

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 p.m.

Councilors Present: LaMear, Herzig, Warr, Mellin, Mayor Van Dusen.

Councilors Excused: None

Staff Present: City Manager Benoit, Community Development Director Estes, Public Works Director Cook, Fire Chief Ames, Police Chief Curzon, Library Director Tucker, Parks and Recreation Director Cosby, Finance Director Carlson, Planner Johnson and City Support Engineer Moore. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

### REPORTS OF COUNCILORS:

**Item 3(a): Councilor Herzig** reported that the next City Council meeting, on Monday, August 19, 2013, would begin at 6:30 p.m. to hold a 30-minute question and answer session about the trip to Walldorf, Germany prior to the regular City Council meeting. Council members will show photographs and share stories of their trip.

**Item 3(b): Councilor LaMear** reported that the trip to Germany was wonderful and amazing, adding that the residents of Walldorf appreciated City Council's presence. Council members were representing the citizens of Astoria. The experience was remarkable.

**Item 3(c): Councilor Mellin** stated that upon her arrival in Walldorf, she began thinking about Harry and Mary Steinbach and the other City Council members who voted to approve the Sister City relationship during a time when there was much grief over World War II. The Sister City relationship was almost an insurmountable gesture. She was honored to be in Walldorf fifty years later. She believed the trip honored Mr. Steinbach. Councilor Mellin has received several phone calls about burning trash within the city limits. She asked Chief Ames to explain the City's burning policy.

Chief Ames explained that the burn permit process allows residents to burn certain items in their yard when correct procedures are conducted. The burn permit is valid for two years and costs \$50.00. The permit can be renewed for one extra year for \$35.00. Currently, guidelines are provided with the burn permits, so he created a list of guidelines to explain what should and should not be burned. The guidelines also include a statement that encourages permit holders to contact the Fire Department when a neighbor becomes disturbed by burning. The Fire Department will respond to the complaint. Fire season restrictions occur throughout the State every year in July that limit burning above and beyond the City's burn permit process; for example, burning is only allowed from daylight until 10:00 a.m. by permit only and trash must be burned in a barrel with an adequate screen. Diapers, plastic and other similar items are never allowed to be burned. Only items that do not cause problems, like paper and unpainted wood, should be burned. Campfires are allowed in back yards as long as certain restrictions are met: fires can be no larger than three feet; the fire must be used for cooking, warming, or ceremonial purposes only; tended at all times; and extinguished prior to going back inside the home. The Fire Department will respond to complaints regarding campfires as well. When complaint calls are made to the Fire Department's business line and no one is available to answer the call, he suggests calling 9-1-1. If a fire is serious enough that it is causing a problem, the Fire Department wants the opportunity to respond to the issue. Residents can call or stop by the Fire Department anytime to learn more about the burn permit process, which is slowly evolving over time.

**Item 3(d): Councilor Warr** reported that he was thrilled about the opportunity to go to Walldorf to participate in the Sister City celebration. He and his wife spent some extra time visiting other parts of Europe. He announced that on Tuesday, August 6, 2013, the Northwest Area Commission on Transportation will be holding its third video conference to review applications for the Enhanced Funding for 2015 to 2018. He hopes the committee can make recommendations for the projects that would receive funding in early September 2013.

**Item 3(e): Mayor Van Dusen** asked City Manager Benoit for an update on the Garden of Surging Waves. City Manager Benoit stated that a lot of work is currently underway. Marble dragon columns will be

upright by Friday, August 9<sup>th</sup> in time for the Regatta parade on Saturday. Two weeks after the columns are set, artists will begin fabricating the mosaics and wood beams. He also reported that recently the Garden's project designer, Suenn Ho, is no longer with Mulvaney G2, which made staff reductions due to a slowdown in business. The firm's project architect will continue to work with Ms. Ho to ensure that the Garden of Surging Waves project continues as planned. Ms. Ho had informed him a week ago that she and her husband were both let go from Mulvaney G2.

Director Estes added that he contacted Mulvaney G2 after receiving an email from Ms. Ho. He spoke with Project Architect Brandon Soens, who assured Director Estes that the City's contract with Mulvaney G2 will continue with the same structural engineering consultant team. Director Estes told Mr. Soens that Ms. Ho has been an integral part of the project from the beginning and some key decisions are currently being made with regard to the artisans. Staff has been working hand in hand with the artisans to make sure that the design intent is being met. Mr. Soens said he would be working with Ms. Ho on a contractual basis so she can continue working on this project. Director Estes told Mulvaney G2 that the City felt she needed to be involved in the project, specifically for some of the design intent issues.

Mayor Van Dusen suggested the agenda packets be downloaded to the iPads sooner as the packet was not downloaded until late last night.

#### **CHANGES TO AGENDA:**

Councilor Herzig added Item 6(h): Proposal to Set Up Funding to Assist Residents Experiencing a Hardship Paying Water and Sewer Bills for discussion.

