



# COUNCIL REGULAR SESSION

Wednesday, October 19, 2022

## APPROVED MINUTES

### MEMBERS PRESENT

Mayor Rick Scholl  
Council President Doug Morten  
Councilor Patrick Birkle  
Councilor Stephen R. Topaz  
Councilor Jessica Chilton

### STAFF PRESENT

John Walsh, City Administrator  
Lisa Scholl, Deputy City Recorder  
Crystal King, Communications Officer  
Jacob Graichen, City Planner  
Ed Trompke, City Attorney  
Tina Curry, Event Coordinator

### OTHERS

Jason Morris	Jenai
Suzanne	Deb Parsons
Steve Toschi	Jeanne Morain
Judy Thompson	Linda Zahl
Brady Preheim	

### CALL REGULAR SESSION TO ORDER – 7:00 p.m.

### PLEDGE OF ALLEGIANCE

### VISITOR COMMENTS – *Limited to three (3) minutes per speaker*

- ◆ Steve Toschi. He is requesting the Council reconsider the indemnity clause condition of the Comstock subdivision appeal. The purpose of fines levied by one government body against another government body is to ensure the health and safety of its citizens. That would include whether the sewage systems overflows. The Council is facing a tough choice regarding additional development. They are in the best position to decide the risks of further development and the remedies. It's not appropriate for the City to try to pass criminal fines along to the developer. The court may say the City is accountable. He has not researched the issue himself but finds it to be problematic. The risk will make it difficult for any developer. The developer intends to challenge the decision. He urged the Council to eliminate the provision. Council should continue to move forward with repairing the system and assessing the fees.
- ◆ Brady Preheim. He listened to the Broadband survey with interest and concern. While they are very underserved, he's nervous about the City taking on the broadband service. It's better to partner with a private agency. The City can do other things better. Broadband is specially needed

outside city limits. In many cases, CenturyLink has exceeded capacity. It should be a county-wide initiative.

### **ORDINANCES – First Reading**

- 1. Ordinance No. 3287:** An Ordinance Amending the St. Helens Municipal Code Chapter 12.04 Regarding Sidewalk Maintenance and Liability

Mayor Scholl read Ordinance No. 3287 by title. The final reading will be at the next meeting.

### **RESOLUTIONS**

- 2. PUBLIC COMMENT - Increase in Planning Department Fees**

**Resolution No. 1967:** A Resolution of the St. Helens City Council to Set Planning Department Fees

No public comments.

Mayor Scholl read Resolution No. 1967 by title. **Motion:** Motion made by Council President Morten and seconded by Councilor Topaz to adopt Resolution No. 1967. **Vote:** Yea: Mayor Scholl, Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

- 3. Resolution No. 1968:** A Resolution of the Common Council of the City of St. Helens, Oregon, Adopting an Agreement with Unrepresented Employees of the City of St. Helens

Mayor Scholl read Resolution No. 1968 by title. **Motion:** Motion made by Councilor Chilton and seconded by Council President Morten to adopt Resolution No. 1968. **Vote:** Yea: Mayor Scholl, Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

- 4. Resolution No. 1969:** A Resolution of the Common Council of the City of St. Helens Adopting a Collective Bargaining Agreement with AFSCME Local 1789

Mayor Scholl read Resolution No. 1969 by title. **Motion:** Motion made by Councilor Birkle and seconded by Council President Morten to adopt Resolution No. 1969.

Discussion.

Councilor Birkle is happy to see them reach agreement. He applauds the members of the union who spoke at the Council meeting last month.

**Vote:** Yea: Mayor Scholl, Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

- 5. Resolution No. 1970:** A Resolution Adopting and Affirming Rules of Conduct for City Facilities

Mayor Scholl read Resolution No. 1970 by title. **Motion:** Motion made by Councilor Topaz and seconded by Council President Morten to adopt Resolution No. 1970.

Discussion.

Councilor Birkle pointed out that this is a living document to continue to evaluate and improve. This is a great start. Councilor Chilton added that they have been advised by legal to continue looking it over.

