stated that one of those issues included the fluoridation equipment, and this elimination appears to have been authorized by the former City Manager.

Nebel reported that in reviewing this matter with Rich, Resolution No. 1165-A, which was adopted by Council, provides for adding fluoride to the city's water supply, and there is no evidence of any Council action rescinding this resolution or redirecting staff on the matter. He stated that as a result, it would appear that Resolution No. 1165-A continues to be the last legislative direction provided by Council on this issue. He noted that Rich has advised that Council is free to take whatever appropriate steps they would like to take on this matter going forward.

Nebel reported that following the public hearing, it is his recommendation that Council not take any immediate action on the issue. He stated that he believes it would be best to allow Council and staff to consider the comments made with a decision being made at a future time. He noted that there have been requests from groups, in favor of and opposed to the fluoridation of the water, to make extended presentations to Council. He stated that he believes that these presentations would have some value for Council's deliberation on this matter. He recommended that Council schedule a work session that would give both sides an opportunity to make a more formal presentation to Council prior to a decision on the issue. He proposed that Council consider holding a work session on October 12 at either noon or at 6 P.M., and schedule final action by Council at the October 19 Council meeting.

Nebel reported that Council really has two options it can pursue in addressing this matter. He stated that the first option would be to direct staff to proceed with the engineering, design, specifications of equipment, and proper containment of equipment needed to add fluoride to the drinking water pursuant to Resolution No. 1165-A. He noted that the second option is to rescind Resolution 1165-A. He stated that rescinding this resolution would effectively confirm previous administrative actions taken to eliminate fluoridation of the city's water.

Allen suggested a discussion regarding which groups to invite to the proposed work session based on public comment this evening. He added that the third option would be to hold an election on the issue.

Roumagoux opened the public hearing at 7:28 P.M. She called for public comment.

Speaking in favor of fluoridation of the city's water were:

Rebecca Austen;
Julia Young-Lorion;
Gayle Hansen;
Bill Wiist;
Cynthia Jacobi;
Gary Lahman;
Cheryl Connell;
Ellen Franklin;
Neal Redman;

Speaking in opposition of fluoridation of the city's water were:

Roumagoux reported that Jane Heida has submitted written comment, in addition to that previously presented to Council, in opposition to the fluoridation of the city's water system;

Tanya Sauer;
Dianne Lynn;
James Lynn;
Jay R. Robinson;
Joanne Matthys;
Janna Pijoan;
Janet Johnson;
LeOra Johnson;
Maria Sause;
Susan Davidson;
Terry Obteshka;
Susan Andersen;
Carla Perry;
Rick North;
Dennis Fry;
John Smigel;
Frederic Wiebe;
Brian Perkins;
Michael Bojarski;
Robert Whitman;

Carole Feese;
Daryl Liberty Lanzon.

Marletta Noe recommended a vote on the issue.

(The City Council packet, for this meeting, contains many additional written comments regarding the fluoridation of the city's water.)

Roumagoux closed the public hearing at 9:00 P.M.

Busby recommended not holding a work session on this issue as there has been sufficient input on the matter. Roumagoux agreed with Busby. She added that the public comment was sufficient, and that written comment can continue to be submitted.

Nebel indicated that there was no action scheduled this evening, and that he has recommended a work session on the matter. He noted that it is important to let the public know what Council plans in terms of voting on the issue or additional meetings.

Allen stated that he is open to a work session with one presentation from a person or organization supporting the addition of fluoride, and one presentation from a person or organization opposed to the addition of fluoride.

Nebel noted that the work session could be a narrower discussion of the issue.

Saelens stated that he is inclined to agree with Roumagoux and Busby.

Allen noted that if a work session is held, it should be scheduled in the evening.

MOTION was made by Swanson, seconded by Roumagoux, to schedule a work session for Monday, October 12, 2015, at noon, in the City Council Chambers to allow for formal presentations for those in favor and opposed to adding fluoride to the drinking water, with the intent of having the City Council make a final decision on this matter at the October 19 City Council meeting. Voting aye in a voice vote was Engler; voting no was Allen, Sawyer, Swanson, Roumagoux, Saelens, and Busby.

MOTION was made by Allen to schedule a work session for Monday, October 12, 2015, at 5:30 P.M., in the City Council Chambers to allow for formal presentations for those in favor and opposed to adding fluoride to the drinking water, with the intent of having the City Council make a final decision on this matter at the October 19 City Council meeting. The motion died for lack of a second.

