

MINUTES

Eugene City Council
McNutt Room—City Hall
777 Pearl Street—Eugene, Oregon

January 11, 2011
5:30 p.m.

COUNCILORS PRESENT: Mike Clark, Betty Taylor, George Poling, Andrea Ortiz, Alan Zelenka, George Brown, Pat Farr.

COUNCILORS ABSENT: Chris Pryor.

Her Honor Mayor Kitty Piercy called the January 11, 2011, work session of the Eugene City Council to order. She noted that Mr. Pryor was out of town, and welcomed Mr. Farr to the council.

A. ITEMS AND COMMITTEE REPORTS

Mayor Piercy reported that she attended Eugene Police Captain Chuck Tilby's retirement party. She recognized Captain Tilby's 33 years of service to Eugene and thanked him on behalf of the council.

Mayor Piercy noted the Matthew Knight Arena was opening on January 13 and the Gateway EmX dedication was scheduled for January 14. She also noted that January 17 was Martin Luther King, Jr. Day and a march in honor of Dr. King would be held that day, followed by an evening event at the Hult Center.

Mayor Piercy thanked the Oregon Ducks for their 2010 season and for giving the community the opportunity to share in the journey to the national championship game. She said a parade in honor of community champions was planned for January 22 to honor the accomplishments of the Ducks as well as other community and University groups.

Ms. Taylor reported that she had attended both the State of the City and State of the County events and commended the mayor for her remarks at the State of the City event. She congratulated Mayor Piercy for her recognition by The Nation as the most progressive mayor in the United States.

Ms. Taylor reported she had been appointed chair of the National League of Cities Human Development Policy and Advocacy Committee.

Ms. Taylor said she was receiving complaints from constituents about a change in the hours when parking tickets were issued.

Ms. Taylor reported that the Lane Workforce Partnership had moved to its new headquarters and the organization was happy in its new surroundings.

Mr. Zelenka commended the State of the City event and also commended the national recognition received by Ms. Taylor and Mayor Piercy. He said the Oregon Ducks were also recognized by being

chosen for the national championship game, which put Eugene on the map. He said it was a special thing to be able to attend the game, and the Ducks were winners to him. He reported on the pep rally held before the game, saying it was attended by 20,000 people.

Ms. Ortiz was also proud of the Ducks and thought they did a fabulous job. She reported she had attended a meeting of the Trainsong Neighbors the previous week and would attend the Whiteaker Community Council meeting the next day at which the EmX extension alternatives were discussed.

Ms. Ortiz regretted she had been unaware of Captain Tilby's retirement. She said he was an awesome person and would be missed.

Ms. Ortiz noted that the Eugene Police Department received 22 commendations December 2010. She reviewed a commendation from a person whose car failed at a busy intersection. The officer pushed the car out of the intersection and waited with the driver until he was sure a tow truck was on the way. She believed it spoke to the good job the police were doing in the community.

Mr. Brown had attended the State of the City and State of the County. He also met with an ad hoc group concerned about the school funding situation. Mr. Brown reported that he attended the orientation for his new committee assignment as the council's representation to the Metropolitan Wastewater Management Commission as well as a meeting of the McKenzie Watershed Council.

Mr. Farr announced that the Active Bethel Citizens had received a Strategic Neighborhood Action Plan (SNAP) grant to fund community gardens. He anticipated the gardens would be operated in conjunction with the Bethel School District on district property. The ground-breaking would occur the following week.

Mr. Farr observed that he was wearing a unit insignia for the second battalion of the 166th Infantry. When he received his commission, he was posted to Bravo Company of the Second Battalion. The executive officer was Thomas Egan. He had served with Mr. Egan in the National Guard for several years. He had thought of Mr. Egan when he heard the news that Bravo Company received a Presidential Unit Citation for bravery in Iraq. He congratulated the men and women of the 166th Infantry, who were now home, and hoped that all those serving came home safely.

