

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, November 3, 2014. Mayor Knapp called the meeting to order at 7:15 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Mark Ottenad, Public and Government Affairs
Jon Gail, Community Information Coordinator
Kristin Retherford, Economic Development Manager
Chris Griffith, Legal Intern
Kerry Rappold, Environmental Services Manager
Delora Kerber, Public Works Director
Chief Jeff Smith, Wilsonville Police Department
Susan Cole, Finance Director

Motion to approve the order of the agenda.

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

Vote: Motion carried 5-0.

MAYOR'S BUSINESS

A. Upcoming Meetings

The Mayor announced that all City offices will be closed in observance of Veteran's Day November 11th. City offices will also be closed for the Thanksgiving Holiday November 27-28. Mayor Knapp noted the date of the next Council meeting and mentioned the meetings he attended on behalf of the City.

COMMUNICATIONS

A. Resolution in Support of Strategies to Reopen the Willamette Falls Locks

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Mark Ottenad prepared the staff report. Staff members of the U.S. Army Corps of Engineers, Portland District Office, have indicated a preference and willingness to assist in studying and funding repairs to the closed Willamette Falls Locks in order to facilitate transfer of ownership and operation to a new entity. A number of stakeholders known as the One Willamette River Coalition coordinated by the Willamette Falls Heritage Foundation and the National Trust for Historic Preservation are advancing efforts to actuate the proposed transfer of ownership and to restore and reopen the Locks.

The Corps of Engineers recognizes that the 140-year-old Willamette Falls Locks are a historic asset that can provide a number of benefits for various river users. However, due to the severe reduction over time of “tonnage” being transported through the Locks coupled with the costs of operations and maintenance and declining federal support, the Corps is unable to continue operating or maintaining the Locks.

In December 2011 the Corps closed indefinitely the Locks to river traffic and placed them in “non-operational” status due to finding a “life safety emergency” with key components used to operate the Locks. Normally, however, the Corps would have first conducted a Section 106 analysis under the National Historic Preservation Act (NHPA) and a “NEPA” review under the National Environmental Policy Act to study and disclose to the public and decision-makers the impacts of the proposed action to close the Locks.

The Corps is conducting the NHPA Sec106 process now and plans to conduct the required NEPA analysis to examine the impacts of the current decision to close the Locks. Both of these processes develop potential binding mitigation measures that can be either broad and all-embracing or narrow with incremental steps.

The Portland Corps leadership has indicated a preference for reopening the Locks; however, to do so, the Corps anticipates transferring ownership and/or operations to another entity that is yet to be identified. The Corps states that “de-authorizing” the Locks as a federal project and transferring the facility to a new owner/operator would take two-plus years.

The Corps has indicated that staff will seek additional funds from the Office of Management and Budget to conduct a “real-estate study” that would provide a complete, detailed assessment of the Lock’s condition and projected costs for repairs. The Corps has also indicated that staff would seek an appropriation to improve the condition of the Locks such that they are fully functional when a new owner would take control.

At this time, several entities—including the Port of Portland, ODOT, Metro and Clackamas County—have been suggested as potential owner/operator or ownership partners. However, the effort to identify an eventual owner/operator has only just started and considerable work remains for this endeavor.

A coalition of businesses, local governments and nonprofit organizations known as the One Willamette River Coalition believes that the Lock facilities are vital for a wide range of river uses that include commercial, industrial, recreational, tourism and marine patrols. Coordinated by the Willamette Falls Heritage Foundation (a nonprofit founded in 2000 based in West Linn) working in conjunction with the National Trust for Historic Preservation, the coalition seeks to bring about a transfer of ownership of the Locks from the Corps to a new owner. The One

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Willamette River Coalition believes that such a transfer would enable the Locks to once again serve communities along the Willamette River.

Because Wilsonville could benefit from operational Locks, especially as it relates to the City Council's goal for a vital multi-modal transportation network and economic development opportunities, the Foundation requested City support for funds for an economic study on the potential benefits for reopening the Locks. The City Council approved in January 2014 a \$2,500 contribution to the study conducted by ECONorthwest, which was released on September 30 as the *Willamette Locks Economic Potential Report*.

