

1. Roll Call

The regular meeting of the Bend City Council was called to order at 7:00 P.M. in the City Council Chambers at Bend City Hall, 710 NW Wall. Present upon roll call by City Recorder Patty Stell were Bend City Councilors Linda Johnson, Peter Gramlich, Jim Clinton, and Mayor Bruce Abernethy. Councilors Telfer, Friedman, and Capell were absent.

2. Pledge of Allegiance

The Pledge of Allegiance was recited.

3. Receive Visitors

Keith Scott referred to a fatal auto/bicyclist accident this week and suggested an ordinance requiring reflective clothing for bicyclists. He attended a meeting about silt in Mirror Pond. This should be a priority.

4. Good of the Order

A. Consider a Proclamation declaring April 21 through 28 as Week of the Young Child

Councilor Johnson read the proclamation and moved approval. Councilor Gramlich seconded the motion which passed unanimously, 4/0. The proclamation was presented to Holly Reemer, Executive Director of Healthy Beginnings, who invited Councilors to events on Saturday.

B. Presentation on Recent Trip to Sister City Condega, Nicaragua

Mayor Abernethy gave a presentation on his recent trip to Bend's Sister City, Condega Nicaragua. Delegates to Condega introduced themselves and presented a summary of the trip.

Mayor Abernethy discussed the community's support in responding to the recent tragic accident of Tyler Eklund, student at High Desert Middle School

5. Consider approval of a Staffing Agreement between the City of Bend and Bend 2030 (Issue Summary) (Agreement)

Dina Barker and Stephanie Hicks gave a summary of the presentation she made at the preceding work session.

Councilor Johnson moved approval of the staffing agreement as presented. Councilor Clinton seconded the motion which passed unanimously, 4/0.

Bend's new Assistant City Manager Eric King was introduced. Mr. King is excited to work with the Bend 2030 Board of Directors.

6. Consider a roll call vote on a proposed Resolution of the City of Bend Oregon, Relating to Utilities and Stormwater Management; Adopting a System and Plan for a Stormwater Utility (Issue Summary) (Resolution)

Public Works Director Ken Fuller explained the Resolution adopting the Stormwater Utility.

Councilor Johnson moved adoption of the Resolution. Councilor Clinton seconded the motion which passed unanimously upon roll call vote, 4/0.

7. Consider the first reading of an Ordinance Amending the Bend Code Relating to Procedures for Public Contracting (Issue Summary) (Ordinance)

Finance Director Margaret Echeveste discussed the amendments to the Bend Code related to purchasing procedures. Council had inquired about why large equipment purchases or contracted expenditures were coming back to Council after approval through the budget process. One amendment addresses this. Other amendments include an accessibility statement and clarification on the practice of purchasing used equipment.

Councilor Johnson asked for clarification about the ADA compliance section. The language requires that contractors comply with the ADA act. There are sections of the act that comply with non-discrimination in employment, physical facilities, etc. The language in the amendment is open and she asked for clarification about the intent of the language. She asked that the language better clarify which provision. Purchasing Manager Bob Griffith explained that the City is limited by its ability to enforce these provisions. City contractors are expected to certify that they will meet the ADA requirements and non-discrimination related to employment practices. They are also expected to ensure that construction of public facilities meets ADA requirements. Language should be clarified to better indicate intent. Legal Counsel Schannauer suggested that, in the performance of their contract with the City, the contracting agency will comply with the requirements of the American's with Disabilities Act. Mr. Griffith advised that this is in the contract.

Councilor Clinton advised that the language indicates that the contractor will ensure, but the City has no way of assuring compliance. Requiring the contractor to certify that he complies should be sufficient.

Councilor Gramlich asked if the City has ever declined a contract because of the corporation's employment policies. Mr. Griffith explained that, if a contractor refuses to

certify that he complies with requirements, the City can take an exception with the contract.

Councilor Johnson asked if all contracts the City holds require that that work will meet accessibility requirements. Mr. Griffith explained there is language in specifications to address this. An engineer is dedicated for review of specifications. Engineering firms completing designs are required to design facilities to ADA specifications. Councilor Johnson would like the City to share the responsibility for ADA compliance with the contractor. If staff's specifications miss something, the contractor should be obligated to catch that. It should be a partnership. This could be added to the language. Legal Counsel Schannauer believes that the contractor is obligated to perform the work in compliance with the ADA whether it is stated in the City's contract or not. The contract is a way to contractually enforce this requirement in addition to the statutory requirement. Councilor Johnson felt that if this language could be included in all contracts, then it would not need to be added as a new section to the ordinance.

