

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

A special meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7 p.m. on Thursday, February 23, 2012. Mayor Knapp called the meeting to order at 7:03p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Council President Núñez
Councilor Hurst
Councilor Goddard - excused
Councilor Starr

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Michael Bowers, Community Development Director
Sandra King, City Recorder
Mark Ottenad, Public Affairs Director
Dan Knoll, Public Affairs Coordinator
Mike Ward, Civil Engineer
Steve Adams, Interim City Engineer
Delora Kerber, Public Works Director
Kerry Rappold, Natural Resources Program Manager

Motion: Councilor Núñez moved to approve the order of the agenda. Councilor Hurst seconded the motion.

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

The Mayor reported he had attended the Westside Economic Alliance meeting, the City had received a thank you letter from Art Tech High School for participation in their Down To Earth Sustainability speaker series; and a thank you letter from the Skateboard Park Group for designating the location of a future skateboard park. The Mayor would be traveling to Washington DC to talk with elected officials about transportation funding for the area.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Sheri Young, Silver Leaf Farms, PO Box 7, Wilsonville was concerned the Storm Water Master Plan did not contain a capital improvement project to replace the culvert between her property and the Bernert's property south of Wilsonville Road near OrePac. She submitted a letter dated January 9, 2012 for the record. The current culvert is breaking down making it difficult to get farm equipment over the crossing. She asked that the project be included in the Storm Water Master Plan. Ms. Young also noted the zoning indications on her land are inaccurate as are the maps.

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Mr. Cosgrove would have Mr. Rappold get in touch with Ms. Young to correct the information. Council discussed amending the plan to include the culvert project in the list of unfunded projects with the understanding if the project was not included it would not be eligible for funding.

Mr. Kohlhoff stated the City's technical staff has spoken with the Young's and Bernert's and have recommended the project not be included in the Storm Water Master Plan. The letter from Dave Bernert originally sent to the City and dated January 2, 2012 was included in the January 30, 2012 Council Work Session packet and would be made a part of the record for this meeting. The project may be included in the Plan as an unfunded project; if the project was not included in the Plan tonight it could be included in future amendments of the Plan.

Simon Springall, 7710 SW Roanoke Drive South, Wilsonville, referred to the statement in the *Wilsonville Spokesman* by Councilor Goddard, "The idea that we're going to take additional ten years of projects and call them unfunded or potential is of no significant purpose besides muddying up the scope and purpose of the plan." Mr. Springall thought the whole point of a long range plan was to have a set of projects that could be taken up, and he detected hostility towards the natural resources and the maintenance of the natural environment around the city. He suggested Councilors look to their mission statement when they are considering such items.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Council President Núñez – Chamber and Library Board liaison. Councilor Núñez had attended the Library 30th anniversary celebration.

Councilor Hurst – Parks and Recreation Board and Library Board liaison had no reports to make. He announced the volunteer planting event scheduled for Saturday February 25.

Councilor Starr – Planning Commission and Wilsonville Community Seniors Inc. liaison announced the middle school dance set for Friday the 24th; and that the Planning Commission continues their work on sign code changes, the water distribution master plan, and city communications plan.

CONSENT AGENDA

Mr. Kohlhoff read the Consent Agenda item into the record.

A. Approval of the minutes of the February 6, 2012 Council Meeting.

Motion: Councilor Hurst moved to approve the Consent Agenda. Councilor Starr seconded the motion.

Vote: Motion carried 4-0

NEW BUSINESS

A. **Resolution No. 2347**
A Resolution Of The City Of Wilsonville Authorizing Geotechnical And Design Consultant Contract For Continuation Of The Boeckman Road Extension Project To Complete Substantial Soil Compression, Repair, And Reconstruction Work.

Mr. Kohlhoff read the title of Resolution No. 2347 into the record.

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Steve Adams, Interim City Engineer, presented the staff report for the proposed Resolution.

Boeckman Road Extension project, CIP #4048, was designed by HDR Engineering, Inc., and then constructed by Kerr Contractors, Inc. from autumn 2006 through autumn 2008. After the roadway was opened the areas near the Coffee Creek Bridge approaches were observed to settle excessively creating undesirably steep grades across the approach slabs to the bridge and impacting the existing culverts and wildlife crossings.

