

Castle Rock City Council
Regular Meeting
July 11, 2011

CALL TO ORDER

Mayor Paul Helenberg called the regular meeting of the Castle Rock City Council to order at 7:32 p.m. followed by the Pledge of Allegiance. The following councilmembers were present: Ray Teter, Glenn Pingree, Earl Queen, Jack Reilly and Mike Mask.

BUSINESS FROM THE FLOOR

- a. Red Canoe Business Development Representative Carey Mackey requests support for the 'Fill the Canoe' school supply drive. She requests permission to place signage in the right-of-way at the north and south entrances into town. During this event, school supply donations will be collected at each branch of the Red Canoe and at the Kelso Library. This annual event will be held from July 25th to August 12th. Red Canoe will match the donated items pound for pound.

Councilmember Mask made a motion, seconded by Teter to approve 'Fill the Canoe' sign placement for this charitable event.

Discussion: In response to a question from Councilmember Pingree, Vorse clarified that Castle Rock Municipal Code specifies signs that are prohibited in the right-of-way, for example political signs. In response to a question from Councilmember Teter, Ms. Mackey confirmed that the supplies donated in Castle Rock will stay in Castle Rock.

Vote: By roll call vote, unanimous Aye.

- b. Public Works Director David Vorse reports that the Friends of the Fair annually place a sign in the right-of-way at both the north and south entrance into town.
- c. Cheryl Slic, area resident, reports that she has recently obtained a medical marijuana card due to extensive liver damage from synthetic pain medication. She objects to any effort to take away her right to use any medication that may help her with her health problems. City Attorney Frank Randolph clarified that medical marijuana cards are regulated by state law.

DEPARTMENT REPORTS

Public Works Director David Vorse

Vorse reports that the Cedar Water Main Replacement Project will begin tomorrow.

City Engineer Mike Johnson

Johnson stated that the first section of street will be poured tomorrow for the Cowlitz Street West Revitalization Project. The sidewalks are complete along both sides of this first section.

Donna Setters, 120 Second Avenue SW #B, reports that the Cowlitz Street West Revitalization Project has eliminated two parking spaces. Two residents within her four-plex are disabled and in need of parking accommodations. She noted that those disabled residents are not physically capable of carrying groceries from alternative parking areas.

Ms. Setter asked if two designated ADA parking spaces could be established behind the library building. Vorse and Johnson will take measurements to ascertain an appropriate location for ADA parking.

City Planner T.J. Keiran

- Keiran reports that the city has been offered a \$40,000 grant from the Department of Ecology to update the city's Shoreline Management Master Plan by June 2014. Kieran attended a meeting today with planners from the five cities and Cowlitz County to discuss the feasibility of collaborating efforts, since the entire county needs to also develop updated plans. Keiran will meet with David Vorse and Mike Johnson to discuss the pros and cons of working collaboratively on this plan with potential action in August.
- Keiran is questioning the results of the State of Washington Office of Financial Management (OFM) 2010 Census. The city lost population which may have been a result of the group quarters at the Villager Inn not being counted. OFM indicates there are no group quarters in Castle Rock. Keiran stated the OFM very quickly accepted the federal count without a reasonable timeline to form an appeal. Keiran will continue working with the OFM to appeal this loss of 20 housing units which has an effect on shared revenue. Mayor Helenberg noted that this could have a huge impact on the General Fund.
- Keiran reports that he has been working with Vorse, Johnson and Covington to influence the Cowlitz County Steering Committee to review the City's Urban Growth Area.

COUNCIL AND AD HOC COMMITTEE REPORTS:

Mayor Paul Helenberg

Reported that the city engineer is requesting a change order for the Cowlitz Street West project in the amount of \$42,560, to allow the contractor to furnish and install texturing of the concrete intersections. The contract quantity shall be 760 square yards and the contract price shall be \$56 per square yard. The mayor stated he is working with Dave Vorse to secure additional funds for the Cowlitz Street West construction project. Currently the project is approximately \$135,000 from the bid amount. He stated the public works director has been able to secure an additional \$110,000 - \$120,000 for that project. To bridge the remaining shortfall, the engineer is considering the feasibility of taking \$125,000 to \$135,000 from the Front Avenue project to be used for Cowlitz Street, In addition, the mayor and public works director have negotiated with the granting agency to make up those funds next year through another funding resource. The mayor stated he could not state the funding source at this time, however he expressed confidence that funding would be secured. This would allow completion of Cowlitz Street, as designed. Mayor Helenberg recommended that council approve Change Order #2, as presented. Engineer Mike Johnson added that the texturing bid was significantly higher than anticipated. Since that time, negotiations with the contractor have enabled a cost reduction from the initial bid.