MOTION was made by Allen, seconded by Saelens, to continue accepting public comment until the October 19, 2015 City Council meeting, at which time a decision will be made on whether to add fluoride to the drinking water. The motion carried unanimously in a voice vote.

CITY MANAGER REPORT

Initiation of the Vacation Process for Portions of SW 10th Street, SW Case Street, and an Associated Alley for the Pacific Communities Health District Hospital Project. Hawker introduced the agenda item. Nebel reported that Samaritan Pacific Health Services, on behalf of the Pacific Communities Health District, is requesting that the City Council initiate the statutory process to vacate portion of NW 10th Street from SW Bay Street north to SW Case Street, SW Case Street from SW 10th Street east to SW 11th Street, and an alley between and parallel to SW 10th and 11th Streets from SW Bay Street north to SW Case Street.

Nebel reported that the property adjacent to the streets and alley being vacated are all owned by the Pacific Communities Health District. He noted that there are

existing roads that have been developed within the right-of-way as well as city water and sewer services that will need to be relocated as part of the vacation. He added that this vacation will facilitate the construction of the new hospital facility.

Lyle Hutchins, from Devco Engineering, appeared on behalf of Samaritan. He stated that he will respond to any questions, and he agreed with Nebel's recommendation.

Busby stated that he thought this request was from the hospital foundation rather than the hospital district. He asked which it is, and Hutchins reported that he represents the foundation.

Busby suggested denying the request in the interest of consistency. He added that a few months ago, a private citizen wanted 1/20 the amount of property, and Council denied his request. He asked that all be treated fairly and consistently.

Nebel noted that the city has a very specific policy governing these actions. Tokos reviewed the policy, noting that there are a number of different policies in the packet that relate to the extent of public benefit. Allen noted that the policy also talks about benefit to the property owner - the foundation.

Saelens stated that he will support the request because it is another piece of the redevelopment of the area. He added that he did not appreciate representatives of Samaritan pre-empting an urban renewal discussion with a discussion of a possible couplet.

Allen noted that this request is to initiate the process of vacating public rights-of-way. He added that future votes will be another discussion.

Sawyer asked whether the city could get the property back if the foundation sold the hospital. Tokos noted that once the property is vacated, it accrues to the adjoining property owner.

Rich noted that the benefit issue pertains to whether the public will benefit from the vacation. He added that street vacations are strictly controlled by state statute.

Busby asked whether the city could grant an encroachment rather than a vacation.

MOTION was made by Engler, seconded by Saelens, to initiate street vacation proceedings for portions of SW 10th Street from SW Bay Street north to SW Case Street, SW Case Street from SW 10th Street east to SW 11th Street, and an alley between and parallel to SW 10th and 11th Street from SW Bay Street north to SW Case Street conditioned upon Samaritan Pacific Health Services paying the filing fee of \$776 and obligating itself to any surveying and recording costs required for the vacation. The motion carried in a voice vote with Busby voting no.

Consideration of Resolution No. 3725 Adopting the Newport Addendum to the Lincoln County Multi-Jurisdictional Natural Hazards Mitigation Plan. Hawker introduced the agenda item. Nebel reported that in 2009, Lincoln County adopted a Multi-Jurisdictional Natural Hazards Mitigation Plan which included an addendum for the City of Newport. He noted that the County's plan has expired. He stated that FEMA provided funding to the state to assist in the update of these multi-jurisdictional plans, and that city staff coordinated revisions to the Newport addendum to the plan. He stated that the city's addendum includes work to secure the domestic water supply; seismic retrofitting of vulnerable structures and critical facilities; completion of a storm water master plan; and implementation of priority

projects; understanding landslide and coastal erosion risks; educating residents and visitors about tsunamis risks; encouraging the undergrounding of overhead utility lines; maintaining high wind warnings on the Yaquina Bay Bridge; developing and implementing educational programs; pursuing opportunities for the stabilization of the Big Creek Dams; and other similar projects. He noted that the project list can be found in Attachment 1, Page 43 the City of Newport addendum which is included in the packet. He stated that FEMA has indicated that the addendum conforms to its requirements, and Lincoln County adopted the full plan at its September 2 Commission meeting.

Nebel reported that adoption of this plan prior to September 29 is critical for FEMA money to be provided for projects listed in the plan. He stated that this is particularly critical at this time since the \$471,361 in federal funding is designated for the retrofit of Safe Haven Hill and will not be released if the addendum is not adopted by the end of the month. He noted that projects identified in the plan would be eligible for future funding considerations from FEMA, which would provide a significant opportunity to fund projects that are identified in the plan.

