



City of Lyons

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MINUTES LYONS CITY COUNCIL MEETING/HEARING May 24, 2011

OPEN MEETING 6:00 P.M.

The Lyons City Council Meeting was called to order by Mayor Doug Morgan. Present were City Councilors Mike Lucas, Troy Donohue and Dan Burroughs. Councilor Lon Conner was excused. City Staff in attendance were City Manager Mary Mitchell, Assistant City Manager Audrey McNerney and J.D. Burns, Public Works.

Mayor Morgan asked that all stand for the Pledge of Allegiance. He then 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.

GUESTS. George L. Geddes, Mark Orr, Ron Adams, Terry Tegg, Mr. and Mrs. James Silbernagel, Tess Landers, Michelle Gates, Roy Kent, Gary Alkire, Bud Leseman, Willis Owen, Mike Rolow, Marc Hughes, Theresa Donohue, Steve Baldwin, Bill Sinclair, Darlene Franklin, Bill Downer, June Namitz, Kathryn Keeney, Troy Gulstrom, Dave DeLapp, Leanne Lail, Gary Schrader, and Trudy Schrader.

PUBLIC COMMENTS TO COUNCIL. Morgan announced that if anyone would like to comment or address the Council, this was the time to do so.

1. Mark Orr complained that he was not included on the Agenda even though he had made a request for such inclusion. Morgan stated that as he had previously advised Orr there were two prerequisites for inclusion on the Agenda, one was to advise the name of the person appearing and the second was to advise what that person wished to speak to Council about. Orr failed to advise Morgan what it was that he wanted to speak to Council about and declined to provide requested documentation in advance. Orr stated that he felt that the city had failed to be transparent about a number of issues. He provided Morgan with a folder which contained a list of "Questions for City Council" and copies of City Council Minutes and other documentation which he said contained proof of the City's failure to be transparent. Orr also provided folders to members of the audience. Orr asked whose decision it was to "franchise the Water District." Morgan stated that the City had not yet approached the Water District with a Franchise

Agreement. Orr referred to a letter from the Water District's Attorney to the City's Attorney which discussed comments made at a Water District Board Meeting regarding accessing water hydrants and referring to possible fines. He (Orr) asked who would be responsible for payment of those fines. He said that he wanted Mr. Conner to step down immediately from City Council. He asked the members of the City Council whether they felt that because of his actions Conner should be allowed to continue as a City Council member. Burroughs said that he should not be allowed to continue *if* he had committed a crime. Morgan stated that he had made his position clear and would not ask him to resign. Donohue said that "*if* he broke the law, he broke the law." Lucas referred to the letter which stated that tampering with a water system is actionable under state law. Lucas went on to explain the difference between a crime and an allegation. Lucas stated that this is the reason why Orr had been asked to prepare his request for information in advance so that the Council be prepared to address those issues. Lucas then said that Council cannot answer questions that they do not know about in advance with a reasoned response. If Orr had advised Council of his questions before the meeting, Council would have staffed research to enable them to answer Orr's questions.

Orr then referred to and read a Memo to the file from Jay MacPherson of the Springfield Office of Public Health which referred to Councilor Lucas' showing a US Federal Bureau of Investigation business card with his name on it for identification and asked Lucas if he was an employee of the US Federal Bureau of Investigation. Lucas responded that he was not an employee but a contract investigator for the US Federal Bureau of Investigation. Lucas went on to say that he had spoken with the appropriate persons regarding this matter and that the issue had no application to City Council matters. Lucas said that he would be willing to explain the matter to Orr but that this was not the appropriate venue

Morgan told Orr that he had been given a sufficient amount of Council's time and asked if Orr had anything new to bring to Council that had not already been discussed. Orr then asked for a special meeting to discuss the contents of the folder he had handed to Morgan at the beginning of the meeting. Morgan responded that he had had multiple conversations with Orr over the past weeks and had advised Orr that it was necessary that he (Orr) present material prior to a meeting so that Council would have an opportunity to review it. Orr has continuously failed to do so. Orr said that "it had all been in the paper so it was all stuff you are aware of." Morgan reiterated that the material had just been presented and that he would review it to determine whether there was anything in the material that had not already been addressed.