Councilmember Pingree made a motion, seconded by Queen to accept Change Order #2 in the amount of \$42,560. In discussion Councilmember Mask asked if the proposed additional funds that have been guaranteed. Mayor Helenberg stated he feels confident that the funding will be awarded to the city and if not, the city would need to scale down the Front Avenue project. Mayor Helenberg stated the additional details have received positive comments and will create a showcase for the county. By roll call vote, unanimous 'Aye'.

Councilmembers

Ray Teter – reported that the Ash Kicker fundraising event sponsored by Williams Pipeline, to benefit United Way, raised \$190,000. This event was held at Toutle River RV Resort, at

Exit 52. They are already planning the event for next year.

CONSENT AGENDA

- a. Councilmember Reilly made a motion, seconded by Teter to approve the minutes of the June 27, 2011 Regular Council Meeting. By roll call vote, Mask abstained, the rest Aye, motion passed.
- b. Councilmember Pingree made a motion, seconded by Teter to approve June invoices in the amount of \$650,006.95 as described on the Summary of Claims as check numbers 41293 through 41393 for general expenses, check numbers 21888 through 21941 for payroll expenses and adjustment number 169 for tax payments. In discussion, Covington stated that Councilmember Pingree reviewed all claims prior to this meeting. Councilmember Pingree also noted appreciation for the efforts made by city departments to keep business locally, when feasible. By roll call vote, unanimous 'Aye'.

OLD BUSINESS:

- a. Councilmember Reilly made a motion, seconded by Pingree to approve Resolution 2011-10 amending the Six Year Transportation Plan 2011-2016, on second reading. In discussion; in answer to Councilmember Reilly, Johnson stated the suggested transfer of funds from the Front Avenue project to the Cowlitz Street project would not affect the any grant award. By roll call vote, unanimous Aye.
- b. Councilmember Pingree made a motion, seconded by Reilly to approve Resolution 2011-11 amending the Six Year Transportation Plan 2012-2017, on second reading. By roll call vote, unanimous Aye.
- c. Councilmember Pingree made a motion, seconded by Queen to approve Ordinance 2011-07 amending Castle Rock Municipal Code, 13.06.130(H) Basis for Adjustment due to unusual circumstances, effective retroactively to January 1, 2011, on second reading.
- d. City Attorney Frank Randolph recommended city council vote down proposed Ordinance No. 2011-05, placing a moratorium on collective garden for medical marijuana. Mr. Randolph stated this recommendation is based on consultation with Association of Washington Cities (AWC) land use attorney. In place of this ordinance, city council will be taking into consideration an interim ordinance to adopt zoning controls regarding medical marijuana collective gardens.
Councilmember Teter made a motion, seconded by Pingree to reject ordinance No. 2011-05, an ordinance establishing a moratorium on collective medical marijuana gardens as described in State Law 2011 C 181 S 403 (RCW 69.51A.040). By roll call vote, unanimous Aye to reject the ordinance.

NEW BUSINESS:

- a. Councilmember Reilly made a motion, seconded by Queen to adopt Ordinance No. 2011-08, an interim ordinance of the City of Castle Rock relating to land use and zoning, adopting interim official zoning controls regarding medical marijuana collective gardens for a period of six months, to be in effect while the city drafts, considers, holds hearings and adopts detailed collective garden zoning regulations, to be effective immediately, scheduling a hearing on the maintenance of the interim zoning and declaring an emergency.
Discussion: City Attorney Frank Randolph provided a Power Point presentation which detailed the current status of law, staff research, and highlights of the proposed interim zoning ordinance. Mr. Randolph stated the proposed ordinance does not remove people's rights to have a medical marijuana card and in addition, qualified marijuana patients currently have the right to grow an individual garden. The current state law passed in April and partially vetoed by the governor expands what can be grown, which

