

October 26, 2009

The Chehalis city council met in regular session on Monday, October 26, 2009, in the Chehalis city hall. Mayor Ketchum called the meeting to order at 6:00 p.m. with the following council members present: Terry Harris, Dr. Isaac Pope, Robin Fuller, Daryl Lund, Chad Taylor, and Dennis Dawes. Staff present included: Merlin MacReynold, City Manager; Bill Hillier, City Attorney; Judy Schave, City Clerk; Glenn Schaffer, Police Chief; Kelvin Johnson, Fire Chief; Eva Lindgren, Finance Manager; Peggy Hammer, Human Resources Administrator; and Bob Nacht, Community Development Director. Members of the news media in attendance included Paul Walker of KITI.

1. **Citizens Business.**

a. **Invitation to Ghosts and Legends Events.** Jupiter Arts Center and Gallery Executive Director, Robert Tomlinson, (325 N Tower, Centralia), extended an invitation to the council and citizens of Chehalis to join them for the remainder of their Ghosts and Legends events taking place through the end of October. Some of the events included: Movie Set Make-up Night; the Other Worlds Exhibition; an exhibit on the History of the Undertaking in Lewis County; movies at the historic Fox Theatre; and the Trick-or-Treat Trolley ride, which would be stopping in Chehalis, Centralia, and the Fairway Shopping Center. Mr. Tomlinson noted both cities were cooperating and doing the events together. He briefly reported on their first 'Cruse and Zombie Parade,' which brought in over 1,500 people to downtown Centralia.

b. **Support for E-Verify Ordinance.** David Schilperoot (205 Galaxie Rd) spoke in support of the E-Verify ordinance request, adding he felt it was important to have some built-in safeguards to help protect the city. He stated he wanted to lend his support and hoped it would be approved.

2. **Relay For Life Kick-off.** American Cancer Society (ACS) Staff Partner, Kitura George, reported on the 2010 Relay for Life event to take place on May 14-15, 2010, starting at 6:00 p.m. at Tiger Stadium in Centralia. Ms. George gave a brief overview of what the ACS does for the community and where the dollars go. She noted the 2010 goal was to have 50-55 teams on the track, and to raise \$150,000. Ms. George reported the Kick-Off Celebration would take place on November 18, starting at 6:00 p.m., at the Hotel Washington.

3. **Consent Calendar.** Councilor Dawes moved to approve the consent calendar comprised of the following:

a. Minutes of the regular meeting of October 12, 2009; and

b. Claim Vouchers No. 94955-95096 and No. 92009 in the amount of \$301,327.12 dated October 19, 2009.

The motion was seconded by Councilor Lund and carried unanimously.

3. **Staff Reports.**

a. **September Financial Report and Third Quarter Sales and Uses Tax Update.** Eva Lindgren stated the September report included explanatory notes at the bottom of each page. Ms. Lindgren focused on the sales and use tax, noting it was very much in line with what the projections had been for the year, and in many instances, the detailed analysis showed that the city was falling below the 2005 levels. Ms. Lindgren indicated this month should include the start of the "cash for clunkers" program.

Councilor Dawes inquired about the sales tax mitigation payments. Ms. Lindgren reported the city had received two payments and were scheduled for one more, but wouldn't know for sure until they received it. She noted she did an in-depth analysis after the first payment bringing it from zero to \$33,000; however, she didn't have an opportunity to do the same analysis of the second payment, and it dropped to between \$8,000 and \$9,000. Ms. Lindgren reported the drop in revenue was reflected in the last budget amendment, making the estimated total \$50,000 for the year.

Councilor Dawes felt the fear that everyone had expressed statewide was now realized. Ms. Lindgren noted her observation in working through the process was the squeaky wheel gets the oil. She noted with the drop in revenue, she was not seeing where they thought the city's mitigation should be reduced. Councilor Dawes noted it wasn't the city's job to have to double check the state's work, but it appeared we were going to have to because the trust factor was not there. He felt there were a number of municipalities who were not receiving the correct amount.

