

**CANBY CITY COUNCIL  
WORK SESSION MINUTES  
December 6, 2023**

**PRESIDING:** Brian Hodson

**COUNCIL PRESENT:** Jason Padden, Traci Hensley, James Davis, and Daniel Stearns.

**COUNCIL ABSENT:** Herman Maldonado.

**STAFF PRESENT:** Eileen Stein, Interim City Administrator; CJ Lason, Deputy City Recorder; Maya Benham, Administrative Director/ City Recorder; Eric Laitinen, Swim Director; and Jerry Nelzen, Public Works Director.

**CALL TO ORDER:** Mayor Hodson called the Work Session to order at 6:45 p.m.

**SWIM CENTER REMODEL DISCUSSION:** Eric Laitinen, Swim Director, gave a presentation describing the need to remodel the current swim center. It was over 50 years old and there were many issues requiring attention, especially plumbing and electric wiring. The original plan was to replace the piping underneath the pool, remodel the locker rooms and front lobby area, and add an extra room for classes, events, and parties. Due to rising costs, Mr. Laitinen estimated that although they had \$1.5 million saved for these projects, they would most likely be unable to complete all of them. In terms of prioritization the plumbing took precedence, followed by the locker room areas, front lobby, and lastly the extra room. They needed to go back to the engineers to get an updated cost estimate of the work.

Councilor Padden thought there should be cost estimates for the different options and how the work could be done in phases.

Jerry Nelzen, Public Works Director, said the pipes had reached the end of their usable life and that most, if not all, would need to be completely replaced.

Eileen Stein, Interim City Administrator, said the City would get accurate estimates for replacing the plumbing as a first priority, the front office and locker room replacements as a second, and the party room as a third.

The Council would be provided with updated costs and budgeting for this project within the next 3-4 months.

**ADJOURN:** Mayor Hodson adjourned the Work Session at 7:09 p.m.

---

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
December 6, 2023**

**PRESIDING:** Brian Hodson

**COUNCIL PRESENT:** James Davis, Jason Padden, Traci Hensley, and Daniel Stearns.

**COUNCIL ABSENT:** Herman Maldonado.

**STAFF PRESENT:** Eileen Stein, Interim City Administrator; David Doughman, City Attorney (attended virtually); CJ Lason, Deputy City Recorder; Maya Benham, Administrative Director/ City Recorder; Jerry Nelzen, Public Works Director; Kevin Aguilar, Human Resources Director; Natalya Erofeeff, Office Specialist; and Don Hardy, Planning Director.

**CALL TO ORDER:** Mayor Hodson called the Council Meeting to order at 7:14 p.m.

**FINALIZING NEW CITY ADMINISTRATOR HIRING AND CONTRACT:**

The Council discussed finalizing the City Administrator contract. There was discussion about Section 10c, which covered the possibility of working from home.

Council President Hensley wanted to amend the contract to remove that language. She thought the City Administrator should be 100% in the office and that expectations could not be set for staff to be in the office if their manager was not also in the office. Including this language in a contract could set a precedent for others to demand it as well.

Councilor Davis agreed and said that work from home was available during the pandemic, but the emergency had passed and businesses were getting people back to the office. Because this was a public position, working for the public, one needed to be available to the public by being in the office full-time. As a manager the City Administrator needed to be available.

Both Councilors wanted this section struck from the contract.

Mayor Hodson stated that he himself occasionally worked from home, and asked Human Resources Director Kevin Aguilar if the language included in the contract was common. Mr. Aguilar responded it was not very common because work from home was not really an option prior to 2020.

Councilor Padden said that work from home availability was here to stay, and the City Administrator had never given the Council reason to suspect she might abuse this option and had almost never used it in the past during the interim phase. It was fine to leave the contract as it was.

Councilor Stearns interpreted the language to mean that the City Administrator was always on the clock and could work from the office or at home as needed.

Councilor Padden wanted to move forward with the contract as it was and stressed the fact that the contract could be revisited and adjusted as needed by the Council in the future if problems did arise from the working from home.