The City of Wilsonville (City) instituted a lawsuit, City of Wilsonville v. HDR Engineering, Clackamas County Circuit Court Case No. CV 10070047, over geotechnical and design errors involving the subsidence of the road and bridge abutments over compressible soils. In conjunction with this lawsuit, the city contracted with Tim Blackwood of Pacific Geotechnical for geotechnical design services. Mr. Blackwood provided technical and professional solutions to the sinking roadway along with detailed cost estimates. The soils analysis work from this study indicates significant additional settlement is anticipated. Pursuant to Resolution No. 2323, adopted by Council on September 21, 2011, a settlement of claims was authorized.

The City has contracted with Hart Crowser for geotechnical design and construction management services for a pre-load program through Purchase Order # 003970, dated October 20, 2011. Hart Crowser completed a draft report with drawings for the pre-load, and presented them to the City on December 22, 2011.

To proceed with the re-design and re-construction of Boeckman Road, Mr. Blackwood has assembled a team consisting of Hart Crowser as project manager and geotechnical engineer, OTAK for civil and structural engineering, Mackay and Sposito for survey services, and DKS Associates for traffic management.

As a continuation of the services provided by Tim Blackwood, the City needs to proceed with roadway re-design and re-construction phase services for this project. Staff recommends that Hart Crowser be named the prime consultant, project manager and geotechnical engineer to lead the re-design and re-construction of Boeckman Road and award a Professional Services Agreement in the amount of Three Hundred Thirty-Four Thousand, Three Hundred Sixty Nine dollars (\$334,369.00). The value of this contract to be covered by the settlement of claims previously received from HDR Engineering.

Under the City's Purchasing Procedures Manual, Revised August 2011, the following findings and allowances are made:

Special Procurements

- Contract-specific Special Procurement: used for entering a single contract or a number of related contracts on a one-time basis or for a single project.

Finding:

Hart Crowser, through Tim Blackwood and Pacific Geotechnical, during the legal proceedings against HDR Engineering was qualified and hired by the City, through the Office of City Attorney, and qualified as the City's main expert on the geotechnical and design issues to provide the technical solutions to the subsiding roadway and the costs for the solution. See above findings as well.

Following the settlement of claims, the City contracted with Hart Crowser for geotechnical design and construction management services for a pre-load program. Hart Crowser, Inc. has

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the professional expertise and project specific knowledge to continue forward with being the project manager for the redesign and re-construction of Boeckman Road.

Oregon Revised Statutes

• **279C.115 Direct contracts for services of consultants.**

- (1) As used in this section, “consultant” means an architect, engineer, photogrammetrist, transportation planner or land surveyor.
- (2) A contracting agency may enter into a contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services directly with a consultant if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under rules adopted under ORS 279A.065 and the new contract is a continuation of the project.
- (3) A contracting agency may adopt criteria for determining when this section applies to a contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services. [2003 c.794 §94; 2011 c.458 §5]

Finding:

Hart Crowser, through Tim Blackwood and Pacific Geotechnical, has previously explored, tested and analyzed the local soil conditions and has substantially described, planned, and otherwise studied the geotechnical issues and design solutions to mitigate the compressible soils problem and repair the road and bridge abutment issues. Hart Crowser, Inc. is currently under contract to provide geotechnical design and construction management services for a pre-load program of the compressible soils on the site.

The adoption of the resolution will be the next step in the re-improvement of the Boeckman Road project. The areas of the bridge that are subsiding will be surcharged with rock and soil. When sufficient compression has occurred, the road will be rebuilt next year. Staff was not engaging the same geotechnical firm that originally built the roadway and was confident this repair would prevent further subsiding. Originally it was thought the repairs would take 6-8 months; however, testing done last fall indicates there is more settlement expected than what was thought last summer. Rather than have the surcharging material placed now and rebuild the road in November, staff chose to delay placing the material until late summer with the hope the surcharging would be completed by mid-spring 2013, and then the road would be rebuilt. The roadway would be closed this August and reopen in August of 2013.

