



City of Lyons  
Phone: 503 859 2167  
Fax: 503 859 5167

449 5<sup>th</sup> Street  
Lyons, Oregon 97358

## **MINUTES LYONS CITY COUNCIL MEETING November 24, 2009**

### **OPEN MEETING 6:00 P.M.**

The Lyons City Council Meeting was called to order by Mayor Mike Lucas. Present were City Councilors, Jeff Branch, Lon Conner and Dan Burroughs. City Staff in attendance were City Manager Mary Mitchell and Assistant City Manager Audrey McNeerney.

**GUESTS** – Clastine Ritchie, Steve Baldwin, Doug Middlestetter (North Santiam School District), Karen Daniher (Wave Broadband), Mike Wagner (North Santiam School District), Mia Mohr (NSCEDC), Dave Kinney (North Santiam School District), Newell Robison and Brenda Harris.

Mayor Lucas inquired as to whether there were any declarations of conflict of interest or ex-parte contact regarding the agenda items. There being none, the meeting continued.

**Mia Mohr – 2009 Community Development Block Grant.** Lucas stated that at the last City Council Meeting the Council had agreed that the City would act as the lead applicant for a Community Development Block Grant and as such would be responsible for the processing of payments there under. He went on to comment that Mohr had since submitted the Project Notification & Intake Form with the specifics of the funding request. Mohr informed Council that NSCEDC had received notification from the Oregon Community Development Department that the City had been invited to apply for the Community Development Block Grant. She will start working on preparing the application which is due by December 31, 2009. She said that letters requesting support (which will be a part of the application) had been mailed to other cities in the area. She said that she will be attending City Council meetings in Mill City, Aumsville and Idanha to update them on the project and request their support. Mohr advised that the money is a federal grant intended to provide microenterprise assistance to either start a business or to assist an existing business in getting started. This is a continuation of an existing service. **Lucas stated that this meeting constitutes the public meeting requirement of the grant.** Lucas asked if there were any questions regarding this issue. When asked the size of the grant, Mohr stated that they were asking for \$85,000. These funds will not be provided directly to business owners, but is to provide services to them. Lucas asked for an example of how this program had previously helped local business owners Mohr responded that a business owner who had run other businesses in the past wanted to start a business that was new to her. She sought help from the facilitator who assisted her in analyzing and

determining what her specific needs were going to be for her business, not only to make her eligible for financing but also other aspects of the business which were not in her area of strength. The facilitator worked with her and brought some of her issues to the Resource Board. The Resource Board, which is comprised of local business persons, compiled a list of suggestions to help her start her business. She eventually hired three people. Jim Clough commented that he was on the Resource Board and stated that part of what the facilitator does is help people get a business plan together which has been of assistance to small business owners. He said that the Resource Board helps to facilitate the building of a team when people are looking for assistance, resources and ideas. He said that a number of people, including people residing in Lyons, have been helped by this program.

Since there were no further comments, Lucas stated that the meeting (set forth on the agenda as a hearing) was now closed. He said that the City would await Mohr's further advice as to what was required by City Staff in order to finalize the grant application.

**Jim Clough – North Santiam Chamber of Commerce Request for Funding.**

Clough introduced himself and advised Council that he had been on the Board of the North Santiam Chamber of Commerce (Chamber) for approximately one and one-half years. He said that the Chamber has some new direction and is trying to help the community (which covers from Kingdom Lane all the way up to Idanha) to get a better economic base by, among other things, developing a Visitor's Center. He said he felt that the Chamber could do many things to help stimulate business for the local businesses in the community. He said that they had had an excellent turnout of local business people for monthly breakfast meetings. They have a paid director (Nicole Miller) who has been working for about a year and a half. She has been very effective and works out of the Chamber office/Visitor's Center in Mill City. They need some help, such as donations from the various cities, as an investment to meet their goals. He went on to say that those dollars will be multiplied many times over into this community based on what the Chamber can do to assist the local businesses and to attract tourism dollars to the area. Lucas read an excerpt from the September 1, 2009 letter from the Chamber as follows: "The successful operation of your Visitors' Information Center is dependent upon local support from area businesses and organizations. Having the support and partnership from your city adds credibility and builds local support, particularly in your community."

