

## MINUTES

City Council  
McNutt Room--City Hall

September 16, 1996  
5:30 p.m.

**COUNCILORS PRESENT:** Tim Laue, Laurie Swanson Gribkov (after 5:40 p.m.), Pat Farr, Kevin Hornbuckle, Barbara Keller, Nancy Nathanson, Shawn Boles, Jim Torrey.

The City Council Meeting was called to order by Her Honor Mayor Ruth Bascom.

### I. APPROVAL OF THE AGENDA AND TIME ESTIMATES

Mr. Laue moved, seconded by Ms. Swanson Gribkov, approval of the agenda and time estimates. Roll call vote; the motion passed unanimously, 8:0.

### II. CONSENT CALENDAR

- A. Approval of City Council Minutes of July 24, 1996, Lunch Work Session; July 29, 1996, Special Dinner Meeting; July 31, 1996, Trimester Work Planning Session; and August 5, 1996, Dinner Work Session.
- B. Ratification of Council Officers' Recommendations of September 10, 1996.
- C. Call for Public Hearing: Alley Vacation Request for Obie Industries, Inc./Fifth Street Public Market (AV 96-1)
- D. Allocation of Low-Income Housing Resources to St. Vincent dePaul and HACSA
- E. Contingency Fund Request for Applegate Trail Event

Ms. Keller requested that item B be discussed by the council at a later time on the agenda.

Mayor Bascom requested that items D and E be discussed by the council at a later time on the agenda.

Mr. Laue moved, seconded by Ms. Swanson Gribkov, that the Consent Calendar be approved, with the exception of items B, D, and E. Roll call vote; the motion passed unanimously, 8:0.

**III. ORDINANCE AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR ACQUISITION OF EASEMENTS FOR SANITARY SEWERS IN THE SANTA CLARA AREA FOR BASIN "S"**

**CB 4592**--An ordinance authorizing the institution of proceedings in eminent domain for the acquisition of easement interests for sanitary sewers in the Santa Clara Area for Basin "S" and declaring an emergency. (Job #2928)

Mr. Laue moved, seconded Ms. Swanson Gribskov, that the bill, with unanimous consent of the council, be read the second time by council bill number only, and that enactment be considered at this time.

Ms. Keller thanked staff for providing the council with additional information.

Roll call vote; the motion passed unanimously, 8:0.

Mr. Laue moved, seconded by Ms. Swanson Gribskov, that the bill be approved and given final passage. Roll call vote; the motion passed 7:1, with Mr. Boles voting in opposition and became City Ordinance 20061.

**IV. WORK SESSION/ACTION: ROLE OF EAST ALTON BAKER PARK CITIZEN PLANNING COMMITTEE (CPC)**

John Etter, Public Works Maintenance--Parks Planning, issued the staff report, noting that the council had received both the City staff proposal and the CPC proposal in the agenda packet. He reported that the key issue was to determine how many times the full committee would meet during a year. He said that Option A (the staff position) was based upon keeping the number of meetings to a minimum while still supporting the committee in proceeding with its work.

Mr. Etter stated that the annual meeting was important and staff wanted to have input on Capital Budget items related to the park. He noted that July 1 would be an ideal time to hold the annual meeting because the annual budget would have been approved, and the CPC could comment on any proposed project.

Responding to Ms. Keller, Mr. Etter stated that the City had primarily been responsible for staffing expenses, but one of the proposals suggested that the expense be shared with Willamalane. He noted that Wayne Hill, Chair of Willamalane and CPC, was available to answer questions.

Ms. Bishow reported, in response to Ms. Keller's question about the cost for Option B, that the proposal included expense for staff time dedicated to recruitment and appointment of committee members. She said that the staff material did not include the cost for the annual meeting, so approximately \$1,500 that was included in Option B, would also be included in Option A. She said that she had included salary figures for Mr. Etter's position and for administrative support.

Mr. Etter stated that the City of Eugene would shoulder 1/4 of the total cost for two meetings, given that Willamalane was willing to share the expenses. He agreed that the extra meeting would cost the City of Eugene approximately \$1,575.

Mr. Hill stated that the CPC would like to have the opportunity to meet four times annually and proposed that Willamalane would pay for two of the meetings and the City would pay for two of the meetings. He expressed his concern about financial constraints and proposed that the committee keep its own minutes asking only that the City or Willamalane produce copies of the minutes for each meeting. He reiterated that the cost to the City would be providing a staff person at two meetings and copying minutes for two meetings.