Motion: Councilor Nunez moved to approve Resolution No. 2347. Councilor Hurst seconded the motion.

Vote: Motion carried 4-0.

CONTINUING BUSINESS

- A. **Ordinance No. 700** – continued decision 2nd reading
An Ordinance Of The City Of Wilsonville Adopting A Storm Water Master Plan, Repealing The 2001 Stormwater Master Plan And Amending The City’s Comprehensive Plan To Include The Newly Adopted 2011 Stormwater Master Plan to Replace the 2001 Stormwater Master Plan.

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Ordinance No. 700 was read into the record by title only on second reading by Mr. Kohlhoff who noted the Council had been requested during Citizen Input to add an unfunded project to the SWMP for culvert replacement south of Wilsonville Road.

Mr. Rappold prepared the following staff report for the second reading. He, Delora Kerber, Public Works Director, and Michael Bowers, Community Development Director presented an abbreviated PowerPoint originally given January 30, 2012.

The City Council discussed the Stormwater Master Plan at a special work session on January 30, 2012. Various aspects of the proposed master plan were reviewed with staff. As a result of the discussion, the City Council directed staff to bring the master plan back for a second reading at their February 23, 2012 meeting.

As part of the discussion, the City Council wanted capital project LID8 (SW French Prairie Green Street) removed from the master plan. Staff has made the following revisions to the plan to accommodate this request:

1. Revised the following pages in the master plan (Exhibit A):
 - a. **Page ES-5** – revised total cost for capital improvement program
 - b. **Page ES-8** – removed project from Table ES-1, and revised unfunded and total costs for CIPs
 - c. **Page 8-31** – reference changed from eight to seven LID projects
 - d. **Page 8-45** – removed project from Table 8-2, and revised subtotal and total costs for CIPs
 - e. **Page 9-10** – removed project from Table 9-1
 - f. **Page 9-13** – revised unfunded and total cost for CIPs
 - g. **Page 9-16** – removed project from Table 9-2, and revised unfunded and total costs for CIPs
 - h. **Figure ES-1** – removed project from figure
 - i. **Figure 8-1** – removed project from figure

2. Removed the following pages in the master plan (Exhibit B):
 - a. Page 8-39 – project description
 - b. Appendix F – project description
 - c. Appendix H – summary cost sheet

Councilor Goddard arrived at 7:38 p.m.

Mr. Rappold pointed out the storm water requirements are based on the health of the Willamette River, the Federal Clean Water Act and the responsibilities the city has in managing storm water. The Storm Water Master Plan sets the framework for how the city manages its system in developing policies, and implementation measures that guide what is done. A part of developing the SWMP included looking at problem areas where there is erosion, coupled with where the city needed to meet the requirements because of the Federal Clean Water Act and the State DEQ requirements. Out of this effort comes the capital improvement program which identifies projects and the funding for the projects as well as operations and maintenance. This feeds in to the City Code, Development Code, and Public Works Standards where the specifics of managing storm water are set out. Tied to this is the federal requirements which come through the city's NPDES permit (National Pollutant Discharge Elimination System).

Delora Kerber noted the costs of the SWMP program include program management as well as operations and maintenance activities to meet the requirements of the NPDES permit.

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Michael Bowers talked about future growth and identified what was in the program, and what was not included in the CIP program. The 20 year master plan project list has been divided into three ten-year segments. For the most part the master plan includes services inside the city, including the existing urban growth boundary areas (Coffee Creek Industrial Area, Villebois build out, and Frog Pond residential area). The capital improvement list does not include areas that are beyond the UGB limits, including Basalt Creek north of Day Street, and areas east of Frog Pond to Advance Road. These are listed on the unfunded project list. The SWMP will be reviewed at the ten year point to reevaluate and rebalance the projects in the unfunded projects list.

Mayor Knapp asked for staff's perspective on the culvert on Coffee Lake Creek south of Wilsonville Road.

