

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
August 1, 2018**

PRESIDING: Mayor Brian Hodson.

COUNCIL PRESENT: Tyler Smith, Greg Parker, Traci Hensley, Tim Dale, and Tracie Heidt. Councilor Sarah Spoon was absent.

STAFF PRESENT: Rick Robinson, City Administrator; Joseph Lindsay, City Attorney; Bryan Brown, Public Works Director; Eric Laitinen, Aquatics Program Manager; and Kim Scheafer, City Recorder.

OTHERS PRESENT: Dr. Sarah Present, Jamie Zenter, Dawn Emerick, Roger Steinke, Paul Ylvisaker, Jeff Klenman, Tony Neuhold, Manfred Zysk, Carol Rosen, Scott Sasse, Bob Cambra, Levi Levasa, Mark Triebwasser, Rod Beck, Lisa Bateman, Bill & Karyn Fenton, Tom & Julie Rushton, DeAnna & Mark Karb, Tim Graves, Regina Taylor, Jonah Barber, and Matt Dave.

CALL TO ORDER: Mayor Hodson called the Regular Meeting to order at 7:00 p.m. in the Council Chambers followed by opening ceremonies.

Presentation by Clackamas County Regarding Tobacco Retail Licensing – Dawn Emerick, Director of Public Health, spoke about the effort to protect youth by raising the age to purchase tobacco products. In January 2018 Oregon increased the age to purchase tobacco to 21 years old. The State was not able to pass a tobacco retail licensing bill so Clackamas County was working on passing this law locally. Four other Oregon counties had already passed this law. She was asking for support from Canby for a County-wide license program.

Dr. Sarah Present, Public Health Officer, explained the licensing would require businesses to purchase a license to sell tobacco and nicotine products. Part of the license fee would go to education and support. There would be an annual license fee and an enforcement system. A survey was done in 2017 of 11th graders in Clackamas County, which showed 41% had used a tobacco product and one in three said it was easy to obtain. Nicotine was highly addictive and the market had shifted to focus on youth. Mapping had been done of tobacco retail outlets which showed the areas with higher rates of poverty were using tobacco products at a much higher rate than other areas and had a higher number of tobacco retailers. Ease of access and increased density were associated with increased experimental smoking in youth. Staff had found 232 retailers in the County, and there were 11 in Canby. The reasons for licensing were: the opportunity for relationships with retailers, enforcement of Tobacco 21 and other tobacco laws, and to decrease in illegal tobacco sales to minors. Benton, Klamath, Lane, and Multnomah counties had already passed a tobacco retail license. She discussed how the licensing would have no significant adverse economic impact. A .23 decrease in FTE could happen in Canby and a decrease of \$6,930 in labor income. The estimated cost of the license would be \$500-\$600 per year.

Councilor Smith suggested using the cigarette tax records to find out the locations of the tobacco retailers.

Councilor Hensley asked why the legislature was not putting in an enforcement piece for this change.

Dr. Present said it did go to the legislature, but did not pass due to challenges surrounding the finance structure to make it fair across small and large counties. Also there was a strong tobacco lobby at the state level and there were issues regarding the minors in possession definition.

Councilor Heidt asked how much it would cost a retailer to purchase the license.

Dr. Present said \$500 to \$600, which was similar to Multnomah County.

Mayor Hodson clarified the Board of County Commissioners would be deciding on this issue; it would not go out to the voters. He asked if all of the \$500 to \$600 would be used for enforcement and education. Dr. Present said if it was passed, an advisory committee would be put together to work out the details of the program. They would also need to hire 2 FTEs in the Public Health Department. The tobacco retailers would do the same ID check as liquor and marijuana retailers.

Mayor Hodson asked staff if they knew how often they issued citations for minors in possession of marijuana and alcohol.

Joseph Lindsey, City Attorney, said the School Resource Officer reported weekly on tobacco ticketed minors. There had been an uptick in 19-20 year old use. The enforcement on minors would be a separate program from the one being proposed.

