

City of Lafayette
City Council Meeting Minutes
May 9, 2002
7:30 PM

- 1. CALL TO ORDER:** Mayor Lotis Hanks called the meeting to order at City Hall at 7:30 p.m.
- 2. FLAG SALUTE:** Mayor Lotis Hanks led the flag salute.
- 3. ROLL CALL:** Richard Van Orman, Interim City Administrator, called the roll.
Present: Bob Cullen, Richard Jewell, Marianne Mitchell, Joe Giesbers, Ron Ross, Lotis Hanks, and Gary Filpi.
Absent: None.
City Staff Present: Richard Van Orman- Interim City Administrator, Trena Cranfill-Assistant to the City Administrator, Paul Elsner- City Attorney, Jim Anderson, and John Wright.
Others: Mike Carpenter, Jackie Carpenter, Ron Harris, Laura Laird, Al Larsen, Bonnie Larsen, Kenny Schweiger, Kim Schweiger, Mike Lewis, Mike Hanks, Nicole Montesano, Cecil Elbert, Jim Reed, Jerry Overgard, and approximately 4 others.
- 4. APPROVAL OF MINUTES:**
Gary Filpi made a motion to accept the April 25, 2002 minutes. Bob Cullen seconded the motion. There was no discussion and the motion passed unanimously.
- 5. ACCOUNTS PAYABLE:**
Gary Filpi made a motion to accept the accounts payable. Bob Cullen seconded the motion. Discussion- Bob Cullen asked about the payment to LZN Excavation. He wanted to know if they have satisfied all of the requirements to receive final payment on the project. Trena Cranfill said that the engineers don't have any outstanding issues, and LZN has supplied the City with a release of lien from all of their suppliers in connection with the project. They have also submitted the final set of BOLI (Bureau of Labor and Industries) reports. There was no more discussion and the motion passed unanimously.
- 6. CONSENT AGENDA:**
Gary Filpi said that he had asked Public Works for a more detailed list of what they do. Gary has since talked to Randy Hubbard and he expressed how time consuming this is. Gary Filpi said that it provided the Council with some good information but it is not something that they need to see every month. Ron Ross said that he would like to see a general review of what he has done over the past month. A paragraph discussion of the tasks that they do would be more effective. Bob Cullen said that John Wright's time log is very comprehensive, and this concept would be useful for all of Public Works to maintain.
Gary Filpi made a motion to accept the consent agenda. Ron Ross seconded the motion. There was no more discussion and the motion passed unanimously.
- 7. APPEARANCE OF INTERESTED CITIZENS:**
Jim Reed, 210 W 8th- said that he recently read an article in the News Register that said that the current City Council was trying to bankrupt the City. It would seem that poor judgement would be on the past Council who approved Phil Lieberman's contract, which required a 6-month severance package if he were discharged. It is my understanding that Mr. Lieberman would not be required to give a 6-month notice if he resigned, only 30 days. It appeared that Mr. Lieberman took the City government hostage if the Council requested his resignation. It is my impression from attending past Council meetings that they had their minds made up regarding the wastewater treatment plant. They were not receptive to any outside engineering firm, other than that of Montgomery Watson. I attended a Citizen's Utility Board Meeting where they made a recommendation for an engineering firm other than Montgomery Watson. Mr. Lieberman continued to lobby for the Montgomery Watson firm. The committee (CUB) held to their recommendation. All those in attendance were sworn to secrecy until the next City Council meeting to allow the Council the final vote. At the next meeting, Mr. Lieberman recommended Montgomery Watson and the Council passed a motion to hire Montgomery Watson. When I solicited signatures for the last recall, the majority of the respondents expressed the desire for a more user friendly government. I am sure that those who voted for the unsuccessful candidates are now pleased. The present Council has different ideas than those of the recalled Council members. It would be helpful if those citizens that voted for the opposing candidates could get behind the present Council. They will have a chance to vote for the candidate of their choice in the next election. Regardless, the majority of the citizens voted for the current Council. Two of the recalled councilors ran for the position of Mayor and were unsuccessful. The write-in candidate, Lotis Hanks, was chosen. He read that Councilor Richard Jewell had gone out on his own and solicited an outside engineer to analyze alternative options for the sewer plant. It is my opinion that Mayor Hanks

