

1 Depoe Bay City Council  
2 Regular Meeting  
3 Tuesday, November 16, 2004 - 7:00 PM  
4 Depoe Bay City Hall  
5  
6

7 PRESENT: Mayor B. Silver, J. White, P. Taunton, A. Brown, G. Romans, J. Brown, M. Lavery

8  
9 STAFF: City Recorder P. Murray, City Field Superintendent T. Owings, City Attorney D. Gordon,  
10 Recording Secretary S. Fox  
11

12  
13 I. PLEDGE OF ALLEGIANCE

14 Mayor Silver called for all to stand for the Pledge of Allegiance.  
15

16 II. CALL TO ORDER

17 Mayor Silver called the meeting to order and established a quorum at 7:00 PM.  
18

19 III. APPROVE MINUTES: November 2, 2004 Regular and Executive Session Meetings

20 The minutes of the November 2, 2004 regular and executive meetings stood approved as written.  
21

22 IV. ACCOUNTS PAYABLE

23 Motion 1: Romans moved to pay the accounts payable, including one late invoice from Robert E. Meyer  
24 for engineering services in the amount of \$1,934. Taunton seconded the motion.  
25

26 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor questioned a  
27 \$2,000 bill for tree removal; there were a total of 12 trees removed.  
28

29 Vote: Motion 1 passed.

30 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown  
31

32 V. SPECIAL ORDERS

33 There were no presentations.  
34

35 VI. REPORTS OF OFFICERS, BOARDS, OR STANDING COMMITTEES

36 A. Salmon Enhancement Commission

37 Fred Robison Jr., Salmon Enhancement Chairman, presented a history of the Commission and its  
38 activities, including descriptions of the four goals of the Commission: economic, education,  
39 environment, and social. He noted that the Commission felt it is appropriate that they be advised when  
40 they are able to participate in issues involving the Depoe Bay watershed. A Councilor advised Robison  
41 to provide written input to the Council regarding the proposed stream setbacks.  
42

43 VII. PUBLIC COMMENTS

44 Dick Johnson, 1915 McDonald, suggested a quarterly meeting between the Mayor, the City Recorder,  
45 and Commission/Committee Chairpersons.  
46

1 Peggy Leoni, Chamber of Commerce, reported that 1) The Chamber is collecting winter wear for  
2 children and adults through November 19 at the church between 4-6 PM on school days. 2) Kids Zone  
3 is selling trees and wreaths. 3) The Magic of Christmas begins November 27, with the tree lighting  
4 ceremony at 5 PM. 4) Toys are being collected at the Chamber through December 18. 5) Santa will be  
5 downtown November 27, December 4, and December 18, and will be available for photos. 6) The  
6 lighting contest will be judged between December 6-10. Categories are indoor and outdoor business,  
7 marine, and residential. Winners will be announced at the Community Potluck on December 16 at 6 PM.  
8 7) A special thank you to Councilor Alice Brown, who coordinated a rummage sale that netted over  
9 \$400 towards the potluck.

10  
11 VIII. UNFINISHED BUSINESS

12 A. LUBA Final Opinion and Order: Moreland vs. City of Depoe Bay  
13 Gordon reported that LUBA remanded two items to the City, to be addressed before making a final  
14 decision: 1) determining what the use of the word “structure” means, and 2) the application requirement  
15 that a riparian vegetation and aesthetic plan be submitted at the same time as an application when the  
16 affected land is within a coastal overlay zone. He said that a public hearing must be held, with a 20-day  
17 notice to all nearby property owners and those who have asked to be notified of that kind of hearing. The  
18 Council needs to decide if the matter will be referred to the Planning Commission or if the Council will  
19 hear the matter. Discussion followed.

20  
21 Motion 1: Alice Brown moved to authorize a public hearing for January 4, 2005, to be heard at the City  
22 Council level, on the questions in the LUBA remand. Taunton seconded the motion.

23  
24 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

25  
26 Vote: Motion 1 passed.

27 Ayes: White, Taunton, Alice Brown, Romans, Jack Brown, Lavery

28 Abstain: Silver

29  
30 Gordon noted that the riparian vegetation and aesthetic plan must be adequately submitted by the date  
31 the notice is mailed; the City Planner will determine whether the application is adequate. Dennis  
32 Bartoldus (present in the audience), representing the applicants, confirmed this was understood.

33  
34 B. Lease Agreement – Neighbors Against Drugs/Ainslee Building  
35 Kay Wyatt was present, and said the Neighbors Against Drugs Board reviewed and approved the lease  
36 agreement (copy attached to original of these minutes) as discussed at the last meeting.