Mayor Hodson stated that if they struck the language from the contract, the contract would have to be re-written, and it would then be re-opened for negotiation again and approved at a future meeting.

Ms. Stein explained she preferred to be in the office five days a week. She had only worked from home on occasion because she lived in Salem and had obligations in Eugene. It did not make sense to drive north to Canby to work in the office, only to turn around and drive twice as far south to Eugene. It saved her time and money to work from home on occasion.

Mayor Hodson said if the City Administrator was working from home too much in the future they could treat it as a performance issue and address it at that time. They could revisit the contract at any time and make changes to it as they saw fit.

Council President Hensley stated that she was a hard no on the contract as it was currently written. She wanted to strike Section 10c completely from the contract.

Councilor Padden said there were already contracts with other employees in the City that had this language. The language was becoming standard because younger people were looking for work from home options in their job searches. Some jobs naturally led to a work from home option, and others did not. He was fine with the contract remaining as it was.

Councilor Stearns said that based on the way the contract was written, a default in it would be hard to recognize and enforce. It was fine to keep it as it was and if they felt the work from home option was being abused they could revisit it in the future. He wanted to proceed based on trust, not the clause in the contract.

**\*\*Councilor Padden moved to approve the contract as written and move forward with Eileen Stein as City Administrator. Motion was seconded by Councilor Stearns and passed 3-2 Councilors Hensley and Davis opposed and Mayor Hodson breaking the tie.**

Councilor Davis said that in the future he would like the Mayor to keep the Council updated with negotiations on contracts.

### **KIWANIS CANBY COMMUNITY FOOD AND TOY DRIVE PROCLAMATION:**

Mayor Hodson read the proclamation declaring December 10-16, 2023, as Kiwanis Canby Community Food and Toy Drive Week.

Sharon Schneider and a group from the Kiwanis accepted the proclamation. They were taking cash donations to purchase Cutsforth gift cards for needy families as well as new unwrapped

toys. They had over 50 barrels distributed around town to accept toys. They encouraged the community to continue to donate to make this a great event.

### **STAFF INTRODUCTIONS:**

Ms. Stein introduced new Office Specialist Natalya Eroffeeff, who started with the City on November 6. She also congratulated Administrative Director/ City Recorder Maya Benham on achieving her Certified Municipal Clerk certification.

### **CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: None**

**PUBLIC HEARINGS:** Noise Variance Request from the Oregon Department of Transportation (ODOT) for night construction work along 99E between Berg Pkwy and Pine St between December 2023 and November 2024 –

Mayor Hodson opened the public hearing and read the hearing statement.

Paul Scarlett, ODOT, gave a presentation on the OR 99E paving and improvement project. ODOT would repave and reconstruct sections of 99E between the railroad crossings and SW Berg Parkway as well as add safety improvements. Additional improvements included traffic signals with new detectors, reconstruction of several short sections of sidewalk, updated striping, new bicycle lanes, sidewalk curb ramps, removal of unused railroad tracks and realigning the tracks still in use, adding bus shelters, and replacing cracked underground stormwater pipe. He explained the community involvement, schedule, and construction impacts.

Robert Schiavone, ODOT, explained they were requesting up to 24 weeks of night work throughout the project area. He discussed the equipment that would be used, decibel levels, and distance from residents. He also stressed that the noise would move, so it would not be constant near any one place.

Councilor Davis asked about the impacts to the firetruck routes and response times during the one-lane construction. He also asked that they not block businesses, such as Walgreens.

Councilor Stearns asked if there had been any complaints made about the noise so far. Mr. Schiavone said there had been no complaints made to ODOT. Ms. Stein said the City had not received any complaints either.

Councilor Padden stressed not delaying the project, but getting it done by the end of next year.

There was no public testimony.

Mayor Hodson closed the public hearing.

**\*\*Councilor Padden moved to approve the noise variance request for ODOT for night work along 99E between Berg Pkwy and Pine St. from December 2023 through November 2024. Motion seconded by Councilor Davis and passed 4-0.**

Noise Variance Request from Canby Pioneer Chapel of the Performing Arts to play amplified music at a New Year's Eve event, from 8:30 pm on Sunday, December 31, 2023, through 12:30 am on Monday, January 1, 2024 –

Mayor Hodson opened the public hearing and read the hearing statement.

