



Home of the Tualatin River National Wildlife Refuge

**SHERWOOD CITY COUNCIL MINUTES  
22560 SW Pine St., Sherwood, Or  
August 6, 2013**

**EXECUTIVE SESSION**

1. **CALL TO ORDER:** Mayor Bill Middleton called the meeting to order at 5:32 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilor's Matt Langer, Bill Butterfield, Krisanna Clark, Councilor Folsom arrived at 5:40pm and Councilor Dave Grant arrived at 6:20pm.
3. **STAFF AND LEGAL COUNSEL PRESENT STAFF PRESENT:** Joseph Gall City Manager, Tom Pessemier Assistant City Manager, Interim Finance Director Julie Blums, Kristen Switzer Community Services Director, and City Recorder Sylvia Murphy. City Attorney Pam Beery.

4. **TOPICS DISCUSSED:**

Pursuant to ORS 192.660(2)(F), Exempt Public Records.

5. **ADJOURN:**

Mayor Middleton adjourned the Executive Session at 6:27pm and convened to a City Council work session.

**WORK SESSION**

1. **CALL TO ORDER:** Mayor Bill Middleton called the meeting to order at 6:32 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Dave Grant, Robyn Folsom, Bill Butterfield, Krisanna Clark and Matt Langer.
3. **STAFF AND LEGAL COUNSEL PRESENT:** Joseph Gall City Manager, Tom Pessemier Assistant City Manager, Jeff Groth Police Chief, Julia Hajduk Community Development Director, Julie Blums Interim Finance Director, Kristen Switzer Community Services Director, Colleen Resch Administrative Assistant and Sylvia Murphy City Recorder. City Attorney Pam Beery.

4. **TOPICS DISCUSSED:**

**A. YMCA Discussion**

City Manager Joseph Gall stated the City Council has wanted to discuss the YMCA agreement and he has spoken with individual Council members regarding the agreement and he has heard dissatisfaction and questions from the public and the Council. He stated the work session was called to discuss the YMCA and

provide any direction to staff to deal with said issues. He said we are in year 15 of a 20 year agreement, adopted by a previous Council. He said this is a unique agreement and there are not a lot of models that exists like this. He said there are questions that the City can answer and questions that the YMCA will need to answer.

Mr. Gall stated, a question that has been asked by the public as well as the Council members, is in regards to finances. He said the Council requested 5-6 weeks ago copies of all quarterly financial reports, which have been provided to the Council. Mr. Gall stated discussing the financials is a good starting point.

Mayor Middleton asked for Council discussion.

Councilor Butterfield said his main concern is the contractual agreement we have with the YMCA, and what he have as far as documentation is vague and can be confusing. He said he would like the city to look at the contract and in collaboration with the YMCA come up with an agreement that's acceptable to both parties.

Councilor Clark asked the City Manager if he thought the current agreement was a good agreement. He stated he inherited the agreement and believes it was a good agreement 15 years ago, but not today. He said it's not working and doesn't believe, from either side, that it has been managed very well. He said it's a good document to start a partnership, but is not a good operating agreement and there is not a lot of performance measures, information on what the city expects as far as programing and activity levels, these things are not addressed in the agreement and this is a concern he has heard from the public and the City Council.

City Attorney Pam Beery informed the Council she has done an evaluation of the agreement and said she concurs with City Manager Gall that it is vague, particularly with respect to the City's rights to obtain financial information that we need as public dollars have been put into the facility. She stated the vagueness has led to misunderstandings and miscommunications, and believes the agreement wasn't that great 15 years ago. She stated from a lawyers perspective, it lacks terms; audit authority, right to terminate and many terms and provisions that currently don't exists. She stated she would support modifications the Council wishes to direct.

Councilor Langer asked in regards to vagueness and asked if the Y has been reluctant to provide financial information requested. Ms. Beery replied she did not know. City Manager Gall stated in his recent experiences, the Y has been forthcoming with providing information requested and cannot speak to prior City Manager practices. He said he believes they want to be a good partner and they know there is some dissatisfaction. He said he doesn't want to speak for the Y, but meets with Bob Hall and Renee Brouse regularly and their participation has been great in those meetings. He said he believes this is a bigger issue than the City Manager meeting with the CEO and the Y monthly, the Council, their Board and the community needs to be more involved.

Councilor Clark stated she believes as a Council, it is their fiduciary responsibility to the public, said these are public funds we are protecting and it's our building. She stated we are talking about a lot of money and feels the prudent thing to do would be an audit to come up with a starting place, what has occurred in the past and what needs to happen.

Mr. Gall replied he sees a lot of head nodding and asked if there are Council members that feel differently. He said we can explore that as a first step.

Councilor Folsom stated she agrees that it is a good place to start, to try and understand the numbers that have been given, but while that information has been given, it doesn't provide the entire picture and we need more information.

Mr. Gall agreed and said there are two steps the City can take; having the CFO meet with the Council to answer basic questions. He gave the example of "occupancy" language in the agreement and not knowing what this means. He said the next step can be an audit.

Councilor Folsom stated she believes an audit can show how we have done in applying the agreement and if we have met that, and it will help us know what standards of performance and expectations we should have to avoid the vagueness. Ms. Folsom asked Ms. Beery to confirm the intent. Ms. Beery agreed and said she believes we should go a bit further in looking at the performance to date and if it matches the agreement and the Council should also have information on best practices. She said it's not only that public money was put into the building, it's a concern that she had after reviewing the document, that there are shares of a portion, between the Y and the City in the document, and we have no way currently, to know if we have obtained the funds that we should. She said, to the extent that the City was entitled to receive those percentages. She commented about this being a fiduciary responsibility of the Council to find out what has happened to date with the public funds.

City Manager Gall commented regarding there being a lot of questions that need to be answered before we can decide where we are going in the future.

Councilor Langer commented regarding the information being from the past and asked how will we set up a structure moving forward to manage the contract and meet the goals we have talked about tonight. Mr. Gall responded regarding after meeting with the Y and performing the audit, and assuming nothing is wrong from a financial standpoint, we then sit with our partner and discuss things we want to see changed and they can offer changes as well. He said he did not think we can get there until we address the things that are being questioned by the Council and the public. He said this may cost a bit of money, but believes there are significant dollars in question.

Councilor Henderson stated one area of concern for her is the operating and maintenance of the facility as the City owns the building and still paying for it through property taxes. She referenced comments from Councilor Langer inquiring on the future of the agreement and said potentially what could happen is we would craft a new agreement to address concerns of the Y and the City. She commented regarding maintenance provided by Public Works and said only recently within the last 3-4 years have we partnered with the Y on building maintenance. She stated she did not want to leave this topic unmentioned and said an operating agreement beyond a financial agreement is what we need to ensure as the building will be serving our community for many years to come. She commented regarding the building being highly used, and open 7 days a week. She said we need to make sure we have an ongoing dialog with the Y and city staff, who are familiar with maintaining buildings, landscape and parking lots.

She confirmed with city attorney Beery that building operations should be addressed. Ms. Beery confirmed and said many things are missing and said this is a big one, and many things will need to be decided, whether we have a master agreement with the Y and subsets, one being operational and another being relationship. She said this is crucial to maintain the life of the facility.

Mayor Middleton said he understand that staff will try and meet with the Y to address concerns from both parties, and this not changing the operating agreement immediately. Mr. Gall confirmed and said not

unless the Council provides the direction to negotiate right away. He said he has heard from the Council to get an audit done and said he plans on meeting with the Y first to gather basics, invite the CFO and Bob Hall to a work session with the City Council to answer basic financial questions and in the mean time putting a scope of work together and figuring out, finding an auditor to look at the financials during the time period of the contract. He confirmed doing both at the same time and said the sooner we get the audit done and information is clear, we can move onto amending the agreement. He said we need to spend our time and effort on the financial piece as people are asking and it's cloudy.

Mayor Middleton asked if there were any other council comments or questions, with none heard, he said from the Councils perspective this is the way the Council will work it; to sit with the Y and discuss the little issues before we do anything else and then the audit. He confirmed with City Manager Gall that after this, the entire agreement will be reviewed.

Councilor Henderson asked if staff had a timeline for the completion of an audit. Mr. Gall replied that it's audit season and firms are very busy and said the sooner the better and this would be the challenge. He said he would like to see it done as soon as possible and believes the Y feels the same.

## **5. ADJOURN:**

Mayor Middleton adjourned the work session at 6:55 pm and convened to a regular Council Session.

## **REGULAR CITY COUNCIL MEETING**

**1. CALL TO ORDER:** Mayor Middleton called the meeting to order at 7:03 pm.

**2. PLEDGE OF ALLEGIANCE:**

**3. COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Dave Grant, Robyn Folsom, Bill Butterfield, Krisanna Clark and Matt Langer.

**4. STAFF AND LEGAL COUNSEL PRESENT:** Joseph Gall City Manager, Tom Pessemier Assistant City Manager, Jeff Groth Police Chief, Julia Hajduk Community Development Director, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy. City Attorney Pam Beery.

Mayor Middleton addressed the Consent Agenda and asked for a motion.