Councilor Smith asked if the County could impose this kind of license on all of the cities, or could some cities opt out.

Dr. Present said because tobacco was an addictive and dangerous substance, The County Commission could impose the license through a public health approach. It was different from a business license.

Ms. Emerick said they were there to get the support of the Council. This proposal would go before the County Commission in October.

There was discussion regarding, how by law, the Public Health Department could not make a profit on these licensing fees.

There was consensus to put the item on a future Council meeting agenda for further discussion.

CITIZEN INPUT & ANNOUNCEMENTS: None.

COMMUNICATIONS: None.

MAYOR'S BUSINESS: Mayor Hodson said Renate Mengelberg, Economic Development Director, retired yesterday. Jamie Stickel was now the Economic Development Director. First Friday was on August 3. Junk Refunk would be held on August 4 on First Avenue. Bridging Cultures would be at Locust Street Park at 11:30 on August 4. He attended the Oregon Mayors Association Conference last weekend. He was recently added to the Metro Regional Land Use and Transportation Committee.

COUNCILOR COMMENTS & LIAISON REPORTS: Councilor Smith said the Planning Commission heard an application for a new commercial retail business office complex on Redwood.

Councilor Parker said the Bike and Pedestrian Committee met yesterday. Ken Dennis was a member of the Committee and had passed away. The Committee wanted to take a field trip to see the Traverso property. The Fair Board discussed the new master plan for the fair facilities and the Economic Development Director and Chamber Director had attended.

Councilor Hensley attended the neighborhood meeting regarding the upcoming N Holly Street annexation. There needed to be more education on the process.

Councilor Heidt also attended the neighborhood meeting regarding the N Holly Street annexation. She thought it was an educational presentation.

Rick Robinson, City Administrator, said there was a comment made at the neighborhood meeting last night regarding the City declining to have this new development develop a park on N Locust. He had made the decision that the City would accept the SDCs from the development and apply them to the development of the park rather than a third party private developer making the decisions on how the park would be developed on the City's behalf.

Councilor Heidt thought the other option was for the developer to dedicate land for a separate park.

Mr. Robinson said that option was not part of the Development Concept Plan.

CONSENT AGENDA: **Councilor Hensley moved to adopt the minutes of the July 18, 2018 City Council Work Session and Regular Meeting and appointment of DeAnna Ball-Karb to the Traffic Safety Commission for a term to expire on June 30, 2021. Motion was seconded by Councilor Heidt and passed 4-0.

PUBLIC HEARINGS: Amending Canby Municipal Code Chapter 9.48.050(A) Regarding Noise Variance Exemptions by Adding an Exemption for Sounds, Including the Discharge of Fireworks and other Explosive Devices, Created by the City, Canby Fire District, and Canby School District Events –

Mayor Hodson read the public hearing statement.

STAFF REPORT: Mr. Robinson said this was a request to amend the Municipal Code to permit the use of fireworks and other explosive devices by a public agency. The high school used fireworks to celebrate touchdowns during football games. If the ordinance was not passed, the School District would be allowed to continue to use sound amplifying equipment during activities sponsored by the School District between 7 a.m. and 12 p.m. They would not be allowed to use fireworks if they exceeded the noise levels identified in the noise ordinance. If this ordinance was approved, the School District and Canby Fire, who hosted the fireworks for the Fourth of July, would be able to continue to use fireworks without having to seek a variance every year.

Councilor Heidt asked if Canby Fire had to apply every year for a variance.

Mr. Robinson replied no, there had never been a request for a variance for the Fourth of July fireworks. This amendment would resolve that oversight as well. It acknowledged that this was something that benefitted the community and codified the appropriateness of the celebrations.

Mayor Hodson opened the public hearing at 8:11 p.m.

PROPONENTS: None.

OPPONENTS: Paul Ylvisaker, Canby resident, said on May 22, 2018 he had submitted a letter detailing his chronic pain condition and how the explosions from the high school football games triggered pain responses as well as stress and anxiety. He also submitted a letter from his physician that

verified his condition. He would like to be treated humanely, the same as had been discussed regarding the treatment of immigrants.