Trent Beaver, local musician, spoke about his plan to have a New Year's Eve party to celebrate his band's success this year and give back to the community. There would be performances inside the facility, and music played outside in the tented area.

Councilor Stearns expressed concern about residents hearing the music while still inside with the doors closed. Mr. Beaver stated that the main concert would be inside with the doors closed, and that they were not planning on playing it too loudly.

Councilor Stearns suggested sending someone out a block or two to test the sound levels prior to the concert. Mr. Beaver agreed.

Council President Hensley asked staff if there were any responses to the mailing that went out with any concerns or complaints. Staff replied that no complaints or questions had been received in response to the mailing.

There was no public testimony.

Mayor Hodson closed the public hearing.

**\*\*Council President Hensley moved to approve the noise variance request for Canby Pioneer Chapel of the Performing Arts to play amplified music at a New Year's Eve event, from 8:30 pm on Sunday, December 31, 2023, through 12:30 am on Monday, January 1, 2024. Motion seconded by Councilor Padden and passed 4-0.**

**CONSENT AGENDA: \*\*Council President Hensley moved to approve the Consent Agenda that included the reappointment of Jennifer Driskill to the Planning Commission with a term ending December 30, 2026; the reappointment of Matt Ellison to the Planning Commission with a term ending December 30, 2026; the minutes of the October 18, 2023 Joint Work Session and Regular City Council Meeting; and the minutes of the November 1, 2023 Work Session and Regular City Council Meeting. Motion seconded by Councilor Padden and passed 4-0.**

#### **RESOLUTIONS:**

Resolution 1399 – Don Hardy, Planning Director, explained the resolution would enable the City to continue to charge System Development Charges (SDCs) when a commercial building was converted to residential housing.

Councilor Stearns asked for clarification. Mr. Hardy explained the purpose of SDCs and the formula for charging the SDCs for conversions. If cities did not adopt a resolution by the end of 2023, they would no longer be able to charge fees when a commercial property was converted to

a residential property. Because the SDCs were a primary source of revenue generation for the City, it would be in the City's best interests to adopt this resolution to continue charging when these conversions took place.

**\*\*Councilor Padden moved to adopt Resolution 1399, A RESOLUTION ADOPTING A SPECIFIC POLICY FOR SYSTEM DEVELOPMENT CHARGE CALCULATIONS IN CONNECTION WITH COMMERCIAL TO RESIDENTIAL CONVERSIONS, AS REQUIRED BY HOUSE BILL 2984. Motion was seconded by Councilor Davis and passed 4-0.**

**OLD BUSINESS:** City Attorney Recruitment – Ms. Stein presented information on the costs associated with recruiting a new in-house City Attorney versus continuing to contract attorney services through Beery, Elsner and Hammond. A comparison of salary and benefits vs. hourly rate was made among several cities that had their own attorney or who contracted services. She thought it would be more cost effective in terms of an hourly rate to recruit and hire an in-house attorney. She suggested continuing with the current contract until an in-house attorney was hired.

Councilor Davis asked for clarification on the health costs included for an in-house attorney and how their hours would be broken out among the different departments. He also would like to go through the budget process before they decided which direction to go in case there was a deficit.

Kevin Aguilar, Human Resources Director, explained the health costs, which were included in the benefits number.

Mayor Hodson wanted staff to investigate the cities that did use contracted services and get a breakdown of the labor hours and how they used their services.

David Doughman, contracted City Attorney, said Gladstone regularly made the labor breakdown of their attorney services a part of the Consent Agenda to be approved at each Council meeting.

Council President Hensley also wanted to know the breakdown by department. She expressed concern that the numbers presented were based on 40 hours a week when the previous City Attorney served in an expanded capacity and did not spend 40 hours a week on City Attorney duties. She also wanted to wait until the current budget cycle was completed to revisit this topic in case positions needed to be eliminated.