Mr. Rappold responded by identifying the location of the culvert on a map, which was south of OrePac and connected the two farm fields owned by the Bernert's and the Young's. He said it was difficult to determine the specifics of a 30-year old project and he was unable to find evidence of a public easement or agreement for long term maintenance, at this point the culvert crossing serves to connect two private properties. Mr. Rappold explained part of the decision process included consideration of the Brown Road extension which would require a new crossing of Seeley Ditch or Coffee Lake Creek and which could be located at either Baily Street or 5th Street. He felt it was in the best interest of the city to place a new crossing that would function properly and be part of the city's transportation system. Mr. Rappold provided a project number – CLC-10 Coffee Lake Creek Culvert Replacement – should the council want to include the project on the funded list; however he was not recommending adding the project.

Projects located on private lands were chosen for the opportunities they presented, restoring wetlands for example; but the majority of the projects were on public land. However, it was possible to pursue a public/private project outside the framework of the SWMP.

Mr. Kohlhoff added the city could enter into an agreement to share the cost of an improvement if it had a public benefit. The project could be added at a later date, or listed in the Storm Water Master Plan as an unfunded project to be reassessed in the future.

Motion: Councilor Hurst moved to approve Ordinance No. 700 as is on second reading. Council President Núñez seconded the motion.

Councilor Hurst commented his motion to adopt the SWMP as written did not belittle Ms. Young's concern and request. Staff raised a good point, should there be development plans for the area the issue may be addressed then; or if it became a pressing enough matter impacting the public it could be approached outside of the SWMP. Adopting the Storm Water Master Plan was necessary to allow studies and improvements to begin, set the Systems Development Charges appropriately, and have staff move from planning to executing the CIP projects listed in the SWMP. He noted each project would be reviewed and approved by council as they are brought forward to be implemented.

Councilor Starr stated as a newer councilor, he has more appreciation for the Stormwater Master Plan than before he was elected. Having a robust stormwater master plan is one of the elements that make Wilsonville such a livable town. As we move into the future to be able to plan and do our part for the environment is important. The Councilor reiterated the CIP budget is reviewed by the Budget Committee and some of the projects can be unfunded should the Budget Committee reprioritize the projects.

Councilor Starr amended the motion to include Ms. Young's property in the Plan as unfunded since the future was uncertain.

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Amendment to Motion: Councilor Starr moved to amend the motion by adding to the unfunded section the project identified as CLC-10 Coffee Creek Culvert Replacement Project. Councilor Goddard seconded the motion.

Vote on Amendment: Motion failed 2-3.
Councilors Starr and Goddard voting “Yes”.

Councilor Goddard supported the adoption of the Storm Water Master Plan to have funding available for the highest priority storm water projects. He did not believe including the unfunded project category in the Storm Water Master Plan was an efficient use of staff time for projects that may not remain intact over the next thirty years, and he did not want to create legislative confusion by including that project category. In addition, it was likely the regulations and requirements will change over the next 30 years.

Mayor Knapp thought it was important to keep long range unfunded list in the Plan since this aids in planning for funding, as well as coordinating future development proposals. If Systems Development Charges are not adequate to pay for new development then existing residents are charged extra because new development has not paid its own way. The City’s general philosophy is for new development to pay its own way.

Vote: Motion carried 5-0.
Council President Núñez - Yes
Councilor Hurst - Yes
Councilor Goddard - Yes
Councilor Starr - Yes
Mayor Knapp - Yes

PUBLIC HEARING

A. **Ordinance No. 702** – First reading
An Ordinance Repealing Wilsonville Code Chapter 10, Section 10.310 And Replacing It With New Section 10.310 Restricting Panhandling.

Mr. Kohlhoff read Ordinance No. 702 into the record by title only.

Mayor Knapp opened the public hearing at 8:12 p.m. and read the hearing format for the record.

Michael Kohlhoff presented the staff report.

W.C. 10.310 has not been updated since the original adoption of the City Code. There have been substantial developments in both Oregon and Federal constitutional law since the adoption of the original City Code. As it is currently written, W.C. 10.310 would fail to pass a first-amendment challenge under the federal constitution or a challenge under Article 1 Section 8 of the Oregon constitution. An update of this Code section is necessary to bring the law in conformity with current constitutional law.