Mr. Poling welcomed Mr. Farr back to the council. He remarked that the honor mentioned by Mr. Farr was the first Presidential Unit Citation received by a reserve unit since World War II. He also thanked and congratulated the men and women of the 166th Infantry.

Mr. Poling announced the Harlow Neighborhood Association meet at the North Park Community Church at 3484 Harlow Road on January 13 at 6 p.m. He announced the Cal Young Neighborhood Association would meet on January 20 at the Sheldon Community Center to discuss the possibility of reorganization.

Mr. Poling acknowledged the recent shootings in Arizona and the six victims of that incident as well as those wounded. He urged people to consider their actions and be part of the solution.

Mr. Clark welcomed Mr. Farr to the council.

Mr. Clark said it had been an honor to serve as the council president.

Mr. Clark thanked Captain Tilby for his service to the City and congratulated him on his retirement. He congratulated the Ducks for their conduct during the national championship game.

Mr. Clark had also attended the State of the City and State of the County events and commended both events. He reported that the Santa Clara Community Organization met on January 6. He conveyed to the council the thanks of the Santa Clara and River Road community organizations for the variance that allowed those organizations to be considered for a SNAP grant. He noted the Springfield State of the City event was on January 13 at 11 a.m.

Mr. Clark asked those with an interest in taking a leadership role in a reorganized Cal Young Neighborhood Association to contact himself, Mr. Poling, or Neighborhood Services.

Mr. Clark reported that the Eugene Area Chamber of Commerce would recognize Rob Bennett as Eugene's First Citizens at its Celebration of Business event on January 26.

City Manager Jon Ruiz said construction continued to go on downtown. Speaking to Ms. Taylor's remarks about parking, City Manager Ruiz said that there had been no change in the enforcement hours for parking limits.

City Manager Ruiz congratulated Captain Tilby on his retirement, saying he was a wonderful person who gave great service to the community.

Councilors then offered committee reports. Mayor Piercy noted that the council had been provided with a written report on the Public Safety Coordinating Council.

Mr. Brown reported on the work of the Human Rights Commission, saying that the commission worked with the Gender Center on Transgender Awareness Week and the Day of Remembrance, forwarded a letter to the council on the Arizona law regarding illegal immigrants, hosted a community forum on veterans, sent a letter of support to the United Nations in support of the Declaration of Rights of Indigenous People, provided financial support to Pride Day, CALC Cornucopia, Transgendered Awareness Week, and the upcoming Martin Luther King, Jr. Day event, and held an International Human Rights Day event at the Baker Center. Several commissioners attended best practices training for boards and commissions.

Mr. Brown anticipated that the Human Rights Commission would ask the council to approve a resolution reaffirming the City's commitment to the Universal Declaration of Human Rights and Human Rights Framework; a three-hour training on the framework was planned, and the commission hoped that councilors attended. A subgroup of the commission was examining its Human Rights Support System and would make recommendations to the full commission on how to proceed. Mr. Brown noted that there were vacancies on the commission to be filled in the next recruitment cycle.

Mr. Farr looked forward to the challenge and opportunity of serving on the Human Rights Commission. He asked the council to calendar the date for Project Homeless Connect, which was March 17.

Ms. Ortiz hoped that the City could provide more training in the future to those appointed to City boards and commissions about their charges and the legal parameters that bound them.

Mr. Zelenka discussed the work of the Sustainability Commission, saying it had reached out to the Human Rights Commission about framing the social equity element of the Triple Bottom Line (TBL).

Mr. Poling reported that the Board of Directors of Travel Lane County heard a report that the State legislature would attempt to revise the way Transient Room Tax funds were allocated. The proposed

legislation would allow counties to make the decision about how those funds were allocated, which could have a serious impact on Travel Lane County's ability to market Lane County and the county's tourism industry. He planned to ask the Council Committee on Intergovernmental Relations to take a position in opposition to such legislation. Travel Lane County staff was also concerned about proposed modifications at the federal level that would change how room taxes were collected for internet bookings.