Voting Yea: Mayor Scholl, Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

### **APPROVE AND/OR AUTHORIZE FOR SIGNATURE**

6. [RATIFY] Agreement with GMP Consultants for Finance Director Recruitment Services
7. Fourth Amendment to Otak, Inc. Agreement for S. 1st & Strand Streets, Road & Utility Extensions Project
8. Findings and Conditions (Final Order) for the Comstock Subdivision Appeal
9. Agreement with Columbia County for Building Inspection and Plan Review Services
10. Agreement with City of Columbia City for Building Inspection and Plan Review Services

11. [RATIFY] Amendment No. 6 to Contract with Mayer/Reed Inc. for the Riverwalk Project Phase I
12. Third Amendment to Ground Lease with 7th Street Lofts Condo

**Motion:** Motion made by Councilor Birkle and seconded by Council President Morten to approve '6, 7, 9, 10, 11, and 12' above. **Vote:** Mayor Scholl, Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

**Motion:** Motion made by Councilor Chilton and seconded by Councilor Birkle to approve '8' above.

Discussion.

City Planner Graichen addressed Steve Toschi's comments. He re-read the indemnify condition that was added at the last meeting, "The owner, developer, and the subsequent buyers will indemnify the City from any costs, fines, or penalties arising from, or associated with overflow or discharge from the sanitary sewer system until the system is upgraded as contemplated in the Plan." The applicant has since reached out with concerns about that and discussed a potential language change. It narrowed the scope and focused on the Sykes Road portion. It includes a time element, after occupancy of the first home. The indemnification period terminates when the project is complete or four years. There is also language for the exception that if the surcharge is caused by act or emission of the City. As noted in the memo, the applicant said they will appeal it if there's any indemnification clause. It comes down to risk. The other change is more simple and not as controversial. On page 12, there are findings that address pipes reaching capacity. He proposes to modify the last sentence to read, "This is much greater than the industry and City standard 85% "at capacity" flows."

City Attorney Trompke said the two words, "and city," makes it clear that the City has adopted the sewer standard for its pipes if they are running at 85% capacity, which means the flow in the pipe can be 85% of the height of the pipe. There must be 15% at the top for air flow, which prevents the pipe from going over capacity and blowing out through manhole covers or people's basements. It is a clear and affective standard. The indemnification language is predicated on this finding. He reviewed the Wastewater Master Plan that addresses that finding. It becomes part of the planning criteria and is applicable to subdivisions and other applications that come before Planning and Public Works. It is clear, objective, and must be satisfied. The Sykes Road section is already at or over capacity. Because the system fails the clear and objective criteria, you're allowed to deny the approval. The City has accommodated the developer to get it done on a faster schedule. By doing that, you can add a condition that they indemnify the City if they get in before the City completes the pipe upgrades. Because you're doing less than denying, the condition is proportional to the impact. Based on that, indemnity should be approved and should be upheld even if they take it to LUBA. It is an adopted City criterion. They can adopt the City staff's recommendation and add those two words that it's an industry "and City" standard.

Councilor Topaz asked if the 85% is flow or static. Trompke said the definition is in the Wastewater Master Plan. He believes it's the flow. The sewage moving through the pipe can't exceed 85% of the height of the pipe. It's not static. Sewage flows downhill. Councilor Topaz said they have evidence that pipes go uphill for drainage. How does he verify that it's more than 85% full? Trompke said he would go to the map in the Master Plan. It shows the lines that are over capacity. Councilor Topaz is more worried about showing proof that it's over 85% full. Councilor Chilton said that is a question for the City's Engineer. Councilor Topaz argued that he wants a legal response to respond in court. Trompke said they have already made that determination by adopting the Wastewater Master Plan. Councilor Topaz wants to legally prove that in court. Trompke said they would call the City Engineer as a witness if it were taken to court. LUBA is not court. It is based on the record.

Council President Morten said this is a lot about timing and upgrades with the development. After the last meeting, he spoke to Public Works Director Mouhamad Zaher. He said there shouldn't be any worries.

They should have the Sykes Road work done prior to the development being complete. Secondly, the amount of grade the sewer is flowing down is substantial.

Councilor Chilton said the attorney is saying they are allowed to approve this with the conditions. Are the applicants going to agree to those conditions? Graichen said the applicant has already stated that they will appeal it. The Council must consider how they feel about the risk of allowing the development, a possible surcharge, and the response from DEQ. The indemnification could result in an appeal.

Councilor Birkle looked at the email where the applicant made an offer to release the City from liability for any surcharges in the Comstock subdivision until the upgrades were made. His primary concern is that the applicant would not be able to hold the City liable for surcharges with the indemnity clause. He questions why the offer to provide liability for surcharges in the Comstock Subdivision would be considered a nonstarter. Trompke responded that it's at the top of the hill. If there is a discharge from the pipe, it is likely to be down the hill somewhere it gets full and backs up. It's far less likely that the backup of discharge would start at the top. The indemnification is meant for third parties, not Comstock. Councilor Birkle talked about how the Council is responsible for whether to approve things. If they are willing to move forward, he is not sure it is fair to hold the developers responsible for the entire system. If they're already running over 100%, he is not sure this development will make that much of a difference. He is inclined to not include the indemnification because of the future impact on other developments. Are they going to ask the same of other applicants? Can that have a negative impact on development? He also talked to Public Works and Engineering, and they are confident about the sewer project moving forward as a priority. He's willing to take that risk.