Mayor Hodson closed the public hearing at 8:14 p.m.

Mayor Hodson asked if the School District or Canby Fire would need to request any other variances.

Mr. Robinson could not think of any other instances. These agencies promoted events for the benefit of the public. He was sensitive to the medical concerns, but he did not think it was too much to allow these agencies to continue the practice that had been in place for many years. There was no profit or personal motivation, it was an attempt to gather everyone in the community together.

Councilor Hensley asked why there was an emergency clause in the ordinance.

Mr. Robinson explained the high school football games would start before the 30 day waiting period for the ordinance to go into effect.

Councilor Parker asked why there was no advocate from the School District who testified.

Tim Graves, Canby School District Facilities Manager, said the Superintendent was sensitive to any citizen who had an objection or concern. He was going to contact the fireworks vendor to see if they could use a type of firework that relayed a less explosive sound. They wanted to continue the tradition.

Eric Laitinen, Canby resident, had lived in the community for 50 years. They had always had fireworks at the games, but hadn't always had the compression blasts. He thought if they took out the compression blasts it would make a big difference.

Mr. Ylvisaker said it was the random act of the compression blasts that was the issue.

Ordinance 1489 – **Councilor Smith moved to approve Ordinance 1489, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE (CMC) CHAPTER 9.48.050(A) REGARDING NOISE VARIANCE EXCEPTIONS; AND DECLARING AN EMERGENCY to come up for second reading on August 15, 2018. Motion was seconded by Councilor Parker.

Councilor Heidt had thought a lot about the idea of public benefit. It was of great public benefit to the people who attended the games and had been attending for several years. However, for the neighbors and those who had pain or PTSD, it was not a benefit. She had also heard about animals getting upset due to the explosions. It was hard to quantify public benefit when taking into account the number of neighbors who disliked it and the number of people attending the games who enjoyed it.

Councilor Smith was in favor of both sides of this issue. He knew that pain and PTSD issues were real and also that thousands of people every year enjoyed the entertainment and sense of community. He thought it was easy to decide which one weighed heavier. Thousands of people enjoyed the games and he thought there were ways to avoid the pain issues, such as fundraising to send Mr. Ylvisaker out to dinner the six nights there would be home games.

Mr. Ylvisaker did not want to have to leave his house, and he thought traditions could be changed.

Councilor Heidt asked if this would allow the School District carte blanche to increase the use of fireworks. Where would the line be drawn.

Mr. Robinson did not have an answer. There were fireworks at the graduation this last year. He suggested how the ordinance could be amended to specify that only the fireworks for the football games would be allowed without a variance.

Councilor Heidt preferred the School District be left out of the ordinance and that they come to the Council every fall for a variance.

****Councilor Smith moved to table the vote on the ordinance until the next Council meeting. Motion was seconded by Councilor Hensley and passed 4-0.**

Kim Scheafer, City Recorder, explained the variance process which included mailing and publishing notices.

APP 18-02 Beck Pond Subdivision by Roger & Cheryl Steinke – Mayor Hodson read the public hearing statement.

Conflict of Interest

Councilor Smith – No conflict, plan to participate.

Councilor Parker – No conflict, plan to participate.

Councilor Hensley – No conflict, plan to participate.

Councilor Heidt – No conflict, plan to participate.

Mayor Hodson – No conflict, plan to participate.

Ex Parte Contact

Councilor Smith – No contact.

Councilor Parker – No contact.

Councilor Hensley – No contact.

Councilor Heidt – No contact, visited the site a few months ago.

Mayor Hodson – Had work related conversations with Stafford and several months ago he had a conversation with Mr. Steinke about the process.

STAFF REPORT: Bryan Brown, Planning Director, said this was an appeal of a Planning Commission decision to approve the Beck Pond subdivision. The appeal was focused in nature and was not about the subdivision that was approved. It was about how it was perceived to affect a neighboring property. The appellants were Mr. and Mrs. Steinke, adjacent property owners to the proposed subdivision site. The issue centered on the variety of conversations between the developer and the Steinke family throughout the process.