## **5. CONSENT AGENDA:**

**A. Approval of July 16, 2013 Council Meeting Minutes**

**B. Resolution 2013-043 Appointing Beth Cooke to the Planning Commission**

**C. Resolution 2013-037 Authorizing an Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT) to receive Transportation Growth Management (TGM) funds to perform an update of the City of Sherwood Transportation System Plan (TSP)**

**D. Resolution 2013-044 Authorizing the City Manager to sign 3-year On-Call Planning Contracts with three selected firms (Brad Kilby, Planning Manager)**

**MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT THE CONSENT AGENDA, SECONDED BY COUNCILOR CLARK, MOTION PASSED 7:0, ALL MEMBERS VOTED IN FAVOR.**

Mayor Middleton addressed the next agenda item.

## **6. PRESENTATIONS**

### **A. Recognition of Sherwood High School Students Academic Achievement**

The City Council and Sherwood School District Superintendent Heather Cordie recognized Sherwood High School Students for Academic Achievements, students that received a perfect 4.0 GPA for the 2012-13 school year. City Manager Joe Gall called forward students and the Mayor presented them with Certificates of Achievement. Mayor Middleton thanked Superintendent Cordie for attending and recognizing the students.

Mayor Middleton introduced Dave Troyer with Tribute to Troops and asked Mr. Troyer to come forward and relay a message to the City and the Police Department in regards to an intersection on Hwy. 99W being closed down on Saturday. Dave Troyer stated that his organization visits families that have lost soldiers in the war. He said they present the families with a plaque and read a biography about the soldier and spend about an hour with each family member. He said their group had about 80 motorcycles and about 120 people and they had an opportunity to shake hands with every family member, which was very emotional and very moving, especially for him as he lost a son in 2005. He said it is easy to complain about stuff but wanted to take the opportunity to thank the Sherwood Police Department who helped out on Saturday. He said they let us through town so we can stay together as a group. He said we try to have minimum impact and be respectful. He thanked Chief Groth, Officers Chad Brinkman, George Lopez, Hector Rodrigues, Greg Hersh and Nathan Powell as well as Captain Mark Daniel who did the final planning. Mr. Troyer said it was fantastic and he appreciated it and said 18 riders were from out of state and they complimented our Police Department for a job well done.

Mayor Middleton asked Mr. Troyer if they visited six families. Dave responded yes, three on Saturday and three on Sunday. Mr. Troyer invited anyone that likes to ride bikes to join them and said that Mayor Middleton joined them on Saturday. Mayor Middleton stated that Ed Contreras joined them on Saturday and his son is who the High School Stadium is named after. Mayor Middleton said it was an unbelievable experience and very touching.

Mayor Middleton addressed the next agenda item.

## **7. NEW BUSINESS**

### **A. Special Committee Report**

Meerta Meyer came forward as Chairperson of the Special Committee and provided a report from the committee. She said in advance of planning a Special Committee you heard comments and testimony from the public regarding ordinances establishing new business regulations and solicited advice of citizens and business owners. She thanked the Council and staff, on behalf of the committee, for acknowledging that citizen involvement is needed to better define our community. She stated it is fitting that today marks the 30<sup>th</sup> anniversary of America's National Night Out Against Crime. She noted that since the Council received this report in advance, she would attempt to be brief. She said this day increases awareness of crime and drug prevention, it also heightens and strengthens neighborhood and community spirit and it is great to see the room full tonight with members of our community. She said Tom Pessemier mentioned that the committee faced a large handicap, time. She noted they had only 3 weeks to come together and work with staff and legal counsel to put together a quality product for the Council's review and consideration. She

said they focused on the idea of a proactive community focused approach, as is necessary to preserve and promote livability, community wellbeing, citizen involvement, civic participation, public health, safety and wellness, local character and prosperity, and environmental sustainability all of which provide opportunities to thrive. She stated our work group came from different personal and professional backgrounds and perspectives and they were successful in working collaboratively and respectfully. She said they examined sample policies from around the country in relation to the ideas brought forward to show diligence in their consideration. She referred to page 2, item 2 of the Special Committee report under dilapidated vehicles and other nuisances and said this remains an area of concern and on behalf of the Special Committee they encourage the Council to encourage the Police Department to review and modify the current Nuisance Code properties within the City of Sherwood. She referred to page 3 item 8 and said throughout our discussion issues that fell under Chapter 16 of the code were raised and they encourage the Council to promote and encourage staff to consider a comprehensive review of existing code language including, but not limited to items such as: a comprehensive review of the traffic study language and Capacity Allocation Program (CAP) language, consider modifying criteria in the review of new business or new development applications, review guidelines related to overall development/new construction to promote and encourage environmentally responsible building practices, and how to better foster economic development within the City of Sherwood. She referred to page 3 and said the notion of a fair living wage for employees came up as a significant issue for the community as well as the committee. She said within the discussion they looked at wages, benefits and sick leave as a means to promote Sherwood as an economically and socially attractive place to live and work. She stated there are both state and federal preemptions related to benefit and wage issues. She said specifically related to sick leave, a majority of the committee agreed that due to time alone they couldn't complete the outreach necessary to produce a comprehensive quality ordinance and they felt this issue would be best addressed at the state level. She said the committee agrees that to promote living wage jobs in Sherwood, the City does have opportunity to explore small business development and promotion. She stated that on behalf of the Special Committee they are presenting three ordinances for the Councils favorable review and consideration: Regulation of Camping, Regulation of Business Hours and Regulation of Hazardous Substances. She encouraged the Council and staff to enhance social, economic and environmental factors aimed toward the sustainable wellbeing of Sherwood and thanked them for their willingness to invest in the community.

Mayor Middleton addressed the next agenda item.

## **8. PUBLIC HEARING - Special Committee Proposed Ordinance Language**

Mayor Middleton stated that since the public hearing covered 3 items, each speaker would have 5 minutes.

Assistant City Manager Tom Pessemier explained that Meerta Meyer will give a staff report for each item.

The City Recorder read the Public Hearing statement.

Tom Pessemier reminded the Council and staff that if items will be referred to the voters there is a tight timeframe. He stated that by August 12, there would have to be ballot titles and explanatory statements for each item referred to the voters, as well as a resolution to adopt. He stated this would allow time to get the Council their meeting packets for the August 20 meeting in time for review. He noted the August 20 meeting would be the last chance to make changes and to pass a resolution and it will have to be noticed to allow ample time for a challenge period before it is due to the County. He said September 5 is the absolute deadline and in order to meet that we have a tight timeframe to put things together.

Council President Henderson clarified that if we move forward with drafting ballot titles and explanatory statements there is a period of time with an opportunity to contest.

Tom stated we need to know tonight that they need to be prepared, and by Monday those titles would have to be done and noticed. He stated if they are adopted on August 20, there will be 7 day period for challenge.

Meerta Meyer provided the Council with the staff reports and said there are 3 proposed ordinances for consideration. She stated the first, the Regulation of Camping, was drafted to protect and promote the health, safety and welfare of residents and properties within the City of Sherwood. She said the second, the Regulation of Business Hours, was designed to preserve the quality of life during late night and early morning hours, discourage activities compromising public safety during late night and early morning hours, and to provide for efficient and effective economic provision of government resources. She stated the third, the Regulation of Hazardous Substance, relates to the release of hazardous substances into the environment, which may present eminent and substantial threats to public health, safety and welfare. She noted the basis used to draft the ordinances was to support the values and the mission of the City of Sherwood to promote livability and pride in our community. She thanked the Council for their favorable consideration.

Tom stated Meerta Meyer will be back to answer questions after the public testimony.

Mayor Middleton opened the public hearing to receive testimony.

**Jim Claus**, 22211 SW Pacific Hwy, came forward and referred to the code enforcement and commented regarding the code and racketeering and said it is enforced when and where you want. He said the city attorney is a contract attorney, represents the Mayor, the Council and the City Manager and referred to a conflict of interest if they start attempting to represent the citizens. He said you keep writing these regulations, and referred to the sign code being unenforceable and banning flag poles, and said they are not proposing another code you are going to enforce another document. He referred to the State of California where they now can't pass another code unless they know that there is 75% enforcement on the level of the code. He stated there is 35% enforcement and you are going to write another code and you screw up once and you rewrite to prove you are doing something. He said you should have a private attorney provision, like an endangered species, so we can go out and enforce your codes and you should let citizen collect the fees, because the attorneys pick on people with breast cancer, and then you need to make it profitable for us to bounty hunt our citizens, because that is exactly what the town is coming to by writing this code. He said you can't carry on a conversation with anyone here or you are threatening them and referred to raising your voice. He stated you need to get a clear definition of what you are regulating because your definition is almost as funny as Langer's smile. He said you don't know what you are regulating and you don't know what an RV is and it is not defined in the code. He referred to regulating camping and asked about the boy scouts having a bon fire and said you don't know what you are regulating. He said to go back and look at enforcement on this and said the Elks is zoned 5 residential detached houses to the acre and they have an RV park. He asked if that is camping or parking and said he did not know. He referred to the business hours and said you got another mess to make you look like you are doing something, but you are racketeering again and giving zoning to those you like and punishing those you don't like. He said put the private attorney general provision in since you have turned the town into bounty hunters anyways with the special enforcement districts for those people who contribute to the right politician or belong to the arts group. He said this shouldn't be hard to do since you have the people now. He referred to the Best Practice Manual from the League of Cities and Towns and said adopt the

manual and say that anyone that violates it violates the ordinance. He said you can clean this up but you had better check what you are enforcing now and if you don't think you can handle it now. He said we should become a good totalitarian town. He stated don't write a code that you don't have the intention and won't enforce unless you don't like the person.