#### **CONSENT CALENDAR:**

The following items were presented on the Consent Calendar:

5(a) City Council Minutes of 7/1/13

5(b) Boards and Commission Minutes

(1) Design Review Committee Minutes of 6/6/13

(2) Historic Landmarks Commission Minutes of 6/18/13

(3) Planning Commission Minutes of 6/25/13

(4) Traffic Safety Committee Minutes of 6/25/13

**5(c) Libraries ROCC! LSTA Grant 2013-2014, Extending Service to the Unserved (Library)**

5(d) Resolution Amending Liquor License Application Process (Community Development)

5(e) Resolution Amending Volunteer Employees' Workers Compensation Coverage (Finance)

5(f) 2013-2014 Coastal Zone Management Planning Assistance Grant (Community Development)

**5(g) Ready to Read Grant Application 2013-2014 (Library)**

5(h) Adair-Uppertown Historic Properties Inventory/State Historic Preservation Office Certified Local Government Grant Close-out Report (Community Development)

**5(i) Approval of Arlene Schnitzer Capital Gift Agreement for Garden of Surging Waves (Community Development)**

**5(j) 11th Street CSO Separation Project - Construction Update (Public Works)**

5(k) Resolution Scheduling Public Hearing for Vacation of a Portion of 1st Street Right-of-Way (Public Works)

Mayor Van Dusen asked if any member of the community requested the removal of an item on the Consent Calendar. There were none. Mayor Van Dusen asked if any member of City Council would like an item on the Consent Calendar removed for further discussion.

Councilor Herzig requested Items 5(c) and 5(g) be removed. Mayor Van Dusen requested Items 5(i) and 5(j) be removed for further discussion.

**City Council Action:** Motion made by Councilor LaMear, seconded by Councilor Mellin, to approve the Items 5(a), (b), (d), (e), (f), (h), and (k) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

**Item 5(c): Libraries ROCC! LSTA Grant 2013-2014, Extending Service to the Unserved (Library)**  
**Item 5(g): Ready to Read Grant Application 2013-2014 (Library)**

Councilor Herzig noted that Items 5(c) and 5(g) were both in regards to the library. The Libraries ROCC! Grant provided \$95,000 to ensure that no child in Clatsop County is without a library card, which is a remarkable achievement. The library is also applying for a grant for \$1280 for a reading program for young children, from birth through age five years. He wanted to recognize how much the library brings to the community. On Tuesday, August 6, 2013, a public meeting will be held to discuss the library renovations. The meeting will begin at 5:30 p.m. at the Liberty Theatre. He reiterated that he pulled these items off the Consent Calendar because the library is often not recognized for all it does to make Astoria and Clatsop County a good place for children to grow up.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Mellin, to approve the Items 5(c) and (g) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

**Item 5(a): Approval of Arlene Schnitzer Capital Gift Agreement for Garden of Surging Waves (Community Development)**

Mayor Van Dusen explained that Item 5(i) regarded an agreement made with Arlene Schnitzer, who made a generous donation of \$250,000 to the Garden of Surging Waves. He did not have the words to express the appreciation that the City Council and the community have for the donation. Mayor Van Dusen wanted to take this opportunity to thank Ms. Schnitzer publicly for her contribution to such an important project.

**City Council Action:** Motion made by Mayor Van Dusen, seconded by Councilor Warr, to approve the Item 5(i) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

Mayor Van Dusen added that when the Walldorf, Germany community visited Astoria in the early 1990s, they nominated Jordan Schnitzer, a prominent Jew in Oregon, for the Freedom Award in Germany, the highest award that any non-German can receive from Germany. Astoria has quite a relationship with Walldorf, especially with Jewish Mayor Steinbach and the Schnitzer family, which is remarkable and important.

**Item 5(j): 11th Street CSO Separation Project - Construction Update (Public Works)**

Mayor Van Dusen requested an update on the 11<sup>th</sup> Street CSO Separation Project. Director Cook stated that the project is going well despite many challenges. The project is about 50% complete. All of the materials at the staging area will be installed on the upper part of 8<sup>th</sup> Street. Mayor Van Dusen asked Director Cook to clarify what he meant by 50% complete. Director Cook replied that Irving Street was just closed at 8<sup>th</sup> Street, so the section of 8<sup>th</sup> Street between Harrison Avenue and Irving Avenue is currently under construction. A sign has been installed at the intersection of 8<sup>th</sup> Street and Niagara Street, which only allows local traffic on 8<sup>th</sup> Street. Detours direct traffic to 15<sup>th</sup> Street, turn left and proceed to 16<sup>th</sup> Street or 14<sup>th</sup> Street. Paving will be done along 8<sup>th</sup> Street and Franklin Avenue on August 7<sup>th</sup>.

Cindy Moore, City Support Engineer, stated that the installation of pipe has been completed on 10<sup>th</sup> Street, 11<sup>th</sup> Street, and 12<sup>th</sup> Street, so only 8<sup>th</sup> Street and 9<sup>th</sup> Street remained. On August 6<sup>th</sup>, 10<sup>th</sup> Street will be paved in preparation for the parade on Saturday, August 10, 2013. After this is complete, 8<sup>th</sup> Street will be paved from Duane Street to Franklin Avenue, possibly to Grand Avenue. 8<sup>th</sup> Street will be open past the Exchange Street parade route to Franklin Ave so traffic can be routed up and over the hill. Staff has been working closely with the Police Department and the Regatta Committee to ensure accessibility.

