

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, December 7, 2015. Mayor Knapp called the meeting to order at 7:10 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Councilor Starr
Councilor Fitzgerald - excused
Councilor Stevens
Councilor Lehan -- excused

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, Assistant City Attorney
Sandra King, City Recorder
Barbara Jacobson, City Attorney
Jon Gail, Community relations
Susan Cole, Finance Director

Motion to approve the order of the agenda.

Motion: Councilor Starr moved to approve the order of the agenda. Councilor Stevens seconded the motion.

Vote: Motion carried 3-0.

MAYOR'S BUSINESS

A. Upcoming Meetings

Mayor Knapp attended a series of meetings in preparation for the joint meeting with the city of Tualatin on the Basalt Creek issue where discussion of the Basalt Creek Concept Plan would occur.

Susan Cole, Finance Director, announced the City had received the Distinguished Budget Award from the Government Finance Officers Association (GFOA).

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS – There was none.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Council President Starr – (Park & Recreation Advisory Board Liaison) reported on the well-attended community tree lighting event, and invited the public to participate in the Reindeer Romp and 5-K fun run. The new Murase Park play structure was featured on the cover of the [Parks and Rec Business Magazine](#).

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Councilor Stevens – (Library Board and Wilsonville Seniors Liaison) attended the Library Board meeting where they toured the children’s sections of the Library which has been enhanced and improved to bring families into the library. She announced the SMART light drives starting December 15th leaving from the Community Center and noted the dates of the Holiday Fun Fest, and the first meeting of the Tourism Promotion Committee.

Mayor Knapp reported the DRB Panel B approved the Charbonneau Country Club application to replace the boat ramp to their marina. The Mayor announced the upcoming meeting date of the Planning Commission. He noted the December 21st Council meeting had been cancelled.

CONSENT AGENDA

A. **Resolution No. 2557**

A Resolution Adopting The Canvass Of Votes For The November 3, 2015 Special Election

B. **Resolution No. 2559**

A Resolution of the City of Wilsonville authorizing the City Manager to sign a franchise extension Agreement With Comcast, Extending The Term Of The Current Comcast Cable Franchise To June 30, 2016.

Ms. Jacobson read the consent agenda into the record.

Motion: Councilor Starr moved to adopt the Consent Agenda. The motion was seconded by Councilor Stevens.

Vote: Motion carried 3-0.

PUBLIC HEARING

A. **Ordinance No. 776** – 1st Reading

An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 3, Right-Of-Way And Public Easement Management Section, By Amending Section 3.410, Franchise Required, And Adding A New Section 3.415, Franchise Fees.

Ms. Jacobson read the title of Ordinance No 776 into the record on first reading.

Mayor called the hearing to order at 7:34 p.m. and read the hearing format for the record.

Mr. Kohlhoff provided the staff report and the background regarding the amendment. The proposed ordinance amends the Franchise Fee provisions of the Code for utility providers who benefit from using the City’s right-of-way features.

To provide background for the proposed ordinance, Mr. Kohlhoff stated, due to federal regulations in telecommunication, several years ago the City adopted a right-of-way ordinance

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and privilege tax for the use of the City's right-of-way in lieu of using a franchise fee approach for all utilities except for existing cable utilities.

A recent Oregon Supreme Court case has held where a government, such as a special district, wants the privilege of using a city's right-of-way, a tax may not be imposed, but rather a franchise fee which is cost related needs to be the method used. Hillsboro and Tualatin Valley Water District seek to bring a large water transmission line from Hillsboro through the City to connect to a treatment plant the City has a large ownership interest in on the Willamette River.

This transmission line caused the City to review its franchise fee code section to cover this eventuality and make sure the appropriate franchise fees are in line with the Oregon Supreme Court case.

The proposed ordinance provides:

- (1) A listing of cost factors which are involved in regulating the rights-of-way.
- (2) A franchise fee for utilities who serve Wilsonville customers of up to 5% of gross revenues derived from prices charged to Wilsonville customers.
- (3) A franchise fee for utilities who do not serve Wilsonville customers (pass-through without service delivery) based on a per cubic foot charge multiplied times the number of cubic feet used in occupying the right-of-way, plus for large pressure pipes transportation, 1% of gross revenue derived from the utility's transportation system located in Wilsonville multiplied times the fraction that the portion, in lineal feet, of the utility transportation system in Wilsonville occupying the City's rights-of-way bears to the full transportation system, in linear feet, that it is directly a part of.
- (4) A separate per lineal foot fee for one inch and below pipes and lines.
- (5) Provision that, based on the listed cost factors, the City Council may adjust the respective fees if they find it is warranted by individual circumstances.