Councilor Dale arrived at 8:46 p.m. and had no conflict of interest or ex parte contact to declare.

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Mr. Brown continued his presentation. The focus of the appeal was that during the process there were various drawings showing road extensions through the Steinke property. Staff did not think the drawings did in any way affect the property, but having those drawings as part of the approval process made the Steinke family nervous about the future. An agreement had been reached between the developer and appellants and staff was in support of it. The agreement was to eliminate any reference to the Steinke property on the drawings. They were not asking the Council to amend the Development Concept Plan

for the area at this time. Staff had been in support of two of the three appeal items even before they had reached an agreement. The third item talked about an alternative solution where Council would indicate that the Planning Commission was not approving anything dealing with the Steinke property and that it was for illustrative purposes. However, the agreement that had been reached took care of that item.

Mayor Hodson opened the public hearing.

APPLICANT: Levi Levasa, Stafford Development Project Manager, gave a background on the subdivision application. In that application there had been a shadow plat for reference only that was the point of contention. They had not intended to get approval on what would happen to neighboring properties and in working with the appellants, they were able to clarify the issue. He showed a map of the Development Concept Plan area and the street stubs to the Steinke property that were on the older version. He then showed the new version which had no continuation of roads on the Steinke property. He handed out a statement that was a new condition of approval that stated none of the maps impacted the Steinke property directly and in the future any application that came to the City from the Steinke family would be reviewed on its own merits and not on the reference materials from the Beck Pond subdivision.

Mayor Hodson read the statement into the record.

APPELLANT: Jeff Klenman, attorney for the appellants, said the concerns the Steinke family had was that once something was put down on paper, there was the possibility in the future that new staff would see it and think that was the way it would be developed which might affect the value of the property and potential buyers. Since the Steinke family was in agreement with the statement from Stafford and the map changes that had been made, he recommended the Council deny the appeal stating that the issues raised had been resolved.

Mayor Hodson asked if the statement memorialized all of the concerns of the Steinke family and what they would be able to do with their property.

Mr. Klenman said it resolved the concerns that were raised by this application.

PROPONENTS: None.

OPPONENTS: Manfred Zysk, Canby resident, said there was supposed to be a total of 69 houses to be built in this subdivision and none of the neighbors on Elm Street had been contacted about what was going to be built. Near the entrance to the subdivision from Elm Street, there was a 150 foot long concrete wall built by Village on the Lochs and 35 large pine trees. He had found out that the wall and trees were to be eliminated. The lots in the subdivision were 4,000 to 5,000 square feet but there was one lot that was over 13,000 square feet. That design did not make sense from his professional point of view. He had asked for a more detailed map, but staff was not able to provide one. He was not in favor of the entrance as it was next to his house and he thought the access could be located further to the left.

REBUTTAL: Mr. Lavasa said the large lot was included due to an existing home that was going to remain. The concrete wall was being minimally disturbed and would be preserved as much as possible. He agreed the wall was a benefit to the neighborhood. The trees were going to be checked out by an arborist to make sure they were safe and most likely would be preserved. If they had to take parts of the wall down, they would rebuild it. They contacted a title company and were given a list of people within

500 feet of this subdivision. Village on the Lochs might have been outside that area. In the future he would reach outside of the 500 foot radius. They sent close to 500 mailed notices for this application.

Mayor Hodson said the code stated that notices were sent to those in a 500 foot radius and they did not expect notices would be mailed out further than that.

Mayor Hodson asked about the ability for citizens to get information about a development this far along in the process.

Mr. Brown said this was after the fact as the approval process had already been done. Mr. Zysk had contacted him by phone two days ago and the most detailed map they had was the one in the record. It did not show the wall, but there wasn't anything else staff could supply him. Staff also placed physical signs out on Elm Street and that was how those in the Village on the Lochs had found out about the application.

Councilor Heidt asked about staying true to the Development Concept Plan even with this amendment.