**Susan Claus**, 22211 SW Pacific Hwy, approached the Council and said her comments are concerning process and said she echoes some of Jim's comments. She said when we put these ordinances together we need to have a process in place to functionally be able to do what we are proposing to do and if not it is just another methodology for the staff to have something on the books to arbitrarily enforce when they want, and ignore when they want. She said we do not have a process for citizens to come forth and say they have been either..., or say this process has been used arbitrarily in one circumstance and not in another circumstance and ask why and what can we do about it. She stated that we are an old enough town, over 100 years, and it is the same thing and referred to the 15 years into the YMCA contract and just now the attorneys are talking about it. She said we need to have our paid staff working on equal enforcement and equal treatment and if we have something on the books, or are contemplating, and we know that we don't have the capacity to work with we should know that up front so we are not faking everyone out. She referred to people calling and reporting that people are camping on a commercial lot and then there is no process, or the process is sometimes applied and sometimes not applied. She said part of the problem here is the citizens outcry and reaction to recent events and said a lot of people who want to be part of the process and some of the people in the process are not appreciated and they feel like there is a push back on the staff level for trying to be in the process. She said that is unfortunate because she has been to many meetings where it is just her and Jim and a few others and the Council asks where everyone is and when people now show up it is communicated that some people we like and some we don't. She said people are not embraced but are disenfranchised and people feel uncomfortable and if they come out too far in front they may become a target. She said there are plenty of examples in town and she is a perfect example of coming out front and being targeted on very specific things where there was no process and referred to when the City decided to take her to municipal court and the contract attorneys ran with it and that is part of her overall objection to contract attorneys that don't live in this town, and are running a lot of little towns, and in some cases trying to experiment in small towns, by experimenting with ordinances or pushing a point to see if they can get further down the road for their legal practice. She stated we need a City Attorney that lives in town and is devoted to the town. She referred to 10 years with Beery, Elsner and Hammond and said it is still a problem because we are not reflecting the costs that we are paying them, and they are still not reflected it in our budget as legal costs. She said that in 2011 we paid them \$225,000 and in this budget cycle we allot \$84,000, and \$60,000 was just allotted for this special purpose. She said if we are not being truthful in our budget documents it is hard to keep going forward and it is the same problem with the budget process. She referred to the YMCA and said if you are not being transparent with the citizen's money, and asked how you start the conversation and said there is a cloud and it needs to be removed. She said we need transparency and a city attorney that lives in this town that will not experiment with this town and will not victimize citizens in this town for speaking up on very fundamental issues.

**Neil Shannon**, 23997 SW Red Fern Drive, came forward and said he attended a few of the Special Committee Meetings and understands why the committee was established because of the concerns about the developments in the Langer area and the merchants that were coming in and said the committee served as a lightning rod and let citizens gather together and understand what is going on and understand that there was not an opportunity to provide a poison pill for any particular merchant coming to town. He stated that he does not see the urgency, which was perhaps created several months ago, to pass these ordinances now or to take them to a ballot. He said if we take these to a special election it will cost a



minimum of \$5,000 and he does not think we need to spend that. He said he appreciates the work of the committee and said they have done some excellent work and said these are ordinances that can be tabled and set aside because we don't have a problem with many of the things they are addressing. He said he is not aware of any problems with camping or overnight parking. He said he is an RV owner and is concerned that the overnight parking would be carried city wide and said there are times when people have friends visit and sometimes they will be parked on the street outside your house for a couple of days. He said this ordinance would prevent that and this concerns him. He said Walmart has a policy that individual stores and managers are allowed to restrict overnight parking in their parking lots and it would behoove us to just go ask them to post the signs for no overnight parking and ask them to enforce the issue. He said he is concerned about trying to pass an ordinance for prevention of 24 hour stores being opened and said he does not know any merchant in this town that is currently proposing to run a 24 hour store. He said if it becomes a problem we could consider that ordinance. He referred to Chief Groth's presentation for the Special Committee and he indicated that there were no problems with late night store operations and said if you want to regulate anything you should regulate the bars being open until 2 am. He said a store being open 24 hours could serve as an island of refuge for someone with real problems late at night. He referred to the hazardous substance and said we have plenty of EPA regulation. He said the ordinances should be tabled, they were useful to put together and get citizen feedback, but said we don't need special elections or the added costs.

**Renee Brouse**, 22794 SW Highland, approached the Council and said on behalf of the Sherwood Chamber of Commerce Board she wanted to address the ordinance regarding the hazardous substances. She stated that the Chamber has failed to identify an existing problem that validates the need for regulation as it pertains to hazardous substance regulation. She said the language of the ordinance increases the potential liability for residents and businesses of all scopes and sizes to pay additional fines even with household chemicals. She provided questions to consider: how does this impact residents and the final consumer, are the subcontractors responsible or business that hire subcontractors, and how much do we gain by building another bureaucracy duplicating what DEQ, EPA, Clean Water Services and other government agencies are responsible for? She said there are more questions to ask. She said the Special Committee did not contact these agencies before recommending to Council nor did they have the time to look at current retail business practices locally for controlling hazardous substances. She stated despite the language it suggests that it will only be applied in certain circumstances. She asked what the cost of staff time is for developing processes and training and addressing issues. She stated she is concerned and is trying to provide answers to questions that have not yet come up. She commented that correlation does not imply causation.

**Eric Evans**, 1644 SW Wildlife Haven Court, approached the Council and provided a document (see record) and said he represents the Chamber of Commerce and is the Treasurer. He discussed the regulation of camping ordinance and said the mission of the Chamber is to give value to our members in the community through innovation, leadership and programs to develop the business climate. He said the Chamber's philosophical view is that less regulation is good and the market place should drive decisions and the government's role is to foster economic development and job creation. He stated the Chamber has concerns with the conversation; it is a reaction to current and further development and will hurt Sherwood's ability to attract future development efforts, from businesses considering not renewing leases to one local business pausing on a potential \$30 million investment in our community. He noted the damage from this dialog is already being done. He said the Chamber is proud that the local businesses in Sherwood overwhelmingly want to be good members of the community and if a problem does arise we have confidence that the business leadership in Sherwood would take steps to correct the issue. He stated most retailers determine policy decisions at the local level. He said don't spend taxpayers money on a special

election that communication can address and there is no current need. He commented that the Executive Director has had meetings with Sherwood's large retailers and most said that requests to camp overnight were minimal and one said that in three years they have only had 4 requests to use their lots overnight. He suggested this is due to our distance from major corridors and the convenient nearby access to overnight parking, such as the Elks and Champoeg Park. He said that this ordinance could impact small businesses and residents in a more substantial way. He gave the example of his mother-in-law staying in an RV in his driveway and said this regulation would require a variance, as would setting up a tent in his front lawn. He gave the example of an emergency with an RV that needed work done at local auto shop that would require an overnight stay and the need to report it and unnecessary use of City resources. He gave the example of church events and scout troops wanting to use private property with public access and again referred to the cost of City resources. He stated the purpose of the ordinance is to "address adverse impacts of such activities included littering; public urination; public defecation; public intoxication; theft of water and electricity; verbal and physical assaults; trespass onto adjacent public and private properties; vandalism; property damage; fire hazards; and harassment of intimidation of occupants, employees and/or customers". He said currently they do not know of complaints regarding these issues at local businesses caused by camping. He said if a problem were to arise these types of issues can be addressed, and he stated they have faith in the Sherwood Police Department and under the leadership of Chief Groth and the City Council to address these issues as they arise. He said until then the Chamber has not identified a need. He stated that this reaction to assumed future problems which do not exist here in Sherwood and adopting to the ballot would be harmful, expensive and would negatively impact businesses and Sherwood residents.

**Leanna Knutson**, did not come forward.

**Amanda Dalton**, 8565 SW Salish Lane, came forward as a representative of the Northwest Grocery Association which is comprised of the grocery retailers, suppliers, and manufacturers in Oregon, Washington and Idaho area. She stated they have two member stores in the City, Albertsons and Safeway, but Walmart is not a member. She said they have reached out to other stores that are members to gather input about the ordinance and they believe there is a regional impact, particularly regarding regulating business hour operation. She said they oppose the ordinance in general and the concern is the retailer's ability to respond to growing consumer needs, growing communities and the overall limiting of hours. She said our stores are currently not open passed 1 a.m., however our concern lies in the lack of clarity around the definition of the ordinance and while it provides to limit times open to the public, the concern is it will also limit the delivery and distribution lines and that will not only impact grocery stores in Sherwood, but the stores down the line. She stated that will put the trucks into your traffic both in a.m. and p.m. congestion times. She stated they are concerned that cities will adopt similar ordinances. She said it is an easy fix and she understands the committee has worked hard and is under a tight deadline and perhaps we could draft a specific exemption that your intent is not to limit deliveries. She said delivery times are 4 a.m. and during holidays 3 a.m. and asked for an exemption so it won't limit trucks.