Orr then asked what Council's stance on the Water District was. Morgan responded that the City's position had not changed and that the City is in monitoring mode. Morgan again asked Orr if he had anything new for Council this evening. He stated that Council had made their position very clear on this matter and that Orr continues to bring this issue to Council every month. Morgan said that it was Orr's right to do so since this time is open for the public to address Council and that if Orr wanted to discuss this matter again and again that was his right. However, Morgan said that he was not going to bring up the matter further at this time. He told Orr that if he had anything new to discuss to please present it at this time.

Orr then said that at the last Council meeting Morgan had stated that there was something wrong with the ballots (for the May 17, 2011 election). Morgan responded that he had sent a letter to Druckenmiller

(Linn County Elections Clerk) regarding discrepancies with the ballots which had been distributed in this area and that the City wanted to know what their resolution to that problem was. Morgan said that as of this date the City had received no response. Orr questioned whether the City had received a response and asked how many letters the City had sent to Druckenmiller. Mitchell stated that there had been two letters sent to him.

There was additional discussion regarding the contents of the folder presented to Morgan and disseminated to the members of the audience which Orr alleged contained evidence that the City was attempting to take over the Water District. Morgan stated that this was not true. Orr again asked for a public meeting to discuss certain issues which had been previously raised and Morgan reminded him that less than a month ago Orr had conducted a meeting regarding City safety issues. The issues were discussed and Orr had made a statement at that time that it looks like the City is doing everything well.

Morgan stated that he had made every effort to try to be open and for Orr to say that we (the City) haven't been is a little disingenuous. Morgan told Orr that if he had issues to bring them to him; that he was open to anything he has to say; he will review the documentation contained in the folder and that he felt sure that he and Orr would talk soon.

Orr again asked Morgan if he would have a public meeting to address "all these issues." Morgan said that he did not know what these issues are. Morgan stated that he had repeatedly told Orr to bring these issues to him and that Orr had told him (Morgan) that he couldn't tell him what all the issues were; that he had 7 of the 8 documents and that he was waiting for one more; that he (Orr) refused to discuss with Morgan what this was about but that Orr had talked to people who were up in arms about it. Morgan told Orr at that time that he felt that it was not fair that he would talk to people in town about the issues but would not talk to him (Morgan). Morgan stated that Orr had presented this documentation to him at the beginning of the meeting and that it was not fair to expect him (Morgan) to agree to a meeting to discuss issues he had not had an opportunity to review. Morgan told Orr that his time was up and he should be seated. Orr then attempted to talk to the audience regarding a possible fine (referred to previously) and members of the audience asked him to be quiet and be seated.

Thomas Donohue, a resident of Mehama, came forward to address the Council at this time. Mr. Donohue stated that he couldn't understand why Council could not address Orr's issues at this time. Morgan said that he had not had an opportunity to look at what Orr had presented this evening. Donohue then asked when Morgan and Council members would run for re-election. Mitchell stated that there had been a general election in November of 2010 and that the Mayor's position was a 2 year term and Council positions were for a 4 year term. Donohue said that Council was not doing things the way they should be done. Morgan stated that he was sorry Mr. Donohue felt that way but it has always been Council's intent to be open and transparent. The Council has operated in a manner which he (Morgan) feels is beyond reproach and expressed sorrow that there was misinformation that had caused Mr. Donohue to come to that conclusion. Morgan stated that his door was open to Mr. Donohue, as it is to anyone else, if he would like to discuss this further.

George Geddes stated that he had one more question. He asked why the City was so concerned with the election. Morgan said that it is the duty of City Government to make sure that things are done correctly.