The ordinance recitals recognize that rights-of-way are the foundation that, when developed, form the transportation system, and that it is a very complex and very valuable utility system unto itself. The administrative factors are widespread among several departments to achieve regulatory compliance and management oversight of the rights-of-way transportation system. Municipal utility pricing may include a portion for return of investment (profit). *Kliks v. Dalles City*, 216 Or. 160, 335 P.2d 366 (1959).

However, the recent Supreme Court Decision in *Rogue Valley Sewer Services v. City of Phoenix* has ruled that a franchise fee for a government utility that serves customers must be based on costs and not simply revenue generating, as that would amount to an unconstitutional tax on government. *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or. 437 (2015).

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Wilsonville is faced with developing a pass-through franchise fee that would cover a governmental utility that enters the City, benefits from the use of the City's rights-of-way without any service to Wilsonville customers, and is not of a lesser, intrusive size, such as a one-inch conduit for fiber, but rather is of 72 inches (6') in diameter size and approximately 3.5 miles in length to transport millions of gallons of pressurized water through Wilsonville. The right-of-way space it will occupy is extremely large and it will take away the City's ability to have other utilities in the same space that could generate return on investment for the City. This creates a recognized cost to the City known to economists as opportunity cost. This is a cost factor that is provided for in the ordinance.

Additionally, the transportation of large volumes of product under pressure can provide greater impacts upon leakage. This type of risk cost is also included in the factors. The cost of insurance to insure against the risk is not the only part of the risk cost. The City experienced such an issue after a design and construction defect resulted in a sinking road. In that case there was insurance, but the City encountered dispute by the insurance carriers over cost of cure and who would pay, causing the City to commence litigation. With the costs associated with litigation, the time elapsed between settlement and the construction season to be able to cure, and compromises inherent in settlements of disputed claims; the City's out-of-pocket cost was quite high. Thus, it is reasonably foreseeable that the cost of insurance may not cover the full costs for claims of major damages. In this case, the pipeline will also be near a wetland, and impacts of chlorinated water and earth deposits from surging water could provide pollution issues, in turn affecting the cost of insurance for full coverage and potential additional costs to cure. Water line leaks and breaks over the time of a pipeline's life of 70 years are also reasonably foreseeable. A brief research of water line breaks has provided examples of major breaks and millions of dollars in claims. Given both experience and consensus, it is reasonable to build a risk fund in addition to cost of insurance or shifting responsibility through indemnification and insurance provisions by the utility provider in any franchise agreement.

Finally, the City has historically had franchise fee agreements or the use of privilege taxes for private utility use of the rights-of-way to serve Wilsonville utility customers. This typically has been at a charge of 5% of gross revenues from those served, with the City currently charging its own utilities 4%. Thus, following the existing guidelines of in-place agreements, the up to 5% of gross revenues was provided.

In the case of entry and pass-through use, staff explored several options and approaches by other cities, based on a review provided by ECONorthwest. Although simple to calculate, a lineal foot approach does not provide a true relationship to space occupied by large pipelines or the volume of water passing through the pipe. A proportionate percentage of gross revenue by proportioning the amount of line or other system equipment to the total line or other system equipment did not seem to fully capture the impacts and the opportunity cost of the large pipelines and the space they occupy. While the percentage can be increased beyond the historical 5% to better align with costs over the life of the facilities, such as a 40-year pipeline life, that, in turn, might be susceptible to more legal challenges due to appearances of being out of the norm.

The cubic foot of occupancy approach aligns to better capture the disproportional use being granted from that of the typical sized utility. It also captures better the potential impacts and

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associated costs of such use. It does not necessarily account for the volume of water, gas, etc. that might pass through it. Combining the cubic feet of occupancy approach with a lower, proportional percentage of gross revenues to account for the water flowing through the pipeline helps ensure that the City's total costs are recovered, as water will not flow through the pipeline for approximately 10 years, albeit a segment of the pipeline is scheduled to be constructed in Wilsonville during the summer of 2016.