Councilor Herzig said he was glad to see the water trucks out more frequently. The summer has been dry and a lot of dust has been kicked up on the streets. He told the Public Works Department to keep up the good work. He noticed that some of the newly installed curb cuts have temporary asphalt. He asked if that would be fixed when the streets are paved. Engineer Moore explained that the Public Works Department would like to do an overlay; however, the curbs and ramps must be installed first. Temporary asphalt ramps have been installed in some areas to ensure safety. The overlay will be an inch and a half thick.

Councilor Herzig said the signage is a nightmare and acknowledged that the department is doing all they can. There are some significant bumps on 11<sup>th</sup> Street, from Irving Ave down, and there are no signs to warn drivers about the bumps. He suggested the addition of a sign if 11<sup>th</sup> Street will not be paved soon. Mayor Van Dusen added that the manhole covers are also a hazard. Councilor Herzig noted that more than a month ago, a driver drove into a ditch in an attempt to avoid a manhole cover on 10<sup>th</sup> Street. The Public Works Department has now put up better traffic cones. He thanked the department noting that keeping up with signage can be difficult.

Mayor Van Dusen reminded that this project was mandated.

## **REGULAR AGENDA ITEMS**

### **Item 6(a): Intergovernmental Agreement with Oregon Department of Transportation for Riverfront Vision Plan Implementation (Community Development)**

In 2008-2009, the City of Astoria worked on a Riverfront Vision Plan to address issues dealing with open space, land use, and transportation issues along the Columbia River. Significant public involvement opportunities were designed to gain public input. This process was initiated to plan for these issues in a comprehensive manner and to set a framework for the future of the study area. The City's north Riverfront was divided into four Plan areas of development: Bridge Vista, Urban Core, Civic Greenway, and Neighborhood Greenway. On December 7, 2009, after holding a final public hearing, the City Council accepted the Riverfront Vision Plan. For Fiscal Years 2012-2013 and 2013- 2014, the City Council set goals to "Implement Riverfront Vision Plan on a Zone by Zone Basis."

At its August 2, 2012 meeting, the City Council approved submittal of a funding application to the Department of Land Conservation and Development (DLCD) to fund code-writing activities for up to two areas of the Riverfront Vision Plan. The funding would be a Transportation Growth Management (TGM) grant through the Oregon Department of Transportation (ODOT). On October 22, 2012, the City was notified that the project had been approved for funding of \$92,000 with no required cash match by the City. Under the TGM program, no cash is provided to the City and ODOT uses the services of planning firms already under contract with ODOT. The proposed Code Assistance Project is for the implementation phase of the Astoria Riverfront Vision Plan. Phase 1 of the project would develop land use codes and/or new zones for the Civic Greenway Plan Area. Phase 2 of the project would develop land use codes and/or new zones for the Bridge Vista Plan Area, contingent upon available funds. The consultant team identified by ODOT to work on this project is Angelo Planning Group. The draft Intergovernmental Agreement with ODOT, including the proposed Scope of Work, is attached for Council consideration. It is recommended that the City Council authorize the Mayor to sign the Inter- governmental Agreement with ODOT for the Riverfront Vision Implementation code assistance project.

Mayor Van Dusen stated that the Community Development Department should be applauded for their work on this project. This team effort included every City department, City Council, and the community; however, the Community Development Department served as the team captain. Work began in 2007, and it can be easy to lose momentum, but the City is following through with the project.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Herzig to authorize the Mayor to sign the Inter-governmental Agreement with ODOT for the Riverfront Vision Implementation code assistance project. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

### **Item 6(b): Purchase of Vector Truck (Public Works)**

The City's sewer cleaner vacuum truck was purchased in 1999 and has the hour equivalent of over 500,000 miles on the main engine. Over the last two years, \$31,000 has been spent for major repairs and there are indicators that additional major repairs will be needed very soon. Vac-Con and Vector are the only combination sewer cleaner vacuum trucks that are offered by the Nation Joint Power Alliance (NJPA). The NJPA is a public agency that serves as a municipal contracting agency. Astoria has been a member of NJPA since April 2012. The Public Works Department investigated both the Vac-con and the Vector trucks and determined that the Vector performed better and it appeared that critical wear parts would be easier to acquire when repairs are needed. It is recommended Council approve the lease/purchase of a Vector combination sewer cleaner vacuum truck from Owen Equipment, through the NJPA, not to exceed \$390,000 in five payments of approximately

\$80,000 per year and to authorize the disposal of our current Vactor at auction. There are funds budgeted in the Public Works Improvement Fund for the first payment.

Mayor Van Dusen reminded that the purchase of this vehicle was discussed at length during budget planning meetings. The decision to purchase the truck was not made lightly.