MOTION was made by Sawyer, seconded by Swanson, to approve Resolution No. 3725, a resolution adopting the Lincoln County Multi-Jurisdictional Natural Hazards Mitigation Plan and Newport Addendum to the Plan, as the official City of Newport Natural Hazard Mitigation Plan. The motion carried unanimously in a voice vote.

Financial Report for the Fiscal Year Ending June 30, 2015. Hawker introduced the agenda item. Nebel reported that Murzynsky and Finance Department staff have completed the year-end report for the fiscal year ending June 30, 2015. He noted that these are unaudited reports, but reflect the city's finances for the fiscal year. He stated that while there are a number of issues being worked on related to the transition of accounts, including the reduction of line items and the renumbering of funds, the Finance Department was able to produce these reports for the first meeting in September. He added that this is a significant improvement from last year when the year-end reports could not be completed until after the first of the year.

Nebel reported that the city finished the year in a slightly stronger financial position than what was projected at year-end for the budget process. He stated that this is important since funds, where fund balances exceeded estimates, represent unanticipated dollars for the current fiscal year. He added that if a fund balance is lower than anticipated at year-end, the available funds for that fund could be impacted. He noted that this becomes a significant issue if the remaining fund balance is insufficient to cover budgeted expenditures.

Nebel reported that the report shows the budget as amended for the 2014/2015 Fiscal Year, and the year-end actual amounts prior to the audit. He stated that Council appropriates funds by various categories, such as City Administration, Police, Fire, Library, etc., and a number of these funds are broken into smaller subsections for purposes of managing the budget. He noted that all of the General Fund expenditures were within the appropriated amounts, and that departments did an excellent job in keeping within the appropriated amounts in all funds. He stated that in the Capital Projects funds, there is additional work needed to address ending

fund balances since projects in the Capital Outlay budget will be carried over in a future budget amendment. He added that this information will be presented to Council at the time those amendments for the Capital Outlay funds are made.

Report on Bids for the Construction of the Aquatic Center. Hawker introduced the agenda item. Nebel reported that the city has received bids for the construction of an aquatic center in response to the bond approved by the voters on November 5, 2013. He stated that the ballot question was in regard to whether the city shall authorize \$7.9 million in general obligation bonds for a new indoor municipal swimming pool. He noted that the summary of the ballot provision indicated that the current plan is that the new pool would be located adjacent to the Recreation Center and share resources with the center. He stated that on July 29, 2015, five bids were received for the construction of the aquatic center, and the low bid was from Pavilion Construction in the amount of \$8,308,669. He noted that with design engineering, construction engineering, and other expenses, the total budget for this project would be \$9,479,729. He added that the current revenues appropriated for this project is \$8,590,000, leaving an unbudgeted amount of \$889,729. He noted that it is important to also have a contingency for unanticipated costs, and that for new construction, a five percent contingency would require an additional \$415,433.

Nebel reported that in reviewing the bids, there are several factors that contributed to the higher costs from the time the bond issue was approved, including: \$271,144 for campus parking improvements; \$100,253 in sewer line improvements to eliminate existing problems with the Recreation and Senior Centers; additional design for the current channel in the amount of \$20,000; and additional engineering to address unforeseen utility issues in the amount of \$73,000. He added that the conceptual design estimates did not include a provision for the Percent for the Arts. He noted that this additional cost added up to \$540,297. He stated that the architect underestimated the construction costs by approximately six percent which also contributed to the gap in funding. He noted that he, Gross, Protiva, and Murzynsky have compiled a list of potential cost savings and revenue sources to fill this gap. He added that he and Murzynsky have also explored the issues of defeasance (refunding) on the bond issue if a decision was made not to go forward with this project. He noted that bids will have to be awarded by September 21, 2015 to be timely and in accordance with the bid documents. He stated that the city has been contacted about developing 100 off-site parking spaces on a lease-purchase basis at an estimated cost of \$3,950 per month plus property tax (if any), insurance, and maintenance. He noted that this could be a cost effective way to address the parking demands for this facility.