Councilor Padden stated that he did not need more data to know that the City was not utilizing the attorney services to their fullest capacity, and that he knew there were legal questions that were not being answered. He was concerned about future lawsuits. The City historically had a dedicated City Attorney, and there was a decision several months ago to move forward with recruiting an in-house City Attorney. Money had been budgeted in the current budget to hire a City Attorney. He wanted to move forward with the recruitment while costs were lower.

Councilor Stearns asked Councilor Padden for any specific situations where legal counsel had been denied.

Councilor Padden said he would contact the former City Attorney on a semi-regular basis when he served on the Planning Commission to make sure he was operating within legal guidelines in that role. He had not contacted the current contracted legal counsel because he knew it was more expensive and wanted to save the City money. He was more comfortable going to an in-house City Attorney with whom he had developed a relationship, rather than trying to contact an outside provider.

Councilor Stearns said the rates being charged by outside legal services were within reason, and wanted to know if the expectations of the quality of service were being met. If the attorney was being utilized and communicating well, the cost was not as important.

Councilor Davis wanted to look at the billing from the previous City Attorney's tenure because there were instances where he had to reach out to outside counsel to answer questions that were not in his area of expertise.

Mayor Hodson asked Councilor Padden for specific instances where he did not have questions answered by staff or the current contractor.

Councilor Padden said it would have been useful to have an attorney present during the recent Executive Session for hiring a new City Administrator. In the past when he was on the Planning Commission, he would contact the City Attorney about various ideas and plans to make sure he was not putting the City in jeopardy.

Council President Hensley would have liked to have had an attorney present during the interviews as well, but pointed out they could have contacted the contract attorney to attend virtually if they really wanted someone present.

Mayor Hodson said the Council needed to decide if they should open recruitment for a new City Attorney, continue with the current contract, and ask staff for additional data regarding labor hours by department, how often other cities used their outside counsels, and how often the previous City Attorney had to reach out to outside counsel for questions.

Ms. Stein said that out of the \$149,000 budgeted in the contract with Berry Elsner, the City had only billed about \$27,000 of it. The City could continue with Berry Elsner under the current contract for quite a while.

Councilor Davis said he typically didn't contact the attorney, and instead preferred to contact the City Administrator with questions, and the City Administrator could reach out to the attorney if they did not know the answer. It would not change even if the attorney was an employee of the City Council.

Councilor Stearns said it was imperative that the Council realized the attorney reported to and was hired by the City Council, and that it was part of their duty to reach out to them on occasion even if it meant going over the City Administrator's head. A relationship needed to be established and it was important to have a clear attorney/client relationship.

Mr. Doughman said their client was the corporate entity of the City of Canby. It was analogous to an attorney that provided general counsel to a company.

Council President Hensley said the attorney represented the City's best interest, and not the Council individually. She had not utilized the attorney in the past because it was her own responsibility to police herself.

Mayor Hodson said there did not appear to be consensus to open the City Attorney position to recruitment at this time.

Ms. Stein said the convenience and relationship factor was something that needed to be considered in the future.

Councilor Padden wanted to find out how much time and money was spent by the City Attorney when they had to remove a former City Administrator back in 2010 to gain a better understanding of what the job might entail.

There was consensus to wait for additional data points before moving forward with opening recruitment for a new City Attorney.

**\*\*Councilor Padden moved to re-order the agenda and go to Citizen Input to accommodate a citizen who had missed the first opportunity and had been waiting patiently. Motion seconded by Council President Hensley and passed 4-0.**

#### **CITIZEN INPUT:**

Steve Trachsel, Canby resident, spoke about how the leaves were not being cleaned up properly. There were several landscape companies that blew the leaves in the street for the City to clean up. He suggested fining them and making it a point to address the issue.

#### **NEW BUSINESS: Possible cancelation of December 20, 2023, Regular City Council Meeting –**

Ms. Stein said there was nothing currently scheduled on the December 20 agenda.

Councilor Padden did not want to cancel the meeting. The Council should continue to do the work of the public and he suggested holding a Work Session in place of a regular meeting.