**City Council Action:** Motion made by Councilor LaMear, seconded by Councilor Mellin to approve the lease/purchase of a Vactor combination sewer cleaner vacuum truck from Owen Equipment, through the NJPA, not to exceed \$390,000 in five payments of approximately \$80,000 per year and to authorize the disposal of the City's current Vactor at auction. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

**Item 6(c): Authorization to Award Contract – Sale of Excess City Property (Public Works)**

At the April 15, 2013 meeting, the City Council authorized staff to solicit Request for Proposals (RFP) from local real estate firms to market excess City property. Staff issued the RFP in May and the only response received was from Area Properties. Area Properties has proposed a commission of 6% of the sale price. There would be no commission paid until the property closed. All advertising, web presence and signage would be paid by Area Properties. Note that prior to any marketing of City-owned property by Area Properties, selected properties would first be presented to the City Council for review and approval. It is recommended that Council award a contract to Area Properties for the sale of excess City Property.

Councilor Warr requested a map that identified the properties, so City Council could review the properties since each one will need to be approved prior to putting them up for sale. City Manager Benoit said he would prepare a map. A list of properties that staff believes are appropriate for selling is included in the agenda packet. Prior to listing any property through Area Properties, City Council will receive a detailed description of each property. Staff is not requesting approval of a master list.

Councilor Herzig requested that staff arrange a tour of the properties, which belong to the citizens of Astoria and he would like to visit the properties. He understood this will be a lot of work; however, it is important for him to see the properties prior to selling them. City Manager Benoit stated this is a great suggestion, but there are more than 100 properties and some are very small. He suggested several tours be arranged as properties are grouped together for potential sale.

Mayor Van Dusen agreed visiting the properties is a great suggestion. He explained that he originally thought these properties were buildable vacant lots, but confirmed with City Manager Benoit that the Yacht Club would fall under this agreement.

Councilor Herzig added that public input is an essential part of this process. He requested a public hearing be held at the City Council meeting immediately following the meeting that staff recommends a property be sold. This gives the public two weeks to prepare for expressing their concerns about the properties. He did not want to short change the public input process.

Mayor Van Dusen agreed with Councilor Herzig. Councilor Warr noted that conducting a separate hearing for each piece of property would be cumbersome. Councilor Herzig clarified his suggestion was that a single public hearing would be conducted for each package of properties presented to Council, depending on the size of the package presented. Mayor Van Dusen and Councilor Herzig agreed more public input on this issue is necessary.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor LaMear to award a contract to Area Properties for the sale of excess City Property. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

**Item 6(d): 17<sup>th</sup> Street Dock Replacement Project – Pay Adjustment (Public Works)**

On June 25, 2012, the Astoria City Council awarded a construction contract to Bergerson Construction in the amount of \$4,266,137.00 for the 17<sup>th</sup> Street Dock Replacement Project. The project construction commenced on September 1, 2012 and is complete. Following is a list of pay of adjustments:

Pay Adjustment	Amount	Contract Amount	Contingency Balance	Contingency Balance %
		\$4,266,137.00	\$400,000.00	100%
1	(\$23,297.00)	\$4,242,840.00	\$423,297.00	106%
2	\$11,934.84	\$4,254,774.84	\$411,362.16	103%
3	\$50,053.18	\$4,304,828.02	\$361,308.98	90%
4	\$62,820.78	\$4,367,648.80	\$298,488.20	75%
5	\$93,818.99	\$4,461,467.79	\$204,669.21	51%
6	\$29,745.90	\$4,491,213.69	\$174,923.31	44%

( ) = credit

Pay Adjustment #6 (Current) - Queen of the West landing revisions, unanticipated electrical power repair work off-site and various guardrail modifications and other miscellaneous items. It is recommended that Council authorize Pay Adjustment #6, which will result in a contract increase of \$29,745.90.

Mayor Van Dusen asked if the project has been completed. Director Cook said the items listed in the agenda packet are the only tasks that still need to be completed. He believed this was one of the best projects for Astoria. The dock will last a long time and require minimal maintenance.

Councilor Warr noted that two cutters and a smaller vessel are tied up at the dock, which looks wonderful.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Mellin to authorize Pay Adjustment #6, which will result in a contract increase of \$29,745.90. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

**Item 6(e): Public Hearing and Ordinance Regarding Historic Properties Ordinance Amendment A13-03 (1<sup>st</sup> Reading) (Community Development)**

The Historic Properties Ordinance, Article 6 of the Astoria Development Code, was last updated in 1992. This ordinance establishes how historic properties are designated, the process for review of exterior alterations, new construction, demolition, appeals, and lists exceptions to the review process. In January 2008, the City Council adopted a Historic Preservation Plan, which identified suggested amendments to the ordinance and proposed projects to support historic preservation. Within the last few years, the State and National terms used for historic properties has changed and, therefore, the City Historic Properties Ordinance needs to be amended to reflect the new terminology. Staff took the opportunity to improve and clarify the Code at the same time. The proposed Code amendments would add the new State historic property classifications and references and would provide code provisions to improve the review process as outlined in the memo. The proposed amendments would provide for three levels of review for historic properties (Types I, II, and III) rather than all requests being reviewed by the Historic Landmarks Commission. The intent of these amendments is to allow simple reviews and to ease the burden of reviewing simple projects at the Historic Landmarks Commission level. This would result in an easier, quicker permit review for applicants making historic preservation less burdensome to property owners and contractors.