Under the language of the proposed ordinance, the Council could enter into a Franchise Agreement that only required the cubic foot approach for each segment built and the percent of gross revenues provision to back it at the time water flows through the pipeline. With the provision that the Council could adjust the fees, the Council could do a lease based on a cubic foot formula and then waive this part of the fee while maintaining the 1% revenue portion as well. This provides for negotiating flexibility given the unusual particulars that pressurized large pass-through pipes may bring to bear on individual situations and routes.

To assist the Council, ECONorthwest provided the various fee scenarios under the different methodologies and the different cities, which have been provided to the City Council. Staff has put together a cost analysis involved in regulating the City's rights-of-way and a reasonable method to apportion the various costs to the large pipeline in order for the Council to assess the reasonableness of the proposed franchise fee provisions.

Mr. Kohlhoff added the City has invested \$300 million in the transportation road system throughout the City, which is treated as a quasi-utility. The lost opportunity costs are reasonable and have been included in the analysis to come to the \$1.15 per cubic foot, which may be adjusted depending on negotiations.

Mayor Knapp referred to Franchise Fee Section (2), paragraphs (b) and (c). Paragraph (2)(b) begins "To recover the costs for, the value of,...where services are not provided to Wilsonville residents...", then it talks about the differing sizes of pipe and different fees. Paragraph (2)(c) "To recover the costs for, the value of, and account for risks associated...where services are not provided to Wilsonville residences, businesses and rights-of-way, the annual Franchise Fee for such Pass-through....". The Mayor wanted to know if there was ambiguity between paragraphs (2)(b) and (2)(c)?

Mr. Kohlhoff responded a simpler approach was used for the smaller pipes for fiber, and it coincides with what the City does with the fee for privilege tax for the small fibers.

The Mayor clarified paragraph (2)(c) only pertains if the pipe is less than 1 inch in diameter, even though it is a pipe, line, conduit, or like facility. He was concerned that over time, costs and values in the City would change and was there a mechanism to adjust or index the dollar values for the future.

Mr. Kohlhoff stated staff would review that point and come back with additional information on the second reading of the ordinance.

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Councilor Stevens asked if the last sentence in paragraph (2)(b) addressed that concern, and that section would be the right place for an addition if one was necessary.

Mr. Kohlhoff offered to discuss the ordinance with Councilors if they have additional questions.

Mayor Knapp invited public comment, hearing nothing he closed the public hearing at 7:48 p.m.

Motion: Councilor Stevens moved to adopt Ordinance No. 776 on first reading. Councilor Starr seconded the motion.

Councilor Starr said it does appear that there is some indication of opportunity costs towards the future charges paragraphs (i) and (j) but they could be indexed, and asked for the language to be clarified to specifically state the indexing.

Mr. Kohlhoff understood the Council would like to see an indexing provision that would insure the City was covered for inflation added to the ordinance and brought back on second reading.

Vote: Motion carried 3-0.

B. Ordinance No. 778 1st Reading

An Ordinance Of The City Of Wilsonville Declaring A Ban On Medical Marijuana Processing Sites, Medical Marijuana Dispensaries, Recreational Marijuana Producers, Recreational Marijuana Processors, Recreational Marijuana Wholesalers, And Recreational Marijuana Retailers; Referring Ordinance; And Declaring An Emergency.

Ms. Jacobson read the title of the ordinance into the record on first reading.

Mayor Knapp called the hearing to order at 7:48 p.m. and read the hearing format. The Mayor stated people have indicated to him they would like to know where a testifier is from when giving testimony during a public hearing. Is it appropriate to ask where a speaker resides if they do not wish to give their full address?

Mr. Cosgrove did not think it could be required; however, someone could make a public records request for the speaker cards.

Ms. Jacobson said some people are hesitant to state their address publicly since the meetings are now televised. If you wanted to ask a speaker if they reside in Wilsonville that would be appropriate.

Ms. Jacobson prepared the following staff report. Pursuant to Oregon House Bill 3400 (HB 3400), passed last session, cities may prohibit, within the city limits, the establishment of recreational marijuana producers, processors, wholesalers, and retailers. Medical marijuana processors, wholesalers, and retail establishments may also be banned unless they are grandfathered. Wilsonville has no grandfathered medical marijuana operations. HB 3400 is silent on whether a city can ban medical marijuana growers from operating within city limits.