The Foundation and the National Trust are now approaching potentially impacted jurisdictions up and down the river and requesting a resolution of support that endorses reopening of the Locks. The National Trust for Historic Preservation has retained two high-profile public-affairs consultants, former Congresswoman Darlene Hooley and Lisa Naito of Hooley & Naito LLC, to advance lobbying efforts at the local, state and federal levels in support of reopening the Locks.

In addition to the direct and immediate river-based transportation objectives, operational Locks could provide additional benefits. Officials from Wilsonville Concrete, Inc., and Marine Industrial Construction, LLC, have indicated that 15–30 total jobs could be impacted if the Locks are not re-opened on a permanent basis.

Wilsonville Concrete and Marine Industrial Construction, which has used the Locks for 127 years, currently conducts extensive work along the Willamette and Columbia Rivers for various businesses and agencies for marine repair and dredging operations, and historically have moved substantial amounts of aggregate to Wilsonville from down river. Each barge carries the volume of aggregate equivalent to 30–35 loaded dump trucks. On an annual basis, regular use of the river to transport aggregate to Wilsonville could reduce truck traffic in the city by more than 5,000 dump-truck trips and more than 360,000 truck miles annually on the Oregon roads systems.

Operational Locks would also allow the City to consider establishing a “port,” which could be eligible for various state and federal funding programs. Eventual development of a port at Wilsonville, the second highest navigable city on the Willamette River, could add to the sustainable logistics hub that Wilsonville is known for historically, while creating additional employment by attracting logistic firms to the area.

The Locks being open would also support the US Coast Guard-required maintenance schedule for the Canby Ferry at roughly 10% of the cost structure needed without the Locks being open. Additionally, state and local law enforcement would have additional capacity available for movement along the river if the Locks are operational.

As the City develops a tourism strategy, recreational access to and use of the Willamette River continues to rise as an issue deserving of further study and consideration. In addition to activities such as float trips on the Willamette River Water Trail, river cruises from Portland to Oregon wine country are a potential tourist attraction that could be developed if the Locks were operational.

Former Congresswoman Darlene Hooley and Lisa Naito, Principals of Hooley & Naito LLC, spoke in support of the proposed Resolution and provided a historical perspective on the commercial importance of the Locks and the role it has played in river recreation, and tourism.

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CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Dave Bernert, Wilsonville Concrete and Marine Industrial Construction, stated prior to their closure his company used the Locks for 127 years moving tons of materials up and down the Willamette River and he supported the reopening of the Willamette Locks for commerce. Mr. Bernert cautioned the Locks would need to be open on a reliable, regular schedule to support commercial use.

Jeff Brown, General Manager of the Holiday Inn, spoke in favor of the development of a year-round athletic/sports complex with multiple playing fields, both inside and outside, along with retail activities in the complex. He reported on the growth of tournaments in the area and noted the prime location of Wilsonville to support such a complex. Mr. Brown suggested that a feasibility study for an athletic/sports complex be conducted using transient/lodging taxes.

Heather Ward, Wilsonville Lacrosse Director, also supported the use of tax dollars for a feasibility study for a sports complex. She felt fields should be accessible year round and that tournaments would bring money and tourism to the community. There were not enough fields to accommodate the number of youth sport teams that needed to practice.

Jim Brazzo, 22050 Rosemont Ridge Court, West Linn, expressed support for more athletic fields and for conducting a feasibility study for athletic center with hotel/motel tax dollars.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Council President Starr – (*Park & Recreation Advisory Board Liaison*) Councilor Starr supported the idea of an athletic complex to increase the number of athletic fields in town. He suggested a facility where kids would use the fields Monday through Friday, and to generate revenue tournaments schedule use of the fields on the weekend. The Councilor proposed discussing a feasibility study for such a facility at the next work session.

Councilor Starr announced the dates of the Memorial Park Master Plan Open Houses, and the dates of the next Parks and Recreation Advisory Board meeting. He mentioned the volunteer opportunities on the City's Boards and Commissions.

Councilor Goddard – (*Library Board Liaison*) reported on the activities that will be taking place in the Library over the next few weeks. The Councilor announced the opportunity to dispose of leaves during the Fall Leaf Drop-off event at City Hall on the 15th, and reminded the public to vote.