At its July 16, 2013 meeting, the Historic Landmarks Commission held a public hearing and unanimously recommended that the City Council adopt the proposed amendment. A copy of the Staff Report and Findings of Fact as adopted by the Historic Landmarks Commission is attached. Also attached to this memo is the proposed ordinance. A public hearing on the Amendment has been advertised and is scheduled for the August 5, 2013 City Council meeting. It is recommended that the Council hold a public hearing and adopt the ordinance as recommended by the Historic Landmarks Commission. If the Council is in agreement with the recommendation of the Historic Landmarks Commission, it would be in order for Council to conduct the public hearing and hold a first reading of the Ordinance.

Mayor Van Dusen called for questions from City Council. There were none. He asked if anyone had any objections to the jurisdiction of the City Council to hear this matter at this time. Hearing none, Mayor Van Dusen asked if any member of the City Council had a conflict of interest or ex parte contact to declare. There were none. He explained the procedures governing the conduct of public hearings to the audience and advised that the substantive review criteria were listed in the Staff report, which is available from staff.

Mayor Van Dusen opened the public hearing at 7:35 p.m. and called for a presentation by the Applicant.

Brett Estes, Community Development Director/Assistant City Manager, 1095 Duane St, Astoria, explained that the code amendments would update the City's code to match the State Historic Preservation Office (SHPO) classifications of historic buildings. Terminology in the amended code reflects current terminology used by the state. Code amendments also make the permitting process easier for property owners. Routine permits can be obtained over the counter. Other permits would still receive public review, but would be reviewed by staff. The Historic Landmarks Commission (HLC) discussed these amendments when developing the Historic Preservation Plan in 2008. The proposed code amendments streamline the process for citizens who own historic properties while still providing the historic review process for the community.

Mayor Van Dusen stated that City Council has always tried to be respectful to the other committees and commissions and that Council values their opinions. He asked if the HLC voted to recommend these amendments to City Council. Director Estes explained that the HLC reviewed the code amendments last month and voted unanimously to recommend the code amendments to City Council. He noted the HLC Chair was in the audience. Mayor Van Dusen asked if the Chair wanted to comment.

LJ Gunderson, President, Historic Landmarks Commission, 413 Franklin Ave, stated that the HLC fully supported the code amendments. Making the permitting process as easy as possible encourages property owners to continue improving and restoring their properties. Property owners will be able to obtain permits and receive approval of projects faster at the staff level since they will not have to wait for a HLC meeting, which occurs only once a month.

Councilor Herzig said that Council has a copy of the technical language involved with the code amendments. He thanked the HLC for doing all of the detailed work. It was a laborious process and he appreciated the time and energy that has gone into creating these amendments.

Mayor Van Dusen called for anyone wanting to speak in favor of, impartial to or against the Historic Properties Ordinance amendments to come forward. Hearing none, Mayor Van Dusen closed the public hearing at 7:39 p.m.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Mellin, to conduct the first reading of the Historic Properties Ordinance Amendment A13-03. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

Fire Chief Ames conducted the first reading of the Historic Properties Ordinance Amendment A13-03.

**Item 6(f): 11<sup>th</sup> Street CSO Separation Project – Pay Adjustment #2 (Public Works)**

In March, Council awarded the construction contract to Tapani, Inc., for the bid amount of \$5,717,177. Staff recommended and incorporated a 15% contingency on this project due to the scope, scale, and potential for encountering unknown conditions during construction. The construction contingency of 15% is \$857,577. Only one pay adjustment of \$4,391.37 has been processed to date on this project that began construction on April 1st.

Pay Adjustment No. 2 for \$35,877.10 is extra costs incurred by the City due to Centurylink underground telephone wiring conflicts on the 11th Street CSO Separation project. There are a number of reasons for these conflicts including uncharacterized conduits, duct banks, and vaults during design and unmarked or inaccurately marked utilities during design and construction. The costs include extra work to confirm location of utilities by potholing, standby costs, re-coring manholes to adjust grades, and adjustments to water, storm and sanitary sewer line locations and grades.

City staff is working with the City Attorney to prepare the necessary documentation to submit a claim to Centurylink for these additional costs. It is possible that more costs could be incurred as construction will be ongoing through the end of the year. It is recommended that the City Council authorize Pay Adjustment #2 for the 11th Street CSO Separation project for \$35,877.10. Funds are available for this project through IFA funding to be reimbursed by Centurylink.

City Manager Benoit noted that Items 6(f) and 6(g) were both related to change orders on the CSO Separation Project. Item 6(f) was separated out as its own item because staff would like to track the pay adjustment separately.