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Councilor Dawes noted he would be attending the Association of Washington Cities (AWC) regional meeting on Wednesday, and would check to see if other cities were pleased with the mitigation payments they were receiving. He felt it was a program that should have never been started because there was absolutely no thought to it. Ms. Lindgren believed it was well intended, but the reality was, the logistics of actually receiving good data and using it appropriately was a staggering challenge.

Councilor Harris felt the Department of Revenue (DOR) was hiding behind the fact that all of their information was privileged and the cities couldn't verify it. Ms. Lindgren noted she had access to detailed records, but she could only look at the entities that were somehow touching us, that reported a revenue stream either currently or in the past. Councilor Harris reported he was calling cities all over the state to get them involved; however, the economy was complicating things and DOR continued to verbally hide behind it. Ms. Lindgren noted the city's issue was compounded by the 2007 flood. She stated, based on her conversations with DOR, they were not going to give Chehalis any credit for the fact that we had businesses shut down for several weeks in December, and some into January.

b. **2010 Budget Preparation Schedule.** City Manager MacReynold reported they were targeting the dates of November 10, 12, and 13, for the departments to present their budgets to the budget committee. He noted the 2010 council budget committee members included Mayor Pro-tem Dawes, and Councilors Harris and Fuller. City Manager MacReynold asked the committee members to contact staff and give them some times that they would be available.

4. Council Reports.

a. **Chehalis River Basin Partnership Update.** Councilor Harris reported he attended the Chehalis River Basin Partnership meeting on the previous Friday, along with Wastewater Superintendent Patrick Wiltzius and Water Superintendent Dave Vasilauskas. He noted there were some very serious issues on the horizon, and they all depended on money. Councilor Harris reported the program itself was put together by the state and was funded almost solely by grants. He indicated they spent most of their meeting talking about how to form a non-profit, which would allow them to apply for other types of grants.

Councilor Harris stated one of the issues they were tasked with was water quality and quantity accounting. He believed if they lost their funding it would all fall into the hands of the tribes, and losing the physical handling of the river basin itself was huge. Councilor Harris reported they talked about collecting dues from each of the entities involved in the basin; however, that only meant taking money from cities who were already struggling.

b. **Chehalis Foundation Update.** Councilor Pope reported, as part of the Chehalis Renaissance, the Chehalis Foundation voted to pay for the entire amount of the pilot tree project along Chehalis Avenue.

c. **Update on Andy Sennes.** Councilor Pope reported Andy Sennes was escorted from Mother Joseph's in Olympia, to Providence Hospital in Centralia by some of the Chehalis firemen. He added it was some of the best medicine Mr. Sennes could have ever received, noting he lit up just talking about it. Councilor Pope felt it was wonderful of the guys to do that, adding you couldn't buy that kind of medicine.

d. **Chehalis Renaissance Update.** Councilor Dawes reported he, and Airport Manager Allyn Roe, attended the one-year anniversary of the opening of the Vernetta Smith Chehalis Timberland Regional Library. Their plan was to talk to people about the Chehalis Renaissance; however, they didn't get the contact they wanted because the event wasn't advertised that well.

e. **Lewis County Historical Museum Update.** Councilor Dawes reported the Lewis County Historical Museum put on a number of paranormal tours on the 16th of October at the museum. He noted the event was well attended, and they even had a couple of unusual sightings reported.

f. **AWC Regional Meeting.** Councilor Dawes reported he would be attending an AWC Regional meeting in Woodland, Washington, on Thursday, and would be talking to the other attendees to get their feelings on the streamlined sales tax mitigation issue. His hope was to get something started to possibly suspend it until the economy turns around, or until some more thought was given as to how it would actually work out.

5. **E-Verify Ordinance Request.** City Clerk Judy Schave reported the issue of an E-Verify ordinance was discussed during the last two council meetings. At the council's request, the administration provided them with copies of the two E-Verify

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ordinances: the first ordinance was from the City of Lakewood, Washington, which required e-verification on all new hires and all contracts; and the second ordinance was from Pierce County, Washington, which required e-verification on all new hires and only applied to contracts above a certain threshold level.

Ms. Schave provided three options for the council to consider. The options included:

- 1) Only applying e-verification to federal contracts, as required by the "E-Verify Federal Contractor Rule," passed September 8, 2009, which required a performance period of longer than 120 days; a value of above \$100,000; and must be performed in the United States.
- 2) Would include option 1, as well as applying it to all new hires and all new contracts.
- 3) Would include option 1, as well as applying it to all new hires and some contracts, based on threshold levels that would be established by the council.