There were citizens who had ballots which were incorrect. Morgan said that it was City's duty to ask the elections office why that happened. Geddes asked what their response had been. Morgan told him that he had been advised that there were "elderly ladies stuffing ballots and apparently a mistake had been made." Morgan said that he felt that was not an acceptable answer and that the City wanted to know what the elections office had done to correct the errors. When asked whether the City had received a letter from Druckenmiller Morgan stated that to date the City had not received a response. Geddes said that two people contacted the elections office and that the elections office had hand delivered the corrected ballots to those people. Morgan said that the elections office had asked who had contacted the City and the City had given them that information. Morgan said that he didn't feel that there was anything wrong with the City asking what they are doing to correct the mistakes. Geddes stated that if there hadn't been Water Board members running for election the City would not have had any concern whatsoever. Morgan said that that was an untrue statement.

Geddes then went on to say that they never have heard Lucas's explanation regarding the Springfield issue. Lucas stated that he had explained it to the Springfield Public Health people; talked to the Springfield Chief of Police about the mix up that occurred and he has taken care of the matter. Geddes asked Lucas if he had had a call from the FBI. Lucas said that he had not. Orr offered to give Morgan the telephone number of an FBI agent in Salem. Morgan asked if it was in the packet of information. Orr said he didn't believe so and Morgan said that Orr could provide that number to him at another time. Burroughs stated that the number was in the packet.

CONSENT AGENDA.

2. Lucas made a motion to accept the Consent Agenda which included the April 26, 2011 City Council Meeting/Hearing; the Amendment to Lyons City Council Meeting/Hearing Minutes of April 26, 2011; the May 3, 2011 City Council Meeting Minutes; the May 2011 Bills; and Resolutions #439 and #440 regarding Library Policies. Burroughs seconded the motion. Voice vote. Motion carries.

DISCUSSION ITEMS.

3. **City Wide Clean-up.** Morgan said that he would turn the discussion over to Mitchell since she did the bulk of the work in connection with this project. He also complimented Burroughs on his ability to maneuver the backhoe. Morgan said that the Pacific Sanitation people had stated that the difference between Lyons' and Mill City's cleanup effort was that Mill City didn't have someone like Burroughs to operate a backhoe which had really helped them out. Morgan also commented that Donohue had done a great job on taking care of packing the brush into the boxes and actually stayed after than 3:30 p.m. to help fill the second box which came later. Morgan said that not all cities have this kind of annual project and that it was something that the City could take pride in.

Mitchell said that she wanted to go on record thanking Burroughs because he made things go more smoothly that day. She said that Donohue operated Freres' front-end loader which was also a great help and made things easier. Mitchell reported that there was a total of 89 loads delivered by citizens (there may have been more which may not have been tallied) and collected \$243 to offset the costs of disposal.