Engineer Moore explained the City has remained in contact with Centurylink to update them on plans and make them aware of potential conflicts since October 2012, the beginning of the CSO project. The City does not have specific information about Centurylink's utilities and relies on the franchise utilities to tell the City how deep the utilities are. Typical depths can be assumed; however in Astoria, things are not typical. No correspondence has been received from Centurylink. Centurylink has made no effort to move their utilities where there are conflicts. Franchise utilities are required to move utilities when a City project is being completed. During construction, the City found several locations where Centurylink's utilities were not marked. A vault containing telephone lines from the 1900s at 8<sup>th</sup> Street and Exchange Street has created the biggest conflict. Centurylink has been working with the City since the vault was discovered; however, these conflicts increased the cost of the project. The vault will be abandoned by Centurylink as it contains a tangled mess of spliced cables. The cables are lined with paper and are vulnerable to moisture. A bypass line is being installed at 7<sup>th</sup> Street and Exchange Street so Centurylink will be outside of the project area while they are splicing.

Councilor Mellin asked if this issue occurred in other areas. Engineer Moore said that other issues did occur, but the vault was the biggest conflict. Working around the vault and dealing with the delays cost about \$20,000. When franchise utilities fail to give the City accurate information, conflicts are found as digging occurs. Centurylink did not give the City of Astoria any information on their utilities.

Mayor Van Dusen asked if the City should send Centurylink a bill for \$35,877.10. City Attorney Henningsgaard stated that staff has done everything they are obligated to do under the City's rules and regulations. The Franchise Agreement, which needs to be updated, clearly requires utility companies to relocate their wires. The City recently adopted an ordinance that includes the same requirement and also requires utility companies to provide the City with digital information about the location of the utilities. Centurylink has not complied with either requirement. He hoped to use this opportunity to receive the reimbursement and obtain an accurate map of Centurylink's utility locations.

**City Council Action:** Motion made by Councilor LaMear, seconded by Councilor Mellin to authorize Pay Adjustment #2 for the 11th Street CSO Separation project for \$35,877.10 and pursue reimbursement by Centurylink. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

**Item 6(g): 11<sup>th</sup> Street CSO Separation Project – Pay Adjustment #3 (Public Works)**

In March, Council awarded the construction contract to Tapani, Inc., for the bid amount of \$5,717,177. Staff recommended and incorporated a 15% contingency on this project due to the scope, scale, and potential for encountering unknown conditions during construction. The construction contingency of 15% is \$857,577. Pay adjustment No. 3 for \$69,521.82 includes a variety of changes that are itemized in the enclosed memorandum. It is recommended that the City Council authorize Pay Adjustment #3 for the 11th Street CSO Separation project for \$69,521.82. Funds are available for this project through IFA funding.

City Manager Benoit noted that upon approval of this pay adjustment, 91% of the project contingency, which totals \$747,000, will remain in the contingency fund. The project is about 50% complete.

Councilor Herzig referred to Page 172 of the agenda packet and noted that \$48,853.41, the largest part of the pay adjustment, was for disposal of contaminated materials. The contractor was cleaning a pipe at the 9<sup>th</sup> Street outfall and the debris deposited at an approved disposal site, where an oily substance was discovered. Testing revealed it was a non-hazardous petroleum product that had to be disposed of and the City is being billed for the disposal. He believed the contractor should be responsible for paying this bill. City Manager Benoit responded that staff has had some intense internal conversations about the bill.

Engineer Moore explained that in this case, there was no way to know the contaminated material was in the pipe, which was an isolated piece of the 9<sup>th</sup> Street outfall, which is unique in that the overflow did not go to the outfall, but back into the interceptor. The City did its best to investigate the outfall and the condition of the pipe during design. The isolated section could not be accessed during the investigation. The pipe had to be busted open in order to repair the portion that the City knew was damaged. While cleaning the outfall, in preparation for



the slip linings, the oily substance was sucked up. No one knew the substance existed and there was no way to know it was in the pipe. The substance did not give off an odor, so the crew was unaware that the substance had been sucked up. The debris was dumped according to standard protocol, which unfortunately then contaminated the dumpsite. Staff's position is that this could not have been prevented. Because the contamination came from Astoria's infrastructure, it is the City's responsibility to pay the bill. City Manager Benoit added that the contractor cleaned up the material immediately upon finding it. If cleanup had been delayed, the cost would be much greater. This is a bad situation, but the contractor was very professional and efficient in cleaning up the substance.

Councilor Herzig asked if the contractor carries insurance that might cover the cost of this bill. Engineer Moore did not believe the contractor's insurance would cover this incident. Councilor Herzig stated that when a job goes wrong, it is the contractor's job to take responsibility. He understood there was no way to know in advance about the substance in the pipe and that the City feels responsible, but it is a shame to see an almost \$50,000 bill, even though the contingency fund is still well funded. Engineer Moore understood Councilor Herzig's concerns and said the issue was difficult for staff to accept as well. All of the proper procedures were followed and it was Astoria's utility that was contaminated. The City would have had to deal with the substance one way or another.