**Stephanie Sass**, approached the Council and said she would like to thank the City of Sherwood staff, Meerta Meyer and the Citizens Special Committee for working hard, in a very short timeframe, to draft three ordinances being presented to the Council this evening. She said it is up to the residents of Sherwood to decide the outcome of these proposed ordinances and she would like to see democracy work as it was designed, letting the people decide. She commented on the vested interest in the current Walmart project and other future projects in Sherwood and she asked that Councilor Langer recuse himself from this vote and future votes involving the use of his family's land, since she believes it is a conflict of interest. She noted as a City Council member, he possesses the ability to manipulate policies and influence others for

possible personal gain. She said even though that may not be his intention, it doesn't look good at any government level; especially to Washington County taxpayers in Sherwood that did not get a voice before the Walmart announcement.

**Michael Carlson**, 23077 SW Main Street, approached the Council and said he moved to the town when there was one blinking light and he bought gas 200 feet away from here that is now a fruit stand. He said he has seen a lot of growth in 2 ½ decades and not all of it was what he wanted. He said it happened and he tried to find a positive. He stated that Sherwood has turned out to be a great City and we saw that tonight with the School District and we have a great Fire Department, and extraordinary Police Department. He said the reason we are here tonight stems from anger, personal agendas, collective pot stirring and other emotions and personal goals. He said he attended most of the committee meetings and is convinced that the goal was not to preserve our City but to have a negative impact on Walmart. He said none of these ordinances will hurt a billion dollar company but are already having a negative impact on our great City. He said it was done too hurriedly and with too much personal emotion. He suggested Council take their time before reacting. He referred to hearing feedback from some of the residents, and even if 1800 of the email and petition signature are legitimate, you still have not heard from 90 percent of our citizens. He suggested mailing out a survey and let it run for a few months and then he can sit at home and not be limited to 4 to 5 minutes of testimony but he can give his true likes and true dislikes. He referred to the Police Chief's testimony and said he did not hear of any critical situation that needed us to take these drastic measures. He stated that for quite a while the Police Department has been very short staffed and we need more officers. He said the City is growing has it has since he has been here and it will continue to grow and our focus needs to be on more important issues than regulating our citizens.

**Amanda Bates**, 16419 SW Wildlife Haven Court, came forward and said stated that she is an Executive Committee board member of the Sherwood Chamber of Commerce, which is a nonprofit 501(c) organization servicing over 250 businesses and organizations here in Sherwood. She said she is also a Sherwood resident. She referred to the camping ordinance and said we have failed to identify an existing problem that validates the need for regulation in Sherwood. She stated current 24 hour businesses in Sherwood are available because consumer demand affords it. She said according to Chief Groth at the June 3 work session 24 hour businesses are not hot beds for crime and in fact a well-lit retail business is a place where police can draw positive attention to their community policing efforts and it provides a safe place for people to go. She said that our Chief put it best at one of the Special Committee meetings last week saying a store being closed doesn't mean police don't have to patrol, in fact it is the opposite. She stated businesses are a lot more likely to be burglarized and broken in to when they are not open and their security or loss prevention teams are not on duty. She added that the ordinance as written infers retail businesses are the cause of public drunkenness, public drinking, and loitering. She commented that we have not seen any data which supports this inference and do not believe that retail business significantly contributes to these problems. She noted a major concern of citizens is that new retail operation in our community will create more traffic and if we are concerned about traffic then why would we limit the hours that customers can shop locally, therefore condensing all of the shopping into the hours when traffic is at its worst and shouldn't we encourage shopping off-peak hours to minimize traffic? She stated multi-store retail businesses need to convey a consistent message to the marketplace on hours, pricing, etc. She said it's disruptive to say things like "all stores open 24 hours except for in Sherwood" and no matter how a business tries to convey the message it gets garbled. She said retail can generate up to 40% of sales between Thanksgiving and the 2-3 weeks after Christmas and there are other annual important sale flights, such as Back-to-School, Halloween, etc. and all of these are crucial to any retailer's bottom line. She stated regulating hours for big box is tough, but hours restrictions during the last 6 weeks of the year create real anguish for any retailer. She said most importantly, this ordinance threatens sales volumes which in turn,

mean Sherwood's ability to retain job opportunities. She stated a large retailer in Sherwood said that if they were to decrease in sales by 11% from 2012 then they would go from being a large-volume retailer to a small-volume retailer, which would result in cutting jobs and changing hours and they fear that regulations, like an hour of operation ordinance would impact their bottom line. She noted retailers support 1 in 4 US jobs and late night jobs at a retailer could improve the unemployment rate locally, which is 6.6% in Washington County, and provide additional local job opportunities for local residents, whether that is for a full time management position, or a part time position for a Sherwood High School student or a stay at home mom needing part time employment. She stated the Sherwood Chamber of Commerce is concerned about the message we're sending to current and future businesses and according to the City of Sherwood's website "the City continues to struggle with an unbalanced tax base". She commented that as an individual property owner she can testify to that. She said if we support the creation, expansion, and sustainability of businesses in our community, our lopsided tax base will become more balanced. She commented that we all know that taxes paid for by businesses, support city services, including police, parks, library, schools, and more, above and beyond what it costs to serve those businesses and this in turn lowers the tax expense for each Sherwood homeowner, while improving the quality of life in Sherwood. She stated the Sherwood Chamber of Commerce cannot identify an existing problem that warrants the need for this ordinance and additionally we have identified potential unintended consequences related to its implementation such as: contributing to traffic problems, inconsistency in business operations, hurting Sherwood's competitive marketplace, decreasing retail sales volume in Sherwood, reducing current jobs and preventing future job growth, limiting current and future opportunities to balance the Sherwood tax base. She asked the Council to please consider the long-term implications and not the short-term emotional impulsive reaction to this hour of operation proposal.

**Kevin Bates**, 16419 SW Wildlife Haven Court, approached the Council and commented that he owns Symposium Coffee and said it sounds like everyone is in agreement to not move the ordinances forward. He said he does not support any ordinance restricting the hours of operation because you limit the free market and it should only be done if it is an endangerment to the community. He noted there is no proof so far with the activity that the ordinances are regulating, except for hazardous waste but there needs to be environmental studies adopted and organizations coming in and then the ordinance should be created off of the studies done. He said there is no proof that it will increase the costs, but there is proof that restricting businesses in such a way affects businesses income. He stated that it has been alluded to that this committee was developed because of the development of Walmart. He said the Council is on record saying that. He asked if Walmart is going to hand us a bill if we pass ordinances that change the rules and are they going to find us irresponsible as a community by regulating hours and overnight parking and by limiting their income generating activities, and suggested a possible lawsuit. He said this should be addresses and analyzed. He suggested moving forward and disbanding the committee and discarding all the ordinances and believes the result would hurt our community. He honors the work that has been done but believe it was formed out of reaction and anger or response to that anger and said a different process needs to be adopted.

**Nancy Taylor**, 17036 SW Lynnly Way, came forward and said it easier to resist at the beginning then at the end. She said she has heard a lot of feeling today and said camping, hours of operation, and hazardous waste are things that most communities care about and it has proven to keep the big box stores from coming in. She stated that Sherwood is not a destination where people come to shop on a daily basis unless they live here. She suggested that people in Lake Oswego don't consider coming to Sherwood to shop for back to school clothes, Christmas, or a Thanksgiving turkey. She said she is not sure but thinks she is correct. She commented hearing concerns that people need to consider why they are sitting there and what the future of the board will be if they continue to sit on it. She joined Ms. Sass that Mr. Langer

needs to resign and step down and said he will cost the town quite a bit of money in a special election coming up.

**Anthony Bevel**, 17036 SW Lynnly Way, approached the Council and said he has lived here 18 years and said we all know why the committee is here and why it was formed and in his eyes a property was sold to a company and it was pretty deceptive and did not seem very clear and the citizen mobilized, petitioned and the Council decided that a Special Committee was to be formed to present proposals. He commented they did not go far enough and the work is half done. He stated that to just throw these three proposals to a side, you will have riot in Sherwood. He said they have to consider these and formulate them and present them to the citizens of Sherwood. He stated the reason he feels so strongly about Walmart is that they are not good for Sherwood or America. He said he knows they are the biggest corporation in the world but that does not mean that they are good and they are not good for Sherwood and will cause reputable harm. He told Chief Groth that he dropped off a report about crime with Walmart and he said it is enlightening. He said citizens aren't against business in Sherwood; they want business, but want to stay that sleepy community that he arrived at. He stated they are against a business that is Walmart and said he does not have to go into it and said you can read and listen to the radio, and watch television and there is not one instance that it is presented as a place you want to go to. He said he will pay more for milk and hamburger and will not be there. He suggested you can trust that businesses will do what they should, but you need these ordinance and you need more of them. He referred to the committee and the Council and said he hopes that everyone wakes up and said that something good has happened and he is looking forward to meeting other people here in Sherwood and he has met so many nice people and people will become more involved with this.