Mr. Poling reported that the West Eugene EmX Extension Steering Committee was asked to make a recommendation for the West 11th EmX alternative to the Lane Transit District (LTD) Board of Directors. While he believed the West 11th Avenue option the best route of those proposed, he also believed he could not support the motion placed before the committee without more input from the City Council. He had asked that the "no build" and transportation system management (TSM) options be forwarded as well, and was told the "no build" would be forwarded but TSM would not. Because TSM was not included, he voted against the motion to forward the recommendation to the LTD board. Five members voted in support of the option, four abstained, and there was one "no" vote.

Mayor Piercy asked Mr. Poling to ask the Travel Lane County board to consider how the region could take better advantage of rail travel opportunities between Washington and Oregon and the United States and Canada. Mr. Poling agreed to raise the issue at the next board meeting.

Mayor Piercy reported that the Human Services Commission had less money to allocate this year so had gone through a program evaluation process that resulted in recommendations for funding to the Board of County Commissioners. One of the agencies that had not been funded objected to the recommendation package, so the board returned the decision to the commission for further discussion.

Mr. Pryor was not present to report on the Lane Council of Governments Board of Directors.

Mr. Zelenka reported that the Metropolitan Policy Committee had elected a new chair, Hillary Wylie of the Springfield City Council. The committee continued to work on local transportation system plans that would eventually be integrated into the Regional Transportation System Plan.

At the request of Mr. Clark, Ms. Wilson briefly discussed the relationship between the Lane Area Commission on Transportation and the Metropolitan Policy Committee and their respective statutory responsibilities.

Mr. Zelenka reported that the Sustainability Commission had discussed his report to the council. Members had commented on the work being done by the Sustainability and Planning commissions on land use and transportation. The Sustainability Commission wanted the council to take a long-term view of those issues with sustainability in mind and to mitigate the negative impacts "at the intersection" of land use and transportation. The commission had believed the social equity element of the TBL was important and should not be forgotten. The commission had also asked for more responsibility. It requested it be giving a role in framing the TBL analysis associated with the Envision Eugene process and reviewing the analysis before the council saw it on February 28. The commission also requested that it be allowed to give staff input on large complex projects, policy issues, and ordinances before they went to the City.

Mayor Piercy supported the commission's requests. Mr. Clark expressed interest in hearing the Sustainability Commission's analysis of the economic impact of some of the decisions it was discussing. He asked if a TBL analysis was being done of the route options for West Eugene EmX. City Manager Ruiz anticipated a TBL analysis would be done as the council moved toward a final decision in August/September 2011. Mr. Clark assumed that analysis included a complete analysis of the route's

impact on local businesses and the LTD operating budget. Mr. Zelenka said he would share that with the commission. He clarified that the commission would actually review the analysis done by staff to ensure the three elements were adequately addressed.

City Manager Ruiz reminded the council that the analysis occurred in the context of sustainability, not in the context of the local economy. However, economics was an important part of the analysis.

Mr. Zelenka concluded his report by saying that the Sustainability Commission wanted to be able to add “low-hanging fruit” to its work program. He commended the work of Sustainability Coordinator Babe O’Sullivan.

Mr. Farr determined from Mr. Zelenka that the commission would both identify “low-hanging fruit” and would accept suggestions from others.

B. Appointment of Representative to Lane Area Commission on Transportation (LACT)

Intergovernmental Relations Manager Brenda Wilson joined the council for the item. She reported that the Oregon Transportation Commission (OTC) had approved the Lane County Area Commission on Transportation (LACT) bylaws on November 9, 2010. The other Lane County communities that would be represented on the LACT were in the process of selecting their representatives. Ms. Wilson said that the bylaws stipulated that the City’s primary representative be an elected official. It was recommended but not required that the representative also serve on the Metropolitan Policy Committee. She reported that the County would select its LACT and Highway 126 representatives the following day.

Mr. Clark suggested that Mayor Piercy was the logical appointee to the LACT. He recommended that her alternative also be an elected official to ensure accountability to the taxpayers. City Manager Ruiz concurred with the recommendation.