Mayor Van Dusen said there were several ways to approach this situation, but he appreciates how the City has decided to handle the issue. Astoria is particularly unique, especially since downtown used to be a river. An unknown situation occurs on almost every project. If the unknown situation has not been budgeted, the costs must be paid. Making a habit of holding the contractor responsible for unknown situations will result in higher bids on future projects. Contractors will want to bid high enough that the costs of unforeseen issues will be covered. He believes the City is doing a better job for the citizens when it agrees to pay for these issues out of the contingency fund.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor Warr to authorize Pay Adjustment #3 for the 11th Street CSO Separation project for \$69,521.82. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin, and Mayor Van Dusen; Nays: None.

**Item 6(h): Proposal to Set Up Funding to Assist Residents Experiencing a Hardship Paying Water and Sewer Bills (Councilor Herzig)**

This item was added to the agenda during Changes to the Agenda.

Councilor Herzig thanked City Council for allowing him to add the item to the agenda. He proposed that the City create a fund, starting with a minimum of \$10,000, to assist people who are experiencing hardships in paying their water and sewer rates. The rates are increasing and many Astorians are low income, are on a fixed income, or live at poverty level. He has spoken with George Sable at Clatsop Community Action, who agreed to administer the program which would save staff from having to do a lot of administrative work. Qualifying for assistance would be similar to the energy assistance programs that Clatsop Community Action already administers. He added this to the agenda so that the issue can be more formally discussed at the next City Council meeting.

Mayor Van Dusen said discussing the fund was a great idea. He called for anyone in the audience wanting to speak on this issue to come forward.

Laurie Caplan, 766 Lexington Ave, Astoria, said she has spoken with Councilor Herzig about creating the fund because she has been in gatherings where people are panicked and upset. She recalled that City Manager Benoit had stated at the City Council meeting on July 1, 2013 that the water and sewer rates would continue to increase. The audience verbally reacted negatively. Even if a resident can afford to pay the bill, it is still a chunk of money that you would want to spend on fun or other bills, clothes, restaurants or other things. The higher rates are taking up so much of residents' incomes. She has noticed an increase in dead lawns in Astoria and believed this was because people are not watering the lawns as a means of reducing their water bills. This is a rational decision for individuals, but some of the blocks in town look dingy and uncared for. This is not good for the overall effect of residence and visitors. If people continue to neglect their yards, property values will be affected. She encouraged City Council to follow through with creating a fund with a minimum of \$10,000 and work with Clatsop County Community Action to recalibrate the funds needed as the program continues.

City Council agreed to add this item to the agenda and conduct a public hearing at the next City Council meeting on August 19, 2013.

## **NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS**

Laurie Caplan, 766 Lexington Ave, Astoria, asked if it would be a good time to reexamine the City's contract with Centurylink and see if another vendor would be more responsive and follow through on the contract to keep the City from having to deal with a company that does not care very much. City Manager Benoit stated he was unaware of the City's options. Changing telecommunications vendors would be similar to switching gas companies, as a lot of infrastructure would be affected. City Attorney Henningsgaard stated the problem is that the utility owns the power lines and distribution system. The only way to change vendors would be to condemn their system, which would be expensive.

Mayor Van Dusen said there are other ways to get Centurylink to respond, such as through the state legislature.

Bill Tosslen, 101 South Harbor, Aberdeen, Washington, stated that he has spoken with some City Councilors and understood the law regarding personal property. No one would like the City to tell him or her what they can do with their personal property. Two and a half years ago, his son, daughter-in-law, and their two children moved to Astoria. His son brought a business to Astoria and has started two more businesses in the last six months. Raw sewage continues to leak across his basement floor, which is a landlord/tenant issue. The landlord was unresponsive for so long that the sewage has caused a toxic, weapons grade mold to develop. Raw sewage has leaked out of the basement on to other private property owned by other people on the block. A claim has been made with the Department of Environmental Quality (DEQ). He has done everything he can do to bring this issue to someone's attention. He does not want the City to tell him what to do with his property, but the issue is so egregious. The paradox is that his son and family are low income, and tax money has been paying for the ridiculous medical expenses they have had over the last year, not knowing specifically what the medical problems were. He paid a lab to test the mold. The pediatrician and doctors are writing letters. He has been on the phone for about two week and he is angry about the situation.

Mayor Van Dusen clarified that the raw sewage leak was in the residence, not the businesses. Mr. Tosslen stated the family has moved out of the house with the raw sewage leak. His concern is that there are no laws to prevent the homeowner from improperly cleaning the mold and renting the house to another family.

City Manager Benoit stated he has spoken with Mr. Tosslen about the issue and did not have any suggestions. Mr. Tosslen has characterized the situation appropriately and it is a difficult civil matter. He is aware that Mr. Tosslen has been in contact with the City, County, State, and anyone else who may be able to get involved, but there is no such law.