includes allowance for collective gardens. Collective gardens allow for up to ten qualifying medical marijuana patients to join together to raise up to 45 plants. This provision will be effective state-wide on July 22nd. Randolph stated that recent law passed by the state legislature provides that cities may adopt and enforce zoning requirements. The proposal, if enacted, would be an emergency zoning ordinance which tries to address the larger items and would be effective for only six months and allows the city to develop regulations. Randolph stated city staff has been working with Carol Morris, AWC land use attorney. Ms. Morris is the person who recommended the city not enact a moratorium, which she felt was not as defensible as implementing interim regulations. Mr. Randolph noted that Municipal Research and Service Center (MRSC) issued a statement that their agency was 'struggling with interpretation of the provisions that go into effect on July 22nd'. Randolph added that staff continues to research growing regulations to understand potential needs of a collective garden and any potential nuisances that such use would/would not produce in certain neighborhoods. The city attorney advised he has received a letter from the U.S. Attorney in Seattle reminding that state law cannot change federal criminal law, or grant immunity to anyone from federal action. The U.S. Attorney correspondence added that they could not advise anyone to take acts prohibited by law. Randolph stated this creates the problem that what is permitted by the state is still prohibited by the federal government.

Randolph summarized highlights of the interim zoning ordinance as follows:

- allowed in the C-2, Highway Business District
- not within 300 feet of schools, churches, youth-oriented facilities, libraries or residential treatment facility.
- if indoors, not within 100 feet of occupied legal residence parcel and enclosed by a six-foot fence.
- not visible from a public place
- no more than one garden per parcel
- parcel must be owned or leased to one of the members
- qualifying patient may not be a member of more than one garden
- must be a member for at least 30 days before changing membership
- collective gardens must maintain membership records for three years.

Randolph explained the authority for passage of an emergency ordinance. Such ordinances must be passed by a majority, plus one, of the whole membership of the council and designated as a public emergency ordinance necessary for the protection of public health and safety. An emergency ordinance is effective upon passage. City council must then hold a public hearing on the adopted interim zoning ordinance within at least sixty days of its adoption. Wednesday July 27th has been proposed for the public hearing at which public testimony on this ordinance will be taken. After the public hearing, council has the option to change or modify the ordinance. In addition, following the public hearing, city council will need to have formal findings of fact and conclusions of law to support the council's action.

Councilmember Mask asked how the police department will be able to enforce this ordinance. Mr. Randolph stated the city would issue a collective garden permit, enforced by the city building official. An application outlining how issues such as odor and security are to be addressed must be submitted to the city. Enforcement would be the same as any similar such permit. He noted, the alternative would be to do nothing, which would mean a collective garden with no limitation could be put anywhere in town. Mask asked how the city will be able to prevent misuse. Mr. Randolph answered that misuse of the system could have existed in the State since 1998 when the initiative was passed. The issue council needs to focus on are collective gardens. The interim zoning ordinance, effective for six months, will be enforced as any other ordinance, to the best of our

ability. This ordinance allows the city to have something in place before July 22nd, and then the city has six months. At the end of those six months, the city may have changes, especially if the regulations create some undue burdens for the police force.

Councilmember Mask stated following the city council's June 1, 2011 meeting on this subject, he spoke with the U.S. Attorney General and was told that incorporating this ordinance does not exempt public officials and staff from arrest on felony charges. Mr. Randolph stated he has also spoken with the federal US Attorney General and agrees that this is an issue. If the city council wants no chance of being placed in that position, then they should do nothing. However they would need to accept whatever collective gardens that will come. Randolph stated the federal agents are looking for people who are profiting and making money. The idea of the ordinance is to do something to at least place some controls.

Cathy Oman, Hazel Dell Road, asked how the city council can accept federal funds to complete projects, and then chose to not obey federal laws in relation to marijuana use. She questioned where the city's allegiance is at. Councilmember Pingree suggested that citizens need to contact their local legislators if they are not in favor of how State law is being addressed by those elected officials.

Donna Setters, Castle Rock, reminded councilmembers that the State has included a provision to allow local jurisdictions to implement regulations on where collective gardens can be located.

Vote on the above motion: Councilmembers Teter, Pingree, Queen and Reilly voted Aye and Councilmember Mask voted Nay to adopt Ordinance No. 2011-08. Motion passed.

- b. Councilmember Pingree made a motion, seconded by Queen to adjust Mr. Crigger's utility bill for the month of May to his regular average billing. This adjustment is made through Resolution 2011-07, with the loss a result of theft of services. In discussion, Chief Heuer stated Mr. Crigger has filed a police report. There does appear that a theft has occurred and the police department's investigation is continuing. By roll call vote on the motion, unanimous Aye.

ADJOURNMENT

There being no further business, Mayor Helenberg adjourned the meeting at 8:28 p.m.

Mayor Paul Helenberg

Clerk-Treasurer