Responding to Mr. Boles, Ms. Norris stated that the County Charter stated that the committee would continue to meet to see the plan carried out to its completion, and added that it was not clear which option was most responsive to the original intent of the Charter initiative. She expressed staff's belief that, in terms of funding and other issues, there would not be significant change from one season to the next, so an annual meeting would be sufficient to meet the spirit of the Charter. She noted that the members of the committee had expressed interest in meeting more than once annually and that was the issue of discussion.

Ms. Swanson Gribkov suggested supporting the CPC in meeting twice annually.

Ms. Bishow, responding to Mr. Hornbuckle's question about resource demands, stated that Mr. Hill's suggestion would significantly reduce the normal expectation that arises when the City staffs a committee. She said that the option put on the record that the City would offer a modest level of staff support and it would encourage the committee members to play a more active role in activities of the committee.

Mr. Hornbuckle voiced his support for Mr. Hill's proposal.

Mr. Etter, responding to Mr. Laue's question about the time line for implementation, stated that the plan was on a generational time scale. He noted that over the next one-two years there were three different types of work activities that would be carried out: 1) work by volunteers; 2) management directives; and 3) capital improvements. He noted that putting benches along the river could be completed by volunteers or it could come out of the capital fund.

Ms. Keller voiced her support for Mr. Hill's suggestion because she wanted the council to be consistent with its original intention and comply with the intent of the Charter Amendment. She added that it was important to sustain the interest of members of the committee and it would be difficult to maintain that dedication over a period of time when the committee was only meeting once a year.

Ms. Nathanson expressed concern that by staffing the CPC at the level suggested, then the City would be relegating other projects to a lower position of priority than East Alton Baker Park. She said that she was considering Mr. Hill's option and that it might be a good compromise.

Mr. Boles expressed his support for Mr. Hill's proposal with the addition of a two-year check back with council. He said that it was a mistake to put this park and this committee in the same context as



other parks and other committees because the CPC was a result of a county-wide initiative. He said that Mr. Hill's proposal was consistent with both the letter and the spirit of the County Charter.

Mr. Laue moved, seconded by Ms. Swanson Gribskov, to direct the CPC to monitor implementation of the East Alton Baker Park Plan by consulting with Eugene and Willamalane staff as outlined in Option 3 received today at the council table, with a two-year check back with council.

Mr. Laue thanked Mr. Hill for helping to create a solution that would work.

Ms. Swanson Gribskov said she would support the motion.

Roll call vote; the motion passed unanimously, 8:0.

**V. ORDINANCE CONCERNING OVERNIGHT CAMPING FOR SPECIAL EVENTS;  
EXEMPTION RELATED TO APPLGATE TRAIL WAGON TRAIN EVENT**

**CB4589--An ordinance concerning overnight camping; amending Sections 4.680 and 4.815 of the Eugene Code, 1971; and declaring an emergency.**

City Attorney Glenn Klein, responding to Ms. Swanson Gribskov's suggestion to drop Section 3 of the Overnight Camping Ordinance, stated that dropping the section would mean that the City Manager would not draft language for additional criteria.

Ms. Norris stated that additional criteria would probably be few in number, but the council may wish to draft language that would say a group could only request this once or twice a year. Ms. Norris stated that there was sufficient record keeping to give the council past history, precedence, duration, frequency, and other significant information in the event that it was considering an exemption in the future.

Ms. Keller said it was important to establish criteria because that would narrow the kinds of requests that were forwarded to the council.

Mr. Klein reminded the council that when it approved exemptions, it would be based, at a minimum, on the criterion that it is in the public's interest to do so.

Mr. Boles argued against the inclusion of additional criteria.

Ms. Nathanson reminded councilors that the criteria in question was criteria to apply and not criteria for granting the request.

Mr. Laue moved, seconded by Ms. Swanson Gribskov, that the bill, with unanimous consent of the council, be read the second time by council bill number only, and that enactment be considered at this time.

After further discussion, Ms. Nathanson offered a friendly amendment, which was accepted by both Mr. Laue and Ms. Swanson Gribkov, to change the wording of Section 3 as follows (additions in bold and deletions in ~~strikeout~~): "The City Manager shall develop for the Council's consideration, specific criteria for determining when an activity shall qualify for application as ~~constitute~~ a special event or be in the public interest."

Mr. Laue stated his reluctance to support the amended motion because the councilors were making policy in an instance and they did not fully understand the ramifications of the policy.

Roll call vote; the motion passed unanimously, 8:0.

Mr. Laue moved, seconded by Ms. Swanson Gribkov, that the bill be approved and given final passage. Roll call vote; the motion passed 7:1, with Mr. Laue voting in opposition and became City Ordinance 20062.

Mr. Laue moved, seconded by Ms. Swanson Gribkov, that an exemption to the park rules be permitted under CB 4589 for the historic Applegate Trail Wagon Train Event October 16-17, 1996. Roll call vote; the motion passed unanimously, 8:0.

#### VI. REVISITATION OF CONSENT CALENDAR

Ms. Keller, referring to the Council Officers' Recommendations, noted that she was concerned with the decision to not hold another Trimester Session. She said that it would be important to her and the two other councilors who were leaving the council, to have an opportunity to review the council goals and create closure. Mr. Boles echoed Ms. Keller's sentiments.

Ms. Keller referred councilors to the third page of the Council Officers' Recommendations, the section dealing with housing goals, and noted that the Council Committee to Finance Affordable Housing was not the appropriate committee to discuss the issues of promoting home ownership in targeted neighborhoods. She suggested that the discussion be referred to the Housing Policy Board or to another committee, saying that it was a planning issue as well.

With regard to the section entitled, Strategies for Increasing the Number of Residents able to Afford Market Rate Housing, Ms. Keller said she was hoping that the council did not view the Enterprise Zone as the only methodology for doing this. She said that would not address the problem directly and she believed that it did need to be dealt with directly.

Mr. Torrey expressed hope that if the councilors decided to add another Trimester Session that it then eliminate some of the work load already scheduled before council.

Ms. Norris stated that the issue of home ownership and targeted neighborhoods could be something that staff would raise at the Wednesday Council Meeting.

Mr. Laue moved, seconded by Ms. Swanson Gribkov, adoption of Council Officers' Recommendation B, including the comments of Ms. Keller which will be revisited at

the next Council Officer's meeting. Roll call vote; the motion passed unanimously, 8:0.

Mayor Bascom, referring to the contingency fund request for Applegate Trail, said that she thought the council had said up to \$500, so she requested that it say between \$300-\$500 or no more than \$500.

Responding to Mayor Bascom's question regarding allocation of Low-Income Housing Resources, Richie Weinman, Planning and Development Department, stated that a subcommittee of the Housing Policy Board ranked the proposals and chose them based on relevant criteria.

Mr. Laue moved, seconded by Ms. Swanson Gribskov, acceptance of items D and E. Roll call vote; the motion passed unanimously, 8:0.

#### VII. WORK SESSION/DIRECTION: CITY ATTORNEY'S OPINION REGARDING SKINNER BUTTE CROSS AND RELATED LEGAL ISSUES

City Attorney Bill Gary stated that he was prepared to respond to questions regarding his memorandum and open the meeting to discussion.

Ms. Keller stated that the council had an opportunity to utilize the current legal opinion to reach a positive conclusion and save the City potentially \$120,000 that could be better spent elsewhere. She noted that she had received feedback from citizens over a period of time and only two calls have been in support of keeping the cross and both were based on the notion that "this was a Christian community and people needed to get used to that."

Mr. Torrey asked if the 9th Circuit Court of Appeals was made aware that Skinner Butte was designated a War Memorial Park. He asked if that was an important fact. He asked if the area could be treated like Arlington Cemetery. He asked how much it would cost to petition the Supreme Court. He asked if the City would have to pay the appellants' legal fees if the City was successful in an appeal to the Supreme Court.

Mr. Gary stated that the 1934 resolution, designating Skinner Butte as a War Memorial, did not mention a cross. He noted that the resolution was not a part of the record before the 9th Circuit. He said the plaintiff's evidence consisted of the fact that there was a Roman Christian Cross on public land. He said that the City's case hinged upon facts that established that there had been a succession of wooden crosses on Skinner Butte over a period of time, the history of the litigation, the vote of the people to dedicate the area as a War Memorial, and facts about the proximity of the cross to other public buildings. He said that in his judgment, it was not very significant to ensure the inclusion of the dedication of Skinner's Butte Park as a War Memorial. He noted that from the perspective of the 9th Circuit Court it made no difference.

Mr. Gary noted that this situation was dissimilar to Arlington Cemetery because there was no choice given as to how to mark the area. He noted that under the logic of the 9th Circuit court's decision that said "it was a Roman Cross on public property, end of story," he was hard pressed to understand the difference between the two. He estimated that it would cost about \$120,000 to prosecute the case



through the United States Supreme Court. Filing a petition for *Writ of Certiorari* would cost approximately \$20,000.

Mr. Gary reminded the council that it would be bad form to ask for a space on the Supreme Court's docket and then decide not to follow through with litigation. He noted that if the plaintiff won, the City would have to pay attorney fees, but if the City won, it would not collect fees from the plaintiff because this was a civil rights litigation and the case was not frivolous.

Mr. Hornbuckle stated that the City should do nothing and allow the remand to stand because: 1) legally, it is plain that the cross is a state endorsement of Christianity; and 2) morally, in addition to the political use of the cross, there were many non-Christians in the community who see the cross as an ongoing insult to their religious freedoms.

Mr. Farr expressed that he was troubled by the entire process and stated that he believed the cross to be a War Memorial and therefore had a rightful place on the butte. He said that when he looked at the cross he thought of his own faith and what the symbol meant to him. He said that he viewed the cross as a symbol of Christ and he understood that interpretation. He added that he wanted to send this case to the Supreme Court because he believed that the City would prevail. He said that because of his personal faith he was troubled. He added that there were better things to spend \$120,000 on in the city. He asked if it would be possible for a private party to pay for the legal fees.

Mr. Gary said that there was nothing legally wrong with the City accepting private donations to fund litigation. He added that it would raise other policy issues. Mr. Gary said that it might undermine the case and the City's argument that the issue was a secular War Memorial, to have it funded by Christian groups.

Mr. Boles suggested that an additional option might be that the City not appeal the decision and then identify a mechanism for recognizing all the spiritual practices of the community on Skinner Butte. He asked why the option was not before the council.

Ms. Norris stated that it was her understanding that he wanted the option discussed if the council decided not to appeal the decision. Mr. Gary said that he did not intentionally ignore the suggestion, but there were problems with allowing religious symbols on public property, whether it was one religious symbol or a dozen religious symbols.

Ms. Swanson Gribkov said that she wanted to find a good alternative to the cross and noted that she wanted to honor all religions and begin a healing process. She added that there was another veteran's memorial in Skinner Butte Park.

Mr. Laue stated that it was the job of elected officials to uphold the constitution and he believed that the cross on public land was in direct conflict with the separation of church and state. He said he did not feel it was appropriate to appeal the decision.

Ms. Nathanson said that the council had done what it needed to do to defend the City Charter. She said that she would not recommend pursuing this issue to the Supreme Court. She noted that the area was dedicated to "those who paid the great price to preserve our liberties," but it was precisely that which was now in question, liberties. She said that it was painful to her to see the issue become a

question of getting rid of a memorial because she did not want this issue to be interpreted in that fashion, but rather the issue was the separation of church and state.

Mayor Bascom stated that the founding fathers made it clear that they wanted the separation of church and state, but nowhere did they call for anti-religious sentiments. She said they were men of strong faith and noted that it was her perspective that Americans had begun to lose tolerance for religion. She said that it was her personal feeling that the issue had been divisive in Eugene and she wanted to create a process that would be healing.

Mr. Hornbuckle stated that the so-called founding fathers had little respect for the separation of church and state and, in fact, had compelled people to go to church, and there were many entanglements between church and state. He again urged the council to do nothing.

Mr. Torrey expressed his concern about the people who have expressed their offense at the cross on Skinner Butte. He said that he would support appealing the issue to the Supreme Court and noted that Mr. Boles' recommendation would be a good one if the City had the opportunity to do it rather than being forced to do it. He noted that he believed it was the intent of the people to call the cross a memorial. He said that the council was running the risk of making a decision that could preclude all of the citizens in the community to override the decision.

Mr. Farr stated that he was also concerned about the people who felt oppressed by the cross. He added that he did not feel oppressed by other religious symbols and noted that the values of Christianity were values that everyone needed to embrace. He said that if the council decided to appeal the decision, he would be interested in hearing from private groups that would be willing to financially support the City with its legal fees.

Mr. Boles said that it was time to stop fooling around and take the cross down and begin a healing process in the community.

Ms. Nathanson stated that Americans had been working very hard to remove barriers and discriminatory materials from reference materials, from books, from pictures, and from displays. She noted that America was a multi-cultural society and it was important to respect individuals and groups within that society. She said that this could be seen as one in a continuum of acts that could be viewed as unbiased, nondiscriminatory acts. She said that if the depth of feeling was about a memorial to those that had served the country, could the council not replace the cross with something that was representative of people, with something that was not religious. She said she wanted to pursue that option.

Ms. Keller said the council's discussion was representative of the divisiveness that had been going on in the community for 32 years. She said that it was difficult to have the discussion without sounding as if you were attacking someone else's religious beliefs, and that was because the cross is a symbol of a single religion. She said that if the council were simply talking about a war memorial then it would not be receiving feedback from faith communities, but because the councilors were discussing a symbol of a religion they were receiving feedback from communities of faith. She said that people felt oppressed by symbols of groups that attempted to impose their beliefs upon other people. She said that those citizens who were gay, or Jewish, or wanted to pursue the option of abortion, knew that there was a particular group of people that wanted to stop you from pursuing your moral agenda.



because of their own. She said that to many people a cross is the symbol of that oppression. She said that whether the councilors believed that was the intent of the religion was something else.

Mr. Farr, referring to Ms. Nathanson's remarks about removing religious symbols from historical documents, noted that it was disturbing to him to see some of the interpretations of freedom of religion seeming more like freedom from religion. He said that religious references were a part of American history and it would be a disservice to children to remove them from all historical references.

Mr. Laue reiterated his stance that a cross on public property is a direct violation of the separation of church and state.

Mr. Laue moved, seconded by Ms. Swanson Gribkov, that the council not appeal the decision and identify a mechanism for transferring the cross to another location.

Mr. Boles moved to amend the main motion to include both transferring the cross to another location and identifying a process for honoring all the spiritual practices of the community. The motion died for lack of a second.

Mr. Hornbuckle said he wanted clarification of the motion because he did not want the cross to be moved to another piece of public property. Ms. Norris assured him that the cross would not be moved to public land.

Mr. Hornbuckle moved to amend the main motion by indicating that the cross be transferred to another location at private expense. The motion died for lack of a second.

Mr. Hornbuckle asked if the cross would be moved at public expense. Mr. Gary stated that the City is under a mandate to move the cross, so it would be responsible for moving it.

Mr. Farr asserted that it was not the right nor the responsibility of the City Council to interpret the Constitution and he urged the council to consider allowing a private party to pay for the legal expenses of the appeal.

Mayor Bascom stated that if she were voting she would vote in favor of the motion.

Ms. Keller stated that it was not the council that was interpreting the constitution, but rather the 9th Circuit Court of Appeals. She added that the imposed deadline for appeal did not allow for public recourse in either direction so that was not a telling argument for following through with an appeal. She remarked that the council's conversation was a positive start to a healing process.

Roll call vote; the motion passed 6:2 with Mr. Farr and Mr. Torrey voting in opposition.

Mr. Torrey said that he had been asked by the American Legion to distribute a letter declaring its offer to pay for the cost of the appeal. He said that he would bring the issue before the council again on Wednesday.

The council took a break at 7:25 p.m.

The meeting reconvened at 7:30 p.m.

#### VIII. ORDINANCE CONCERNING WIRELESS COMMUNICATION FACILITIES MORATORIUM

CB4587—An ordinance declaring and imposing a moratorium on building and land use permits for telecommunications towers and antennas within the City of Eugene, and declaring an emergency.

Jan Childs, Planning Director, provided the staff report. She reminded councilors that they had asked a number of questions of staff at the public hearing and those answers were provided in the written memorandum contained in their agenda packet. She added that the packet included an updated summary of recent and pending applications, a memorandum from the City Attorney related to telecommunication towers, a memorandum from the City Attorney specifically addressing questions number 2 and number 12, and Ms. Child's summary of the oral testimony that was given at the hearing.

Ms. Childs stated that staff provided two possible ordinances for the council's consideration: 1) an ordinance that would be adopted if the council was interested in imposing a moratorium on both pending and subsequent applications; and 2) an ordinance and findings labeled "new applications only." She said that the second ordinance would be considered if the council wished to impose a moratorium that would not apply to the pending applications. She noted that amateur radios or HAM operators were not covered by the ordinances that the council was considering that evening.

Ms. Childs reported that the council had received 15 additional letters of testimony since the time of the public hearing. She said that 5 of them dealt specifically with the HAM issue.

Mr. Klein reported that all the attorneys for the providers have indicated that in the event that the council exempts all pending applications, then the four providers that testified would not challenge the moratorium.

Responding to Mr. Torrey, Mr. Klein stated that under state statutes, somebody that files a land use application has the right to have that acted upon within 120 days of the date that the application is complete. He added that if the council adopted this moratorium, then the 120-day clock stopped running, so that if somebody had an application in for 15 days and the council adopted the moratorium, the remainder of their 120-day period would not begin to run again until after the moratorium expired.

Ms. Childs stated that virtually all the applications the City had received for land use approval had also submitted building permit applications. She said that it was understood that the site loop of the building permit application process could not begin until after the land use review was completed, but that did not stop providers from submitting the building permit application.

Responding to Ms. Swanson Gribakov, Ms. Childs stated that with relation to electromagnetic fields, the City was preempted by the FCC from putting any local restrictions into place. She reiterated that under State statute dealing with moratoriums the longest a moratorium could last was 120 days, and she added that the purpose of the moratorium was to give the Council Committee on Telecommunications time to finish its work and report back to the City Council.

Ms. Childs, answering a question about antennas and towers, stated that a tower was one way of supporting an antenna, which transmitted and received signals. She noted that in cases where there was not another kind of structure that would support an antenna, that is when another tower or structure was proposed. She said that providers would like to locate on existing structures because it is less expensive, but Eugene did not have many tall buildings and in order to provide adequate coverage, the antennas needed to be high enough to transmit and receive signals. She added that the providers had indicated a wish to not have the moratorium apply to new antennas placed on existing towers.

Ms. Keller asked for clarification about the January 1, 1997 deadline for the emergency action system (EAS). Ms. Childs reported that both versions of the ordinance include a section that says, "this moratorium shall not apply to towers or antennas which are dedicated exclusively to and required for the emergency broadcast system, to the extent that Federal law mandates installation of the towers or antennas within the next six months."

Ms. Childs, addressing Ms. Keller's question about exempting antennas, stated that a complete telecommunications system requires both new towers and antennas and she did not believe a moratorium affecting only towers would keep the City out of a Land Use Board of Appeals (LUBA) challenge.

Mr. Klein, responding to Ms. Keller's question about the length of a LUBA challenge, stated that the first action the providers would take would be to ask for a stay of the moratorium, which would occur in a matter of weeks. He said that a LUBA stay, if granted, would render ineffective the moratorium until LUBA decided the merits. He said that a case could take three to six months.

Ms. Childs clarified that under state land use planning statutes, the City would be required to treat an application under the rules that were on the books at the time of application. She noted that the primary advantage that the City and the providers could gain by waiting would be that the results of the siting study might indicate some locations that would be appropriate for new towers and antennas.

Ms. Swanson Gribakov expressed her concern that the council was changing the rules of the game for those providers that had already applied, during the middle of the game. She added that the City might have something to gain and learn from watching the providers move forward with the projects for which they had applied.

Ms. Childs stated that if the council wished to make amendments to the ordinance, staff would need time to craft specific language.

Mr. Laue stated that, when making the motion, he was referring to the ordinance that applied to new applications only and exempted the existing applications.



Mr. Laus moved, seconded by Ms. Swanson Gribakov, that the bill, with unanimous consent of the council, be read the second time by council bill number only, and that enactment be considered at this time.

Ms. Nathanson said that she would have preferred to have been able to adopt an ordinance "cleanly," without pending applications, but she was willing to support the motion.

Mr. Boles moved, seconded by Mr. Farr, to extend the time by 10 minutes. Roll call vote; the motion passed unanimously, 8:0.

Mr. Boles urged the council to defeat the motion and support the ordinance that does not exempt the pending applications. He said that the council would nearly guarantee a LUBA appeal because it would exempt providers with early applications but not those with later applications.

Mr. Farr expressed concern that the council had not heard from the one provider that did not have applications pending. He said he would support the motion because the people sitting in the audience were a part of the community and it was important that the City work closely with those in the telecommunications industry in constructing telecommunications policies.

Mr. Torrey voiced his support for the motion.

Ms. Keller said she did not find the solution satisfying, but she did think it was reasonable and equitable. She reiterated that the council was reacting to a problem that had been created by the Federal Government.

Roll call vote, the motion passed unanimously, 8:0.

Mr. Laus moved, seconded by Ms. Swanson Gribakov, that the bill be approved and given final passage. Roll call vote; the motion passed 6:2, with Mr. Boles and Mr. Hornbuckle voting in opposition and became City Ordinance 20064.

The council took a break at 8:40 p.m.

The meeting reconvened at 8:50 p.m.

**IX. WORK SESSION: PROPOSED ADMINISTRATIVE RULE AMENDMENTS TO SYSTEM DEVELOPMENT CHARGES FOR LARGE VOLUME CONTINUOUS FLOW FACILITIES**

Chris Andersen, Public Works Director, issued the staff report. She reported that in May 1996, a notice of intent to amend the Systems Development Charge (SDC) methodology for Metropolitan Wastewater Management Commission (MWMC) Regional Facility Equalization Charge and the local wastewater SDC was proposed in recognition of the cumbersome nature of the current methodology in addressing the impact of large volume users that did not relate well to the Plumbing Fixture Unit (PFU) basis. She noted that the council had requested the opportunity to discuss this issue prior to adoption of administrative order and that was the purpose of the work session.

Ms. Andersen gave an overview of the agenda packet materials. She noted that the underlying intent of both the local and regional wastewater SDCs is to levy a charge on new development that equitably recovers the cost of providing capacity to serve that development. She said that the methodology for calculating the wastewater SDC charge is presently in effect in both the City's wastewater SDC and the Regional Equalization Fee as based on a methodology adopted by the MWMC in November 1990. She said that the methodology distinguished between residential development and all other development. She added that recent development proposals have shown that for large volume continuous flow users, the total discharge per PFU is much higher than projected under the present methodology and for this reason the City of Eugene has used the administrative authority under the Uniform Plumbing Code to establish total PFU counts based on wastewater impacts in addition to traditionally defined PFUs. She reported that the proposed methodology change was based on the best available information on capacity utilization contained in the MWMC equalization study, master plans for the City's wastewater system, and comparisons with other SDC methodologies adopted in Oregon.

Ms. Andersen explained that one of the primary points of controversy has been the issue of whether an Equivalent Dwelling Unit (EDU) uses 200 gallons per day or 600 gallons per day as a basis. She said that the relationship addresses the fact that residential flow has a peaking characteristic and that assumption is built into the EDU basis. She noted that there was no peaking flow for continuous flows. She explained that a peaking factor was a multiplier that uses the average daily flow and develops the actual impact of the fact that that flow does not occur uniformly over the time period.

Ms. Andersen stated that the proposal reflects one area where staff had recognized that the MWMC Equalization Study, which addressed EDUs as the basis for residential development and PFUs for all other types of development, has gaps in application.

Mr. Boles commented that the proposal was before the council because the current methodology was too cumbersome, and he noted a simple alternative to the current methodology in that 1 EDU equals 6,000 gallons per month. He asked why the City did not just divide the proposed flow, on a monthly basis, by 6,000 and charge the current residential EDU charge for that. He said that would be equitable for both large and small flow users. He asked why the City would not use that methodology until the MWMC completed its study and if people had been overcharged the money, it could be rebated.

Ms. Andersen responded by saying that for nonresidential development the current methodology required the City to use PFUs as the basis. She noted that, in trying to address large volume users, staff had taken a provision in the Plumbing Code which allowed the City to administratively determine a flow and the equivalent PFU and use that as the tool to derive a number. She stated that the proposal was being made because the basis for the equalization fee was actual capacity impact and this was the best methodology that staff had been able to derive using the existing studies and master plans.

Mr. Boles said that he was not convinced by staff's arguments and he was concerned that the City was comparing itself to other jurisdictions. He noted that SDCs were to be set by the capacity impacts in the local jurisdiction. He said that he believed the charges would be less, under this methodology, for a large volume continuous flow facility than it would be for the equivalent amount of wastewater coming from a residential unit and that was inequitable.

Ms. Andersen stated that Mr. Boles was correct in saying that if there was a series of residential users that had the same total flow as Hyundai, there would be a higher impact on the capacity utilization at the plant. She said that would occur because of the peaking characteristic of residential users. She noted that staff had reviewed the methodology used in other jurisdictions so that staff could utilize a methodology that would best sustain a challenge in the appeals process.

Ms. Norris reiterated the point that if the community had an equal flow coming from residential uses, the City would have had to build a larger plant because of peaking than if the same flow was coming from industrial users that had 24-hour continuous flow. Mr. Boles said that the capacity would have been reached more rapidly, but a larger plant would not have been needed initially. Ms. Andersen stated that there was a distinction between the user fee and the capacity impact, noting that whether flow was used in the middle of the night or during the middle of the day, the same user fee would be paid, but capacity impact was based on when the flow occurred and the impact to the size of the plant necessary to accommodate that flow.

Mr. Torrey asked if the council wanted the MWMC to have the ability to set this SDC rate or did the council want it retained within the three governing bodies. Mr. Torrey expressed his confidence that staff had worked to the best of its ability to create a methodology that would withstand court appeals. He observed that the regional treatment facility was operating at a level substantially under capacity.

Mr. Klein, responding to Mr. Torrey's first question, stated that MWMC was charged by the intergovernmental agreement that created it to propose a rate. He said that the same agreement provided that the City would adopt a rate that was equal to or greater than the rate that the MWMC proposed. He said that given an MWMC decision to change a rate, the City could not enact that rate change immediately because a state statute required that there be notice of a proposed change given at least 45 days before a public hearing and that there be at least 30 days advance notice of the language.

Answering Mayor Bascom's question about varying rates between Springfield, Eugene, and Lane County, Ms. Andersen stated that the County did not have a MWMC SDC charge because it did not have connections to the system. She added that the two cities would adopt rates and the City of Springfield had an ordinance provision for its SDCs that was comparable to Eugene's ordinance provision.