Mr. Brown stated the motion would need to incorporate the new plat map showing nothing on the Steinke property rather than the one the Planning Commission saw. Staff was going to set up a separate electronic file that was titled "appeal final revised drawings" so it would be clear in the future.

Mayor Hodson closed the public hearing at 9:21 p.m.

****Councilor Smith moved to deny the appeal and affirm the Planning Commission's decision as amended by adding the additional condition of approval submitted by the applicant and adopting the revised plat map. Motion was seconded by Councilor Hensley.**

Mayor Hodson said he appreciated how Stafford Land Development and Mr. Steinke had worked together.

Motion passed 5-0.

****Councilor Smith moved to pull from the table Ordinance 1489. Motion was seconded by Councilor Parker and passed 5-0.**

Mayor Hodson gave a recap of the public hearing and discussion for Councilor Dale.

Mr. Lindsey said the first football game would not be able to have fireworks due to the timeframe to get a variance.

Councilor Heidt requested the Council discuss this item at the end of the agenda.

RESOLUTIONS & ORDINANCES:

Resolution 1296 – ****Councilor Hensley moved to adopt Resolution 1296, A RESOLUTION ADOPTING AN INTERAGENCY AGREEMENT BETWEEN THE CITY OF CANBY AND THE CANBY SWIM CLUB, INC. AND REPEALING RESOLUTIONS 1147 AND 1160. Motion was seconded by Councilor Parker and passed 5-0.**

Ordinance 1488 – Mr. Lindsay said this was an amendment to the ordinance that banned marijuana in the City to allow industrial hemp since state and federal law viewed it as a legal agricultural product.

Councilor Smith asked if the only business the applicant would have in Canby was industrial hemp and not the other processes that happened at their other facilities.

Ross Day, attorney in Portland representing MRX Technologies, clarified they would only be processing industrial hemp and nothing else.

Councilor Heidt said the Council had discussed this item at length at the last Council meeting and she was comfortable with moving forward with the ordinance.

****Councilor Hensley moved to adopt Ordinance 1488, AN ORDINANCE AMENDING ORDINANCE 1427 REGARDING THE DEFINITION OF MARIJUANA. Motion was seconded by Councilor Heidt and passed 5-0 by roll call vote.**

Ordinance 1490 – Mr. Lindsay said someone had filled out a comment card to testify, but had left. He had testified at the first reading of this ordinance. Telecommunication facilities in the right-of-way were governed by the City's code and were treated on a level playing field and were non-exclusive. If the application followed the code and the applicant signed up for the same contractual franchise agreement, they were allowed to be in the right-of-way and paid the same amount to do so.

Mr. Robinson said an email had been submitted from the person who had left and he appeared interested in being selective in who was allowed to be in the right-of-way, which the City could not do.

Councilor Dale had forwarded that email to the CEO of DirectLink and encouraged him to contact the City if there were concerns. No concerns had been raised.

****Councilor Hensley moved to adopt Ordinance 1490, AN ORDINANCE GRANTING TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY, OREGON. Motion was seconded by Councilor Heidt and passed 5-0 by roll call vote.**

Ordinance 1491 – Mr. Robinson said they had been working with the N Maple Street community to secure right-of-way and easements for street and sidewalk improvements from NE 10th to NE 14th. The contract with Curran-McLeod for the project was \$103,200 for engineering services. The emergency clause would enable them to go out to bid as soon as possible so the project could be completed in the 2018-19 Fiscal Year.

Councilor Heidt clarified that the section of N Maple Street was City owned, not County owned.

****Councilor Hensley moved to approve Ordinance 1491, AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES FOR NORTH MAPLE STREET RECONSTRUCTION; AND DECLARING**

AN EMERGENCY to come up for second reading on August 15, 2018. Motion was seconded by Councilor Parker.

Mr. Robinson said Bob Cambra had been instrumental in securing easements for the sidewalks.

Motion passed 5-0 on first reading.

Ordinance 1489 – Mayor Hodson gave a recap of this item and the issues that had been raised.