Council President Morten asked who initiated the indemnification. Graichen said it originally came from the City's legal counsel.

Councilor Topaz said there may be people dumping too much into the sewer system now. Anyone else who is added, is pushing them over the limit. They don't have rights because they are the last people on the line. They expect that the pipeline will be brought to a standard that will help the additional development. With the weather and product availability, the ability to predict when this project will be complete is non-descript.

Councilor Chilton is uncomfortable going against legal advice. However, she did not talk with Public Works and trusts those conversations.

Council President Morten is shaky about it. There were threats of catastrophe if this happens. He went straight to Engineering and Public Works to get their input about timelines. He did not contact the developer about their timelines. They are fixing the problem. In government, things move slow, but he doesn't see that with Public Works. They get things done.

Councilor Topaz said this is important enough to have the Engineers here to say it in front of the public. Graichen said that doesn't work with the timelines. Councilor Topaz is concerned about the legal problems with catastrophic weather. This is unusual and not straight forward. Councilor Birkle agrees but pointed out that the City's not liable with a weather event that exceeds a 25-year storm.

Council President Morten requested legal advice. Trompke said the applicant would need to consent to an extension of the 120-day timeline if Council wants the opportunity to hear from Engineering. The legal opinion given is to minimize risk to the City. Graichen said the applicant is not in favor of extending the time. Councilor Birkle does not think it's necessary. He questioned if Councilor Topaz spoke to the City's Engineer and understood the same things that were said by him and Council President Morten. Councilor Topaz said he did extensively. He implied that they didn't understand the engineering terms that were said. The discussion included other sewer line problems in the city. There is a great uncertainty of many of the sewer lines in the city because of the past engineering. Councilor Birkle recognizes his background in engineering, but he also believes the explanation by the City's Engineer and Public Works Director was

done in such a way that even a layperson like himself can understand. More input from Public Works or Engineering will not change anything. It is time for them to make a decision.

Graichen said there are other things to consider. When they talked about this in April, they questioned if they should explore moratoriums or allow development with a fee structure. There must be some assumption of risk. In a sense, it's the premise of not shutting the door to development.

City Administrator Walsh talked about their job to act as risk managers. The attorney is going to come back with the most conservative and insulated response.

**Motion:** Motion made by Councilor Birkle and seconded by Councilor Chilton to amend the motion by inserting the words, "and City," in the last sentence of the last paragraph on page 12 of the findings, to read, "...industry and City standard 85%..." **Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Chilton; Nay: Councilor Topaz

**Motion:** Motion made by Councilor Birkle and seconded by Councilor Chilton to amend the motion to eliminate the condition for indemnification by the developer.

Discussion.

Councilor Chilton is uncomfortable with it but trusts the Public Works Director and Engineer. She hopes to see the sewer improvements done soon.

**Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Chilton; Nay: Councilor Topaz

**Vote on Main Motion:** Yea: Council President Morten, Councilor Birkle, Councilor Chilton; Nay: Councilor Topaz

Mayor Scholl said they are aware of the sewer issues and will continue to collaborate with the developer on remedying it. He looks forward to the partnership.

#### **CONSENT AGENDA FOR ACCEPTANCE**

13. Parks and Recreation Commission Minutes dated September 12, 2022

14. Library Board Minutes dated September 12, 2022

15. Planning Commission Minutes dated September 13, 2022

**Motion:** Motion made by Councilor Chilton and seconded by Councilor Topaz to approve '13' through '15' above. **Vote:** Yea: Mayor Scholl, Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

#### **CONSENT AGENDA FOR APPROVAL**

16. Council Work Session, Executive Session, Public Hearing, and Regular Session Minutes dated September 7, 2022

17. OLCC Licenses

18. Accounts Payable Bill Lists

**Motion:** Motion made by Councilor Chilton and seconded by Councilor Topaz to approve '16' through '18' above. **Vote:** Yea: Mayor Scholl, Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

#### **WORK SESSION ACTION ITEMS**

None

#### **COUNCIL MEMBER REPORTS**

Council President Morten reported...

- Nothing to report.

Councilor Topaz reported...