Ms. Schave asked that the council give staff direction, and provide some parameters as to what they would like the administration to bring back to them.

Councilor Dawes asked if the city currently e-verified its employees. City Manager MacReynold noted the city currently used the standard I-9 verification.

Councilor Dawes talked briefly about what the threshold of a contract should be, adding it needed to be reasonable. Ms. Schave noted it varied; however, Pierce County's threshold was set at \$100,000. Councilor Dawes felt that might be reasonable for the city as well. Ms. Schave reported that level would probably include all of the city's public works projects. Mayor Ketchum suggested just doing the same as the federal requirements.

Councilor Dawes reported he was looking at option three; to include all new hires and contracts that were over \$100,000. He didn't see it as being labor intensive for staff to include the required language in the contract documents. Councilor Dawes believed it was up to the contractor to show proof that they E-Verify all their employees, and submit that to the city.

City Attorney Bill Hillier stated concerns with regards to the use of the small works roster process the city currently uses, noting occasionally some projects would exceed \$100,000. He suggested the council think about excluding the small works roster from the E-Verify process. City Attorney Hillier suggested if they put too much on the local contractors, they may not want to deal with it. Councilor Dawes asked if the small works roster was something the city used in emergency situations. City Attorney Hillier indicated no. He agreed that anything the city put out to bid, they could apply the e-verification process to; however from his perspective, the city would be asking a lot of the smaller contractors if they included that stipulation. Councilor Dawes wondered if it would be that much more work for them.

City Attorney Hillier thought E-Verify was a very important issue, adding he brought it up at a Municipal Attorney's Conference last week in Spokane. He asked the other attendees how many of them had experienced it, and not one had seen it. City Attorney Hillier noted he worried about the small works roster because it was a practical tool that the city used, and he would hate to create a problem with that process.

Mayor Ketchum thought it was important too, adding he would hate to see any contracts not being verified enough. City Attorney Hillier felt that would not be the issue, as much as the contractor not wanting to go through the hassle of doing it.

Councilor Dawes noted the information provided stated it was legal to have exemptions, and suggested passing something to exclude the small works roster. He indicated one of the reasons he would consider excluding it would be that the city has a history of using the small works roster with contractors that are known to the city. He stated, if it became an issue, they could always make that change later.

City Attorney Hillier believed if the city set the threshold at \$150,000 they would probably avoid 99 percent of all small works roster issues. He felt after a couple of readings to visit about it, they might be able to pin that number down.

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Councilor Harris asked if a contractor would be required to E-Verify all their employees, or just the ones working on the contract. He also inquired about what kind of liability the city would take on by requiring the contractors do that. Ms. Schave understood that the contractor would need to e-verify all of their employees, while the city only had to E-Verify employees that worked on the project, which was very rare. City Manager MacReynold believed it was still so new and so few jurisdictions were doing it, and the real concern was, does the city take on some sort of liability if after the fact they find out a contractor did in fact use illegal aliens. He believed, procedurally, things would sort out as more jurisdictions begin to implement it.

City Attorney Hillier felt it would be similar to the prevailing wage laws, noting the city's obligation was to get the certification from the contractor, and if they were in violation the state would go after them and the city would not be liable. He felt the bigger concern would be stop order issues if a contractor violated their obligation, which could cause project delays and potential lawsuits from sub-contractors.

Councilor Fuller asked if the city was following all of the rules when it hires employees. Ms. Schave indicated the city was meeting its requirements for both hiring employees and awarding contracts.

Councilor Dawes stated with any bid process there was a list of assurances, especially when federal funds were involved. He didn't believe any entity would be found liable if they were complying and something came up in the middle, or after a project was completed.

Mayor Ketchum suggested they go with the federal mandate for now and revisit the issue in six months.

Councilor Harris moved to apply the E-Verify Federal Contractor Rule for now and revisit the issue in six months.

Councilor Pope seconded the motion.