3. PERS Position Qualification. Mitchell explained that PERS has undertaken the task of meeting with all member cities this year. There is a large PERS increase which will take place on July 1, 2011. They are going through records to be sure that all PERS qualified positions and people are of record. In order to qualify for benefits, including PERS, a City of Lyons employee must work 100 hours or more per month. However, when the PERS representative visited City offices it came to Mitchell's attention that if an employee works more than 600 hours in a calendar year by PERS standards that employee is eligible for the PERS benefit. Mitchell stated that there are two City employees who meet that qualification. It was the City's position when these employees were hired that they would be part time employees and would not qualify for benefits. However, under PERS rules, which supersede the City's rules, these employees qualify for the PERS benefit. Mitchell referred to the memo provided to Councilors which set forth several options. Burroughs asked how much this would cost. Mitchell said that this time the cost would be approximately \$1300. It will run approximately \$3800 annually for both employees for the coming fiscal year. The PERS rate is increasing from .29% to 10.73%. Donohue stated that this will increase the City's maintenance cost for labor to almost \$40,000 per year. He said that it is costing the City roughly \$38,000 per year for these two employees. Lucas asked what Council's deadline for a decision on this matter was. Mitchell said that she needs a decision from Council as soon as possible. Donohue asked if there could be a special session of Council scheduled to discuss this issue. Mitchell said that she did not believe that this matter would qualify for an executive session but Council could have a special meeting just to discuss this issue. Lucas asked what additional information Council might need. Donohue stated that one of the questions to be answered would be whether or not one person could do the required job duties. He went on to state that he realized that there were a lot of duties to be carried out during the summer months but that outside maintenance requirements drop off during the winter. Another question is whether or not the City could justify having both employees work during the winter months. Another question was whether it should be one person full time. Mitchell said that employing one person full time would cost significantly more, even considering the cost of the PERS benefit, than having two part time employees in this position. There were several options discussed. Morgan mentioned that when the Storm Water Drainage Plan was discussed with the Engineer, one of the things pointed out was that the City needed to provide more maintenance of the system we currently have. Mitchell said that the employees cannot really do a lot of the necessary maintenance on the system; that she has to bring a vactor truck in to clean out the dry wells. Any significant maintenance on the system would require outside contractors. When asked when a decision had to be made, Mitchell advised Council that she had advised the PERS representative that she would be bringing this matter to Council at this meeting. She also noted that the City is in Budget season and any changes will have to be reflected in the proposed budget. Morgan asked whether the City could afford this additional cost. Mitchell said that it could be managed but everything takes its toll. She said that it is purely a Council decision. Burroughs said that he felt that Council should have some time to think over this decision since it involves the jobs of two people. Donohue commented that this was a huge increase; almost 11%. Donohue also commented that he hoped that the employees in question would not misconstrue the Council's actions and realize that this was not a personal issue or that there was any question as to their worth as employees. Mitchell said that the reference memo contained all of the pertinent information. After discussion it was the consensus of Council to schedule a special meeting of Council on Thursday, May 26, 2011 at 4:30 p.m. to finalize the decision regarding this matter.

Donohue asked if Mitchell had received any information on the mole trapping at the cemetery. Mitchell stated that the trapper had caught 9 moles and a lot of ground squirrels as well.

5. ODOT – RESPONSE TO INFORMATION REQUEST. Mitchell said that when discussions were had regarding safety issues Burroughs asked when this had happened and was advised that this issue had been raised at the Safety Meeting. Burroughs said that this was the first he had heard about this and since he was the Transportation Commissioner he should have heard about this ahead of time. Morgan asked if Burroughs had some question regarding the matter and Burroughs said that he just wondered why he had not heard about this prior to receiving his Council book. (Burroughs later realized that he had received this information in last month's Council book and had also picked up a copy of the letter to ODOT and the response from ODOT at City Hall prior to receiving his Council book). Mitchell said that Burroughs had been invited to the Safety Meeting but had not checked his e-mail. Mitchell said that shortly after that Burroughs had requested that he not receive e-mail correspondence any longer.

Donohue referred to ODOT's response regarding the vulnerability of the Mehama Bridge. He said that there are also two more bridges in Lyons. One is on 226 which is the City's evacuation route. He asked whether, if there was a significant amount of water, would it affect that bridge so that no one could get across. The other is the bridge on 13th Street. Mitchell responded that in 1996 there was a voluntary evacuation of the residents that were affected by the 13th Street Bridge. Donohue then stated that perhaps those two small bridges should be considered in our vulnerability assessment. Mitchell and Morgan both stated that this was a very good idea. Mitchell then explained that the letter from ODOT was in response to her request for ODOT to assess the seismic stability of the 5th Street Bridge entering Lyons from Mehama. Mitchell asked if Council felt ODOT's response was adequate or would Council like to go a step further. Donohue stated that he felt that it was adequate. Mitchell said that the City had just completed the Natural Hazards Mitigation Plan which the City was working on with FEMA and that had been identified by the group of people that were working on the Plan as one of the areas that was as safe as, to the best of our ability, we could make it. Mitchell said that she was presenting ODOT's response to Council to see if Council was satisfied with it or whether Council felt that the City has done all that can be done at this time. Burroughs said that he thought so. Mitchell asked Burroughs what he would have done differently. Burroughs responded that he would have done nothing differently and that what ODOT has responded is fine. Lucas stated that if it was good enough for Burroughs it was fine with him.