Lucas pointed out that Lyons is "off the highway (22)" and unless someone is coming to Lyons they don't usually pass through the City. He asked if there was a specific way that the Chamber's activities would benefit the City of Lyons. Clough said that the monthly breakfasts which are being hosted by the Chamber are an excellent way for the businesses to get acquainted. As an example he said that he had just referred someone from Mill City to a car repair business in Lyons. By getting acquainted with the various businesses that are available locally the business can stay in the area rather than going to Salem. He said that, for example, his business has an account with Mehama True Value which has been invaluable to him. The stimulation to business is exposure and the more off the highway you are the more it is needed. Getting acquainted with and finding out what businesses are in the area is helpful. The intent of those on the Board is to do everything that can be done to get people acquainted and to have money spent locally rather than elsewhere. They are also trying to attract new businesses to the area and expose to people traveling through what is available in the area.

Lucas commented that the Chamber is requesting a contribution of \$1,000 for the operation of the new Canyon Visitor's Information Center and is also requesting that the Council consider adding a like amount as a contribution to the City's budget for the coming year. Clough stated that it was their belief that within the next 2 to 5 years the Chamber can establish an economic base. He said that usually Chambers rely on a transient occupancy tax but since there are no hotels or motels in the area they really do not have such an economic base. If the Chamber can get some help from the various cities which they could count on it would help them to get things off the ground.

Conner asked how long the visitor's center had been open. Clough replied that it had been open since April. Conner then asked how they determined a growth pattern and whether they had a month to month visitor's tally. Clough replied that they are staffing 100% with volunteers, including board members, and they have found that it is pretty quiet during the week and they are trying to change things around so that there is more staff available on the weekends. He went on to say that even though he had obtained brochures describing high points of the area they have not had many visitors. They have a slowly growing base. They have received assistance from Pacific Power. They have good signage and are putting the "Open" sign up and are getting more people coming in. However, the bigger thing happening is that the business people in the area are getting acquainted with each other. Conner asked what kind of tourist activity was being promoted. Clough said that there was material containing information about the local area served by the Chamber and additional material which contains information more state wide which reaches as far as Bend. He also said that they were networking with other Chambers of Commerce in order to learn how to be effective. He informed Council that the Chamber had been very active with the people from National Geographic when they were in the area doing a piece about the volcanoes.

Branch asked what the money they are requesting would be used for. Clough said they do not have to pay rent at this time; however they do have to pay for utilities. They have a part time director who is paid for 15 hours per week. Most of the work is being done by volunteers. He said that they are working on a much smaller budget than most other Chambers. With their small budget they have furnished an office this year and have installed signs, some of which were paid for by volunteers. He commented that they have had good support from the local businesses.

Conner made a motion to contribute \$1,000 to the North Santiam Chamber of Commerce pursuant to their request and also to include provision for a \$1,000 contribution to the Chamber in the City of Lyons 2010-2011 Budget. Burroughs seconded the motion. Voice vote. Motion carries.

**Doug Middlestetter – North Santiam School District Construction Excise Tax. Resolution #412 – Intergovernmental Agreement.** Lucas called on Doug Middlestetter who is the business manager for the North Santiam School District and commented that the Council had, for several months, debated about the issue of the imposition of a Construction Excise Tax (CET) which has now been incorporated into Resolution #412 an Intergovernmental Agreement Between North Santiam School District 29J and City of Lyons to Collect and Remit Construction Excise Taxes. This tax has been mandated by the State Legislature for School Districts to create a construction excise tax on building permits. The cities have no option but to collect the proceeds for the School District. Lucas referred to Item 9 on Page 3 of the Agreement entitled "Administration Fee." The School District has set the rate of \$1 per square foot for construction on residential property and \$0.50 per square foot for nonresidential construction which will be collected by the City. In a final review of this document Lucas noted that the City could collect an administrative fee of anywhere between 1% and 4% which would be deducted by the City from the CET.