and Mr. Lieberman were set on the engineering firm Montgomery Watson. I mentioned to Richard Jewell that a friend recommended a firm that specialized in small community wastewater treatment plants. That engineer was contacted and an appointment was set up. Phil Lieberman attended part of that meeting at the plant. The engineer said that he had modified a plant similar to Lafayette's for a sum of \$1 million. At the special meeting last Thursday, there was discussion about the new site for the plant. At that time several citizens suggested that alternatives should be considered. Those remarks were absent from the News Register's remarks. Two weeks ago, Bob Cullen reprimanded the citizens for saying that an alternative system be considered. He also suggested that the present Council members that voted to dismiss Mr. Lieberman had made a terrible mistake. Bob Cullen reminded us about the hours of discussion the past Council went through into making the only feasible decision. Perhaps Bob Cullen recalls the special meetings that he attended at Marianne Mitchell's residence where he indicated that he was the lone wolf on the Council and was not privileged to the inner workings on the Council. It is my recollection that he had a desire to pursue alternative economic solutions to the wastewater treatment plant. He was also in favor of removing Mr. Willoughby and Mr. Lieberman. Even the new plant will have permit violations when equipment fails or is not maintained.

Laura Laird, 820 Jackson Ct.- said that she wanted to correct something that Jim Reid said in his speech. When the Council chose Montgomery Watson over Wallis Vision, Phil Lieberman did not favor Montgomery Watson over Wallis Vision. He presented the CUB's recommendation as Wallis Vision and he said that the final decision was for the Council to make. There were reasons for choosing Montgomery Watson that she felt outweighed the CUB's recommendation. If the CUB had made a presentation about the engineering firms and voiced their opinions, then maybe the Council could have had asked some questions and explained why they made a recommendation that the Council did not agree with. She said that she hopes that whatever happens, (because of political revenge) the City doesn't have to scrap the last 2 years worth of work that has been done on the sewer plant. It would waste the more citizen dollars and time.

Marianne Mitchell said that when the decision was made by the Council, all councilors were in agreement and they didn't really know enough to counter the CUB's recommendation. The CUB had put 14 months of research into that decision. Marianne Mitchell said that Bob Cullen should have been contacted by each councilor, as the council liaison to the committee, to answer any questions.

Bob Cullen said that he has learned a lot and changed his position over the years in regard to the sewer plant, based on what he feels is the right thing for the City of Lafayette. At the current time, after all of the time and money that has been spent on this, he is in full agreement that the City has to move forward on this. To change the direction of the project, seems a little irresponsible at this time.

Laura Laird said that decisions by the Council are to be made in Council Chambers. Discussion ensued.

Marianne Mitchell said that questions are supposed to be directed to the Council liaison.

8. BUSINESS DISCUSSION FROM THE COUNCIL:

Marianne Mitchell said that she wanted to say something further about the material that was handed out by the Mayor regarding public meetings law. Marianne Mitchell said that she had contacted the Attorney General's Office, COG, LOC, and they all told her that the Councilors could talk one on one. She said that she was told by others that the councilors could not talk one on one (or through email). Paul Elsner said that if the councilors were to engage in conversation in a chat room that that could constitute a meeting and therefore violate the public meetings law. The City Council is not allowed to reach a quorum (in person or in a chat room) and discuss City business outside of a public meeting.

Gary Filpi asked Richard Van Orman how things are going. Richard Van Orman said that it has only been 3 days, but he is getting his feet wet. Richard Van Orman said that he will be in the office on Mondays, Wednesdays, and Thursdays. He is also available on Tuesdays at the Council of Governments.

Richard Jewell said that the Council had asked staff to talk to Skip Wendolowski about removing the clause in the Zoning and Development Code that specifies a garbage dump as a conditional use. Staff will consult with the City Planner on this issue.

Joe Giesbers said that he is working on the City's website and it is about 1/3 of the way done. The website is www.lafayetteoregon.org.

Richard Van Orman asked the Council's consent to add an agenda item, and place it at this point in the meeting. Council agreed.

9. NEW BUSINESS:

f) Employee Bargaining Unit:

Richard Van Orman said that he received a letter from the Employment Relations Board about the staff's desire to form a bargaining unit. Richard Van Orman said that he asked the City Attorney to be present to comment on the letter. Ron Ross asked if PERS would still be in effect. Paul Elsner said that this doesn't have to do with PERS, it is dealing with an employment relations board. Paul Elsner said that he has prepared a memo

regarding this issue and it is up to the Council whether or not they would like to discuss this memo in executive session. The Council wanted to go into executive session.