Councilor Fitzgerald – (*Development Review Panels A & B Liaison*) thanked the citizens who had served on the City's Boards and Commissions. She announced the next meeting dates of the

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Development Review Board Panels as well as the Veteran's Day Celebration scheduled for Town Center Park on November 11th.

Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*) stated the Planning Commission sitting as the CCI has scheduled a Wastewater Collection System Master Plan open house for November 12th. She invited the public to participate in the second annual Reindeer Romp in December, and the Wilsonville Garden Club Swag sale at the Library.

CONSENT AGENDA

Mr. Kohlhoff read the titles of the Consent Agenda items into the record.

A. **Resolution No. 2496**

Resolution Of The City Of Wilsonville Supporting The Reopening Of The Willamette Falls Locks.

B. **Resolution No. 2495**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute Addendum One Amending Section 4.9 Of The Intergovernmental Agreement Between The City Of Sherwood And The City Of Wilsonville Regarding Cost, Construction Ownership, And Operation Of Segment 3B Of A 48-Inch Diameter Water Transmission Line From The Terminus Of Segment 3A In Kinsman Road To The Beginning Point Of Segment 4 Near The Intersection Of The Proposed, As Yet To Be Completed, Segment Of Kinsman Road And Boeckman Road, A Length Of Approximately 2,400 Feet.

C. **Resolution No. 2492**

A Resolution Of The City Of Wilsonville Declaring City-Owned Real Property Described As 3S-1W-15BD Tax Lot #01503 As Surplus Property And Authorizing Staff To Dispose Of The Property Through Sale.

D. **Resolution No. 2494**

A Resolution Of The City Of Wilsonville Authorizing Acquisition Of Property Interest Related To The Replacement Of Water Pipeline (CIP Project #1121).

Motion: Councilor Fitzgerald moved to approve the Consent Agenda. Councilor Starr seconded the motion.

Vote: Motion carried 5-0.

PUBLIC HEARING

A. **Ordinance No. 750** – 1st Reading

An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 5, Vehicles And Traffic, Section 5.210, Prohibited Parking Or Standing

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Mr. Kohlhoff read the title of Ordinance No. 750 into the record on first reading. Mr. Kohlhoff introduced Chris Griffith, a third year student at Lewis and Clark Law School who is clerking for the Legal Department.

Mayor Knapp presented the public hearing format and opened the public hearing.

Mr. Griffith prepared the staff report: A recent Ninth Circuit opinion held that Los Angeles' prohibition of using vehicles as "living quarters" is unconstitutionally vague in violation of the Fourteenth Amendment. *Desertrain v. Los Angeles*, No. 11-56957 (9th Cir. June 19, 2014). In short, the court ruled that the ordinance's language did not sufficiently inform citizens of what activity it actually prohibited. The Los Angeles Police Force formed a task force to target homeless individuals on Venice Beach and used their ordinance prohibiting use of a vehicle as living quarters aggressively. Cited individuals sued, claiming that they could not have predicted that the ordinance prohibited the activities for which the police issued the citations. The Ninth Circuit agreed, stating that "[s]electively preventing the homeless and the poor from using their vehicles for activities many other citizens also conduct in their cars [is inappropriate.]" *Id. at* *22. Whether the United States Supreme Court would agree that the ordinance is unconstitutionally vague is debatable, but a simple amendment to the Wilsonville City Code can avoid the problem and make the provision clearer.

The Wilsonville Code prohibits using a vehicle or trailer to "camp in, sleep in, or live in while parked upon a City street." WC 5.210(12). While the Ninth Circuit found that term "living quarters" is unconstitutionally vague, the term "live in" provides no more guidance and thus requires clarification. In order to better protect the City from liability, the amendment clarifies the meaning of all the prohibited activities: camping, sleeping, and living in vehicles. The revised ordinance targets individuals who are using vehicles as a dwelling for extended periods of time and excludes reasonable behavior.

The ordinance will clarify what activities are prohibited and better protect the City from legal challenges. The ordinance defined the term "live in" with more specificity, and allowed weary drivers to take a two hour nap. The ordinance still allowed recreation vehicles to remain on the street in preparation for or returning from a camping or out of town trip.

Mayor Knapp invited public testimony, hearing nothing he closed the public hearing at 8:30 p.m.

Motion: Councilor Fitzgerald moved to approve Ordinance No. 750 on first reading. Councilor Starr seconded the motion.