Councilor Clinton inquired whether standard contract language requires contractors to comply with all state and federal laws. Mr. Anderson advised that recently, the design firm that the City contracts with has been tasked with ensuring that the construction is ADA compatible.

The first reading of the ordinance was held with suggestions made by the Council.

8. Proposed Public Works Utility Site (Issue Summary) (Resolution)

Ms. Echeveste explained that the supplemental budget moves money from water and wastewater funds to facilities funds to make the purchase of the site.

A. Hold a Public Hearing on a proposed \$4.4 million Supplemental Budget to increase appropriations for the purchase of a property at 62975 Boyd Acres Road.

Mayor Abernethy opened the public hearing at 7:49 P.M. Hearing no comments the public hearing was closed.

B. Consider a roll call vote on a Resolution to adopt the Supplemental Budget for fiscal year 2006/07

Councilor Johnson moved adoption of the Resolution. Councilor Clinton seconded the motion which passed unanimously upon roll call vote, 4/0.

9. Hold a Public Hearing on a Measure 37 Claim for Anthony and Cyliene King Measure 37 claim. City of Bend file #06-789 and the property address is 640 NW Delaware Street. The claim is based on designation of the property within the Old Town Historical District of Bend. The claim states that the

**Historic District restricts the use of private real property. (Issue Summary)
(Staff Report) (Exhibits) (Response Letters)**

Planner Heidi Kennedy explained the details of the claim. The claim requests purchase of the home for \$600,000, payment to the applicants of \$300,000 in lost value, or removal from the historic district designation and reversion to planning regulations from 1997 when the property was purchased. The applicant did not supply an appraisal with the claim. They claim they cannot add to the structure because of historic district designation. Staff has found several examples of improvements made to properties within the historic district. Staff recommends denial of the claim.

Mayor Abernethy opened the public hearing at 7:53 P.M.

Anthony King addressed the Council and distributed information. He just received staff's report last Wednesday and requested that the record remain open. He reviewed the purpose of Measure 37 claims. He feels that historic district designation has prohibited him from building improvements to his home which he purchased in 1997. The home was moved onto the site in 1978. The historic district forced zoning changes to the detriment of his investment. He explained his disagreement with staff's recommendation for denial. He believes the City has jurisdiction over historical designation. He believes he is prohibited from building on his land by designation in the historical district. The historic district does not permit him to build a second story. He would like the code to be observed from when he bought the property.

Counsel Schannauer explained that in order to hold the public hearing open, Mr. King would have to extend the 180 day period for an additional 60 days. Mr. King is okay with not keeping the record open.

Responding to Mr. King's claim that he cannot build a second story, Ms. Kennedy believes that it is possible to build a second story. There are several examples of two-story approvals in the historic district. She believes Mr. King has numerous options.

Sonia Keppert addressed that Council. She owns a percentage of a home in the historic district and asked what determines if a structure is historic.

Mayor Abernethy closed the public hearing at 8:08 P.M.

Councilor Gramlich doesn't believe Council should have to explain how the Development Code works. He feels that the timeline has been warped. He feels that this claim is a waste of time for staff and Council and believes that the Council has more important things to do than respond to demands such as this.

Councilor Clinton, referring to the numerous Measure 37 claims having come before Council, concluded that there is no way to logically apply Measure 37 within the City. It is his policy to deny all Measure 37 claims because there is a huge increase in value of

properties because of the zoning and restrictions applied within the City by the Code. Properties are benefited by the codes within the City.

Councilor Johnson acknowledged the claimant for his attempt to comply with the requirements imposed by the City for Measure 37 claims. She will not support the claim because she has difficulty waiving regulations if the applicant hasn't attempted to go through the process and been denied. It is possible that the application would have been approved. Secondly, there is no tangible evidence that the property has been devalued. She believes the property has probably increased in value. Finally, the historic district is a federal law and, although the City has some leeway, it cannot repeal federal law. She supports rejecting the claim. Mayor Abernethy agrees.

Councilor Johnson moved to reject the Measure 37 claim. Councilor Gramlich seconded the motion which passed unanimously, 4/0.