He stated that he originally was under the impression that the 1% administrative fee which was agreed upon would be in addition to the tax itself. Actually the administration fee is deducted from the amount to be forwarded to the School District. In light of that fact the City would like to discuss changing the 1% fee set forth in the Agreement to 4%. He went on to say that this is merely good business. It will not impact the cost to the builders, it will not be a significant decrease to the amount the District will receive, but it will be a stream of revenue for the City when building permits are issued. Middlestetter said that Lucas was correct in his interpretation and because he appreciates the City's cooperation he will not have any objection to changing the Administration Fee stated in the Intergovernmental Agreement from 1% to 4%. Dave Kinney, who was present at the meeting as a representative of the School District, is the Public Works Director of the City of Stayton. He said that the City of Stayton is already collecting this tax on behalf of the School District and would be happy to assist the City of Lyons in setting up a process for the collection and distribution of this tax. Lucas commented that it had been mutually agreed between the City and the School District that the imposition of the CET would begin on January 1, 2010. Branch, Conner and Burroughs agreed that the 4% Administration Fee was appropriate. Lucas again asked Middlestetter to advise his superintendent that the Council was not trying to be obstructionists but that they are trying to be sure that the citizens of Lyons are being protected and that the Council understands the Agreement which the City is entering into.

After discussion Lucas read Resolution #412 by Title and Branch made a motion to adopt Resolution #412- Intergovernmental Agreement Between North Santiam School District 29J and City of Lyons to Collect and Remit Construction Excise Taxes and that all references in Paragraph 9 to a 1% administrative fee are to be changed to 4%. Conner seconded the motion. Voice vote. Motion carries.

Middlestetter said that he would get together with Mitchell to review the documentation to be sure that it complies with all agreed upon stipulations and he will provide the necessary paperwork for processing the CET prior to January 1, 2010.

**WAVE Broadband Request Letter.** Karen Daniher of WAVE Broadband apologized for missing the last City Council meeting and explained that she had experienced some health problems. Lucas stated in review that WAVE Broadband (WAVE) was a cable service provider (Franchisee) and the City has an agreement (Franchise Agreement) with WAVE that has many stipulations, one of which has to do with the revisiting and renewing of the Franchise Agreement. The current Franchise Agreement would be renewable in 2012. Mitchell clarified that WAVE is requesting a 5 year extension past the 2 years remaining for a total of 7 years. Lucas asked how long the normal renewal time period was. Daniher commented that the length of Franchise Agreements varies but that it was normally 7 to 10 years. Lucas then stated that it appeared that WAVE is asking that the Franchise Agreement be renewed earlier than 2012 and extended longer than the current Franchise Agreement provides. The current Franchise Agreement provides for a 10 year period which may be extended for a period of not to exceed 2 years. Daniher stated that the rationale was that WAVE purchased several smaller cable franchises in the Willamette Valley and have been operating for almost one year. They have spent a lot of money and time to interconnect a large area and bringing in upgraded services such as additional cable channels and internet access. They will soon be launching phone service capability. She said that there were 22 franchises that she has to work with. Lucas asked why they did not want to wait until the current term expires. She responded that the company would like to get the renewal process out of the way so that they can focus on providing services to the community. Lucas pointed out that the renewal was due in 2 years; it's not going to affecting what the company will be installing. He asked if WAVE was considering