- There was an incident of an escaped child at the library. Thankfully, Library and Public Works staff rescued the child.
- Regarding the sewer system capacity limit, they have set a precedent by approving the Comstock Subdivision. They had hoped to not set a precedent to stop building by imposing a moratorium.
- The consultant's investigation into the geotechnical problems that would affect the sewer and storm systems showed mill site geologic problems. The consultants looked at earthquake, landslide, and liquefaction which revealed no sewer line problems. The map they showed included the entire city. The mill site showed two of those factors playing a large part. Liquefaction is the entire length of the shoreline, including the foot of the lagoon. The landslide also goes through the Waterfront. The area DEQ is covering toxic materials is also disrupted by landslides. The consultant's investigation of the geotechnical problems also affects DEQ's proposal to cover the contaminated mill site waterfront. They plan to put a nine-inch cover of sand over the contaminated areas. There are lot of problems with nine inches of sand protecting a five-foot deep contaminated area. The area is 150-feet from shore to where they think it ends, and a mile long. There were a number of red flag warnings for Engineering with storm and sewer drain problems. There were problems with no storm drains between 3<sup>rd</sup> and 4<sup>th</sup> Street. Some of the drains go up hill. There was another failure of repair or non-repair of the reservoir tank. The Engineering Department messed that up big time. There was another Engineering failure when they pushed a drainpipe from Godfrey Park to the river. There were a number of Engineering mistakes on that. Continuing Engineering mistakes, they have a \$15 million cost to re-do the sewer line, a \$20 million cost to re-do the storm drain, and \$1 million for Godfrey Park.
- They are building a 239-unit apartment complex on Gable Road. It gives an idea of what the 250 units of what was proposed for the Waterfront will look like. Gable Road only as two entrances and exits. The Waterfront only has two entrances and exits. They are going to put a stop sign at 1<sup>st</sup> and St. Helens Street. He talked about traffic patterns and needing to understand what it will look like. R. Kim submitted a proposal for the Veneer site. It was turned down because they wanted to own everything. When Tokola proposed a hotel and then found out they weren't going to make money, but could make money on the 250 living units, no one said anything. That also was a single-owner situation. The mill site has unstable, contaminated ground and they want to build an industrial park there. Have they done a marketing survey? Last night, he attended a DEQ meeting. Boise and DEQ talked about covering the contamination. The City needs to find out how to be part of that discussion.
- He received a letter from Oregon Ethics Commission. It describes the meeting that was held on May 20. It stipulates that it did violate the ethics regulations. They pointed out what mistakes were made in the report. It was related to a proposed cleanup of the City's lagoons. At the beginning of the executive session, Attorney Monahan advised the Council that the executive session was authorized under ORS 192.660(2)(h) because the City was meeting with experts to better understand the liability related to the City's wastewater lagoon and steps the City could take to reduce it. The next paragraph says the January 19 executive session was not authorized under ORS 192.660(2)(h). The expert's presentation and discussion of liability was related to the wastewater lagoon and procedures that required a cleanup of the wastewater lagoon, and therefore mitigated those risks were not a consultation by the City Council with its legal counsel regarding the City's legal rights and duties with regard to the current litigation or litigation likely to be filed.

Mayor Scholl repeated the last part that said, "litigation likely to be filed." When the companies showed up, they said there are liability issues if they do nothing. Councilor Topaz even reiterated at the meeting that if they do nothing, there will be issues. Councilor Topaz confirmed that's what he said. They answered with yes. Mayor Scholl wants that for the record. Councilor Topaz went on to say that litigation has be imminent, not in the future.

Councilor Birkle said that he neglected to say that they stayed in the meeting based on legal advice. They learned at the last meeting, that if they don't agree, they should leave. Councilor Topaz did not leave. Councilor Birkle is making the point. He signed a final order and will receive a letter of education. He was offered it under the understanding that the violation occurred under the advice of legal counsel. Councilor Topaz said that was made to the Ethics Commission by himself and Council had a discussion that it was okay, and the Ethics Commission said it was not. Councilor Birkle repeated that it was under the advice of their legal counsel.

- Would like to have a public meeting describing the use and methodology of how the cooling lagoon will be used as a waste dump and all the steps required for things to be done. There was supposed to be a public meeting in 2019 and it never happened.
- They occasionally go long in their meetings and bring in pizza. He found out that the high school has a catering service. He suggests they give them the opportunity to cater and serve.

Councilor Chilton reported...