Councilor Davis was fine leaving it up to the Mayor and the City Administrator to decide whether or not to cancel the meeting. The Mayor said it was not his decision, it was the purview of the City Council.



**\*\*Council President Hensley moved to cancel the business meeting on December 20, 2023, and direct staff to discover whether or not there was enough to present as a Work Session instead. Motion seconded by Councilor Padden and passed 4-0.**

**MAYOR'S BUSINESS:** Mayor Hodson reported on the Region 1 Area Commission on Transportation meeting where the project on 217, the 99E project that should be done by the end of 2025, Boone's Bridge expansion open house, bike and pedestrian improvements around the bridge, toll implementation report, interstate bridge project between Washington and Oregon, and ODOT's revenue forecast were discussed. He attended the Light the Night event and thanked staff for their work. He discussed the Christmas in Canby event and snowman fundraiser.

### **COUNCILOR COMMENTS & LIAISON REPORTS:**

Councilor Stearns attended the Bridging Cultures event. He asked for a follow up on idle properties usage. He suggested a "Citizens Academy" to build and foster relationships with City government and residents. He also suggested an online repair request system.

Councilor Davis reported on the Parks and Recreation Advisory Board meeting where they discussed the Locust street park graffiti which had been reduced due to cameras installed, Community Park which would be closed until December 27 to remodel the bathrooms, the scope of work on the exercise equipment at Legacy park which was waiting on bids, creating a memorial tree and bench program, the Auburn Farms park meeting which went well and had a lot of positive feedback from the community, and a meeting with Cogeo on December 7 to discuss the athletic fields. The Fire Department had a very active citizens emergency preparedness unit including amateur radio operators. The number of applicants for EMTs and Paramedics had grown, with 65 for EMT positions and 18 for Paramedics. He complimented City staff for the Light the Night event on December 1. He attended the pancake breakfast at the Fairgrounds and Journey to Bethlehem event at the Foursquare Church.

Council President Hensley attended the Light the Night event and thanked City staff. ODOT gave the City a grant for enforcement during construction, so everyone needed to be mindful of their speed and using phones in the zones. She met with Chief Tro when they received a donation from Citizens Bank for their "Shop with a Cop" event for needy families.

Councilor Padden promoted the Friends of the Library "Christmas Tour" fundraiser event and his house was on the tour. It was on December 16 and cost \$10. He requested staff get caught up on the Planning Commission's minutes. He gave an update on the ethics training required by the state. He also attended the Light the Night event and thanked City staff.

**CITY ADMINISTRATOR'S BUSINESS:** Ms. Stein said the new Finance Director would start on January 2.

Jerry Nelzen, Public Works Director, walked the Council through the map of the properties owned by the City explaining there were very few properties owned by the City that were not already in use or had future usage planned for them.

Councilor Stearns asked about the property at 4<sup>th</sup> Ave and Fir St. He thought something needed to be done with the old equipment still on the property. Mr. Nelzen said it was owned by Canby Utility, not the City.

Don Hardy, Planning Director, said Councilor Padden had asked at a previous meeting what the consequences would be if the City decided not to expand the UGB. He explained the City got a significant portion of funding from the state and if they chose not to expand under the terms of the UGB expansion plan, they could pull the funding. In addition, they would lose control over their own growth with property owners and the state taking it over. They had some flexibility regarding employment land, but the residential land aspect had to be complied with if they wanted to continue to accept state funds.

Councilor Padden thanked Mr. Hardy for this information and said knowing how much state funding they received would be useful in his conversations with citizens.

There was discussion regarding upcoming UGB expansion open houses.

Ms. Stein said Canby had been featured in the fourth quarter issue of LOC magazine for the old City Hall restoration.

#### **ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Adopted Resolution 1399.
3. Approved a Noise Variance Request for ODOT.
4. Approved a Noise Variance Request for Canby Pioneer Chapel.
5. Changed the December 20, 2023, Regular City Council Meeting to a Work Session if an appropriate topic could be prepared.

The meeting was adjourned at 10:08 p.m.



Maya Benham  
City Recorder



Brian Hodson  
Mayor

Assisted with Preparation of Minutes - Susan Wood