Trena Cranfill said that the Lafayette City Council will now meet in executive session for the purpose of considering records exempt by law from public inspection consistent with the provisions of ORS 192.660(1) (f). The record in question is a memorandum from the City Attorney to the City Administrator concerning the scope of ORS Chapter 246 as it relates to union organizing activities by City employees. As such, the memorandum is a privileged attorney-client communication and exempt from disclosure under the terms of ORS 192.502 (9) and ORS 40.225. Representatives of the news media and staff designated by Council are invited to attend the executive session. All other members of the audience are cordially requested to leave the room. In terms of the news media, it is specifically directed NOT to report on the deliberations that occur during the executive session except, of course, to state the general subject of the session. No final decision will be made in the executive session. It is further understood that the presence of the media in the Council chambers while the Council is discussing a memorandum which is protected by the Attorney-Client privilege is not intended, and nor does it waive in any way the privilege that attaches to this document. If a final decision on any matter is necessary, that decision will be made once the Council comes out of executive session and is back in regular session and the public is invited back in.

The City Council went into executive session at 8:06 p.m.

Mayor Lotis Hanks closed the executive session at 8:38 p.m., and the public was allowed back in the room.

Bob Cullen made a motion in response to the letter from the employment relations board regarding the employee bargaining unit, and the Council wants to exercise Option 3 stated in that letter. Option 3 states that the City will enter into an election agreement with the petitioners and intervening labor organizations in which you agree to compose the bargaining unit. This board would then conduct an election among the affected employees to determine whether or not they are desired for the purpose of collective bargaining. Gary Filpi seconded the motion. There was no discussion and the motion passed unanimously.

a) Public Hearing: FY2002 Supplemental Budget and FY2003 Budget:

Mayor Lotis Hanks opened the public hearing at 8:40 p.m.

Staff Report- Interim City Administrator Richard Van Orman said that the City Council has been presented with a new page 3 of the budget that replaces the page that was handed out in the packet. It reflects some changes to the Fire Department budget. On page 2, there are 3 items in the City Council column that have been changed (highlighted in yellow) since it was approved by the budget committee. It reflects a change to allow for the purchase of a new computer at the front desk. \$1,000 was taken from legal services, \$1,000 was taken from Communications, and \$2,000 was added to Office Equipment. On page 3, \$2,000 was taken from the fire chief's salary (won't use all of salary that was allocated), and \$2,000 was allocated to schooling to allow for additional EMT courses. This change was at the request of Fire Chief Terry Lucich. On page 9 (sewer capital projects), there were several changes, including the beginning fund balance and the Interest on Cash Accounts. The beginning fund balance should have been lower (\$341,927) and the interest on cash accounts should have been higher (\$405,000). The net difference is an increase of about \$30,000. The budget for City Administrator also had to be changed to reflect Phil Lieberman's severance package and the cost for the Interim City Administrator. This resulted in a \$48,300 increase in this line item. Richard Van Orman said that the severance package was taken from the sewer capital projects fund because it was the only fund that has the money. The City can borrow the money from the sewer fund and can take up to 2 years to pay it back. It can be apportioned, as needed, to the different funds. Gary Filpi said that he agreed that they should keep an eye on the funds and allocate the money as appropriate. Bob Cullen asked about arbitrage and Richard Van Orman said that this doesn't have anything to do with arbitrage. The money for the City Administrator severance package and Interim City Administrator came out of the contingencies fund, which is set aside for future bond payments.

Mayor Lotis Hanks opened the hearing for public comment.

Public Comment- Jim Reed, 210 W 8th- asked if Phil Lieberman's severance package was going to be paid in one lump sum or in monthly installments. Mayor Lotis Hanks said that it will be in one lump sum.

There was no other public comment and Mayor Lotis Hanks closed the public hearing at 8:54 p.m.

Bob Cullen made a motion to ask staff to prepare the appropriate resolutions for the adoption of the FY2001-02 Supplemental Budget and the FY2002-03 Budget for the June 13, 2002 meeting. Ron Ross seconded the motion. There was no discussion and the motion passed unanimously.

b) Approval of OLCC License (Roadhouse Pub):

Richard Van Orman said that the Roadhouse Pub has applied for a full on premise sales liquor license. The pub currently has a limited on premise sales license. The Sheriff's Office has approved the application as they had no reason for denial. Ron Ross said that the Pub had one case of selling to a minor, and asked the owner, Ron Biggs to explain this instance. Ron Biggs said that it was a sting operation. The sting has been ran 11 times and there has only been the one violation in 5 years. Gary Filpi asked Ron Biggs if they have a policy in place that positively ID's people, and Ron Biggs said yes.