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This allowed prohibition under HB 3400, however, has one catch: Cities that are not located within a county that voted NO on Measure 91 by 55 percent or more may enact such a ban only by referral to the voters at the next statewide general election of November 2016. In the meantime, however, the city may enact an ordinance temporarily banning all or any of the above, to be effective immediately and until the results of the general election are in. In light of Wilsonville's effective ban on marijuana-related operations through its business license requirements, the Council must now determine whether it wishes to take advantage of this state-sanctioned process or continue to rely on the business license ban, the legality of which is disputed by the state but is supported by the current federal law prohibition of all marijuana use.

Last month in work session, Council discussed options with respect to the above-described ban, referral to voters, and the implications with respect to tax revenue. A copy of the work session staff report is attached hereto for your reference and contains an executive summary applicable to this action. At work session, Council directed that an ordinance be drafted banning all allowable marijuana facilities for public hearing at the December 7 Council meeting.

In addition, during work session a concern was raised by Councilor Lehan regarding the banking issues that face the marijuana industry. Basically, most banks will not deal with marijuana businesses for fear of running afoul of federal law. There are a few credit unions, however, in the State of Washington that have recently elected to take the risk but have reported there are numerous hoops to jump through and, if anything goes awry, the bank can lose its charter, as well as any pledged security. In a recent article found in the *Credit Union Times* magazine, it is noted that a primary reason these credit unions decided to take a chance is that the Washington Liquor Control and Cannabis Control Board regulations were specifically written and adopted to address the U.S. Attorney General's "Cole Memo" priorities for enforcement of the Controlled Substance Act. (Note: the Cole Memo is a document issued by the prior attorney general, who has since been replaced, about enforcement priorities and, although the new attorney general has not repealed it, there is some indication that she may not be entirely in agreement with it.) The article does go on to state that in neighboring Oregon, financial institutions are staying away from serving the pot business. In Colorado, even though the State of Colorado itself chartered the Fourth Corner Credit Union last year as a dedicated bank for marijuana companies, the Federal Reserve rejected its application to open a master account (which is necessary for a bank to function). The Federal Reserve also rejected its application to establish an electronic payment system that would have allowed customers to buy marijuana products with a credit card. As a result, in December, the federal court is scheduled to hear a case brought by Fourth Corner seeking to force the Federal Reserve to give it access to a master account.

Councilor Lehan also asked about the tax revenue that might be lost. As noted, if the City elects to ban either one or all of the listed Marijuana Facilities, it will get no state tax revenue share. The tax revenue for recreational marijuana sold by OLCC retailers will be collected by the Department of Revenue and distributed according to the formula found in the statute (HB 2041, Section 14). Until July 1, 2017, 10% of the Marijuana Fund is distributed to cities based on population. After July 1, 2017, 5% of the Fund will be distributed based on the number of producing and processing licenses cities have granted, and the other 5% will be distributed based on the number of retail licenses cities have granted. Again, cities that ban marijuana are not eligible to receive any distributions from the fund. Medical marijuana is tax free. Given how

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easy it is to obtain a medical marijuana card, however, it will be interesting to see how many more people opt to go that direction. That situation has been an issue in the State of Washington in terms of lost tax revenue.

If an ordinance banning some or all of the marijuana operations was to be enacted and the people voted to support the ban, the issue would be resolved and the chances of legal challenges to the City's ban would be greatly reduced. If, on the other hand, the vote was in favor of allowing the operations, then the City Council would then need to decide whether to follow the direction of the voters or stand by the business license ban.

Recreational licenses will begin to be issued in January, and cities are therefore advised the wisest course of action is to get a ban in place prior to that date to avoid greater potential for legal disputes and disgruntled applicants. Because there is only one meeting in December, our second reading will occur on the first business day of the month of January. As a result, we have made the Ordinance an emergency so we can quickly get word to the OLCC, as they begin receiving and processing applications in January.

None immediately, but if a city elects to ban any of the marijuana operations legalized by state law, the city will not get any of the tax revenue collected from the sale of marijuana, nor can it impose a local tax. For the first year, revenue is distributed based on population. Thereafter, the formula is changed based on the number of marijuana facilities located in the city, as outlined above. Additionally, HB 3400 allows a local tax of up to 3%, if approved by voter referral. Although the City already passed a higher local tax than is included in HB 3400, the belief is that the taxation formula of HB 3400 is most likely preemptive.