Vote: Motion carried 5-0.

B. **Ordinance No. 751** – 1st Reading
An Ordinance Of The City Of Wilsonville Adding Section "10.550 Civil Exclusion" To Chapter 10 Of The Wilsonville City Code.

Mr. Kohlhoff read the title of Ordinance No. 751 into the record on first reading.

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Mayor Knapp presented the public hearing format and opened the public hearing at 8:30 p.m.

Mr. Griffith presented the staff report: The Mayor has expressed a concern over individuals who disrupt the public peace and safety on public property. Police in Clackamas County currently have the power to exclude individuals from private property when empowered by the property owner. Clackamas County has also adopted an exclusionary trespass ordinance for public property. On occasion, the City has had trouble with disruptive and dangerous individuals in the past. From time to time, the police have had difficulties preventing individuals from repeatedly camping on public property, threatening city staff, or engaging in disruptive behavior. The proposed ordinance empowers Wilsonville police to issue exclusions to individuals who engage in criminal, disruptive, or dangerous activity on public property. Those exclusions would prohibit the individual from reentering that public place until the exclusion expires.

Officers can exclude individuals from public property and subsequently arrest them for trespass should they reenter. Residents within Wilsonville have taken advantage of that opportunity to protect private property. City police officers have also noted concern that they do not currently have a corresponding power on City property.

Exclusions from public property can create Constitutional First Amendment problems if administered incorrectly. The legal department designed the ordinance's procedural requirements—variances, appeals, etc.—to avoid those problems. The procedures create exceptions from the exclusion in order to ensure that an individual can engage in protected free speech activities and that the exclusion does not violate their basic rights.

As Wilsonville continues to develop into a larger, more populous City, the power to exclude disruptive and dangerous individuals will be a valuable tool for police to keep City Staff, residents, and visitors safe.

Passage of the ordinance gives the Wilsonville Police Department an additional tool to protect public safety by excluding an individual from public property, such as City Hall or a park. Essentially, the ordinance extends the Police Department's power to exclude individuals from private property and public property.

Mayor Knapp asked if the legal staff had spoken with other agencies that had this type of ordinance in place. Mr. Griffith stated he had spoken with Chief Smith who felt the ordinance would give the Police an additional tool to use, and that the draft ordinance was based on one in use in Portland.

Councilor Goddard asked for a clarification on what constituted "disruptive" behavior since some may consider teenagers disruptive in certain instances.

Mr. Kohlhoff indicated the person would need to be violating any applicable provision of law or regulation in or on City property. The proposed ordinance provided a tool for an officer to address the person, give a warning, and allow the opportunity for the person to stop the behavior before issuing any citation of exclusion. First amendment activities are not included in this

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ordinance.

Mayor Knapp invited public testimony, hearing none he closed the public hearing at 8:40 p.m.

Motion: Councilor Stevens moved to approve Ordinance No. 751 on first reading. Councilor Goddard seconded the motion.

Councilor Stevens thought the ordinance provided a tool that would promote citizens' feeling of safety and security in the community.

Councilor Fitzgerald appreciated that the Wilsonville Police force valued reasonableness and the issuing of a warning prior to issuing any exclusionary citation.

Councilor Goddard indicated he had raised the question of the term "disruptive" to insure the language struck a balance between social services and protecting citizens from a dangerous person. He thought the language reached the right balance.

Mayor pointed out a typographical error on page 3 of 6 number (d) 5; and that there was a blank line on page 4 of 6 (8). Mr. Kohlhoff indicated Council should direct staff to make those appropriate edits in their motion.

Councilor Stevens and Councilor Goddard agreed to the two corrective amendments.

Vote: Motion carried 5-0.

C. Ordinance No. 752 – 1st Reading

An Ordinance Of The City Of Wilsonville Adding Section 3.022 Water Safety Regulations To The Wilsonville City Code

Mr. Kohlhoff read Ordinance No. 752 by title only for the record.

Mayor Knapp opened the public hearing at 8:48 p.m. and recited the hearing procedure.