37  
38 Motion 2: Lavery moved to approve the Neighbors Against Drugs lease agreement, subject to  
39 Neighbors Against Drugs’ acceptance of an inspection for compliance with federal, state, and county  
40 health and safety standards, and authorize the mayor to sign. White seconded the motion.

41  
42 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

43  
44 Vote: Motion 2 passed.

45 Ayes: White, Alice Brown, Silver, Romans, Lavery

46 Abstain: Taunton, Jack Brown

1  
2 IX. NEW BUSINESS

3 A. Seafood Processing Lease Renewal – Ocean Brite Seafood

4 This item was tabled to the next regular meeting.  
5

6 B. Measure 37

7 Gordon said the effective date of this measure is December 3, 2004 and advised the City to be prepared  
8 to respond to any claims that may be filed. He provided samples of documents the League of Oregon  
9 Cities has prepared for cities to use (copies attached to original of these minutes). He explained that  
10 jurisdictions can be sued by land owners for land use actions that adversely affect the value of the land,  
11 when the actions have been imposed subsequent to the purchase. A question that needs to be answered is  
12 who establishes the value of the land. He recommended that the City adopt an ordinance that sets up a  
13 mechanism to handle claims. He provided the Council with copies of a memo describing what Measure  
14 37 does and an ordinance from the City of Eugene, from Glenn Klein (copy attached to original of these  
15 minutes), an attorney for the City of Eugene who is an expert in this field. He recommended the City  
16 adopt an ordinance before December 3, and advised caution in adopting any new laws involving changes  
17 in land use. Land use issues covered by Measure 37 include: comprehensive plans, zoning ordinances,  
18 land division ordinances, and transportation ordinances. Claims not covered by Measure 37 are:  
19 restrictions on uses commonly and historically recognized as nuisances, restrictions to protect public  
20 health and safety (e.g. fire and building codes, health and sanitation regulations, solid or hazardous waste  
21 regulations, and pollution control regulations), restrictions required to comply with federal law,  
22 restrictions on property to sell pornography or perform nude dancing, and anything enacted prior to the  
23 time the property was purchased. A special meeting was scheduled for November 22, 2004 at 7 PM with  
24 Gordon present, for developing final language for an ordinance outlining a claims procedure. Dick  
25 Johnson, Planning Commission Chairman, asked Gordon to confirm that it is safe to proceed with  
26 applications for construction and variance requests, and relaxing rules and adding uses to some zones.  
27 Gordon said the Council should address these questions, because any action still might lead to claims.  
28 The City needs to continue to process applications, but the Council needs to address questions relating to  
29 changing regulations.  
30

31 C. Oregon Savings Growth Plan

32 Murray explained that there were three items needing adoption (copies of documents attached to original  
33 of these minutes) to implement making this new benefit available to City employees:  
34

35 1) 457 Deferred Compensation Plan – Trust Declaration

36 This is a statement that the City will have a 457 deferred compensation plan.  
37

38 2) Proposed Resolution #344 – A Resolution for Inclusion Under the State of Oregon Deferred  
39 Compensation Plan

40 Adoption of this proposed resolution would declare the City intends to be included under the State of  
41 Oregon's deferred compensation plan.  
42

43 3) 457 Deferred Compensation Program Administrative Services Agreement

44 By signing and entering into the services agreement, the City would be hiring a third-party administrator,  
45 that being the Public Employee Retirement System (PERS). It was noted that administrative fees are  
46 paid by the employees that choose to participate in the plan.

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2 Motion 3: Lavery moved to approve the 457 Deferred Compensation Plan Trust Declaration, and  
3 authorize the mayor to sign. Taunton seconded the motion.

4  
5 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor questioned who  
6 prepared the documents; Murray responded they came from the state. Gordon noted the mayor is  
7 required to sign the declaration on behalf of the City, and also on behalf of the City as the plan trustee  
8 (two signatures).

9  
10 Vote: Motion 3 passed.

11 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

12  
13 Motion 4: Lavery moved to adopt proposed Res. #344 – A Resolution for Inclusion Under the State of  
14 Oregon Deferred Compensation Plan. Alice Brown seconded the motion.

15  
16 Mayor Silver said it was moved and seconded, and called for discussion. There was none.

17  
18 Vote: Motion 4 passed.

19 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

20  
21 Motion 5: Lavery moved to approve the 457 Deferred Compensation Program Administrative Services  
22 Agreement, and authorize the mayor to sign. White seconded the motion.