Councilor Smith said it would be a travesty to eliminate the festivities that the City engaged in. The yearly variance process was an additional burden on the School District and the City. He did not think there would be an issue of increased use of fireworks. He supported it the way it was currently written.

Councilor Hensley said the football games were a long standing tradition. She was concerned about the addition of fireworks at graduation and the possibility of adding fireworks to other events. She was in favor of adding an amendment to limit the fireworks to just during football games.

Councilor Heidt could see both sides, but some of the population was bothered by the fireworks and were experiencing pain and she would be voting in opposition. She hoped the School District could find quieter fireworks, but she could not count on that.

****Councilor Hensley moved to amend the previous motion to approve Ordinance 1489 by adding language to restrict fireworks to during football games only. Motion to amend was seconded by Councilor Parker and passed 4-1 on first reading with Councilor Heidt opposed.**

Mr. Robinson read the revised language into the record.

NEW BUSINESS: Recommendations from the Parks and Recreation Advisory Board – Mark Triebwasser, Parks and Recreation Advisory Board Chair, explained how the Board had come up with the recommendations to Council. The recommendations included some assumptions that they hoped the Council would take under consideration including coming up with a method to address the funding issue long term as well as using park staff time for park related duties only. There needed to be a limited update to the Park Master Plan to allow the creation of a district that would generate enough revenues to fund the parks and build a community center/sports complex. Other recommendations were the construction of a splash pad, improving the fish eddy property, and construction of a park for the Auburn Farms subdivision.

Mayor Hodson had asked staff to look at the analysis for long term park funding. The Council would be holding a work session to review the Board's recommendations. The parks deferred maintenance was being addressed and staff was also trying to maintain the parks during this high use season.

Councilor Parker said the Council needed some information, such as the estimated maintenance hours for the splash pad and Auburn Farms Park, before making a decision. He did not think they would have any excess capacity to apply to new parks for the next 18 months.

Mr. Triebwasser said the Board thought it would take two years to cover the backlog, and then there would be three years left of the fee. The earliest they could do the splash pad would be next summer.

Councilor Parker thought the Park Master Plan update should be comprehensive especially to include river access opportunities.

Councilor Smith asked about the priority of the Auburn Farms Park.

Mr. Triebwasser said it was the consensus of the Board to prioritize this park as nothing had been done to the property for over ten years.

Mayor Hodson handed out a map of the City's parks and a handout on national park standards. These would be used to rate the City's parks in preparation for the September 18 tour with the Parks and Recreation Advisory Board. There would be two ratings, what they thought the park was now and what they would like to see the park become. The ratings were due by August 21.

Mayor Hodson said Franklin Graham was coming to town this Sunday and he asked if they were prepared for the traffic.

Mr. Robinson had not been aware of it and would talk to staff about it.

ADMINISTRATOR'S BUSINESS & STAFF REPORTS: Mr. Robinson said they had done a preliminary walk around with an architectural firm regarding the community room improvements at the Swim Center and the archway on Grant Street. The architect would be putting together preliminary cost estimates for the projects. He thought the costs would be within his authority threshold and the projects could be fast tracked. His goal was to have them under construction by next spring. He had contacted DirectLink regarding free WiFi in the parks and they were looking into it. He was keeping close track of the hours spent on maintenance of City property versus park property. Two full time employees had been transferred to the Park Department to care for non-park properties. There was no attempt to maintain City properties with the Park Maintenance Fee.

Mr. Lindsey said it was a crime to have alcohol in City parks. Community Park was being heavily used and there had been access issues with emergency vehicles. He encouraged everyone to park in designated parking places only.

CITIZEN INPUT: None.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Denied APP 18-02.
3. Adopted Resolution 1296.
4. Adopted Ordinances 1488 and 1490.
5. Approved Ordinance 1489 as amended and Ordinance 1491 to come up for second reading on August 15, 2018.

There was no Executive Session.

Mayor Hodson adjourned the Regular Meeting at 10:20 p.m.

Kimberly Scheafer, MMC
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood