

MINUTES
City Council
Council Chambers—City Hall

October 14, 1996
7:30 p.m.

COUNCILORS PRESENT: Shawn Boles, Barbara Keller, Jim Torrey, Nancy Nathanson, Pat Farr

COUNCILORS ABSENT: Tim Laue, Laurie Swanson Gribkov, Kevin Hornbuckle

Her Honor Mayor Ruth Bascom called the meeting to order.

I. PUBLIC FORUM

George Davis, 615 West 1st Avenue, told the council that he had erected a barbed wire fence on his business property, not unlike those in other areas in the City, to protect his clients' cars. He had been notified that the fence was not in keeping with City Code, and asked the council to take steps to help him protect his clients.

John E. English, 1620 I Street, Springfield, reported that he had witnessed children buying and selling drugs in the Wayne Morse Free Speech Square across from Saturday Market on several occasions. Law enforcement officials respond, but not quickly enough to interrupt the activity. He asked that City of Eugene Public Safety personnel take actions to affect these conditions.

Jim Antonini, 564 East 13th Avenue, said drug activity along East 13th Avenue was persistent, and asked the council to support continued enforcement by the Rapid Deployment Unit. He complimented the behavior of the law enforcement officers, and urged all responsible residents to express concern for drug law enforcement.

Steve Johnson, 1825 Longview, in reference to the toxic right-to-know initiative, took issue with the cost details of a memorandum composed by Warren Wong on the costs of the initiative. He said the claim that the cost of independent audits for trade secret filings would have to be borne by the City was wrong, since the cost of hiring an independent auditor is to be borne by the company claiming the right of trade secrecy. He also said the work to be performed by the Fire Marshal's office does not require 2.5 FTE.

Sandra McCourry, owner of 1312 Mill Street, and 431 East 13th Avenue, and resident of 3410 Onyx Street, reported that she witnessed drug dealing near her 13th Street property, and near East 32nd and Hilyard, and said drug dealing is pervasive in the city. She asked the council to make efforts to eradicate drug dealing in the city.

Darrell Randall, 737 East 16th Avenue #3, reported that he had witnessed aggressive panhandling near the downtown LTD bus station, and expressed his concern that public officials make an effort to assist people make an effort to improve the quality of life in the city.

II. APPROVAL OF MINUTES OF SEPTEMBER 9, 1996, DINNER WORK SESSION; SEPTEMBER 9, 1996, MEETING; AND SEPTEMBER 11, 1996, LUNCH WORK SESSION

Mr. Boles moved, seconded by Ms. Keller, to approve the minutes of September 9, 1996, dinner work session; September 9, 1996, meeting; and September 11, 1996, lunch work session.

Ms. Nathanson asked that the motion exclude minutes from both the September 9, 1996, work session and meeting for discussion at the end of the agenda.

Members approved the motion, with the stated exception, unanimously (5:0).

III. PUBLIC HEARING: ORDINANCE CONCERNING STREET VACATION (BROADWAY/CHARNELTON)

CB 4593—An ordinance vacating the following described alley and a portion of the following described rights-of-way, to wit:

Tax Lots 1700, 7200, 8000, 8100, 8200, 8400, 8500, 8600, and 8700, Assessor's Map 17-03-31-13, located along Broadway, between Lincoln and Charnelton. Requests the vacation of the following streets and alleys: 1) alley between Lincoln and Charnelton from Broadway 160 feet north; 2) alley between Charnelton and Lincoln from Broadway 160 feet south; 3) a three-foot segment along the north right-of-way line of Broadway between Charnelton and Lincoln; and 4) a three foot segment along the south right-of-way line of Broadway between Charnelton and Lincoln.

Ms. Norris introduced Land Use Planner Rodney Jennings who made the staff presentation.

Mayor Bascom opened the public hearing. There being no citizens wishing to testify on the matter, the public hearing was closed.

Mr. Boles, seconded by Ms. Keller, moved that the bill, with unanimous consent of the council, be read a second time by council bill number only, and the enactment be considered at this time. Roll call vote; the motion passed unanimously (5:0).

Mr. Boles, seconded by Ms. Keller, moved that the bill be approved and given final passage. Roll call vote; the motion passed unanimously (5:0) and became Ordinance 20064.

IV. PUBLIC HEARING: ORDINANCE CONCERNING PROPOSED WITHDRAWAL OF RECENTLY ANNEXED PROPERTIES FROM SPECIAL DISTRICTS

CB 4594—An ordinance providing for withdrawal of territories (Heller, EC EU 96-10; Hebel, EC EU 96-24; Bires, EC EU 96-23; Cozy Homes, EC EU 96-41; and Knott, et al, EC EU 96-44) from the River Road Water District and River Road Park and Recreation District; proposed withdrawal of territories (Dukes and Dukes Construction, C EU 96-4; Sturtevant, C EU 96-6, Gerber, C EU 96-5; Smith, C EU 96-15; Burri, C EU 96-17; Mulkey, C EU 96-18; Berge, C EU 96-31; Vanderhoff, C EU 96-36, and Still, C EU 96-37) from the Santa Clara Water District; and withdrawal of territory (Gazelle Investments, C EU 96-11) from the Glenwood Water District and Willamalane Park and Recreation District.

Ms. Norris stated that Jan Childs, Planning Director, was available to answer any questions.

Mayor Bascom opened the public hearing; and, there being no requests to speak, closed it.

Mr. Boles, seconded by Ms. Keller, moved that the bill, with unanimous consent of the council, be read a second time by council bill number only, and the enactment be considered at this time. Roll call vote; the motion passed unanimously (5:0).

Mr. Boles, seconded by Ms. Keller, moved that the bill be approved and given final passage. Roll call vote; the motion passed unanimously (5:0) and became Ordinance 20065.

V. PUBLIC HEARING: ORDINANCE CONCERNING AN ALLEY VACATION (OBIE INDUSTRIES/FIFTH STREET PUBLIC MARKET)

CB 4595—An ordinance vacating the following described public right-of-way of two alleys to wit:

An alley, 14-feet wide to 26-feet wide, running from the north margin of East 6th Avenue north 174 feet more or less to the north margin of the east-west alley; and an alley 14-feet wide running from the east margin of Pearl Street east 186 feet more or less to the east margin of the north-south alley located in the block bounded by East 5th Avenue, East 6th Avenue, High Street, Pearl Street, Assessor's Map 17-03-30-11. RESERVING herein a public utility easement 14-feet wide covering the existing public facilities in the north-south alley, running from the north margin of East 6th Avenue north 174 feet more or less to the north margin of the east-west alley in said block.

Ms. Norris said Land Use Planner Kent Kullby was available to answer questions.

Ms. Keller, noting that the issue of the alley vacations had been delayed because of an outstanding

assessment, asked if the assessment had been paid. Mr. Kullby replied that it had.

Mayor Bascom opened the public hearing; and, there being no requests to speak, closed it.

Mr. Boles, seconded by Ms. Keller, moved that the bill, with unanimous consent of the council, be read a second time by council bill number only, and the enactment be considered at this time. Roll call vote; the motion passed unanimously (5:0).

Mr. Boles, seconded by Ms. Keller, moved that the bill be approved and given final passage. Roll call vote; the motion passed unanimously (5:0) and became Ordinance 20066.

VI. PUBLIC HEARING: ORDINANCE CONCERNING EROSION PREVENTION AND CONSTRUCTION SITE MANAGEMENT PRACTICES

CB 4596—An ordinance concerning erosion prevention and construction site management practices, adding section 6.625, 6.630, 6.635, 6.640 and 6.645 to the Eugene Code; and amending Section 6.406, 6.990 and 8.005 of that code.

Ms. Norris asked Michelle Cahill, Public Works Engineering, to introduce the ordinance.

Ms. Cahill said this ordinance would implement the requirement that owners of property where construction activities are occurring take responsibility to ensure that mechanisms are in place to prevent negative impacts to the quality of storm water runoff and related natural resources. Specifically, she said the ordinance applies to all construction related activities that result in any land disturbance, structural development, impervious surfaces or dewatering activities. In addition, permits would be required for sites 5 acres or greater and those within sensitive areas for disturbances of 500 square feet or 20 cubic yards or more. Ms. Cahill noted that she had received 5 letters regarding the proposed ordinance and would forward them to be included in the record for this hearing.

Mayor Bascom opened the public hearing.

Max Vollmer, 1255 Pearl Street, said the ordinance should not be approved, since there is no credible documentation that a problem exists, the ordinance and administrative rules are overly broad, onerous, expensive. The estimated cost of compliance per single family residence in a sensitive area is between \$1,400 to \$2,700. He recommended that council direct staff to redraft the administrative rules to require that developers adhere to best management practices, and not the narrow outcomes described in the rules at this time, and that council not adopt the ordinance until then.

Michael Roberts, 1919 Myers Road, said that erosion control could be more productive and less expensive than the proposed ordinance makes it. Council should ask for studies justifying the ordinance. He criticized the City's exemption from the requirement. Mr. Roberts noted that the ordinance does not take into account the unique soil conditions of the city of Eugene. The ordinance does not take into account the natural erosion patterns existing on site prior to permitting. Mr. Roberts

questioned using the end-use, as opposed to the area of disturbance, of a development as a basis for requiring an engineer-prepared plan, and said the controlling phrase "to the maximum extent practicable possible" was unclear. He said the erosion control ordinance was a boondoggle, and asked for a study of the pollution loadings of the storm water system in the city, as a necessary step prior to approving an erosion control ordinance.

Fergus McLean, 38574 Dexter Road, Dexter, who owns a technical forestry and wetland mitigation concern, admitted he was interested in providing the services the ordinance would require. He shared his experience inspecting erosion control practices on construction sites as part of an internship for the Department of Environmental Quality. Mr. McLean said three quarters of the sites he visited did not properly maintain their erosion control devices, and were delivering mud into the City's stormwater system. Currently there are no mechanisms for responding to violations of erosion control requirements, mostly because the Department of Environmental Quality is understaffed.

Ms. Norris said staff would provide copies of written testimony to the council before its Wednesday meeting.

Mayor Bascom closed the public hearing and invited questions from the council.

Mr. Boles asked Ms. Cahill whether the City is exempt from the erosion control ordinance. She said it was not. Mr. Boles asked Ms. Cahill to contrast the proposed erosion control ordinance with the ordinance enacted in the City of Portland. Ms. Cahill said staff could prepare a report for the Wednesday meeting. Mr. Boles also asked for details about the consequences of making the ordinance less stringent, and identifying the water courses that would be affected.

Ms. Keller asked how effective the Department of Environmental Quality was in management of erosion control. Ms. Cahill reported that the Department of Environmental Quality has four inspectors state-wide. They process 200 construction permits every year, and cover 900 industrial sites.

Ms. Keller asked Ms. Cahill to verify Mr. McLean's statement that 75 percent of construction sites contribute to soil deposition in waterways and stormwater infrastructure. Ms. Cahill said she has seen serious erosion on construction sites, and agreed that Mr. McLean's judgment was roughly accurate.

Ms. Keller asked if there would be an opportunity for a public hearing on the administrative rules associated with the ordinance. Ms. Cahill said there is a comment period after the rules are made public and prior to adoption. She added that monitoring the effectiveness and impact of the ordinance and the administrative rules with the Departmental Advisory Committee and reporting those findings to the council is part of the work program.

Ms. Nathanson asked if there is documentation for the presence of a problem, and if it has been made available to the public. Ms. Cahill reported that staff had taken photos of construction sites, and impacts, had reviewed existing regulations to determine their utility in addressing the observed conditions, and had collected information from the Public Works Maintenance Division regarding the frequency of stormwater system and road cleanings.

Ms. Nathanson asked how many developable lots are in sensitive areas, as defined by the ordinance.

Ms. Cahill recalled that approximately 47 percent of developable land is either sensitive or in parcels of 5 acres or greater. Considering the four or five standard management practices anticipated to be used by developers during wet weather, staff has determined the cost of implementing the ordinance would be \$600 per single family dwelling.

Ms. Nathanson asked whether the purpose of the ordinance had been revised to address the safety of building occupants, or neighboring properties. Ms. Cahill replied that it was not addressed in the purpose or elsewhere in the ordinance but protection of adjacent properties was addressed in the outcome section of the rules.

Mr. Torrey asked Ms. Cahill what staff will use as indicators of success. Ms. Cahill said a lowered frequency of maintenance calls, visual improvement of development sites, a drop off in citizen complaints about erosion coming from development sites, and proactive involvement of developers will be measures of the ordinance's success.

Mr. Torrey asked Ms. Cahill to resolve the differing figures in erosion control costs, to deal with the concerns about the ordinance's ambiguity, and respond to the presence of naturally occurring erosion as a mitigating factor in the need for erosion control. Ms. Cahill said staff would contact parties who have differing cost estimates, and lingering concerns about ambiguity. She said that the outcome section of the administrative rules did address the natural erosion issue.

Mr. Farr asked if staff has objective information on sediment loading due to construction site runoff? Ms. Cahill said no. Mr. Farr asked if staff has documentation on sediment loading due to natural runoff? Ms. Cahill said no. Mr. Farr continued this line of questioning to reinforce his concern that staff develop more quantitative evaluations of erosion problems in the city.

Mr. Farr asked if there were differing levels of enforcement for habitual and atypical offenders? Ms. Cahill noted that the emphasis of the enforcement elements of the ordinance is education, not punishment. Mr. Farr asked if there were provisions to relax inspection standards for those who have a history of compliance? Ms. Cahill said compliance will reap administrative trust, and fewer inspections. But, Mr. Farr countered, such people will still have to undergo the delays and expense associated with the permitting process. Ms. Cahill replied that staff is just beginning to develop a fee schedule, and is considering a re-inspection fee for those sites requiring it.