Responding to Mr. Torrey's question about Sony, Ms. Andersen stated that the Sony situation was different from the Hyundai situation because it was an annexation agreement. Gary Colwell, Springfield Environmental Services Supervisor, said that in order to identify a peaking factor, the flows in the east bank interceptor were measured and it was determined that the peak to average ratio in that pipe was 1.4-1.5 of the average and related to residential peaking. He observed that because Sony's flow was "steady state," the inverse of that ratio was applied to the Sony EDUs to develop a rate. Ms. Andersen noted that the City of Eugene was applying the basis in the Sanitary Master Plan, which was the derivation of the system peaking factors, noting that it was a broader view of system applicability.

Ms. Keller stated that she would be leaving the meeting following her comments. She said that the City was not under capacity and it needed to act because it was important to get the appropriate amount of money from Hyundai and the other new developments in West Eugene, and that was not



possible under the current methodology. She commented that the Sony methodology made more sense than the proposed methodology. She reported that the MWMC was split on this decision and added that information indicated that there was a 14-18 hour peak flow rather than a 6-8 hour peak flow. She said that the City could require design flow information from new developments. She supported Mr. Boles' suggested methodology because it was a more conservative methodology that would better ensure equity for the citizens of Eugene.

Ms. Keller left the meeting at 9:25 p.m.

Ms. Andersen stated that the capacity issue was related to the inflow and infiltration (I & I) problem during wet weather flows and noted that one of the City's program areas for rehabilitation was of the collection system to reduce I & I. She reported that during dry weather flow, capacity was available.

Mr. Boles stated that the only empirical data regarding peaking factors was that measured in the east bank interceptor and all other numbers were derived from information gathered at the plants. He said that the question was whether the City wanted to use derived numbers or those empirically measured.

Ms. Swanson Gribkov clarified that in terms of the cost to process wastewater, industrial users did not receive a reduction in cost. Ms. Andersen explained that the issue at hand was a replacement cost and did not include new capacity at the plant because it has a 10-15 year life expectancy. She noted that if the plant was closer to capacity, then the City would be considering a "forward looking" SDC in order to create more capacity. She explained that the statutes that covered the derivation of SDCs included language that spoke to the reasonable connection of a new development and use of facilities. She noted that "reasonable" in terms of court cases has been about a 5-year period because that was the capital improvement window. She explained that the fee was to repay the community's investment in the plant at the capacity level at which it was built in 1984.

Ms. Andersen stressed that the level of review and analysis of the proposed methodology had been extensive, and it had been derived around the responsibility of being able to withstand a challenge. She explained that Weyerhaeuser was not included in capacity needs analysis for plant design because it had intended to be off-line, so when it connected it did not fall under the building permit provision.

Ms. Swanson Gribkov remarked that everyone was uneasy because a large volume user was moving into the community and it was important to ensure equity for both the citizens and Hyundai and HMT. Ms. Andersen stated that when this issue was discussed before the council in June or July, staff had reported that Hyundai's and HMT's charges were expected to be levied as, in fact, they have been for Phase I of both developments. She emphasized that the issue was on overhaul methodology, and not a discussion about additional fees that would be levied against Hyundai or HMT in phase I development. She added that the change in methodology would affect fees for future phases of HMT and Hyundai.

Mr. Hornbuckle stated that it seemed to him that this issue was a matter of empirical versus conjectural and voiced his support for Mr. Boles' proposed methodology. Ms. Andersen, responding to question from Mr. Hornbuckle, stated that EDUs were based on averages, so built into the formula was the assumption that there were some basic units, that it was the only way to derive an administratively viable rate, and noted that there would be some type of equivalent units developed.

Ms. Anderson stated that this proposal was a stop-gap measure until the completion of the revised MWMC Equalization Study.

Responding to Mr. Laue's question regarding current peak flows, Peter Ruffier, Wastewater Director, said that it depended on the time of year, but dry weather flow indicated that there were two, small diurnal peaks. He commented that current flow rates were irrelevant to recovery of construction and capacity costs because the Regional Equalization Rate was a "backward looking" SDC.

Mr. Hornbuckle left the meeting at 9:50 p.m.

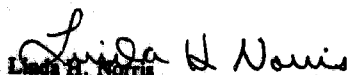
Mr. Boles left the meeting at 9:50 p.m.

Ms. Nathanson left the meeting at 9:50 p.m.

The councillors remaining acknowledged that they did not have a quorum of members present to continue discussion.

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

  
Linda H. Norris  
City Manager pro tem

(Recorded by Jennifer Self  
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