Background

Currently, W.C. 10.310 reads, “Begging. No person shall beg or solicit money or other gratuities upon the streets or any public place in the City.”

This issue came before the Legal department when a defendant was found guilty by the Wilsonville

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Municipal Court of violating 10.310. Judge Gleeson suspended imposing the conviction because he was concerned about the constitutionality of the Code section.

After researching the topic, the legal department concluded that, as currently written, 10.310 would be considered an impermissible regulation of speech content. This is because to enforce the law, a police officer would have to listen to words spoken by a person to determine if the law is being broken—a police officer would have to hear the content of the speech to be able to decide if the law applied. When a law restricts speech based on its content, the US Supreme Court has determined that it must be tied to a compelling government interest and be implemented via the least onerous means possible—very few laws meet this high standard. Judge Gleeson also found W.C. 10310 would violate constitutional free speech standards.

While governments are not allowed to regulate the content of speech in public fora, they can adopt reasonable time, place, and manner regulations under which communications are made. Time, place, and manner restrictions do not prohibit content, but they regulate the way that individuals are allowed to convey the content to the public. A common example would be a noise ordinance that restricted the use of a bullhorn—the speakers' content is not being regulated, just the manner in which they are allowed to convey their message to the public. Wilsonville can implement reasonable time, place, and manner restrictions on panhandling that do not reach the speakers' content.

Related Policies/Budget Considerations

- (1) It is not the content of a panhandler's speech that makes individuals uncomfortable traveling or spending time in public places. However, often the attendant circumstances surrounding the panhandling or the physical actions of the panhandler can result in annoyance, discomfort, distress, or fear. By regulating the conduct and attendant circumstances of panhandling activities the City can alleviate these burdens on the use of public property.
- (2) Enforcement of this ordinance would not require any extra expenditure of City resources, it simply updates the current section 10.310 to comport with constitutional standards.
- (3) Under § 1983, municipalities can be responsible for compensatory and nominal damages if they are held to have violated an individual's constitutional rights. The municipality can also be held responsible for paying the attorney's fees of the party that brings the claim. It is important to remove clearly unconstitutional code sections to avoid exposing the City to legal liability.

Council Options

In order to comply with the Oregon and Federal constitution W.C. 10.310 cannot continue to be enforced in its current form. The Council could repeal it entirely and try to rely on other provisions in the Oregon Criminal Code such as assault (ORS 163.160-163.185), menacing (ORS 163.190), coercion (ORS 163.275), or stalking (ORS 163.732). This option would address the most onerous panhandling activities, but would not reach all the activities that have the potential to annoy, distress, or place individuals in fear as they navigate public spaces.

To better address the specific concerns raised by panhandling activities, the City Council could adopt a targeted ordinance that places reasonable restrictions on the time, place, and manner of panhandling activities designed to focus on the particular concerns raised by such activities.

The Mayor invited public comment, hearing nothing he closed the public hearing at 8:40 p.m.

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Motion: Councilor Hurst moved to approve Ordinance No. 702 on first reading. Councilor Starr seconded the motion.

Vote: Motion carried 5-0.

CITY MANAGER'S BUSINESS

Mr. Cosgrove provided a recap of the meeting. He noted the city had signed a contract with Eco Northwest and asked for council direction on forming a ten member economic development task force. Mr. Cosgrove identified potential task force members as major employers, small business owners, and people in the community who wear multiple hats. Councilors Starr and Hurst would sit as ex officio members and facilitate the meetings, which would be open to the public. The meetings would begin in March and end in June with an economic summit.

Mr. Cosgrove advised he was in the middle of the internal budget review process, and the departments were providing a status quo budget or less than last year's.

LEGAL BUSINESS – No report.

ADJOURN

Motion: Councilor Núñez moved to adjourn. Councilor Hurst seconded the motion.

Vote: Motion carried 5-0.

The Council meeting adjourned at 8:30 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

TIM KNAPP, MAYOR