The staff report was prepared by Mr. Griffith, legal intern. The State Marine Board and Wilsonville's Parks & Recreation Department desire to prohibit swimming, fishing, and diving at Wilsonville's boat dock at Memorial Park. The City has previously had signs prohibiting the activity at the dock. However, upon review, it has come to light that the code does not grant explicit authority to prohibit the activities. Rather than restricting the ordinance only to the boat dock, City Staff decided to draft the ordinance to allow the prohibition anywhere the City determines necessary "upon a finding that such activity is unsafe or impedes use of a facility or City property as designed." The City may very well determine that other areas are unsafe for water recreation and wish to implement similar prohibitions. Although probably protected by governmental immunities in most cases, the ability to prohibit the activities could also protect the City from liability. Water recreation can be an extremely dangerous activity. KATU, *Is Oregon Doing Enough to prevent Drownings?*, The Oregonian, 'We probably need to push a little harder,' at <http://www.katu.com/news/investigators/KATU-uncovers-difference-in-water-safety->

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plans-in-Oregon-and-Washington-266611311.html (reporting on July 10, 2014 that there had been 10 drowning in 10 days in Oregon and Southwest Washington). Thus, City Staff feels that prohibiting certain types of water recreation in particularly dangerous areas is a prudent safety measure. The ordinance would give staff the power to do so.

Passage of the ordinance would allow the City to protect the public by prohibiting certain types of water recreation in areas where it might conflict with a designated use or otherwise be dangerous.

Councilors had difficulty with excluding persons from fishing and swimming from the Memorial Park dock and felt the ordinance was overly broad and restrictive. Staff explained the restriction is a result of the grant agreement the City entered into with the State Marine Board, and the enforcement of the language in the grant agreement for another two years.

Mr. Kohlhoff offered to narrow the language to the Memorial Park dock if Council thought the language too expansive.

After inviting public input and hearing none Mayor Knapp closed the hearing at 9:12 p.m.

Motion: Councilor Fitzgerald moved to approve Ordinance No. 752 on first reading. Councilor Stevens seconded the motion.

Councilor Fitzgerald liked the idea of narrowing the scope to the Memorial Park Dock only. If additional development occurs along the Willamette River, the matter can be reopened.

Mr. Cosgrove suggested striking the phrase “any park” in the ordinance and replace it with “Memorial Park”.

Councilor Goddard thought if fishing and swimming was unsafe from the Memorial Park dock, it would be unsafe from private docks as well; he did not think this was the right approach.

Mayor Knapp asked if the maker of the motion was amenable to amending her motion to include the suggested language changes.

Motion to Amend: Councilor Fitzgerald moved to amend her pervious motion to amend paragraph (1) to read, “No person shall swim, dive, or fish on or from the Memorial Park dock.” And delete the language in paragraph (2) entirely and replace it with a new paragraph (2) to read “The ordinance will sunset on the date of the conclusion of the described grant agreement.” Councilor Stevens seconded the motion to amend.

Councilor Starr agreed with Councilor Fitzgerald’s comments; if the City is in a contract the City must fulfill the requirements of the contract.

Councilor Fitzgerald and Mayor Knapp agreed.

Vote on Amendment: Motion carried 5-0.

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Vote on Main Motion: Motion carried 4-1.
Councilor Goddard voting “no”.

Mayor declared a recess at 9:25 p.m. and reconvened the meeting at 9:35 p.m.

CONTINUING BUSINESS

- A. **Ordinance No. 753** – 2nd Reading
An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 8,
Environment To Add A Stormwater Section And Make Other Modifications.

The City Attorney read Ordinance No. 753 by title only on second reading and explained Exhibit A was the full Chapter 8 that was highlighted to show where changes were made concerning stormwater.

In response to comments and questions received at the Council meeting on October 20, 2014 revisions have been made to the proposed amendments to City Code, Chapter 8 – Environment.

Chapter 8 of the City Code was originally developed to address policies related to Water Conservation, Sanitary Sewer Use, Industrial Pretreatment Regulations, Solid Waste, and Business Recycling with the expectation that a section on stormwater would be added at a later date. Thus, Section 8.500 was reserved for the policies related to stormwater.

With the completion of the 2012 Stormwater Master Plan, Chapter 8 is being amended to incorporate Stormwater policies identified in the Plan. In addition, the amendments to Chapter 8 will provide the City the ability to enforce the National Pollution Discharge Elimination System (NPDES) Stormwater Permit requirements.