**Jennifer Harris**, 21484 SW Roellich Avenue, came forward and thanked the Council and the Special Committee and said she could not have made such a strong commitment. She said we should not consider throwing the ordinances to the side and said it is disrespectful to the committee. She encouraged them to read the ordinances in their entirety and you will notice that for camping Grandma in the driveway in not applicable. She said that emergency situation is also considered. She said the committee spent a lot of time and went in depth and considered scenarios because they live or they work here because it is important to them and not because Walmart is coming, because it is important to their lives. She referred to the 24 hour ordinance and said it does not restrict stocking shelves, trucks coming in, the cleaning crew, deliveries, but simply restricts business hours for the public to be there. She encouraged Council to think about proactivity not reactivity. She said it is a better option and she said if we wait until the problem is already there, we have to clean up what has been done and address it in the future. She suggested if we can be proactive now, it might cost some money, but might save money down the road especially with toxic waste. She stated that businesses have been regulated forever and she does not think any of us would say that government doesn't belong in regulating business or we wouldn't have minimum wage or fair trade or any good business going on if government wasn't regulating in some way. She noted that camping in banned pretty much everywhere in the United States, and said this is not new or earth shattering and it is mundane and normal and it is was it is. She said just because we didn't have it in the past doesn't mean we shouldn't have it in the future, and if we don't have a problem now doesn't mean we shouldn't deal with it now. She referred to people stating that they have people coming to camp and said that there are 3 RV parks within 3 to 7 miles of Sherwood and said that you can actually run 3 miles. She said we have plenty of places for people to camp and we have emergency situations set up. She encouraged reading the ordinances and referred to the scare tactics and said that they have not read them because the issues they addressed are irrelevant.

With no further public comments, Mayor Middleton closed the public hearing and asked for Council comments.

Councilor Folsom asked if they are going to discuss each ordinance separately.

Mayor Middleton stated that they can since it does not appear that anyone has general questions.

Councilor Langer stated that he has been asked by two people to recuse himself tonight and asked city attorney Beery to clarify if these three ordinances are for the current project or for the entire City and asked if there is any legal reason why he should recuse.

Attorney Beery responded that these ordinances as written and as proposed would apply City wide to effected entities that were covered by their terms, so are not specifically directed at any one property or business. She stated as far as your obligation, you are required under state law to recuse yourself if you have an actual conflict of interest, which is defined by state law as a clear demonstration that you will in fact either achieve a pecuniary benefit or avoid a cost for yourself, your business, your family, and a long list of relatives. She said the requirement has a fairly high threshold only based on an actual showing of financial impact to you, either for better or worse. She noted you have the discretion to make a choice to step down when you feel you have a potential conflict of interest, which is defined more liberally as interest in a proposal or non-financial interest. She stated she does not see how your...and there is no requirement that you step down based on the actual bias, and based on what she knows of the situation and said they are City wide regulations. She said she always advises elected officials that they are the judge of their own partiality under Oregon law unless it is an actual bias, i.e. direct monetary gain or avoidance of cost. She stated that you get to decide and there is no standard of appearance of propriety or appearance of bias, the standard has to do with your own judgment about your own impartiality.

Council Langer asked how the class exemption would apply in this case.

Attorney Beery responded that yes, even if you could be shown to have an interest, what the class exemption provides is if a Council member is taking action on an item and they are effected somehow, then if they are part of a class they are still allowed to vote on that item, the reason being is that you wouldn't be able to enact legislation of general effect, they recognize elected officials are members of their community and for example, if you own a business in Sherwood one of the new ordinances was approved by the voters or passed onto the voters by the Council, you would be part of a class because there is huge number of businesses that would be effected. She stated there is not a definitive number for what is a class. She said there are cases and opinions from the Oregon Ethic Commission and 10,000 is clearly a class and 2 or 3 is not and between that she would say the number of businesses in Sherwood would constitute a class and based on that he would be eligible to vote but she said there is not actual bias either. She asked what the other question was.

Tom said the question was whether to have a discussion on the ordinances one at a time moving forward. He said that as you make motions they will have to one at a time, so it would be helpful to keep the conversation focused.

Mayor Middleton stated that Council deliberation would start with the hazardous material ordinance.

## **A. Regulation of Hazardous Substances**

Councilor Butterfield said he read all of the ordinances and thought about them and agrees with Mr. Shannon and does not understand this ordinance at all but can maybe understand the hours and camping, but at this point he does not agree with any of them. He said he appreciates the work the committee put in, but does not believe we should vote for any of them.

Councilor Folsom said she agreed and referred to working in a wetland sensitive area and listed all of the agencies that already regulate hazardous materials and said there is already response and process in place and said she spoke clearly at the beginning of this process that she felt that the scope of ordinances would be outside of what our job is and she still feels that way.

Mayor Middleton said he is big on public process and said they went to a lot of time and effort and took the list of ideas before them and did a good job. He stated we should let the voters decide and said if the public doesn't want the ordinances they can vote them down. He takes issue with the Chamber because it seems that they will do business at any expense and referred to them wanting the apartments that are going in and referred to the number of children that will be coming into the schools and asked how we are going to take care of that. He said we need business but we need to drive the business that we want in this community not what the outside wants to bring in. He referred to the City goal that states to provide for the safety and security of the community and its citizens. He stated that in the long run we don't have problems yet but this will create problems we could have in the future. He referred to doing public service for 37 years and said he doesn't want to drive business out but bring in the best business we can.

Councilor Clark agreed with the Mayor and said she respects the time and effort of the Special Committee to fine tune the questions put before them. She said they tackled more than has come before us today and said they tackled the bigger issue and referred to the pit fight that it had turned into. She said they created ordinances that people can choose. She stated they can vote in the privacy of their home or at the polls without any recourse, such as garbage being put on lawns, and without ridicule. She said if the public wants the ordinance then they will pass it and if it is the vocal 10% then they will fail. She said she believes in the process of democracy and we should allow the people to decide and she is for this ordinance being sent to the voters.

Councilor Langer thanked the Special Committee and said that was a lot of work and appreciates all of Meerta's work and said he attended a few meetings and recognized the effort in the meetings and after. He said he is all for the ordinance going to a vote and that it is a great way to let the citizens decide it. He stated unfortunately from the information he has gathered it doesn't indicate that they have a chance of passing. He referred to an email stating that these ordinances are not indispensable. He said we hear information in this forum, but mentioned all of the emails and correspondence that indicate otherwise. He mentioned an article in Oregon Live that speaks to a couple of examples of this. He said in terms of being budget conscious we should not waste the taxpayer's money. He referred to the City of Newport facing a similar situation where they had a divided Council, 4 to 3, and referred to voters and the voters voted them down. He said he thinks this will happen and he agreed with Mr. Shannon and noted the EPA, DEQ and others currently handle this and it is not necessary for Sherwood to get involved.

Councilor Grant thanked the Special Committee and Meerta Meyer for the work and said it is presented well for us to read and understand, and the dialogue was helpful and he understands it could not have been easy. He said it was worrisome that we even put a group to that task and they performed well. He referred to the ordinances presented and said this is something to chew on and before you sat down we didn't have that and we didn't know what we were talking about specifically and didn't know which ones would stop Walmart or which ones were about Walmart. He said that in some peoples mind it still is about

let's stick it to Walmart. He stated that is what is worrisome about putting it to a vote and said when you try to inflict pain on one business it's unhealthy and we are not ready or at a point to continue that unhealthy discussion. He said he agrees with Mr. Shannon and Mr. Campbell. He said he disagrees that it is necessarily unwise to be reactive. He stated when writing new regulations and imposing them on businesses, we should not pretend there is a problem. He stated he is not convinced there is a problem, but referred to camping and said there may be a problem with generators making noise, but we have a noise ordinance for that. He said putting these ordinances out to vote sends a message that there is a problem and also looks like sending the message of sticking it to Walmart back to the community. He noted these are ordinances that the Council could make decisions on if there is a problem, or put them to a vote if there is a problem. He said he appreciates the material from the committee and it is something we can work on when the time comes.

Council President Henderson said she would speak about just the hazardous substance ordinance and said it is complicated and said Councilor Folsom alluded to a situation 3 years ago in which we wanted to put a platform down at Stella Olsen Park in a dry streambed and that required 4 agencies to sign off: Fish and Wildlife, Clean Water Service, Army Corp of Engineers and the Bureau of State Lands. She said that was just to put 15 yards of plywood on a public space. She stated she has reservations about this and does not remember reading this in the petitions and she has not known of Sherwood having environmental spills or issues that were not contained. She referred to another community adopting similar regulation and asked how long the community considered this ordinance, how much research and data they had. She said she is reluctant to move forward at this time because we don't have enough data and is not sure how it applies to private or public entities and is concerned that staff does not have the qualifications or training to respond to issues of removal of hazardous substances and does not know what the legal issues are and said one of the lines said it is not the intent of the code to act if DEQ or EPA will act. She stated that section assume that in cases that DEQ and EPA will not act, but she is not under that impression and said it is on page 3 of the ordinance. She said she is reluctant to act right now and does not have enough information and staff does not have enough training and is worried about page 4 where is said the City Manager will reimburse for reasonable cost and if the City Manager denies reimbursement the party may appeal to the Municipal Court within 15 day of the denial and said to her knowledge we don't have any of these issues in Municipal Court right now. She asked if we have anything in the Municipal Court that has been dealing with this or has the experience. She referred to the language that in order to ensure completion of the removal action, the City Manager may require a bond and said she is not sure that the City Manager has the training to determine the level of the bond that would be needed to remove such hazardous waste. She does not know where the committee was going with this ordinance and said she does not understand how we don't have agencies available to us and referred to a number of DEQ sites in our town that are multi million dollars sites that we are trying to get grants for. She said her reservation is administering and how we would administer it differently than how others would deal with it.