selling the company. Daniher said that they were not. She explained that since they had assumed a number of franchises they were interested in getting them all redone so that renewals will fall in the same time period. Lucas said that in their letter requesting the extension WAVE has offered to provide free services to the City Hall and the Library. Daniher said that the renewal would not hinge on their providing that service which they would provide regardless. Lucas said that it bothers him that there is a "quid pro quo" which could be viewed as the City getting this free service in return for granting the extension. Lucas said that this could be construed as a potential conflict of interest. Lucas commented that WAVE had also offered to provide free service to the Fire Department and to Mari-Linn School which are entities with which the City is not involved. He said that he wanted Council to be aware that they needed to consider how this could be viewed. The City can pay for the services. He asked if this service was provided in other locations. Daniher said that it was typical for cable operators to provide such free services. Lucas said that the City was about to enter into an agreement that benefits WAVE and because they were offering to provide free services it could appear that this might be the reason the City would enter into the agreement. He asked Daniher if that issue had been raised before. Daniher said that she understands Lucas' point of view but she is of the opinion that if the City had asked for the free services WAVE would have been happy to provide them and, in fact, she didn't know that they weren't being provided already. She said she felt that it was a good position for the company to provide those services to the communities in which they do business. Branch said that if they supply these services to other communities it shouldn't be a problem if they were to provide them to us. Daniher stated that when she heard that these services were not being provided she arranged for her service personnel to contact the City to make arrangements to do so. Mitchell advised them that she needed Council approval prior to installation. Daniher said that providing the free service to the City did not depend upon the City granting the extension; that they would still like to provide the service. Lucas said that in reading the letter he understood that this was how they did business but that he wanted to bring it to Council to determine if they wanted to (1) extend their Franchise Agreement at a time other than that which was agreed upon and (2) to determine, regardless of what the decision was, whether Council wanted to have the City accept WAVE's offer of free services to the City. Branch said that he did not feel that a 5 year extension was too much and that he was in favor of accepting the free services offered to the City Hall and the Library. Burroughs stated that he agreed with Branch. Conner asked if providing this service was an industry standard or whether it was just something that they do. Daniher said that it was pretty standard in the industry to provide such services to the City Halls, the Fire Departments, and the schools. She said that as business people in the community it was their obligation to provide such services. Middlestetter said that the School District contracts with Willamette EST and they route everything through them. The service is included in their software program and they have no need for WAVE's services. Dave Kinney commented that franchises are granted by cities as a method for the use of public right of way. A typical franchise obligation on the part of the City is to provide such space for the utility normally without their having to get special permits to do work within the right of way. In exchange they typically provide different types of service to the municipality such as service to the city hall, the library, and any public buildings. Mitchell said that her past experience with franchise agreements is that the companies offer services to the City. For example, the Water District provides water to the City free of charge as does Pacific Sanitation who provides free garbage services. She went on to say that the City is currently paying between \$50 and \$60 per month for internet service to City Hall. Mitchell said that in her opinion receiving this free service would not be misconstrued by the public. Middlestetter stated that, as a business manager, he would be in favor of accepting the free service and said that he understood the position of WAVE in their request for a 7 year extension due to the costs involved in providing the infrastructure.

Lucas said that if Council makes a motion, approves the extension and accepts the free services being offered by WAVE there were some changes to the current franchise agreement that the City would propose. Mitchell said that she would recommend that Section 2.2 entitled "Term and Renewal" be amended by striking the last sentence which reads "The Franchise may be extended by written Agreement between the City and Grantee for an additional term, not to exceed two years." She then referred to the portion of Section 2.4 (a) entitled "Compensation" which reads "During the term of the Franchise and any extension, Grantee will provide Cable services free of charge, to facilities owned and operated within the City of Lyons by the City, the North Santiam School District and the Lyons Fire District; and provide free of charge *one free cable modem for use with one computer with a total bandwidth usage not to exceed the average use of a residential cable modem subscriber...*". Mitchell stated that the wording *one free cable modem for use with one computer with a total bandwidth usage not to exceed the average use of a residential cable modem subscriber* be deleted and the following language inserted in its place: "*the highest level of internet services available*". She then stated that the language in that paragraph which reads "*Any usage above the average usage of a residential cable modem subscriber would be paid for by the respective authority at a discount of 10% to the currently prevailing rates for such service or such other rate that may be negotiated between said authority and the Grantee*" be deleted and the following language inserted in its place: "*These services will not be taken as a credit against franchise fees.*" Section 2.24 (a) would then read: "During the term of the Franchise and any extension, Grantee will provide Cable services free of charge, to facilities owned and operated within the City of Lyons by the City, the North Santiam School District and the Lyons Fire District; and provide, free of charge, the highest level of internet services available to facilities owned and operated within the City of Lyons by the City, the North Santiam School District and the Lyons Fire District. These services will not be taken as a credit against franchise fees. Daniher had no objection to such a modification of the Franchise Agreement.