Mr. Farr asked who developed the outcome measures? Ms. Cahill noted that staff had reviewed other erosion programs to develop the proposed ordinance and relaxed the standards as initially proposed from a half-cubic foot leaving any site, to a half-cubic foot per one thousand square feet of lot size. The change was in response to community feedback. Mr. Farr suggested that deriving the standard from those used by the State Department of Environmental Quality and by Washington County were arbitrary.

Mr. Farr asked why the ordinance uses arbitrary outcomes rather than best management practices as its standards for erosion control practices. Ms. Cahill said that staff and the Department Advisory Committee had chosen to use outcomes rather than best management practices, because best management practices do not ensure prevention of negative impacts to storm water quality. Controlling impacts at the source is the most effective method of protecting water quality.

Mr. Farr asked how staff intends to register improvement when it does not have objective figures already? Ms. Cahill said staff has base line information from the Maintenance Division about number of times it cleans out stormwater drains, about the amount of sediment it removes from storm drains as a result of construction activity, and complaints from neighbors to construction sites.

Mayor Bascom asked how staff will resolve the definitional problem about the phrase "to the maximum extent practicable." Mr. Klein said staff is attempting to develop a definition that is more measurable.

Mr. Boles, in response to Mr. Farr, asked what level of penalty the development community was interested in instituting to prevent erosion damage to the stormwater system so civil authorities would not have to? Mr. Boles also asked Mr. Farr if the development community was seriously interested in developing objective data regarding sediment deposition and turbidity, since the cost of doing so would be attached to the fee for erosion control permits. Mr. Boles, addressing Ms. Cahill, thought it would be attractive to repeat the photo reconnaissance performed in the initial stages of construction site management as a means of evaluating the success of the program.

Ms. Keller, responding to Mr. Farr's concerns that compliant developers are being punished for the behavior of the few, said regulations always are introduced to control only the few. She felt the phrase "to the maximum extent practicable" had a lot of "wiggle room," and felt it would be desirable to define it in a way that is advantageous to the environmental community. Ms. Keller also suggested studying tributaries of the McKenzie River where there has been little development as a way of developing figures around the effects of natural erosion. She felt that the threshold for permit violation of half a yard per thousand square feet seemed lenient.

Mr. Farr said turbidity indicators should be used at natural and construction sites. He said a banker determined the cost of implementing erosion control measures on a construction site would be \$37 a month over a 30-year mortgage, and that the cost would impact not only new home buyers, but also renters on the lower end of the housing scale, who would have to absorb rent increases that were at least a proportion of that. Mr. Farr agreed controlling erosion is important, and it is desirable to have more effective and less expensive ordinance means of doing that. He worried that builders would be held responsible for unavoidable erosion, such as that would occur with large storm events.

Mr. Boles shared Mr. Farr's concern to make the erosion control ordinance effective, and noted that the council will have the opportunity after a year to make the ordinance even more effective. He added that he would welcome Mr. Farr's suggestions as to how to make the program more equitable to low-income residents. Mr. Boles, in any case, expressed concern to expedite the erosion control ordinance before the next construction season began.

Ms. Nathanson expressed concern about the widely differing estimates of the costs of erosion control. She noted that citizen concerns imagine the level of application review to be much higher than it actually is. Ms. Nathanson agreed being penalized for natural occurrences does not seem fair, and that administrative rules need to take into account those conditions.

Mayor Bascom expressed dismay that the development community was unhappy with revisions to the ordinance made in response to their concerns. She encouraged interested parties to review and comment on the administrative rules.

Ms. Keller, responding to Mr. Farr's suggestion that the cost of erosion control would be \$2,700 per house, and \$37 a month over 30 years, commented that her calculations indicate the cost would only be \$17.06 per month for 30 years, or \$3.79 per month if the lower cost of \$600 is used. Ms. Keller reminded the council the ordinance was being instituted in response to Federal requirements, and that it is less expensive to prevent stormwater contamination than to treat stormwater before returning it to the waterways.

**VII. APPROVAL OF MINUTES FOR SEPTEMBER 9, 1996, WORK SESSION; AND
SEPTEMBER 9, 1996, REGULAR MEETING, REVISITED**

Ms. Nathanson asked to postpone approval of the September 9, 1996, dinner work session minutes until she could review tapes of the meeting. Council concurred.

Ms. Nathanson changed page 8, paragraph 4 of the September 9, 1996, regular meeting to read "She said the moratorium was not about prohibiting ~~growth~~ new telecom facilities. . . ."

Mr. Boles moved, seconded by Ms. Keller, to adopt the minutes of the Regular City Council meeting of September 9, 1996, as amended. Roll call vote; the motion passed unanimously (5:0).

The meeting adjourned at 9:03 p.m.

Respectfully submitted,


Linda H. Norris
City Manager pro tem

(Recorded by David J. Bell)
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