Councilor Harris stated one of the things he had learned the hard way was, when you are on the cutting edge, you are usually the first one to get cut. He indicated he would like to wait until it had been tried and tested, instead of being the ones to do the trying and testing.

The motion carried 6-1, with Councilor Dawes voting against the motion. Councilor Dawes explained that he wasn't against the motion, he would just like to see the city proceed.

6. Critical Areas Ordinance (CAO) and Associated State Environmental Policy Act (SEPA) Checklist Preview.

Bob Nacht reported the administration was requesting a public hearing on November 9, 2009, at 6:05 p.m. on the CAO and the associated SEPA checklist. He noted the proposed CAO was mandated by the state growth management act, and he and staff had been working on it for about a year and a half. Mr. Nacht indicated the city currently had a contracted consultant working on the project, and they were trying to get it through the city and state process before the end of the year.

Mr. Nacht reported the ordinance would replace the city's current CAO, which dealt with flood hazard areas, wetlands, critical aquifer for recharge areas, fish and wildlife habitat, and geologically hazardous areas. He stated the proposed ordinance was not significantly different, noting: the floodplain regulations did not change, it just put them into a different section; wetland regulations changed a little to comply with the growth management act and best available science criteria; landside areas were about the same as what the city currently had; fish and wildlife habitat areas would change some; and the shorelines, streams and wetlands of the state would change based on the best available science. Mr. Nacht expected the wetlands, streams, and habitat areas to be significantly affected. He encouraged the council to read through the document, and to call or email him about any questions they might have with regards to the proposal.

Councilor Taylor moved to set the date and time of November 9, 2009, at 6:05 p.m. for a public hearing on the draft CAO and the SEPA determination relating to the ordinance.

The motion was seconded by Councilor Harris and carried unanimously.

7. Ordinance No. 848-B First and Final Reading – Council Medical Benefits. City Manager MacReynold reported state law was very quirky about changing benefits for elected officials, noting medical benefits could be changed at any time

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during the year; however benefits for dental, vision and life insurance only applied to future elected officials. City Manager MacReynold indicated the ordinance would apply to the three at-large positions currently up for election, beginning in January 2010; and the other four positions at the beginning of 2012. He reported the dental, vision, and life insurance benefits were time sensitive and the council would need to take action on them prior to the next election.

Councilor Dawes stated they were all very much aware of the current economic situation and the things they had asked the city employees to do over the past years in an effort to reduce costs, which included: layoff of employees, furlough days, and employees paying a portion of their benefits. He noted there was not a whole lot to cut from the council budget, and felt they should take a look at the medical benefits they received for spouses and dependents.

Councilor Dawes reported he was aware that some of the council members elected not to take some benefits. He felt it was a personal choice and the other council members should not be looked at in any different light. Councilor Dawes stated, originally, he wanted to bring the issue up during the budget process; however, after doing some research it was determined that the council would need to take action prior to the election, in order for some of the benefit changes to go into affect the first of the year. He stated he didn't like the short notice, but felt they had no other choice.

Councilor Dawes believed cutting family benefits was a way to help reduce costs, and he would like to see it send a message to the employees that, yes they were serious. He felt if the council was going to ask the employees to consider certain things, they had to consider things as well.

Councilor Fuller stated he and Councilor Dawes had talked about the issue for the last couple of months, adding the reason he worked with Councilor Dawes and supported the issue had to do with his own personal experience of owning a business. He indicated his part-time employees had to work a minimum of 15 hours a week in order to have medical for themselves, and a minimum of 20 hours to have medical for their families. Councilor Fuller believed the city's part-time employees had to work a minimum amount of hours in order for their families to qualify for benefits, as well. Councilor Fuller stated he tried to figure out how many hours a week he put in on the council, and came up with 10 to 15 hours a month. In talking with one other council member, they thought they put in an average of 15 to 20 hours a month. Councilor Fuller figured the average was about 15 hours per month, which added up to 180 hours a year. He thought that was a huge discrepancy in what part-time city employees were being asked to do, and what the council was getting.

Councilor Fuller reported the current council benefits ranged anywhere from \$7,000 to almost \$18,000 annually per councilor. He believed the proposal on the table would equalize it for everybody, and equalize them with the city's part-time employees. Councilor Fuller thought full benefits for themselves and their families was a bit exorbitant, and believed the time was right to send the message that they were willing to make cuts too.