Adams asked what the response was with regard to the hillside on 226. Mitchell read the response which stated "the manager for this area looked at the hillside on 226 were (sic) the concern about the sink is and he doesn't believe that there is imminent danger of failure. He will be looking into possible fixes for the future and plan on patching the sunken area when the weather allows." Adams commented that they had been promising to do that for the past 3 years. Morgan asked if the City should follow up on this. Donohue suggested that when the weather gets better the City should send them a reminder letter requesting that if they have time they should come out and reassess it. Mitchell said that she would leave that to Burroughs. Burroughs said that he would make sure that happens.

6. OSHA Report. Mitchell stated that the City had requested OSHA make a voluntary assessment of the City owned properties and activities. A representative made a thorough inspection and recommended 4 issues which, in their opinion, the City could improve on. Item No. 1 was a Personal Protective

Equipment Assessment which has been turned over to J. D. Burns. We now have the proper forms to determine what type of Personal Protective Equipment is needed and used by the employee(s) for their protection. The representative commented that everything was in good order except Item No. 2 which required that the City ensure employees use nylon chaps for leg protection when using the chain saw. Those have been purchased. Item No. 3 required that there be a clear distance of at least 3 feet maintained in front of the electrical panel in the sand shed at all times. J. D. and Doug have moved everything out from in front of the electrical panel and spray painted an area in orange to be sure that nothing would be placed there again. Item No. 4 regarded electrical cords being used in lieu of permanent wiring. Mitchell said that additional lighting in the sand shed which was not designed to be hard wired in had been purchased. The public works employees have been instructed to wind the cord up when the lighting is not in use and, since it was not designed to be hard wired in, the representative signed off on that issue. The library, city hall and the sand shed were all inspected and reviewed. Everything has been addressed. Morgan stated that the representative was very complimentary and said that he was having difficulty finding anything to discuss. Orr asked if this was the complete report and Mitchell stated that it was the short version and offered to provide a copy to Orr for his information.

7. Emergency Response Agreement. Mitchell stated that the Oregon Public Works Emergency Response Cooperative Assistance Agreement was distributed to the City through ODOT. She said that more than 100 public works agencies have signed off on this since 1998. It is actually being initiated by ODOT and the Oregon Department of Justice has reviewed the agreement. It enables the public works agencies to support each other during an emergency and provides a mechanism for an immediate response to the requesting agency when the responding Agency determines it can provide the needed resources and expertise. Mitchell went on to state that what it allows is access to other agencies if, during an emergency the City does not have the necessary equipment. It puts the City in a position to receive the largest amount of resources possible from FEMA. The list is kept by ODOT and is distributed every time there is a change so that the City has, at all times, accurate information as to all agencies that are participating and what resources are available to the City through them. Mitchell said that there doesn't appear to be a downside to entering into the Agreement and referred to the documentation provided in the Councilor's meeting books which sets forth some examples of how other Cities have been assisted during emergency situations and other advantages of the agreement. Donohue commented that it also allows other agencies that are a party to the agreement to assist in the event of an emergency. The list of participating entities is not available until the entity has joined in the agreement.

Mitchell said that if Council is willing there would need to be a motion to enter into the Agreement. Morgan stated that this could be an Action Item. Mitchell stated that if Council agrees to enter into the Agreement it would be Resolution 441.

8. DEQ Pollutants. J.D. Burns said that a sludge discharge was first noticed when he and the Engineer walked through various properties in connection with the preparation of the Storm Water Drainage Plan. There was sludge and some type of abnormal growth in the stream on 19th Street behind Decorative Bark and Foothills Firewood. They did not go onto the Decorative Bark or Foothills Firewood property, but followed the stream to a pasture, which the property owner allowed access to, and found none of the growth that had been previously observed. Since that time, Burns said that the original thinking was that organic material breaking down in the ponds on the property across from the cemetery was getting into

the stream and mixing with fresh water creating the sludge and bacteria growth. He (Burns) later met with a representative of Decorative Bark and found that Decorative Bark had a drain off from their property going into the stream where the sludge had been detected and it appeared that that was where the sludge and bacteria growth began. There was also a few spores evident both upstream and downstream. J.D. provided this information and pictures to DEQ and the last information he had was that DEQ had determined that this was biological matter that was breaking down and that they really didn't know if they had any jurisdiction since they mainly deal with chemical issues. There was discussion regarding whether or not anything further needed to be done in connection with this matter. Burroughs commented that he had experience with this type of problem and that it was nothing that presented any danger.