Mr. Clark said while he had never objected to any action taken by the City representatives to the Metropolitan Policy Committee, he wished there was more diversity in the views of its representatives.

Mr. Clark, seconded by Ms. Taylor, moved to appoint Mayor Piercy as the City’s representative to the Lane Area Commission on Transportation (LACT). The motion passed unanimously, 7:0.

Mr. Clark, seconded by Ms. Taylor, moved that the City alternative to the LACT be the City’s other representative to the Metropolitan Policy Committee. The motion passed unanimously, 7:0.

C. WORK SESSION: Eugene Water & Electric Board Sale of Water to Veneta

Ms. Wilson introduced the item. City Attorney Glenn Klein was also present for the discussion. Ms. Wilson reminded the council that it had discussed the sale of surplus water to Veneta several times, and the courts ruled in 2010 that the Eugene Water & Electric Board, not the City of Eugene, had the authority to enter into a contract with and sell surplus water to Veneta. The City of Eugene was appealing that decision. In the meantime, the City of Veneta was requesting the City of Eugene show support for the sale so it could move forward with a federal funding package and begin work. She said that support could be reflected in a resolution, and a resolution would be presented to the council later in the month.

The resolution would reflect a specific amount of water and could include a provision that ended the resolution should the City be unsuccessful in its appeal or a regional water supplier come into existence. It could also include a provision that no one could tap into the pipe line without council approval.

Veneta City Administrator Ric Ingram discussed the terms of a contract between EWEB and the City of Veneta as it regarded the amount. The contract currently called for 4 million gallons per day; that amount was based on a 20-year horizon. However, 3 million gallons per day was acceptable for the immediate future. Veneta would maintain a redundant system and have its own capacity.

Councilors asked questions clarifying the details of the proposed contract.

Mr. Clark asked the average daily flow of the McKenzie River. Jeannine Parisi of EWEB indicated that the utility took about 3-1/2 percent of the flow from the river at the Hayden Bridge intake on an August day of highest usage, and adding Veneta to the flow was .02 percent more.

Mr. Clark said the purpose of the contract was to perfect more water rights for Eugene and to help Veneta find a solution to its water supply problem, and the question was whether it was a good idea. If it was a good idea, he questioned why the City would limit the amount of water that EWEB could sell to Veneta since it did not appear to significantly impact the supply. It would also generate more revenue for EWEB.

Speaking to whether the contract should be for more water, Ms. Wilson pointed out that to perfect its water rights, EWEB must demonstrate beneficial use of the water and it would not help to sell Veneta more water than it needed. The amount could be more if Veneta could show the need for more water. City Attorney Klein added the City could increase that amount in the future if the pending litigation was settled in its favor.

Mayor Piercy suggested the quandary before the council was the precedent being set for infrastructure expansion and growth without a broader discussion of regional water needs. She acknowledged that Veneta had a grant and a time line to address. Mayor Piercy also acknowledged concerns about the community's claim on additional water rights in the McKenzie River.

Mayor Piercy asked if the contract should also include conservation agreements and stipulations about water reuse in the future. Ms. Wilson pointed out that the contract included requirements about water conservation, including water reuse.

Mr. Zelenka agreed with Mayor Piercy's summary of the issues. He asked City Attorney Klein if the resolution threatened the City's appeal, given that the amount of water included seemed arbitrary to him. City Attorney Klein said there needed to be a significant difference between what the council and EWEB authorized. He believed that the courts would accept 3 million gallons a day as a sign of significant differences in position, keeping the lawsuit alive.

Mr. Zelenka recalled he had asked for staff input about how the contract affected the City's growth management policies and its relationship to State land use planning laws. He acknowledged that for him the issue was not about Veneta, which had its own urban growth boundary (UGB) and was responsible for growth inside that. Instead, it was about Eugene's role as regional provider of water and how it related to the City's growth management policies and State land use planning goals. After discussion with Ms. Wilson, Mr. Zelenka came to the conclusion that the growth management policies and State planning rules did not apply because the pipeline would run between the two communities. He considered that a bit of a disconnect, but acknowledged the issue did not come up often. He believed that the council needed to consider the spirit of those policies and laws as opposed to the letter of the law.