Councilor Pope reported he spoke with Councilor Dawes about the issue, and felt they needed to look at the whole picture, instead of just trying to show that they're doing something. He indicated his first eleven years on the council cost him an average of \$9,000 a year in lost wages. Councilor Pope reported he didn't run for council in order to get benefits; however, he felt he was almost breaking even with what he received. He felt they could not say it didn't cost anything to sit on the council, adding some of them were fortunate and didn't have to worry about those kinds of things.

Councilor Pope felt, procedurally, issues were usually talked about in a council session and the council as a whole directed staff to put together the needed information. He stated it appeared to him that the issue of council benefits was already discussed by soliciting certain council members, and they already had their four votes. Councilor Pope felt they did not go through the proper procedure, and he and Councilor Harris were the only two who were not involved with the discussion. He stated he had a problem with micromanaging, and not living up to ethical responsibilities. Councilor Pope felt the integrity and ethics they were supposed to follow continued to be violated. He added he was totally against the way things are done when two council members decide what they should do.

Councilor Harris indicated when Councilor Fuller called him he hadn't heard about it yet. He stated he had concerns for the current council, and councils of the future. Councilor Harris reported his spouse was currently on the city's policy, and if he read the material right, he would be paying for her medical benefits starting next month. Councilor Harris stated personally, he couldn't afford it. He reported he would have liked to have had some time to discuss it, adding it was no different than contract negotiations.

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Councilor Harris didn't believe having the council set a precedent would make any difference, but felt there were some areas for improvement. He stated he understood it had to be passed by election day, but he could not support it because he didn't know all the information about it, or what other options they had. Councilor Harris suggested having a council work session on it, and if nothing else, postpone it and revisit the issue next year.

Councilor Lund felt \$30,000 was not that much money, adding they had bigger problems and they needed to be looking at the bigger picture. He indicated he could report on things the city did every day that would make their heads spin. One example was the dip in the road under Chamber of Commerce Way. Councilor Lund noted about eight years ago, the city did a study on that section of the roadway, which probably cost the city around \$8,000, or more. He questioned the study at that time, and was told the road was going to slide down the hill and onto the railroad tracks if nothing was done. Councilor Lund reported nothing was ever done and the study was probably just sitting on the shelf like a lot of other studies.

Councilor Lund reported he was also catching heck about what was going on around Chehalis Avenue, adding people were wondering why the city was wasting all that money. He noted the council knew it was graciously being funded by the Chehalis Foundation, and wondered why it wasn't being promoted as such to let the public know. Councilor Lund felt it was that kind of stuff that gave a bad overtone to the city. He wished they were working on cutting hundreds of thousands of dollars with the way the city runs, rather than just \$30,000. Councilor Lund stated he was not in favor of the proposed ordinance.

Councilor Dawes reported he did not take a poll or contact individual councilors. He stated he had ethics and felt if any one was questioning that, it was a misguided effort. Councilor Dawes noted the ordinance was put up just like he said, adding he would have just as soon presented it for discussions, as planned. He stated if the majority wanted to approve it, or didn't want to approve it, so be it.

Councilor Dawes reported \$28,000 might not seem like much to some, but it was a good start in the right direction. He knew it was not going to be popular because it wasn't the first time the issue had come up before the council. Councilor Dawes felt strongly about it and believed he was doing the right thing. He stated, for the record, he did not go out and take a vote count or anything like that, adding that wasn't the way he operated.

Councilor Dawes moved that the council suspend the rules requiring two readings of an ordinance.

The motion was seconded by Councilor Fuller and carried 4-2. Councilors Pope and Lund voted against the motion and Councilor Taylor abstained from voting.

Councilor Dawes moved to pass Ordinance No. 848 on first and final reading.

The motion was seconded by Councilor Fuller and failed 4-3, with Councilors Harris, Pope, Lund and Taylor voting against the motion.

There being no further business to come before the council, the meeting adjourned a 7:08 p.m.

Mayor

Attest:

City Clerk

SUGGESTED MOTION

I move that the council approve the minutes of the regular city council meeting of October 26, 2009.