This matter has been of ongoing discussion during past City Council meetings open to the public, including most recently at a work session held on November 16, 2015. There was also a town hall meeting conducted by Representative John Davis and Senator Kim Thatcher.

If an ordinance ban is enacted and referred to the citizens for a vote in November 2016, there will be clarity for both citizens and the Council as to the will of the people on this issue. The issue of the conflict between state and federal law will, however, remain. Opting out precludes the City from collecting the marijuana tax at both the state and local level.

The Council has the following options, or a combination thereof, for consideration:

- 1) Elect to enact an ordinance banning all or some of the above-listed operations and refer to the voters to determine the will of the people on this issue;
- 2) Take no action and rely solely on the business license ordinance to limit marijuana operations within the City;
- 3) Take other action, such as enacting reasonable time, place, and manner restrictions, if the Council elects to allow some marijuana operations to occur, which will also generate some tax revenue.

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- 4) Regardless of which election is made above, including a local tax election on the November 2016 ballot is another option, keeping in mind that as long as marijuana facilities are not allowed to operate in Wilsonville, there will be no tax to collect. The alternative for taxation is to wait until the next general election to do this, if the ban is referred to the voters in November 2016, to avoid additional cost and possible voter confusion.

Clackamas County implemented time, place, and manner regulations on December 7, 2015 rather than enacting a ban.

Mayor Knapp asked if specifics of the County regulations were known, and if commercial growing or distribution facilities would be placed just outside of Wilsonville. He wanted to know what types of land uses were in unincorporated Clackamas County just outside of Wilsonville and are those land uses ones where commercial growing, processing or distribution would be allowed under the County's regulations.

Ms. Jacobson explained Clackamas County can regulate only the unincorporated areas of the county. She has a synopsis of the regulations she can provide to the Council. The County regulations allow recreational and medical marijuana facilities – production/grow, processing, wholesaling and retailing in these zones: Business Park, Light Industrial, General Industrial, Village Office, Corridor Commercial, General Commercial, Station Community Mixed Use, Office Commercial, Neighborhood Commercial, Community Commercial, Regional Center Commercial, Retail Commercial, Panned Mix Use, and Regional Center Office.

The Mayor asked if distribution can occur from a grow site, and what the cities of West Linn and Tualatin were allowing.

Ms. Jacobson responded growing and retailing cannot be combined. Growing would be allowed in an agricultural area adjacent to Wilsonville and some processing. Tualatin has reasonable time, place and manner restrictions but they have been vacillating on whether or not they would keep that in place. The Tualatin ordinance was not compatible with HB3400 because they had greater restrictions between retail operations and processing operations than were allowed under HB3400. She was not sure if their ordinance would remain in place. The City Attorney did not know what West Linn was implementing, but would find out and report back to the Council. She would also provide a matrix of the Clackamas County regulations on second reading.

Councilor Starr wanted to know if Washington County has enacted any laws since a portion of Wilsonville was included in Washington County, and what other cities voted for the ban in the tri-county area.

Ms. Jacobson replied Washington County has time, place and manner restrictions in place, they have not banned marijuana, and she was not sure what operations might be in that corner of Washington County. There is an ongoing list on the OLCC website that includes cities that have adopted the ban.

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Mayor Knapp pointed out the part of Washington County that includes Wilsonville is an industrial area, and if there are growing or manufacturing, processing or distribution allowed in industrial areas, then that could be allowed in the industrial area adjacent to Wilsonville.

Mr. Cosgrove indicated West Linn was looking to ban recreational uses.

The Mayor invited public testimony.

Tim Smith, 7576 SW Thornton Drive, Canyon Creek, Wilsonville. Mr. Smith indicated he was a former staffer for the Oregon Lottery. He is the owner of Wilsonvilleweed.com an informational website providing information to the marijuana industry. Mr. Smith argued Oregon passed Measure 91 by a large percentage, and felt if Wilsonville imposed a ban that marijuana would be obtained in an illegal way from the black market. He was of the opinion that a ban on the industry would be anti-business and people would go outside the city to make their purchases.

Mayor Knapp closed the hearing at 8:05 p.m. and asked if Council had questions of staff.

Councilor Starr asked how Wilsonville voted on Measure 91.

Ms. Jacobson responded Wilsonville voted 51% against legalization.

Councilor Stevens clarified if the ban was put into place, there would be no tax revenue collected; but if voters voted in favor in November 2016 then the City would be able to collect the tax revenue.