After discussion Branch made a motion to accept the changes to the Franchise Agreement as herein stated and to renew the Franchise Agreement for a term of 7 years. Burroughs seconded the motion. Voice vote. Branch voted aye. Burroughs voted aye. Conner voted nay. Lucas abstained. Motion carries.

### **CONSENT AGENDA.**

Lucas asked if there were any questions or clarifications necessary in connection with the Minutes of the October 27, 2009 Council Meeting or the November 2009 Bills to Pay Report. He also referred to Resolutions #413 and #414 which are budgeted transfers of monies between funds. After discussion Conner made a motion to approve the Consent Agenda. Branch seconded the motion. Voice vote. Motion carries.

### **CONTINUING BUSINESS**

- **Approval of Concrete Bid for Library.** Lucas stated that Greg Stufflebeem had submitted the lowest bid for the concrete work at the Library but had not included specifications in his bid. When going over the specifications he realized that there was more that there was additional work that needed to be included in the bid and he re-submitted his bid containing all necessary

information. Lucas advised Council that Kinzer had clarified the exact measurements and they are now included on the bid sheet. His bid still comes in as the lowest. Conner made a motion to accept Greg Stufflebeem's resubmitted bid in the amount of \$3,135 for the concrete work to be done at the Library. Burroughs seconded the motion. Voice vote. Motion carries.

- **Adoption of Display Policy.** Harris stated that she had received copies of Display Policies from various libraries and had attempted to combine the contents to cover all scenarios which might occur in the draft Lyons Public Library: Display Policy which has been submitted to Council for review. Lucas commented that the City Attorney had cautioned that it was necessary to be careful regarding objectionable material. He asked Harris if the concept is that the Library Board is primarily responsible for enforcing the policy. Harris said that she only would have to be sure that any issues that arise are presented to them. The Library Board will approve what is displayed by the process set forth in the Display Policy by utilizing the forms attached for that purpose. Branch asked if Harris was the person who approved the handouts, etc. Harris stated that it is her decision as to what goes up on the bulletin board. She described the kinds of material that will be posted. There was discussion regarding the apparent conflict between the language in paragraph in the Notices and Handouts section entitled "Duration" and the section entitled "Appeal Process." After discussion it was decided to strike the first paragraph of the section entitled "Appeal Process." Lucas read the section entitled "Situations Not Covered." After discussion it was determined that the sentence should read "Situations not specifically covered above will be resolved by the Library Board." Lucas then referred to the section entitled "Permitted Uses" and read the last sentence. After discussion it was decided to delete the last sentence which read "Specific authorization from the Library Board is required for an organization to have a notice posted or a handout displayed in any other location." Lucas then referred to and read the section entitled "Sales and Promotions." After discussion it was decided to delete this section. There being no further discussion on this issue Branch made a motion to adopt the Lyons Public Library Display Policy as amended herein. Burroughs seconded the motion. Voice vote. Motion carries.

## **NEW BUSINESS.**

- **Bowe Resignation Letter.** Lucas stated that unfortunately Pat Bowe is moving to Sisters and has submitted his letter of resignation from City Council. He asked McNerney to read the thank you letter to Bowe expressing Council's regret at his leaving and thanking him for his years of service and dedication to the City of Lyons. Lucas instructed that the letter be framed and presented to Bowe at a later meeting. Since Bowe had been elected for a two year term expiring December 31, 2010 his resignation leaves a Council vacancy.
- **New Council Member Selection Process.** Lucas stated that the City has received two letters of application to serve on City Council. This is a unique situation since at no time in the recent past has there been more than one applicant at a time. Clastine Ritchie and Steven Baldwin have both submitted letters of application. The City Charter states that it is up to the Council to decide who is appointed to a vacant Council position. Lucas advised that Mitchell had placed a notice in the local newspapers advertising the vacant position so that any other interested person(s) will have an opportunity to submit an application should they so desire. He went on to say that the City does not have a process to select a Council member when more than one application for a vacant position is received. Lucas suggested that no selection be made at this meeting since the notice of the vacancy is still being published. He said that by next Council meeting all persons wishing to apply for the position will have had an opportunity to submit an application. It is necessary to