Meerta responded that as the Special Committee reviewed the regulation, the crux of this issue was immediate action. She said this ordinance is similar to other municipalities where the City Manager can act quickly and mitigate damages and not acting alone but cooperating with others. She stated that often with these agencies there is a delay in their ability to react and it would give the City Manager an opportunity to react. She said it was supported by staff and she is concerned that a majority of the Council is not lending their ear to the professional direction of the staff and that concerns her on behalf of the community. She said we need to be proactive and part of why we were formed was for Council to have an opportunity to have citizen input and she values that. She said the decision to draft the language was simple in that it affords Sherwood, like other municipalities, to respond and to mitigate damages not only to people but to



the environment and is hopeful that Tom and Joe have an opportunity to talk to you and tell you how it is not unique and mimics what others have had for decades.

Councilor Clark asked Tom to comment.

Tom spoke in general and said the issue is what we are going to do with these ordinances and referred to the timeframe and the direction, or said the Council can give the staff direction. He commented he is less clear on that but needs to be very clear as to what action we are taking, specifically the ballot titles. He said Eugene has done this but he is not aware of other cities that have this, but said it does give an additional tool to the City Manager and the City to deal with situations that are not as immediate in nature and might slip through with other agencies. He stated yes, it is a major issue, the other agencies will handle it, but like Eugene there may be a need for some local control. He said if you want staff to look at this more closely and have discussions with Eugene, and said this ordinance has been around for over a decade, and ask them if they have used it, etc. He said that is your options. He asked Council if they want to have a broader conversation and have staff bring it back to you.

Mayor Middleton said he would be willing to do that on this ordinance only and it is a little confusing and staff could do further research and bring back to Council. He said he would do this only on this ordinance.

Attorney Beery asked for clarification on what Tom said and she said it might be good once the discussion on this particular ordinance if done, to call for a motion to refer or not and the second question would be a clarification as a whole of Council if interested in further research and that can be done as a motion or a consent.

Councilor Folsom said she would be interested in hearing if there is a problem, why is there a problem, if there is a hole that needs to be filled, how did it effect the other jurisdiction that adopted it, and how it came on the radar. She said that we are all about common sense and if this is facing our community and we are concerned about it we can do the research and do the work and to understand why we are talking about this. She stated that she does not want to refer to the ballot something that we don't know how we are going to implement or pay to implement and we are not even sure why we are referring to voters.

Councilor Butterfield stated that he agrees with Councilor Folsom and questions the staff expertise and said unless staff tells us differently. He asked staff to look into it and if there is a real problem, then we need to get a hazardous materials team in to talk to us.

Tom responded that instead of expertise, you are dealing with certification and said it is something we could contract out to deal with the situation because staff does not have the expertise.

Mayor Middleton referred to a problem years ago with a rolling meth lab that rolled over and said that at that time there was funding to deal with those, but there is no more funding. He said to recover money this may be something we need. He said we have certified people in the Fire Department.

Councilor Clark said she agrees with Mayor Middleton that with this ordinance only we should look further and make sure we cover all of our bases.

The following motion was received.

**MOTION: FROM COUNCIL PRESIDENT HENDERSON TO NOT TAKE ACTION ON THIS ORDINANCE EITHER TO DRAFT THE BALLOT TITLE OR EXPLANATORY STATEMENT BUT TO DIRECT STAFF TO DRAFT AN ORDINANCE TO COME BACK TO COUNCIL IN THE NEAR FUTURE AFTER COORDINATING WITH OTHER AGENCIES ON THE BEST WAY TO HAVE AN ORDINANCE TO ALLOW FOR A QUICKER RESPONSE BUT THE OPPORTUNITY TO FIND A WAY TO PAY FOR THE RESPONSE OF A CLEAN UP. SECONDED BY COUNCILOR FOLSOM, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR GRANT STEPPED OUT OF THE MEETING TEMPORARILY AND DID NOT VOTE).**

Mayor Middleton addressed the next agenda item.

## **B. Regulation of Camping**

Councilor Butterfield said he does not know if we have a problem with camping and said he has an RV and has parked at Walmart facilities several times. He stated he would be willing to at least put it before the voters.

Councilor Folsom agreed with the citizen who spoke of saving money and stating that if we have a problem we should go to the businesses and let the businesses say no to camping and do the enforcing with their property management team. She said that the job of the Council is to be responsible for our money and before we have a problem and legislate against a problem we should be proactive and approach the businesses. She stated that she does not want to legislate for a problem that she doesn't think exists.

Mayor Middleton said he disagrees and we should have the ordinance and said he has worked in communities where it is an issue and we don't need people camping in parking lots all night. He said it is an issue that this community does not need. He stated that if you say it is up to the businesses, but there is not an ordinance on the books, they can't enforce. He said that we have a lot of camping in state parks and national parks and we don't need camping in town, but he noted that if you read the ordinance it is allowed in residential areas. He said that it hurts other businesses that have campgrounds and said they are only a few miles away. He concluded that there is a need for a camping ordinance.

The City Recorder informed the Council that IT staff needs to switch the tape.

Mayor Middleton called for a brief recess at 8:55pm to switch the video tape. The Council returned at 9:05pm.

Councilor Clark said this should go to the voters to decide and said we should be proactive and not reactive, but the voters should decide.

Councilor Langer asked Chief Groth about crime statistics and asked if we have camping problems in Sherwood around retail facilities.

Council President Henderson stated that when we first started these discussions we were discussing overnight parking and not camping. The Council agreed. She said the ordinance states camping and referred to the camping problem in Portland and said we need to be careful to clarify that we were talking about overnight parking in a retail zone, not camping like for days on end and asked if there is a legal distinction.

Tom Pessemier stated that there is a distinction, but referred to the discussions where there were people coming forward about overnight parking and camping and then Council gave the authority to the Special Committee without any limitation on what they could look at so they took the advice and decided to go down the camping route.

Councilor Henderson asked if there is a legal difference between overnight parking and camping.

Attorney Beery said the ordinance defines camping, and it is different from parking and refers to preparing to sleep.

Councilor Henderson asked how that is not defensible in Portland.

Attorney Beery stated that they are camping on sidewalks, which is public property.

Chief Groth responded to Councilor Langer that he did not have any statistics and he didn't go down that route. Mr. Langer asked if the committee asked for that information. Chief Groth said no.

Councilor Langer referred to the purpose of the ordinance which states "to help decrease problems with regards to public urination, public defecation and theft of water" and he asked if there was a request for information for these types of crimes. Mr. Langer asked if these problems exist now.

Chief Groth said there were not requests for data and he was asked to come to a question and answer session and he brought information about activity for retail outlets. He said that the bigger issues are; is this something that we do need and could deal with, and the answer is yes. He said he has had people set up camps including tarps and sometimes tents, so these issues do occur and they do these sorts of things but he does not know about the stealing of water.

Mr. Langer asked if these cases were on private property or were they trespassing. Chief Groth said that they were trespassing. Mr. Langer asked if the code address trespassing. Chief Groth said we have trespassing code and statutes.

Mr. Langer asked if you need more code for camping to give you more leverage.

Chief Groth stated that it would be a useful resource to have and would give us a clear tool to address this if it happened again or got worse. He said there is a clear distinction and referred to overnight parking versus camping. He stated he is not suggesting a problem but it has happened and would be useful to tell people to move on.

Councilor Langer referred to a question he heard during public testimony based on the current language and asked about scouts and asked how to get a variance and what is the fee.

Tom said it gives the authority to the City Manager to set up a process to get a variance and have a form readily available for people to fill out. He said they have not proposed any fees and if they had fees it would be very small. He stated he does not expect many requests.

Councilor Langer referred to a tent on the corner of Ladd Hill Road and Brookman Road and said that is good example of what he heard tonight and he assumed that they would have to get a variance.

Tom said only for areas open to the public, such as parking lots. Tom stated that is private property and not open to the public.

Councilor Langer said that front yard looks as easy to walk across as any parking lot. He referred to living on corner lot and open spaces.

Meerta defined areas open to the public and said we defined those areas and just like you wouldn't put a tent in my front yard without permission that is a moot point. She said the intention, as with the other ordinances, is to promote safety issues, livability and lessen impact to adjacent neighborhoods and communities and residents. She commented that Chief Groth said in their Special Committee Meeting that this would be another means to deal with this issue now and in the future.

Tom answered Councilor Langer's question and said because of the way it is written and according to legal, it would not apply to a tent in the front yard on private property.