Ms. Jacobson explained if Council enacted the ordinance now, and kept it in effect through November 2016 and referred it to the voters as required, and the voters voted in favor of allowing it, the Council would then have to decide what to do next, since the business license ban would still be in place. The likely solution would be a time, place, and manner regulation as has been done in other jurisdictions. After that, then the City would collect the taxes. The other issue that can be put on the ballot in November is an additional local tax on marijuana capped at 3%. If the ban goes to the ballot, the Council could, in theory, put both on the ballot; however that might confuse the voters.

Mayor Knapp asked what the State level of tax is that would come to participating cities.

Ms. Jacobson read, "Until July 1, 2017 ten percent of the marijuana fund is distributed to the cities based on population. After July 1, 2017 five percent of the fund will be distributed based on the number of producing and processing licenses the cities have granted and the other five percent will be based on the number of retail licenses the city has granted." The amount of tax would depend on the number of retail operations each city had. The funds would come from a pool.

Councilor Stevens asked if the Council needed to revoke the resolution previously adopted on the tax or does the statute override it. Ms. Jacobson stated the resolution would be negated by the statute.

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The Mayor asked for a motion.

Motion: Councilor Starr moved to approve Ordinance No. 778 on first reading. Councilor Stevens seconded the motion.

Councilor Stevens seconded the motion to allow discussion. She noted Wilsonville was one of the few communities that did not pass Measure 91. The Councilor felt there has been so much discussion about legalizing marijuana for so long that it was important to reaffirm how the voters of the community feel by having another vote on this in November 2016. If the vote passes giving clear indication the citizens want these businesses in Wilsonville, it will become a part of the economic business community. As a Council member it was important to understand that was really what the citizens want and re-evaluate how the citizens feel.

Councilor Starr agreed with Councilor Stevens' comments. Measure 91 was understood by the voters and both sides of the argument were presented. He thought the desires of the citizens should be respected for the first vote; and the second vote will determine the future, not the Council deciding for them.

Mayor Knapp was in agreement also. He did not feel a 41-59% split gave sufficient direction to the Council to make a choice on behalf of the citizens and a second vote is appropriate. The question of having establishments is a different question from Measure 91. The Mayor was not sure how a second vote on legalization would turn out; however he was not convinced that Measure 91 is an indicator of what the answer to this question might be. That uncertainty led him to want to ask Wilsonville residents the question again.

Vote: Motion carried 3-0.

NEW BUSINESS

A. **Resolution No. 2558**

A Resolution Of The City Of Wilsonville Authorizing Intergovernmental Cooperative Agreement For Advance Road Middle School Site Infrastructure Between City Of Wilsonville And West-Linn Wilsonville School District.

Ms. Jacobson read the title of Resolution No. 2558 into the record.

Mr. Kohlhoff explained the Resolution before Council is an agreement between the West Linn-Wilsonville School District and the City, regarding infrastructure that is necessary for the development for the middle school on Advance Road.

This agreement provides for the necessary infrastructure for development of the middle school, including road improvements to Advance Road, signalization at the intersection of Advance/Boeckman and Wilsonville/Stafford, a major sewer line, water line, and that the property will be portioned to complete the exchange agreement and deed the City approximately ten acres of park land. In addition, this agreement will allow the City to partner with the West Linn-

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Wilsonville School District to cost-effectively provide necessary public capital infrastructure to serve the school and future development.

The Assistant City Attorney noted on page 5 of the IGA there is a correction to the figures as follows:

- The Advance Road street improvement costs inclusive of soft costs are now estimated to be \$1,103,000 which is a reduction from the original figure of \$1,211,000.
- This affects the District's portion which is being reduced from \$772,000 to \$664,000.

Reimbursement districts are provided for to the extent that some of these costs will benefit other properties adjacent to what will be served by this infrastructure. It was pointed out there was some risk involved in reimbursement districts because they have asked for ten years, but in this case part of the areas that might be involved are not yet within the City limits, they are in urban reserves and not in the urban growth boundary. However, the city can extend reimbursement districts for good cause shown which may mitigate the length of time that may be a risk factor.

In an exchange agreement for the development of Lowrie Primary School the City received ten acres for parks out of the 40 acre school site on Advance Road.