23  
24 Mayor Silver said it was moved and seconded, and called for discussion. A Councilor questioned the  
25 necessity for the administrating company to be located as far away as Massachusetts.

26  
27 Vote: Motion 5 passed.

28 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery

29  
30 D. Painter Building – Observation Deck Hand Rail Project

31 Owings reported that the railing has been designed, and the City is ready to move forward with the  
32 project (copy of memo and drawings attached to original of these minutes). Hearing no objection, Staff  
33 was directed to proceed with the project.

34  
35 X. CORRESPONDENCE

36 Murray reported there were two items of correspondence (copies attached to original of these minutes):

37 1) A letter from William Sachs, resigning from the Traffic Safety Commission, effective November 3,  
38 2004. Murray said she sent out a memo to let affected parties know of the resignation, because the  
39 Traffic Safety Commission can no longer meet due to lack of quorum.

40  
41 Motion 6: Taunton moved to accept Sachs' resignation, send a letter of thanks, and advertise the  
42 vacancy. Alice Brown seconded the motion.

43  
44 Mayor Silver said it was moved and seconded, and called for discussion. There was brief discussion  
45 about how soon to advertise the vacancy. It will be advertised with other notices of positions expiring on  
46 December 31, 2004, with notices going out before Thanksgiving.

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2 Vote: Motion 6 passed.

3 Ayes: White, Taunton, Alice Brown, Silver, Romans, Jack Brown, Lavery  
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5 Murray continued with Correspondence: 2) A letter from the Lincoln County Board of Commissioners  
6 in response to the City's letter regarding the ODFW closure of ground fishing. Mayor Silver said he'd  
7 received a telephonic response from Ray Naff of the Governor's office.  
8

#### 9 XI. CITY STAFF REPORT

10 Owings reviewed his written report (copy attached to original of these minutes), providing updates on  
11 the Harbor Fueling System Project, Winchell Street Project, Pirate Cove Sidewalk Project, Water  
12 System Improvements, Christmas decorations in ODOT's right-of-way, and the PUD utility box by the  
13 Spouting Horn. Hearing no objection, he was directed to pursue covering the box.  
14

15 Murray reported: 1) The Scenic Lands Acquisition Project manager was out of town until the end of the  
16 month, and not available to attend tonight's meeting, as requested at the last meeting. If she is available  
17 for the December 7 meeting, Murray will send out the other invitations as discussed. 2) The City will  
18 not be able to apply for the grant to fund development of the nature trail in City Park, due to a  
19 requirement for final engineered drawings. She proposed the City begin preparing these documents in  
20 anticipation of a future application opportunity, and it was the consensus of the Council to do so. 3) A  
21 news release was received from Lincoln County School District (copy attached to original of these  
22 minutes). There are two meetings scheduled in December at Newport High School to discuss a local  
23 option for funding to support the district. It was the consensus of the Council to send a representative to  
24 the meetings; Councilor White will attend, with Councilor Jack Brown available as back-up. 4) A news  
25 release was received from Lincoln County Board of Commissioners (copy attached to original of these  
26 minutes) regarding Economic Development Fund grant applications, which have a deadline of December  
27 13, 2004. The City has applied for these grants in the past for funding projects such as the Harbor Fuel  
28 System Project. The grant has a \$20,000 maximum. This item was scheduled for the next regular  
29 meeting, to discuss possible projects. A Councilor asked if removing the billboard at the south end of  
30 town would be an appropriate project, and Murray responded that she would find out.  
31

#### 32 XII. COUNCIL COMMENTS

33 White reported he attended the 79<sup>th</sup> Annual League of Oregon Cities Convention, where a lot of  
34 information was presented. Depoe Bay received a Gold Medal Award for Wellness Promotion, and a  
35 Gold Safety Award for an injury frequency rate of 0% in fiscal year 2003-04 with 11 full time  
36 employees. Everyone applauded the employees' efforts.  
37

38 Jack Brown commended Mayor Silver and Kay Wyatt for their work to get the Neighbors Against Drugs  
39 lease approved. Everyone applauded Wyatt and Silver's efforts.  
40

41 Romans asked about the status of a junkyard on South Point Street; Owings said he is working with  
42 Gordon on this issue and that letters have been written.  
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1 XIII. ADJOURN

2 There being no further business, the meeting was adjourned at 8:46 PM.

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Mayor Bruce R. Silver

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11 Silver Fox, Recording Secretary