Councilor Langer commented on the confusion he heard tonight and said there must be some rewording needed and until that it crafted it is not ready to go to the voters.

Councilor Grant said he previously spoke in general about all three ordinance and said he is open about being conservative and one element of being conservative means you look more reactively and don't write a law unless there is a problem. He said he still sees this as a WalMart issue and stated that Walmart has a national reputation as having RVs camping in their lots and then moving on and feels that is how this ordinance has come about. He stated if this went to the voters there is too much confusion over how is it applied and who it applies to. He said this is one that we can easily vote on ourselves and if there is a problem we could fix it overnight. He stated right now he is not ready to put to the voters.

Council President Henderson said everyone has had a chance to speak and she thanked Chief Groth and Meerta and referred to page 2 of the variance and said how it is confusing about who it applies to and who it doesn't apply to. She commented that a Class A variance to camp up to 14 days and she asked why 14 days. She referred to the Class B variance as 15 days or more in duration and asked why the division. She asked about situations of firework stands where people spend the night to watch over the tents. She asked if this was considered.

Meerta responded that they considered a number of different possibilities, such as firework stands within parking lots and the need to have a van or RV, and fundraiser events that are often done in partnerships with the schools, and she assured them that both points were clearly addressed and the City Manager would have the ability and discretion to give variances for these activities.

Councilor Henderson asked about the 15 or more day variance.

Meerta responded that it is hard to predict duration of an event and said they felt comfortable to rely on the discretion of the City Manager.

Council President Henderson stated that both variances require that you must apply ahead of time and require a posting. Meerta said just advance request. Councilor Henderson said prior to a public hearing. Meerta said not a public hearing, just a pre-application and she gave examples and said a pre-application that would be available for the City Manager to review.

Tom responded that the over 15 day variance could have a public hearing.

Attorney Beery clarified that the ordinance states that it is an option for the Council if they want to have a public hearing on an over 15 day variance request.

Council President Henderson said we have heard from the Chief that this would be a useful tool and we obviously have a draft form and asked if the Council would consider instead of referring to the voters, similar to the hazardous materials, directing staff to come back much quicker, say 30 to 60 days, with an ordinance that would take into account these recommendations of the committee and anything brought up tonight.

Council Henderson asked about the civil penalty of \$100 a day and asked if that was unanimous. Meerta responded no.

Councilor Henderson referred to Councilor Grant's comments and said that instead of referring to the voters, which is expensive, we could adopt something and ordinances are not set in stone, they can be amended, repealed, and replaced. She stated that we can take care of it at the Council level and work closely with the Police Department and make sure we do a good job communicating to properties where it would be applicable, like a fireworks stand and since there is no fee and it is handled through the City Manager's office we could take care of it at the Council level. She said if we determine that it needs to be amended based on feedback of staff or businesses, than we can do that. She asked if Council would consider that as opposed to drafting a ballot title and explanatory statement. She agreed with Councilor Grant that it is about Walmart. She said she owns an RV and does camp but said there is a heightened responsibility when you bring an RV onto a public parking lot and maybe there should be language that the RV is in good working order. She stated that she would like to take the work of the committee and come back with an ordinance that we can adopt at the Council level, not referring to the voters, and amend in the future if necessary. She said she still has a few questions but that will be addressed through process. She said ordinances regarding civil penalties are based on complaint and said we need to reach out to businesses and educate them on the ordinance and on what they need to be aware of. She said that since there are no fees other than penalties, she said there will be people that don't know about it. She asked the Council to consider this.

Mayor Middleton disagreed and said that is why we formed a Special Committee and stated that there is a group here that will vote "no" no matter what and that is why we have voters. He said \$5,000 is nothing and referred to the cost already spent on the committee. He asked why we formed a committee if people were going to come in here with preconceived notions that we weren't going to refer to the voters. He said he can't believe we are not referring to the voters.

Councilor Clark agreed with Mayor Middleton and said for full disclosure she has spoken to Meerta, Jennifer Harris and Beth Cooke and they did not change her view in anyway. She said the public should have the freedom to vote and define their community and the committee has worked hard and this is a good ordinance.

Councilor Langer said he understands and hears what is going on and again referred to the situation in Newport and said this looks like it. He said we shouldn't spend \$5,000 to have it get voted "no" and we can work with staff and not waste money.

Meerta asked Councilor Henderson about educating the public and allowing businesses an opportunity to understand what would happen if this ordinance was adopted. She said one committee member is the Executive Director at the Chamber of Commerce and she said the Chamber would help to educated

businesses locally if this was adopted and there would be public outreach and that would be helpful. She referred to Mr. Langer's comment and said she would like to understand if this ordinance was put to the review of Council would it be favored.

Council President Henderson asked the Council if the end result was to form a subcommittee and the subcommittee made a recommendation and we agree with it, what is the point of sending it to the voters if we actually agree with the recommendation. She said if we send it to the voters and it fails we have not accomplished what the subcommittee wants us to do, but we could ask staff to draft an ordinance and implement the ordinance months of advance of the special election. She asked about the end result and referred to how Council takes the recommendations from other commissions and boards and said this is a policy decision question and this is what we do. She stated they take the committee's recommendations and adopt policy. She said when she came up with the idea, the idea was we could refer it to the voters, or if we agree with the recommendations we can just adopt it ourselves. She asked Meerta if she thought this was an either/or. Meerta responded no.

Councilor Clark agreed with Councilor Henderson but said Meerta needs to know if there is support in favor.

Meerta agreed that it would be helpful to know if there is support in favor.

Councilor Henderson stated that was her intention, that they have a discussion at the dais, and that is what we are doing and asked if the Mayor disagreed.

Mayor Middleton said he does not believe the Council will vote it in because there is at least three that do not want the regulation, but one would put it to the voters. He said that is what he is hearing, that the Council would not pass a camping ordinance by a vote of 4 to 3. He said two have already made a final decision and will not change their mind no matter what you do to it. He commented that we have an obligation to let the voters vote.

Meerta said it would be helpful on behalf of the Special Committee to hear from the Councilors whether, if presented the opportunity to adopt this policy, whether or not they would support it.

Councilor Folsom said she appreciated the professional job Meerta has done to present this material and said the first thing she said was that we have all read the ordinances to show commitment to your committee, and can we adopt the ordinances and save money. She said that when she hears staff say that this is a tool that they would like to have, such as Chief Groth who has more information, she will certainly vote to adopt and implement. She referred to the highlighted regions and asked if that is really what they want to say. She said this is what we do with the Planning Commission. She supports Chief Groth and said he knows his job and she is a volunteer that respects the experience and authority of the staff. She said if we can adopt this in such a way that it will not do harm to the community and provide the Police Department with something that they need, but she agrees with a citizen who asked what is the urgency, and she said that the Council can deal with this quicker than going to the voters, because we are doing our job and this is a policy decision.

Councilor Clark said she would support and adopt.

Council President Henderson addressed Councilor Clark and said that she just reversed her vote.

Councilor Clark said she wants it to go to the voters because she has heard other Councilors say that they will not support and adopt it. She commented that she does not want to rule instead of represent. She said if the Council as a whole is supportive of reworking and small fine tuning.

Council President Henderson said that is what she said 15 minutes ago by asking if we can have a discussion at the dais. She referred to not being transparent and said that some people came with a preconceived notion of another person's vote and said that is not what we do. She referred to Councilor Folsom's comment regarding Chief Groth saying it is a useful tool. She said the Mayor's ideas are valid and we don't need to put it to the voters because it is not necessary, but what is necessary is to have staff come back with an ordinance that we can adopt and will have more time and every ordinance has a public hearing so we will have another public hearing.

Councilor Butterfield noted the disadvantages of going first and said that after hearing from Chief Groth and Councilor Henderson he would support it only because he now has more information and he can make a better decision.

Councilor Langer said he heard Chief Groth and he could support for the need of running off trespassers. He said he could support passing a camping ordinance if it supported that need but not too general. He said it needs to be refined so the Chief has a tool and said it needs to be simple and clear, and then he would pass. He referred to the amount of youth in this town that camp.

Tom commented and referred to the language "area open to the public" and said it should be capitalized and that may have led to the confusion. He said he has heard clearly that needs to be better defined and we need to do additional work to define more clearly.

Councilor Langer stated that as it reads "means all outdoor areas on private property within the City".

Tom said that he will make sure that will be capitalized.

Councilor Langer said add something about trespassing and it will be fine.

Mayor Middleton asked Meerta if the Special Committee would support this action. Meerta said yes.

Councilor Grant said it is offensive to hear how other members know how he is going to vote now and in the future and it is rude and said we discussed this in January and agreed not to do this. He said he doesn't know how he is going to vote. He said in its current form it is not ready, but if it is cleaned up and pinpointed he could support. He stated it has a better chance being voted by Council than by the voters. He stated that if this becomes about Walmart he will not support it, but if it is about providing a useful tool for enforcement Chief Groth he will support.