Gary Filpi made a motion to authorize the Interim City Administrator to grant and sign the OLCC Application. Ron Ross seconded the motion. There was no discussion and the motion passed unanimously.

c) Recruitment for City Administrator:

Richard Van Orman said that the Council received a proposal from the Council of Governments (COG) to perform the search for a new City Administrator. The cost to do the search is \$4,700. This would include advertising, applicant screening, finalist interviews, reference checks, and final selection. The Council of Governments will recommend 5 finalists to the City Council for their consideration. Richard Van Orman declared a possible conflict of interest on this agreement as he is employed by the Council of Governments. Gary Filpi asked about advertising in the Statesman Journal, and Richard Van Orman said that the Sunday Oregonian is the paper that most people in the state go to when they are looking for a job. Ron Ross asked about putting the ad in with the Unemployment department. Staff will look into this.

Bob Cullen asked what services the City is entitled to in the agreement the City already has with the COG. Richard Van Orman said that this goes above and beyond the City's existing agreement with the COG. Discussion ensued. Council asked staff to check with the Council of Governments and see if they would be willing to adjust the cost of this agreement based on the number of applicants received. Marianne Mitchell said that the Council needs to consider the job description of City Administrator and amend it if they feel its necessary. Paul Elsner said that the Council has to remember that there are certain powers that the City Charter dictates must be held by the City Administrator. Staff will talk to Dave Galati (Director of COG) and bring the information back to the Council at the next meeting.

d) Council Meeting Schedule:

Bob Cullen said that he has been having difficulty with the late meetings. It is starting to affect his job and he needs to take that into consideration. Trena Cranfill said that Mayor Lotis Hanks is going to be going to a job that will take him out of state beginning in June. Ron Ross said that if the Council does decide to do this, then the meetings should start earlier. Paul Elsner said that the Charter says that the Council must meet at least once a month. Lotis Hanks will be faced with having to drive back to Lafayette just for the Council meetings. It was suggested that the Council consider only having one meeting per month throughout the summer. Paul Elsner said that the Council will need to approve the mayor's absence (blanket consent) from the City for more than a 30 day period to comply with the charter. Council tabled this agenda item until the next meeting.

e) Review of April 29 and May 2, 2002 Special Meeting:

Mayor Lotis Hanks read the agenda for the April 29, 2002 special meeting. The agenda included Call to Order, Flag Salute, Roll Call, clarify terms of Phil Lieberman's 30 day notice period, Interim City Administrator, and adjourn. Gary Filpi made a motion to approve the minutes of the special meeting on April 29, 2002. Bob Cullen seconded the motion. There was no discussion and the motion passed unanimously.

Mayor Lotis Hanks read the agenda for the May 2, 2002 special meeting. The agenda included Call to Order, Flag Salute, Roll Call, Work Session- tour of industrial site for sewer treatment plant, Discussion of Montgomery Watson Pre-design report, and adjourn. Gary Filpi made a motion to approve the minutes of the special meeting on May 2, 2002. Marianne Mitchell seconded the motion. There was no discussion and the motion passed (5 votes aye and 1 abstention) with Bob Cullen abstaining (he was absent from this meeting).

10. OLD BUSINESS:

a) Approval of pre-design report to be sent to funding agencies and DEQ:

Richard Van Orman said that the Council has had time to review the draft (wastewater treatment plant) pre-design report presented by Montgomery Watson. Richard Van Orman said that he talked to Tim McFetridge, from DEQ and he said that he forwarded the 20 NPDS violations that the City had in August and September, 2001, to the Portland office for possible assessment of civil penalties. The exact amounts of the fines will be given to the City in 2-3 weeks. Richard Van Orman said that he recommends that the City Council accept the pre-design report to be forwarded to the funding and regulatory agencies for their review and comment. Jerry

Overgard- COG, said that the City cannot **approve** the pre-design report until the regulatory and funding agencies have approved it.