Mr. King advised that the problem with the zoning is the height restriction. The language states that you cannot exceed height of the original neighborhood. If there are variances, then the City is breaking its own Code.

Responding to Ms. Keppert's comments, staff advised that there is much information on the City's website to answer her question. Usually, the regulations are confined to the outside of the structure rather than the inside. Counsel Schannauer added that, if the structure is in the historic district, it is covered by this historic code, but, if it is not in the district, structures are evaluated using a matrix to determine whether they are historic. Districts are formed through a process by which the City Council is only allowed to comment. Councilor Gramlich added that each structure within the historic district is matrixed, (such as garages, outbuildings and sheds). Councilor Clinton added that the Historic Landmarks Commission is a good venue to explore these issues.

10. Consider a Motion to approve the Consent Agenda A:

A. Consider approval of the City Council meeting minutes

- **March 21, 2007 Work Session**
- **March 21, 2007 Regular Meeting**
- **March 28, 2007 Special Meeting**
- **March 30, 2007 Special Meeting**
- **April 2, 2007 Work Session**
- **April 4, 2007 Work Session**

B. Receive minutes:

- **Traffic Safety Advisory Committee (03-20-07)**

C. Acknowledge receipt of a \$43,692 State Homeland Security Grant for the Bend Police Department (Issue Summary)

D. Receive Petition for Vacation for a Portion of American Lane (Issue Summary)

E. Receive Petition for Vacation of a Portion of the Alley West of Lava Road between Colorado Avenue and Arizona Avenue (Issue Summary)

- F. **Receive March Financials and Quarterly Investment Report (Executive Summary) (Detail) (Investment Report)**
- G. **Receive Report on Liquor License Endorsements (Report)**

Councilor Johnson moved approval of Consent Agenda A. Councilor Gramlich seconded the motion which passed unanimously, 4/0.

- 11. **Consider a roll call vote on Consent Agenda B:**
 - A. **Consider a Roll Call Vote on a Proposed Resolution Approving Appropriation Adjustments for Fiscal Year 2006-07 to Accommodate a \$10,000 SCD Credit for Double Happiness Restaurant (Issue Summary) (Resolution)**

Councilor Johnson moved approval of the proposed Resolution. Councilor Clinton seconded the motion. City Recorder Patty Stell explained that the Resolution expresses the intent that the \$10,000 will go toward System Development Charges. The motion passed unanimously upon roll call vote, 4/0.

12. Council Action and Reports

Councilor Clinton made a presentation to the Parks District on Mirror Pond and advised them that the City was hoping for, but not expecting federal appropriations. Board Member Suzanne Johannsen suggested that Council and Parks District hold a joint meeting to address this and other issues. Mayor Abernethy will work with her to schedule this.

Councilor Clinton discussed the status of the Council approved recruiter to help plan for a new university and research institute at Juniper Ridge. The recruiter is helping to locate and hire a higher education consultant to explore options. The recruiter will develop a website to contain applications she receives from interested consultants with the intent to narrow down the applicants before interviews. On May 15th, an all day session is scheduled to review the applicants, narrow the candidates, and advise the Council. Councilor Clinton hopes to participate and invited others to e-mail him if they are interested in attending or reviewing the applications. Other community members have been invited to participate. Council will decide who will serve on the interview committee.

Mayor Abernethy announced that Bend's Public Works Department has been accredited by the American Public Works Association. Bend is the 41st City in the country to receive this level of accreditation.

Mayor Abernethy and Councilor Capell met with the Blue Ribbon Committee to discuss customer service in Planning, Building, and Engineering Departments. This was the first meeting.

The City is seeking additional candidates for the Budget Committee and Planning Commission.

13. Receive City Manager's Report

Mr. Anderson discussed gypsy moth eradication efforts by the Department of Agriculture. The Department will spray to eradicate the moths from Nels Anderson to Quail Haven Road. Half of the area is within the City and half within the County. Spraying is scheduled for May 2nd, 16th, and 30th. The formula used is BTK, a naturally occurring substance. Public meetings were held and press releases will inform citizens how to handle this.

14. Adjourn

Councilor Clinton moved to adjourn. Councilor Johnson seconded the motion. The meeting adjourned at 8:33 P.M.

Respectfully submitted,

Patricia Stell
City Recorder

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