Due to the addition of the stormwater section, other portions of Chapter 8 needed to be modified to provide clarity between sanitary sewers and stormwater sewers. Modifications include adding the word “sanitary” where appropriate, adding or revising definitions, and relocating requirements to a more appropriate section of the Chapter.

At the Council work session and public hearing on October 20, 2014, Council had comments and questions about the stormwater section. Staff agreed to review the proposed code and recommend revisions to address the Council’s concerns. These revisions include the following:

1. Section 8.508 (Powers and Authorities of Inspectors)
Revision: Changed title to “Right of Entry.” The section was reworded to make it consistent with the State of Oregon requirements for building inspectors. The revised wording clarifies there must be a “*reasonable cause*” to believe a violation has occurred, and the inspector must make a “*reasonable effort*” to contact the property owner before entering the property. It parallels what the state has adopted for building inspectors and meets due process standards.

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2. Section 8.524 (Accidental Spill Prevention and Control)
Revision: The requirement for a Spill Prevention and Control Plan was linked to documented instances of spills or releases regulated under OAR 340-142-0005(9).
3. Section 8.532 (Requirement to Monitor and Analyze)
Revision: Added a statement about monitoring, sampling and testing completed by a third party.

The community benefits from an improved level of awareness of the requirements of the NPDES Stormwater Permit; ability to enforce the NPDES Stormwater Permit; codification of current unwritten policies related to sewer lateral; and updating the Pretreatment Enforcement Matrix.

Mayor Knapp referred to Page 59 of 102, Paragraph (1) dealing with Right of Entry and the wording modifications, "...or where the City's authorized stormwater representative has reasonable cause to believe there exists upon the premises a condition which is contrary to or in violation of this code which makes the premises unsafe, dangerous or hazardous, the City's authorized stormwater representative is authorized to enter the premises...". The Mayor wanted to know if the same limiting conditional wording could be used in Section 8.214, page 27, and 8.312, on page 49.

Ms. Kerber stated Section 8.214 Powers and Authorities of Inspectors relate to the public sanitary sewer construction; and Section 8.214 has to do with industrial pretreatment. Both of those Sections, and that language, has been reviewed by the Department of Environmental Quality (DEQ) who confirmed it was applicable, especially since it is tied to the City's Wastewater NPDES Permit and the City's pre-treatment program. Changing the language would initiate a discussion with DEQ.

Mayor Knapp referred to Section 8.214 (1) "...the Director and other duly authorized employees of the City bearing proper credential and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing, in connection with the provisions and regulations of City sewage collection and treatment system as provided for in this Chapter." The section does not cite an emergency, or an expectation that there is a violation, or any of those conditions that are cited on page 59.

Mr. Cosgrove asked if the language referenced was existing Code language. Ms. Kerber stated it was existing language tied specifically to the City's industrial pre-treatment program.

Mayor Knapp wanted to know if the language referred to on page 27 could be made more like the language he referred to on Page 59.

Mr. Kohlhoff stated the City would need to discuss the changes with DEQ and the Environmental Protection Agency (EPA). The City went through a very vigorous process in which they required these abilities. The pre-treatment program must have a special permit.

Mr. Cosgrove noted a distinction should be made between sanitary sewer and stormwater; one has the potential to have a major impact on public health. He did not think Council wanted to tie staff's hands to deal with a sanitary sewer emergency.

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Ms. Kerber said the industrial pre-treatment program relates to commercial and light industrial facilities, not residential. It is intended for businesses that could release something harmful into the sewer system that could damage the wastewater treatment plant, such as petroleum, acids, and high amounts of metals. The City needs to have the ability to conduct inspections and take samples of these businesses waste streams.

Mr. Kohlhoff noted Section 8.312 (1)(a) Right of Entry; Inspection and Sampling, states “The city, an authorized representative of the US EPA and/or authorized representative of the Oregon DEQ shall have the right to enter the premises of any user to ascertain whether the purpose of this Chapter is being met and all requirements are being complied with.” That is an authority the City has to have.

Councilor Starr referred to page 27, Section 8.214 the third line, and suggested adding after the phrase “shall be permitted to enter all” the term “*commercial and industrial*”.

Mr. Cosgrove thought this would limit the City’s ability to act quickly, and used a residential methamphetamine lab as an example.