Mr. Kohlhoff explained the IGA before Council is patterned after the Lowrie Elementary School agreement. What is different is that no guarantees for a reimbursement district are negotiated into the Advance Road IGA. It went to the School District Board tonight so we will see if they have any changes.

Steve Adams noted there had been minor language changes to make the IGA flow and read more clearly.

Mr. Cosgrove pointed out the City has mitigated its risks on the reimbursement district.

Councilor Starr asked if the School District was planning on using the 10-acre park area as adjacent playground area for recess, or are they using the school grounds for recess.

Mr. Kohlhoff explained the School District has their own recreation site; but joint uses would be appropriate. He noted the School District has acquired an additional 2 acre property from the Lowrie family which is adjacent to the School District property; however, this property is not within the UGB.

Councilor Starr referred to the City's 10 acre piece and thought he had seen ball fields to be put onto the property. He questioned the use and whether aggregating the 10-acres into a larger parcel for ball fields would be a better use.

Mr. Adams said no development plans have been made for the 10-acre parcel, but it looked like there is room for 2 ball fields and or 4 soccer fields. The design and planning for this park are several years out.

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Councilor Starr felt the City would get “more bang for the buck” if there was more acreage for athletic fields, which would then leave this parcel for residential or another use.

Mr. Kohlhoff understood the Councilor was asking if these 10 acres could be traded for a greater parcel that could be developed. He noted there were issues to be considered such as: the location, time frame, is whether the parcel is within the UGB.

Councilor Starr thought the 10-acres did not seem to be a part of a long term strategy on what the City is going to do with fields and recreational facilities, but at this point there is flexibility to talk about uses and planning.

Mayor Knapp asked how Mr. Kohlhoff would characterize the City’s development relationship with the School District on the Lowrie school development.

Mr. Kohlhoff thought the relationship was excellent. Mr. Adams agreed.

Motion: Councilors Stevens moved to approve Resolution No. 2558, Councilor Starr seconded the motion.

Vote: Motion carried 3-0.

B. Resolution No. 2560

A Resolution Approving The System Development Charges Deferral Agreement Between The City Of Wilsonville And BL & DF LLC For The Subaru Development.

Ms. Jacobson read the title of Resolution No. 2560 into the record.

Ms. Kraushaar provided the staff report. The applicant for the Subaru development in Wilsonville, has requested that the SDCs be deferred until occupancy at which time additional funding will be available for their payment. The agreement states the conditions of the referral, when payment is to be made, and consequences for non-payment.

The City has agreed that Applicant may defer paying only certain SDC until June 30, 2016, or until an occupancy permit of any nature is requested. The deferred SDCs shall bear interest at the rate of one percent (1%) until paid in full. All of the deferred SDCs, plus all interest due thereon, must be paid on or before the due date. Failure to pay by the due date shall be a default under this Agreement and, in such case; the default interest rate shall be increased to twelve percent (12%) per annum and shall continue to accrue until the deferred SDCs, plus all interest due thereon, including default interest, are paid in full.

The Mayor asked if the City had allowed deferrals in the past. Ms. Kraushaar indicated the City has allowed them in the past; but not often.

Motion: Councilor Starr moved to approve Resolution No. 2560, Councilor Stevens seconded the motion.

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Vote: Motion carried 3-0.

CITY MANAGER'S BUSINESS

Mr. Cosgrove thanked the Mayor and Councilor Starr for attending the City Employee Holiday Party. He noted he had volunteered at the Wilsonville Community Sharing spaghetti dinner which earned over \$1,500.00 for WCS. He complimented the Leadership Academy for their quick planning and execution of the project within just three weeks.

LEGAL BUSINESS

Ms. Jacobson reported the City had requested that ODOT lower the speed limit on Day Road to 35 mph from 45 mph due to an unsafe sight distance. ODOT denied the request and the City went to the appeals board at ODOT. The Appeals Board compromised the reduction to 40 mph.

Ms. Kraushaar felt the environment in the Day Road area will be changing due to new businesses and the speed limit should be reduced. ODOT did not agree with the City since the environment had not yet changed. Staff will return to ODOT in a year to request the 35 mph speed. At this time there is an advisory speed posted of 35 mph.

Councilor Starr wondered how the City's roads were doing with the volume of rain storms.

Mr. Cosgrove responded there had been areas with significant flooding and staff was working to keep storm drains clear.

ADJOURN

Mayor Knapp adjourned the meeting at 8:52 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Tim Knapp, Mayor