**MOTION: FROM COUNCIL PRESIDENT HENDERSON TO TAKE THE RECOMMENDATIONS OF THE SPECIAL COMMITTEE AND DIRECT STAFF TO TAKE THE RECOMMENDATION AND REGARDING CAMPING AND ANY CLARIFICATIONS AND MAYBE AN ADDITIONAL CATEGORY ON PAGE 1 AND FURTHER EXPAND AND BRING BACK AN ORDINANCE TO ADOPT WITH LEGAL ASSISTANCE AND NOT REFER TO THE VOTERS BUT BRINGING IT BACK AND ADOPTING IT IN AS TIMELY MANNER AS POSSIBLE. SECONDED BY COUNCILOR BUTTERFIELD, MOTION PASSED 7:0, ALL PRESENT MEMBERS VOTED IN FAVOR.**

### **C. Regulation of Business Hours**

Councilor Folsom said she listened to the testimony and said she spoke clearly about this early on and said that she has five children and has been through a lot of illness and has appreciated being able to get medicine in the middle of the night. She stated that passing business hours is outside the scope of what we should be doing for our businesses and said she does not in any way want to inhibit the growth of our community and their successful pursuit of business.

Councilor Butterfield commented that he is a business owner and he does not want the government telling him how we can run his business and who can come to work at what time. He said this is not good for our community and if all of the business owners knew about this they would be here tonight encouraging us to vote against it. He concluded that he is definitely against.

Councilor Clark responded to Councilor Folsom's comments and said it does not apply to sale of prescription or nonprescription medication and asked if that would change her opinion in any way.

Councilor Folsom responded no.

Councilor Clark said she supports the ordinance going to the voters.

Councilor Langer referred to Amanda Dalton's comments and heard her say that they do not support any regulations of this nature. He referred to other testimony of an island of refuge and with that he does not believe as a City we have any business regulating business hours and he will not support in any way, shape or form.

Council President Henderson asked Meerta if the Chief spoke.

Meerta responded that he did and he clarified some of his statements via email which are included in the packet.

Council President Henderson said she is confused about the retail sales of other goods or merchandise of less than 50% of the established overall sales. She said it is on page 1 at the very bottom then down below you exempted gasoline stations so they don't apply and she asked why.

Meerta responded that this is an arbitrary number then clarify that, any time we looked at language that included words "for the primary purpose of", 50% would be inclusive of the primary purpose so if something is not being used for the primary purpose of a majority of percentage it is not its primary use.

Council President Henderson referred to Section D, the limitations, where it states it does not apply to restaurants, gasoline filling stations, and personal service businesses and said they received a letter from the movie theater and asked if movie theaters were under personal service?

Meerta responded no and they excluded premieres and theaters from the language.

Tom clarified that yes, we are considering movie theaters as personal services so they are excluded from being regulated.

Meerta said they also discussed not just movie theaters, but theater in general.



Councilor Henderson said for example we are going to have a Community Center that will have a theater function in it but the primary service is not a theater and there will be retail in the building.

Councilor Henderson asked about Snap Fitness and said they are open 24 hours, but they are in a retail zone.

Tom responded that it is the business type we are regulating, not the zone. He stated that they would be considered a personal service.

Councilor Henderson said that she did not see fitness centers under the exclusions of personal service business.

Tom said it is under nutrition/weight loss centers.

Councilor Henderson referred to page 3, Section 5, "such conditions may include but need not be limited to the creation of a security plan and/or the hiring of private security guard".

Meerta Meyer responded that this is related to extended hours, for example Black Friday.

Councilor Henderson referred to the word "may".

Tom said it would be up to the City Manager to determine whether they thought it would be necessary.

Councilor Henderson stated she has trouble with the word "may" in any ordinance because it is too broad.

Tom said the City Attorney recommended "may" and said he understands her concern, and they had a conversation about this, but you can't determine what situations will come up and there are too many variables. He said that you can have a different opinion and decide to change it.

Councilor Henderson asked how many people know what a "writ" is? Tom said probably someone who violated it would find out quick.

Attorney Beery responded and referred to page 4 and said that is the standard mechanism for challenging a decision and it is the standard mechanism to review a government action and it is defined by state law.

Councilor Henderson said it is the opportunity to have another government body review it.

Attorney Beery said no, the court.

Councilor Henderson referred to the penalties and questioned the \$1,000 each day for violation.

Meerta referred to the word "may" and said if a violation would occur in this regard, where public safety was being jeopardized, the City Manger could impose this type of a penalty.

Councilor Henderson asked when the committee was talking about hours of operation, and she referred to Amanda Daltons concerns about deliveries, did you have conversations about a retailer...

Meerta Meyer said that is addressed within the ordinance and the hours of operation would not be inclusive of deliveries to the establishment and the hour of operation is related to when they are open to the public.

Councilor Henderson stated your concern is sales from 1 a.m. to 5 a.m.

Meerta said the majority of the Special Committee was comfortable with the 1 a.m. closing and a 5 a.m. opening and said there was a lot of discussion on this topic and the packet includes a number of comments from the public regarding this ordinance. She stated a number of the emails suggested additional restriction on hours, but the majority of the committee agreed with a 1 a.m. closing and 5 a.m. opening. She said the basis on which they drafted this ordinance is to promote the health and wellbeing of the neighboring community and the residents and having there being an opportunity to enjoy quiet enjoyment and it is a valid concern to the community. She said additionally Chief Groth had an opportunity, clarified some of his statement about regulating business hours in regards to community policing and how the ordinance lends itself to that very notion.

Councilor Henderson asked Chief Groth to weigh in on this as a potential tool for the police force and issues in our community where 24 hour businesses are open.

Chief Groth responded that again he is not intending to play a game of semantics but by “weigh in” that it is fair to say that when he spoke to the committee he did not come with a presentation just answered questions and did not take a position on the ordinance and does not take a position now. He said the main point on this general topic has to deal with the growth of the community and that is what it comes down to. He said it doesn’t matter where you build it or what it is called, it is going to need to be protected. He commented that different things happen during the day and different things happen during the night, and open or closed doesn’t matter, it is a resource that has to be protected. He said he takes no position and hopefully that answers the question.

Councilor Henderson asked if anybody from the business community with a larger facility came and talked to the committee.

Meerta responded that two local businesses came, a representative from Regal Cinemas and The Springs.

Tom stated that The Springs representative came during the first draft and that is when personal service businesses were included, then we decided to rewrite and that is when the personal services were excluded.

Councilor Henderson said that if we were going to refer any ordinance to the voters it would be this one, but questioned whether it is needed. She stated that we have not had a lot of issues or trouble with businesses being open 24 hours and referred to when Safeway and Albertsons were open 24 hours. She said that if we referred to the voters in the form of a ballot title and explanatory statement we would have to clarify what zones it applies to and since you don’t have a threshold, and stated that when they originally talked about this 100,000 was mentioned as a threshold and said that would exclude Kohls and give them an unfair advantage. She noted another concern is that we have a disparate tax base in our community where the residents bare a majority of the taxes. She mentioned a large industrial property east of town that is very unique called the Tonquin Employment Area and said we need to be careful and not let this hurt our chance to develop that property. She said it needs to be defined clearly and if we send

it out to the voters and they do not pass it, it will show the propensity to regulate businesses or not regulate businesses.

Attorney Beery stated that Tom will discuss the time constraints but reminded the Council they cannot use the ballot title as a mechanism of clarification, and Councilor Henderson may have meant that the ordinance itself would have to be clarified before we would send it. She stated the ballot title has to be an accurate representation. She noted that she would need specific direction on changes the Council would like to make if the Council wants to meet the November election.

Tom said we need to know tonight, you could vote to amend that on the 20<sup>th</sup>, if you had specific amendments to the language, but it would have to be extremely minor. He stated that they definitely need to know tonight. He clarified that this does not apply to zoning in any form, and if it did we couldn't put this before the voters because it would be part of our land use code, this is limited to types of businesses regardless of the zone they lie in. He said we have some businesses in Light Industrial and primarily retail and said some are grandfathered in, and it would apply to them, and we have not made a difference between different types of zones, but we have made a distinction between different types of businesses, so it would not apply to industrial property which would include the users in the Tonquin Employment Area.

The following motion was received.

**MOTION: FROM COUNCILOR CLARK TO DRAFT A BALLOT TITLE AND AN EXPLANATORY STATEMENT IN RELATION TO THE PROPOSED ORDINANCE SUBMITTED BY THE SPECIAL COMMITTEE REGULATION OF BUSINESS HOURS TO THE VOTERS, SECONDED BY MAYOR MIDDLETON, MOTION FAILED 3:4 CLARK, MIDDLETON AND HENDERSON VOTED IN FAVOR. BUTTERFIELD, FOLSOM, GRANT AND LANGER VOTED AGAINST.**

**9. ADJOURN:**

Mayor Middleton adjourned at 10:05 pm and stated the Council will be convening to an Executive Session. The Council did not address the following items on the Agenda: Citizen Comments, Council Announcements and City Manager Report. Mayor Middleton reconvened the City Council regular session and stated the Council decided not to hold the Executive Session due to the late hour and will hold the executive Session at a future date.

**10. ADJOURN:**

Mayor Middleton adjourned at 10:10 pm.

Submitted by:

  
Sylvia Murphy, CMC, City Recorder

  
Bill Middleton, Mayor