Mayor Knapp said the language does not state “an emergency” or reasonable cause for believing a violation has occurred or any condition whatsoever, just that “shall be permitted to enter all properties”.

Mr. Cosgrove stated changes in the language need to be vetted by the State, and there is Federal language that is tied into the State as well. You want to give staff the greatest amount of flexibility to insure that what one person does, does not affect the greater.

A discussion regarding personal/private property rights, government intrusion, remedies under the law, and past environmental disaster ensued. It was noted that property owners did not lose their constitutional rights with the adoption of public safety language for wastewater.

Mr. Kohlhoff said the City was required to adopt regulations by the EPA down through the DEQ. To make changes to the language included in Chapter 8 regarding wastewater will require a return to the DEQ and EPA for approval. There are specific prohibitions for substances that can create fire, explosions, or have a corrosive pH amount which could cause structural damage to the plant or harm employees.

Mr. Cosgrove offered to research other city codes to see if there is more “user friendly” language.

Mr. Kohlhoff added if an individual refuses to allow staff to enter the property, then staff would obtain a warrant to do so if there is probable cause. To make changes to this section will require returning to the DEQ and EPA for approval.

Councilor Goddard asked if there was a way that would allow the Council to act on the wastewater amendments and return in the future to address the language in Chapter 8 that staff has not proposed to modify.

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Mr. Cosgrove pointed out the language being discussed is existing Code, and no changes are proposed for that language. The language before Council for consideration is shaded, underlined, struck out, and greyed; Staff is not proposing any changes to the remainder of the Chapter.

Councilor Fitzgerald understands why the language is necessary to protect the public, but was curious about the background on the language and history with the EPA.

Mr. Kohlhoff suggested the Council act on the stormwater changes to the chapter, and leave the current language as is; staff will go back to DEQ and the EPA and see if modifications can be made. Staff can look at code language used by other cities in the Portland metro area to see if there is more property right friendly language that would satisfy the concerns expressed.

Mayor Knapp asked for clarification on page 57, Section 8.502(2). The second sentence reads, "The owner shall indemnify the City from any loss or damage to the City that may directly or indirectly be occasioned by the installation of stormwater facilities or connections to the public stormwater system." He thought the term "indirectly" was vague and suggested including specific causes of the damage.

Mr. Kohlhoff explained when discussing loss or damage, one is talking about the dollar amount, not the cause. Indemnification protects the City from direct damages or indirect damages claims against the City by the connection done by the developer.

Motion: Councilor Stevens moved to approve Ordinance No. 753 on second reading.
Councilor Goddard seconded the motion.

Mr. Cosgrove asked for further Council direction.

Councilor Fitzgerald wanted to learn the background on the current wording of the examples the Mayor raised on page 27 and 49 and if there is background available for consideration should Council want to make further changes.

Mayor Knapp was interested in whether the language similar to the stormwater wording on page 59 might be acceptable to the DEQ and EPA.

Staff would inquire with other cities and agencies on the language in their ordinances, and talk with DEQ to see if there is language that is more "user friendly".

Vote: Motion carried -4-0-1.
Councilor Starr - abstain
Councilor Goddard - yes
Councilor Fitzgerald - yes
Councilor Stevens - yes
Mayor Knapp - yes

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CITY MANAGER'S BUSINESS

Mr. Cosgrove indicated he would bring back the Tourism Report at the next meeting. He noted Council protocol required a motion to continue the meeting at this point in time.

Motion: Councilor Goddard moved to continue the meeting to wrap up the remaining legal matters. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 5-0

LEGAL BUSINESS

Mr. Kohlhoff stated the Offer of Compromise had been accepted by the Young's in the amount of \$92,066.35 inclusive of the amount already paid, attorney fees, appraisal fees, court costs and interest at the statutory judgment rate of nine percent. A plaque identifying the Young family history on the land will be placed on the property. The Young's have requested naming rights to the property and asked that this be an additional condition of the settlement.

Motion: Councilor Goddard moved to accept the legal settlement outlined by Mr. Kohlhoff. Councilor Starr seconded the motion.

Vote: Motion carried 5-0.

ADJOURN

The Mayor adjourned the Council meeting at 10:25 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Tim Knapp, Mayor