Mr. Tosslen added that Senator Merkley alluded to the fact that indoor air quality is being discussed in Washington D.C. The Senator's office is interested in this issue. He is concerned about the health of his family. There is no guarantee that his family will recover. His granddaughter has lost 70% of her hearing and must undergo speech therapy. His daughter-in-law has been treated for ruptured eardrums over the last six months. The mold is a serious mold. Other people in the community have had the same problem and have moved out of Astoria. His son still loves Astoria. He asked City Council to find out if something can be done to stop issues like this. The mold should be cleaned up by a hazmat crew. He hired a haz-mat crew to help his family move out of the house.

Mayor Van Dusen suggested that City Council direct staff to write a letter to Senator Merkley, Senator Wyden and Congresswoman Bonamici requesting that the issue be investigated. Legislatures receive many requests and a letter from the City may draw more attention to the situation. City Council agreed. Mr. Tosslen believed that City Council had the authority to approve additions to the International Building Code. The City can create code that prohibits the flow of raw sewage outside.

City Attorney Henningsgaard believed that Astoria's enforcement code could deal with this issue. He suggested that Mr. Tosslen's son and daughter-in-law speak with Oregon Legal Services, a low or no cost legal service funded by State filing fees. The most competent landlord/tenant lawyers in Oregon work for Oregon Legal Services. He suggested Mr. Tosslen speak with Ellen Johnson at the office in Hillsboro, who is an excellent landlord/tenant attorney. His experience with DEQ has revealed that they do not have any enforcement abilities. DEQ is the only state agency that could get involved with this situation; however, they do not have adequate

staff. Civil litigation is a venue should begin as soon as possible. Mr. Tosslen said that civil litigation is completely separate from what he was speaking about. City Attorney Henningsgaard believed civil litigation could be an avenue for Mr. Tosslen to achieve his goals.

Councilor Herzig asked if raw sewage leaking across property lines creates a public health hazard. Mr. Tosslen responded the sewage is on private property. Director Cook stated that the City prohibits raw sewage in the open. Water service is shut off upon repeated violations. Mayor Van Dusen stated this would prevent another family from moving into the home with mold.

City Manager Benoit asked for the address to the property. Mr. Tosslen stated the house is at 762 5<sup>th</sup> Street, Astoria. The neighbors are upset about the smell of the sewage. A neighbor two houses away has complained of the smell of raw sewage since before Mr. Tosslen's family moved into the home.

Tamara Stanley, 2044 SE D St, Astoria, referred to Consent Calendar Item 5(k) and asked about the next step in the vacating of 1<sup>st</sup> Street. City Manager Benoit explained that City Council approved the scheduling of the public hearing, which will be held either on August 19<sup>th</sup> or the first meeting in September 2013. He confirmed Ms. Stanley would like to sell a house that is intruding upon the right-of-way. Ms. Stanley added the house has been in that location since the early 1950s and has been sold many times. The house is currently up for sale. The right-of-way issue was brought to her attention a few months earlier.

Councilor LaMear said the City is not making a lot of progress with the Flavel properties. Since the passing of the Derelict Building Ordinance, she was hopeful that some real action would be taken with the Flavel's. She asked for an update on the Flavel properties. City Attorney Henningsgaard confirmed that after a series of meetings with the enforcement officer, it was decided that a couple of citations would be issued. In May 2013, the enforcement officer asked City Attorney Henningsgaard to review two forms of citations, about which he commented and the last he heard was the officer's concerns were sent to Director Estes.

One issue is that the City adopted a code that sets high penalties for derelict buildings. Another code section states that except as otherwise provided in the section, a violation of a provision of the code may be punishable by only a \$1,000 fine. In his opinion, this limits the City to fining no more than \$1,000. This issue can easily be remedied, and he suggested amending the ordinance to accept the derelict building sections and the penalties that have already been adopted. Some of the penalties are as much as \$7,500. He offered to present a proposed ordinance amendment at the next City Council meeting to do so.

Mayor Van Dusen asked if any part of the process allows the City to take control of the property. City Attorney Henningsgaard replied that one major problem is finances. The City could foreclose on some of its existing liens, but the City would be in the midst of an expensive legal procedure if the property owner attempted to stop the foreclosure. Foreclosures take time, the sale must be advertised to the public, and the sheriff would have to conduct the sale. This would only remove Mary Louise Flavel from the chain of title. Other claimants would still remain in the chain of title. Staff discussions went to the effect of keeping Ms. Flavel focused on doing something by issuing citations, though he did not have much faith that would happen. The idea was to see if the City could get her to act voluntarily.

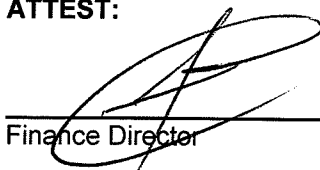
Mayor Van Dusen asked City Council if a different approach should be used. Councilor LaMear said the City has been very patient so far as the issue has been ongoing for many years. When she ran for office in 2008, it was her goal to clean up the Flavel building, and she believed every Council had that hope.

Mayor Van Dusen asked City Manager Benoit to present a different approach and options regarding the issue at the next City Council meeting for Council to discuss.

## ADJOURNMENT

There being no further business, the meeting was adjourned at 8:15 p.m.

ATTEST:

  
Finance Director

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APPROVED:

  
City Manager

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