determine a method by which to select the most appropriate person for the position. In order to assist Council in making this determination Mitchell investigated the process by which other cities filled this type of position. She found that in addition to a letter of application it would be advisable to interview people in more detail by asking them several questions. Lucas presented a group of questions which, if Council agrees, can be posed to potential Council members. Council reviewed the proposed questions. After discussion Council agreed that all applicants should receive a copy of the questions so that they can be aware of what will be asked of them at the interview. After interviewing all potential applicants the decision as to who should be appointed to the position will be based upon a vote of Council. Ritchie and Baldwin were provided with a list of possible questions which will be posed at the interview and were invited to come to the next City Council meeting for an interview.

- **Explanation of Employee Performance Reviews.** Lucas stated that when he took office he asked about the status of employee performance reviews. In the past performance reviews took place between March and May but no performance reviews had taken place during 2009. Lucas stated that he wanted to accomplish two things; (1) he wanted to talk to each employee to get to know them better and (2) to do a mid-year review. He felt that the existing forms needed to include more detail and he and Mitchell created a form, a copy of which has been provided to each Councilor, to rate each person numerically, to include comments regarding their performance and to set forth their goals. Mitchell reviewed Harris, McNerney, Stufflebeem and Kinzer and Harris reviewed Voltin and Freeman. Lucas reviewed Mitchell. All of the employees reviewed said that they were pleased with the review process and that there was an accurate assessment of their performance. Most employees set forth goals that they would like to accomplish between now and their annual reviews. The reviews were given in a positive sense and Harris commented that the Library staff was appreciative of the opportunity to have one on one time with Lucas. He asked Councilors if they had any comments or questions or if they would like to change the process in any way. There were no questions or comments from Councilors and they indicated they were satisfied with the process.
- **Christmas "Presents".** Lucas reminded Council that in the past Council had presented gift certificates to the employees to enable them to purchase, among other things, turkeys for Thanksgiving. He said that he had approved the purchase of seven gift certificates, one of which had been presented to each of the seven City employees which, he was advised, were much appreciated. Lucas went on to say that because of the recent economy issues City employees did not receive a cost of living increase in 2009. He felt that because no salary increases had been awarded in 2009 the City had saved a significant amount of money. He said that he would like to propose giving the seven City employees a one-time gift in appreciation for the continuing excellent jobs they have done throughout the year despite the fact that they had received no increases in salary. He said the City finances were not problematic. Harris, Mitchell and McNerney excused themselves from the Council Chamber so that Council could discuss their decision without the employees being present. After Council's discussion Harris, Mitchell and McNerney returned to Chamber. Conner made a motion to award a one-time end of year merit cash gift to each of the City employees to be determined on the basis of full time employment and part time employment. The gift is to be subject to federal and state tax withholding deductions. Burroughs seconded the motion. Voice vote. Motion carries.
- **Conner Resignation Letter – Acceptance of.** Lucas informed Council that Lon -Conner had submitted his resignation from the Planning Commission concurrently with his appointment to City Council. A copy of his letter of resignation has been provided to Council. After discussion

Burroughs made a motion to accept Lon Conner's resignation from the Lyons Planning Commission effective September 29, 2009. Branch seconded the motion. Voice vote. Motion carries.

- **Councilor Availability for December Meeting.** There was discussion regarding changing the next Council meeting date to December 15, 2009 to accommodate Councilor's schedules. After discussion Burroughs made a motion to reschedule the December 22, 2009 City Council Meeting to December 15, 2009. Branch seconded the motion. Voice vote. Motion carries.

There being no further business to come before the meeting Branch made a motion to adjourn. Burroughs seconded the motion. Voice vote. Motion carries. Meeting adjourned at 8:05 P.M.

Audrey McNerney  
Assistant City Manager