Bob Cullen asked where the City is at with the MAO (Mutual Agreement Order).

Ron Ross said that the current plant hasn't even been repaired yet, so the City doesn't even know if the plant can meet the numbers (permit-proposed MAO) yet. Ron Ross said that once the City enters into an MAO, the City will be strictly held to its terms. Discussion ensued.

Laura Laird, 820 Jackson Ct., said that Ron Ross has a good point, and she wanted to know if sending this document (pre-design report) sets out the terms for the MAO (Mutual Agreement Order). Laura Laird said that she thought that the MAO was completely separate. Jerry Overgard suggested pulling the MAO out of the pre-design report, before it is sent to the funding and regulatory agencies.

Brett Teel said that the MAO was only a draft and was added a few days before the report went out, and it was for informational purposes only. There is no binding MAO agreement in place. John Yarnall, Westech Engineering, is working with DEQ on establishing an MAO. Discussion ensued.

Mike Lewis, 580 Jackson St.- said that he didn't know anything about 20 violations last year, and if there were violations, they were most likely made up. Ron Ross said that is beside the point, because there were suggested improvements to avoid violations in the future and the diffusers (part of the improvements) have not been installed yet. He suggested waiting to see what happens after the diffusers are put in.

Bob Cullen asked what the timeline is for regulatory action. Richard Van Orman said that the City will be hearing from DEQ in 2-3 weeks. The question that will be presented to the funding and regulatory agencies is that IF the City did go with this design, would these agencies approve it? Ron Ross said that he wants to make it clear that re-use is still being discussed (of the current sewer plant). Discussion ensued.

Jerry Overgard said that the key to satisfying the funding agencies is to satisfy DEQ.

The Council requested staff to ask John Yarnall (Westech Engineering) to come to the meeting when the MAO will be discussed.

Gary Filpi said that he is convinced that the City needs to move forward on this project. This pre-design report should be submitted (with the MAO removed) to the funding and regulatory agencies to show that the City is moving forward on this. Any additional issues about re-use can be submitted at a later time.

John Wright, Assistant Sewer Plant Operator- said that he spoke with Sanitaire (manufacturer of diffusers for sewer plant) and they said that it will be delivered the first part of June. John Wright said that the diffusers will get the plant through the next 2 years (with anticipated growth) until the new plant is built. John Wright said that if there is another stall in this project, DEQ told him that a stop will be placed on all sewer connections.

Jerry Overgard said that the funding agencies concerns are that this project has been dragging on and on and on. The funding contracts are just about to expire. The plant should have been built by now. Their other concern is the increased cost of the plant. The two issues seem to go hand in hand as the longer the project drags on, the more it costs to build things. Discussion ensued.

Jerry Overgard said that he wanted to give everyone a basic chronology of this project. The City hired a reputable engineering firm (Westech Engineering) in 1998 to do a facilities plan. That plan included the issues of collection, transmission, treatment, and disposal (including reuse). It was determined that reuse was not a viable option. The City decided to hire another reputable firm (Montgomery Watson) to review that facilities plan, and restudy all of the same issues. The current pre-design report says that reuse is also not a viable option.

Ron Ross said that he wants a third opinion. Richard Van Orman said that the third opinion will come with the value engineering.

Discussion ensued.

Ron Ross made a motion to remove appendix A from the pre-design report, and attach a cover letter from the City saying that the Council is still looking at other issues, and approve the pre-design report to be sent to the funding and regulatory agencies. Joe Giesbers seconded the motion. There was no discussion and the motion passed with Ron Ross, Gary Filpi, Marianne Mitchell, Bob Cullen, and Joe Giesbers voting aye, and Richard Jewell voting nay.

11. CORRESPONDENCE / DISCUSSION / INFORMATION:

None.

12. COMMITTEE REPORTS:

a) Heritage Days

None.

b) Parks, Open spaces, Wetland & Conservation

None.

c) Community Center Update

None.

d) Public Works

None.

e) Public Safety

None.

f) Planning

None.

13. MAYOR'S REPORT:

None.

14. ADJOURN:

Bob Cullen made a motion to adjourn. Joe Giesbers seconded the motion. There was no discussion and the motion passed unanimously. The meeting was adjourned at 10:34 p.m.

Minutes approved on this 23rd day of May, 2002.

APPROVED:

ATTESTED:

Mayor Lotis Hanks

Richard Van Orman, Interim City Administrator