- She was at the League of Oregon Cities (LOC) Conference during the fire at Columbia Hills. She did receive an update from Chief Greenway. It was devastating for the residents and individual who lost her life. She commends the police for arriving before anyone else and pulling residents out. She appreciates them.
- Kudos to K-9 Officer Ryder for apprehending a suspect. They should bring him out in the public more often.
- They have a new Code Enforcement Officer. She is happy to see him out and working on things.
- They are working on filling two officer positions. One has made it to the very end and will attend the academy when it is available.
- Attended the LOC Conference
  - Spoke to the Mayor of Warrenton. They have a really strong relationship with their National Guard. She is working to strengthen the relationship with our Guard.
  - She networked with other cities and learned how they handle similar issues. It was insightful. They need to ask questions and think from every perspective.
- She is going to meet with Community Action Team (CAT) about transitional housing. They need to consider how they are going to keep the City safe.

Councilor Birkle reported...

- Likes the idea of working with National Guard. They are an Engineering team.
- Enjoyed walking in the Big Parade. He dressed up and walked the route just ahead of the Sheriff's escort. They need to discuss crowd management. He thanked Heather Epperly and team for sponsoring the event. He heard a lot of good things.
- He met with Records & Evidence Specialist Pati Ruiz to tour the Police Department and talk about the work she and Records & Evidence Specialist Haley Holm do. They are self-initiating and took on property management. He wants to look at how they can support that. They are doing tremendous work. Later that evening, he did a ride-along with Officer coy. It was a quiet night. He was impressed with Coy's professionalism, as well as others on duty.
- He helped check people in at the Waterfront property on Saturday. It was a wonderful time greeting people. Afterwards, he walked through Nob Hill with visitors from Eugene and Pennsylvania. He was impressed by the two high school students giving orientation at the stairs.
- It's fun to see and visit with people enjoying the decorations in the Plaza.

#### **MAYOR SCHOLL REPORT**

- Air quality is bad right now. He hopes to see improvement with the weather change.
- Had a great time at the LOC Conference. It was very informational.

- He also talked to the Warrenton Mayor about the National Guard partnership. With the proximity of the Guard, it's an ideal spot for a ferry.
  - Homelessness was a key topic. He wants to make sure they are looking at it closely with partners. There must be rules and regulations to help people who want the help. Not everyone wants help. Measure 110 was a disaster to the community.
- Spirit of Halloweentown has been in full swing.
  - Thousands of people have visited.
  - Good job by Heather Epperly and team with the parade.
    - Need port-a-potties along the route and more CERT officers down here.
  - It's been very successful.
  - He appreciates Lori's comments and beliefs. The event also brings joy to many and supports businesses.
- October 25, Head Start Open House
- October 24, informational meeting for businesses and citizens in the First Street area
- November 2, Waterfront Groundbreaking Ceremony. They are going to celebrate the success of years of planning. If the City had not bought the property, they would not be able to control it like they are now. If he were to call CIS and tell them he was considering purchasing a secondary lagoon and a pulp mill, they would probably tell him not to do it because there is liability. The City has leading experts and attorneys saying it's our right. He is not liable, and they all heard it. Councilor Topaz was in there and still turned it into the Ethics Commission. Mayor Scholl sees that as a political stunt. He wishes they could all be team players. They are all trying to get work done. He appreciates the Council members who have stepped up to get things done.
- Shout out to Public Works. They cannot do a project over \$50,000, so the sewer upgrades will go out for bid. Public Works would have done a great job at that project. Public Works is understaffed. They have lost four positions and are going to work to bring those back. They do have the funding mechanism to pay for the upgrades. Council President Morten added that they have the oversight.
- Councilor Topaz made false statements about the water reservoir. The City won the lawsuit. It will either be repaired or get an entirely new reservoir. The statement about 2<sup>nd</sup> Street was also false. They got their money back from that project. Councilor Topaz has been fighting since before he was on Council. He tried suing the City in 2009 over his flooding basement. Vee Lee Amusement, who owned that property previously, said that property used to flood all the time, which is why there are sump pumps in the basement. They went to court and the City won, he appealed, and the City won again. Councilor Topaz continues to come after the City's engineers because of his engineering background. It is not right to put down qualified staff and mislead the public. Mayor Scholl stands up for our engineers, including the ones who have left. Councilor Topaz has not been kind to them.

**OTHER BUSINESS****ADJOURN – 8:44 p.m.**

Respectfully submitted by Lisa Scholl, Deputy City Recorder.

ATTEST:

/s/ Lisa Scholl

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Lisa Scholl, Deputy City Recorder

/s/ Rick Scholl

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Rick Scholl, Mayor