Mr. Zelenka pointed out that Eugene would need multiple Venetas to perfect its water rights for the first 25 percent, which suggested to him that the region needed a planning context for that to occur. He suggested there were benefits from a regional water master planning approach, including cost savings and the mitigation of environmental impacts.

Responding to a question from Mr. Brown, Ms. Wilson indicated that the courts had ruled in the past that municipalities have five years to perfect their water rights. Because of the difficulty of doing so, the legislature was trying to modify the law. One of the League of Oregon Cities' top three legislative priorities was clarifying and protecting the amount of time municipalities have to perfect their water rights. She said no one knew precisely when EWEB had to perfect its rights, but it had to be soon. EWEB had asked for an extension to provide more information to the State proving it was moving toward the next 25 percent. She did not know if the State would grant the extension.

Mr. Brown pointed out that even if the City approved a resolution of support, the contract did not get EWEB closer to the next 25 percent. He said EWEB would need more customers and he questioned if they were out there. He said that when EWEB first applied for water rights in the 1960s the community was going through a growth period and many believed that its population would reach San Francisco levels, but that had not occurred. He asked how long EWEB projected it would take to perfect the third water right. Ms. Wilson said that it was not likely to happen in 5 or 20 years, but the community just needed to meet the first 25 percent. She said that EWEB General Manager Roger Gray had noted out that beneficial use was not just the use of water, but also the mitigation of the risk of having a single source of water. In the case of an emergency, the community could lose water for weeks. EWEB hoped to demonstrate to the State that it had a plan to mitigate that risk by showing part of the water right could be used as a back-up source.

Mr. Brown believed it would take more than 100 years for EWEB to fully perfect the third water right. He thought the water right was too big and added to a false sense of pressure, making the issues difficult to sort out. Mr. Brown suggested that Veneta and EWEB could change the contract at any time without consultation with Eugene to increase the amount of water.

Mr. Clark suggested a well-done regional water master plan would include the voices of people from around the region and would not be filtered through the City's growth management policies. He said Eugene was not the ultimate arbiter of the discussion and he anticipated the State would have a say in many of the issues.

Ms. Taylor did not want to confuse the subject of the Veneta contract with the subject of a second source of water. She thought they were separate topics. She believed that EWEB should talk to the Springfield Utility Board about sharing sources of water.

Mr. Zelenka thought it important to protect EWEB's water rights, particularly the first 25 percent because it gave the community a reservation on the next 25 percent. He suggested a regional water plan could help answer the questions before the council, would create benefits through regional cooperation, and would address the risk of infrastructure costs. He reviewed his proposal for a regional water planning process, included with the council's meeting materials.

Mr. Farr determined from Ms. Wilson that Veneta could not sell excess water or allow other cities to tap into the pipeline.

Responding to a question from Mr. Brown, Ms. Wilson said the State had denied cities water rights in the past. It was becoming more difficult for municipalities to perfect their water right permits. The courts ruled that perfection must occur on a faster time table because of the many entities waiting for water. It was highly unlikely that EWEB would be able to get back in the queue and apply for the same amount without any restrictions was highly unlikely. Portland was buying water from other entities because it was unable to secure additional water rights. Other municipalities had lost their rights because of failure to perfect their rights. She did not envision that the State would allow exemption after exemption if a community made no attempts to perfect its rights. Water was held in trust for the people of Oregon by the State and hoarding was not allowed. Mr. Brown asked about the potential of negotiating with the State to reduce the third right to a more realistic level. If the community gave up too much and found it needed the water in 100 years, he doubted the State would deny Eugene the water. Ms. Wilson said the law of prior appropriation would not allow that.

Mayor Piercy adjourned the work session at 7:23 p.m.

Respectfully submitted,

Beth Forrest

Beth Forrest
City Recorder

(Recorded by Kimberly Young)