9. Notice of Pending Land Use Action. Mitchell stated that this property is outside the City Limits. The tip of the property butts up against the City Limits boundary. Lyons Retired Recycling has submitted an application for a Conditional Use Permit to Linn County Planning & Building. They are proposing a wrecking yard to collect and store tires in until the tires are bailed and transported off the property by either shipping container or railroad car. No other processing of the tires is proposed at this time. They anticipate that they will employ approximately four people. The City is the commenting agency on this matter since the property is outside our City Limits but within our Urban Growth Boundary. Mitchell identified the property on the wall map in Council Chambers. She said that the biggest question is a possible impact on the adjacent streams if they are going to be pressure washing these tires or any other type of activity which may somehow impact the streams. Burns commented that there is drainage on the property which would flow into the stream. Mitchell stated that the application states that the activity will occur in side an enclosed building. Burroughs said that as far as he knows they do not intend to do any steam cleaning of the tires, they will just bundle them up and ship them out. He also said that they would not be using any water inside the building because there is nowhere for water to drain. Donohue asked if they have a fire plan in place. Burroughs said that they have a fire system. Donohue asked whether it would be capable of putting out a fire in the tires. Mitchell said that the City has an opportunity to make comments and ask questions and request that those comments and questions be addressed at the hearing. Donohue said that his question would be whether they have a fire plan in place in the event of a fire. A member of the audience asked whether any of the tires would be stored outside the building. Morgan responded that, according to their application the use would occur *inside* an existing building. The comment was made that if tires are stored outside the building they can become a breeding area for mosquitoes and other insects. Geddes asked what the economic impact would be to the City. Morgan stated that they would be creating 4 new jobs. Geddes asked about truck traffic through the City as a result of their location. Morgan stated that according to the application they intended to utilize the rail system. Morgan said that the question raised should be forwarded to Linn County Planning & Building prior to the hearing.

PUBLIC COMMENTS – LIMITED TO DISCUSSION & ACTION ITEMS. Baldwin asked if the City had any option other than PERS. Mitchell explained that once you are in the PERS system you cannot withdraw.

Orr asked whether anyone sitting at the Council table had spent City time or acted as a Council member to assist in the recall against the Water Board. He also asked whether anything inside this building had been used to do so (phones, fax machines, copy machines or employee time). Mc Nerney, Burroughs, Morgan,

Lucas and Mitchell responded that they had not. Orr then again asked whether the City had received a letter from Druckenmiller. Mitchell responded that the City had not received a response.

Teresa Donohue stated that she and her family live across from the City sand shed on 13th Street and asked permission of Council to put ground cover and plants on the area where the City had recently planted some trees. She said that she would take care of it, water it, etc. Morgan said that he had no problem with it and thanked her for her efforts. He asked if there was anyone on Council who had a problem with this. There was no response in opposition to this request.

ACTION ITEMS.

Lucas made a motion to adopt Resolution #441, the Oregon Public Works Emergency Response Cooperative Assistance Agreement. Donohue seconded the motion. Voice vote. Motion carries.

Morgan stated that Councilor Conner was not at tonight's Council meeting because he is on assignment for the Department of Homeland Security.

COUNCIL AVAILABILITY FOR THE SPECIAL MEETING ON JUNE 26, 2011, BUDGET MEETING ON MAY 31, 2011 AND THE REGULAR COUNCIL MEETING/BUDGET HEARING ON JUNE 28, 2011. Mayor Morgan, and Councilors Burroughs, Lucas and Donohue said they were available.

There being no further business to come before Council the meeting adjourned at 7:15 pm.

Audrey McNerney
Assistant City Manager