Nebel reported that staff has compiled a possible funding scenario for moving the project forward, and that it is included in the packet. We have put together the following possible scenario for the Council's consideration for moving forward:

Aquatic Center **Resources & Expenses**

Budget Shortfall

Budgeted Resources	\$8,590,000
Expenses (Design, Engineering, Construction)	<u>(\$9,479,729)</u>
Unbudgeted	(\$889,729)
<u>Deductions</u>	
Bid Alternative No. 2 (Delete UV Treatment)	\$89,000
Value Engineering (Block & plumbing changes)	\$74,400
Value Engineering (Eliminate Hydrotherapy Spa)	\$78,000
Value Engineering (Eliminate Current Channel)	\$34,800
South Parking Lot	<u>\$273,000</u>
<u>Total Reduction</u>	<u>\$549,600</u>
<u>Net Shortfall</u>	(\$340,129)
<u>Additional Resources</u>	
General Fund, 2015-16	\$200,000
Room Tax, 2015-16	<u>\$280,000</u>
Revenues	<u>\$480,000</u>
<u>Net</u>	\$139,871
Recommended Contingencies 5% of Construction Cost	<u>(\$415,433)</u>
<u>Net Shortfall</u>	(\$275,562)
Inter-fund Loan for Agate Beach Closure Fund	<u>\$275,502</u>
Shortfall	\$0

Roumagoux agreed with the leased parking alternative. Busby stated that if we cannot build what was promised, we should not build at all. He added that features

that are promised need to be delivered. He noted that he had received a comment regarding not taking money from anything else to fund the pool.

Nebel noted that the flow channel could not be added if it is taken out of the plan, but the hydrotherapy spa could be added later for minimal cost.

Allen asked whether an interfund loan from Agate Beach Closure Fund would have an impact on legal requirements. He asked where the payback would come from, and Nebel noted that the payback would be from the General Fund, and indirectly through the Parks Fund. Busby asked whether the monies could simply be extracted from the Agate Beach Closure Fund without an interfund loan. Nebel noted that when the project (landfill) is closed, the remaining funds will go into the General Fund.

Saelens addressed the issue of what the public wanted in the swimming pool. He noted that a therapy pool was wanted, and that the current channel could be added later. He added that there are a number of members of the Parks and Recreation Advisory Committee who could help recall the package promised to voters. Protiva noted that the September meeting of the Parks and Recreation Advisory Committee had been postponed, and it is critical that a response be made related to the bid at the next City Council meeting. Allen suggested reaching out to key committee members for their input and provide this information as a part of the packet for the next Council meeting.

Gross stated that it is important to not get too hung up on Nebel's scenario as it is unlikely that the full five percent contingency would be needed. He added that the alternative deductions were developed so that items could be added in during the contract. He noted that the items that the contingency will be needed for will be identified almost immediately. He stated that he would have left the current channel in and eliminated the spectator entrance. He added that to a lesser extent, the hydrotherapy spa falls into the same category and could be added in the future.

Sawyer asked whether more parking would be realized if Angle Street was vacated. Gross noted that the issue is the cost to build the parking.

Nebel stated that the previously discussed scenario provides an idea of what steps could be taken to move the project forward if that is the desire of Council. He noted that if Council has specific comments regarding possible project reductions, to let him know quickly as a decision must be made on September 21.

Allen stated that the larger issue is whether the alternative deducts change the project so that it is not what voters intended.

Protiva reported that the voters wanted two bodies of water - a warm therapy pool, a cold swimming pool, and a hot tub. He noted that the hot tub could be plumbed but not built until funds are available. He added that staff has looked at different ways to make the best project for the community.

Allen noted that the Agate Beach Closure Fund has \$550,000 in excess of its requirements.

REPORTS FROM MAYOR AND COUNCIL

It was agreed to delay these reports due to the late hour.

PUBLIC COMMENT

Gary Lahman expressed disappointment about the elimination of the work session on fluoride. He noted that the state dental officer, representing the Oregon Health Authority, would like to speak to this issue.

Rick North, with Clean Water Newport, expressed dismay regarding the elimination of the work session on fluoride. He noted that Clean Water Newport was asking for equal time.

Susan Andersen, with Clean Water Newport, asked whether the city would be using hydrofluorosilicic acid; what the source would be; cost estimates; whether there was a provision for testing the fluoride chemicals for contaminants such as arsenic. Nebel noted that he would bring a response to a Council meeting.

Daryl Lanzon continued his discussion regarding the dangers of fluoride.

Cheryl Connell asked Council to reconsider its decision not to hold a work session on the fluoride issue and to provide ten minutes to both proponents and opponents of fluoride.

ADJOURNMENT

Having no further business, the meeting adjourned at 10:13 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor