



# SCAPPOOSE *Oregon*

MONDAY, MAY 20, 2024  
CITY COUNCIL MEETING AGENDA  
REGULAR MEETING 7:00 PM  
COUNCIL CHAMBERS  
33568 EAST COLUMBIA AVENUE  
SCAPPOOSE, OREGON 97056

Disclaimer: These minutes are intended to summarize the conversations that took place in this meeting rather than provide a full transcript. Anyone wishing to view the full conversation can find a recording of this meeting on YouTube at: [www.youtube.com/watch?v=dimcAaAvtcw](http://www.youtube.com/watch?v=dimcAaAvtcw) and [www.youtube.com/watch?v=H2MCQI8OOLY](http://www.youtube.com/watch?v=H2MCQI8OOLY).

## Call to Order

Mayor Backus called the May 20, 2024 City Council meeting to order at 7:02 pm.

## Pledge of Allegiance

## Roll Call

Joseph A. Backus	Mayor	Larry Lehman	Interim City Manager
Tyler Miller	Council President	Brian Jensen	Interim Public Safety Director
Jeannet Santiago	Councilor	Susan M. Reeves	City Recorder
Kim Holmes	Councilor	Isaac Butman	Assistant to City Manager
Andrew Lafrenz	Councilor	Laurie Joseph	Community Development Director
Ty Bailey	Councilor		(left at 8:55pm)

**Remote:** Councilor Marisa Jacobs; and Planning Commissioner Harlow Vernwald

## Continuation of the Community Enhancement Program work session

Bill Blank with the Scappoose Community Club gave an overview of their request.

## Approval of the Agenda

Councilor Bailey moved, and Council President Miller seconded the motion to approve the agenda. Motion passed (7-0). Mayor Backus, aye; Council President Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; Councilor Lafrenz, aye; Councilor Jacobs, aye; and Councilor Jacobs, aye.

## Public Comment

There were no public comments.

**Consent Agenda ~ April 15, 2024 City Council meeting minutes; May 6, 2024 City Council work session minutes; and May 6, 2024 City Council meeting minutes**

Council President Miller moved, and Councilor Holmes seconded the motion to approve the Consent Agenda ~ April 15, 2024 City Council meeting minutes; May 6, 2024 City Council work session minutes; and May 6, 2024 City Council meeting minutes. Motion passed (7-0). Mayor Backus, aye; Council President Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; Councilor Lafrenz, aye; Councilor Jacobs, aye; and Councilor Jacobs, aye.

## New Business

**Proclamation ~ Amyotrophic Lateral Sclerosis Awareness Month 2024**

Mayor Backus read the Amyotrophic Lateral Sclerosis Awareness Month Proclamation.

## Joint Work Session with Planning Commission

## Land Use Training

**Present:** Mayor Joseph A. Backus; Council President Tyler Miller; Councilor Jeannet Santiago; Councilor Kim Holmes; Councilor Andrew Lafrenz; Councilor Marisa Jacobs (remote); Councilor Ty Bailey; Planning Commission Chair Scott Jensen (left at 8:26pm); Planning Commissioner Vice Chair Bill Blank (left at 8:31pm); Planning Commissioner Rita Bernhard (left at 8:26pm); Planning Commissioner Sara Jones-Graham (left at 8:26pm); Planning Commissioner Marty Marquis (left at 8:26pm); Planning Commissioner Harlow Vernwald (remote) (left at 8:29pm); Interim City Manager Larry Lehman; Community Development Director Laurie Oliver Joseph; City Recorder Susan M. Reeves; Legal Counsel Ashely Dougill (left at 8:26pm); Assistant to City Manager Isaac Butman; Interim Public Safety Director Brian Jensen, and NJ Johnson.

Legal Counsel Ashleigh Dougill went over a presentation.



## Agenda

- Brief Refresher on Land Use Basics
  - History and Purpose of Oregon Land Use Law
  - Role of State and Cities
  - Types of Land Use Decisions
- Important Issues
  - Bias, Ex Parte Contacts, and Conflicts of Interest
  - Other Government Ethics Issues
  - Public Meetings Issues
  - Hearing Requirements and Issues
  - Criteria and Findings
  - Appeals
  - 120-Day and Fixed Goalpost Rules
  - Clear and Objective Requirements
  - Constitutional Issues
- Questions and resources

## History and Purpose of Oregon Land Use

- 50<sup>th</sup> anniversary last year
  - Originated with Senate Bill 100, adopted in 1973
  - Concerned at that time primarily with protecting farm and forest lands, preventing sprawl
- Purpose is to manage land uses to achieve a variety of competing and complimentary goals

## Role of State and Cities

- State:
  - 19 Statewide Planning Goals → natural resources, housing, economic development, transportation, etc.
  - State statutes and administrative rules
  - DLCDC, governed by LCDC
  - LUBA
- Cities:
  - Comprehensive Plans – maps, policy, vision
  - Ordinances - implementing comp plan
  - Review development applications for compliance



## Types of Land Use Decisions

There are two types of land use decisions:

- Legislative
- Quasi-Judicial

## Legislative Decisions

- Legislative decisions typically involve the adoption of more generally applicable policies, standards, etc., that apply to a variety of factual situations, and a broad class of people.
- Examples include amending the comprehensive plan, a zone change that applies broadly to large areas, or changes to the text of the development code to include or delete specific uses in a zoning classification.
- Because a legislative decision is the expression of City policy, the City is not required to reach a decision on a legislative proposal and may table the issue or decline to review it altogether.
- Bias and ex parte requirements do not apply.

## Quasi-Judicial Decisions

Definition:

- The application involves only a single property or small group of properties.
- A decision on the application is based on pre-existing criteria.
- The city is required to make a decision.

Most of your decisions will be quasi-judicial. The focus is on "judicial" – you will be effectively acting as the judge to determine an application's compliance with applicable requirements. Because of that, additional requirements apply.

## Bias

Bias exists if the decision was the product of positive or negative bias rather than an independent review of the facts and law.

*Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011).

The standard is whether the decision-maker prejudged the application and did not reach a decision based on the evidence in the record and the applicable criteria. *Halvorson Mason Corp. v. City of Depot Bay*, 39 Or LUBA 702 (2001).

## Bias – Example

*Halvorson Mason Corp v. City of Depot Bay*, 39 Or LUBA 702 (2001).

- Facts: Prior to decision, city councilor sent letter to mayor and other councilors concluding that applicant did not have the right to use the structure for the proposed use.
- LUBA: The city councilor formed an opinion regarding the legality of the real estate sales office prior to receiving evidence during the course of the city council proceedings. . . It is clear [the councilor] prejudged the application and was incapable of rendering an impartial decision based on the application, evidence and argument submitted during the city's proceedings on the application.

## Bias - Example

*Woodard v. Cottage Grove*, 54 Or LUBA 176 (2007)

- Facts: City councilor signed letter to the editor encouraging project opponent to leave town. Also requested police logs regarding projects opponents and included them in the record.
- LUBA: "The role of the local government decision maker is not to develop evidence to be considered in deciding a quasi-judicial application, but to impartially consider the evidence that the participants and city planning staff submit . . . in the course of the public proceedings.

## Bias - Example

*Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137 (2002).

- Facts: City councilor was member of church that applied for conditional use permit. Voted to approve permit.
- LUBA: Where the decision maker has expressed concern about the proposed conditions of approval but nevertheless declares that she is able to render a decision based on the facts and law before her, that decision maker has not impermissibly prejudged the application.

## Bias - Example

*Nicita v. Oregon City*, 74 Or LUBA 176 (2016).

- Facts: Petitioner challenged city decision to approve plan amendment, zone change and master plan.
- LUBA: A city councilor's reference to "banana" as an acronym for "build absolutely nothing anywhere near anything" does not demonstrate that the city commissioner was biased against opponents.

## Note on Bias in Practice

- Common meaning versus legal term.
- *Perception* of bias may be sufficient for a claim, even if the claim does not prevail.



## Ex Parte Contacts

**Definition:** Communication or information received outside of the record on a matter that is pending before the city. Can include site visits.

**ORS 227.180(3):** A decision is not invalid if the decision-maker receiving the contact discloses the **substance** of the communication on the record and allows an opportunity for parties to respond. Tip: Err on the side of over-disclosure.

**Exceptions:**

- Communication with staff.
- Communication before application is submitted or after final decision (more on this later).

## Conflicts of Interest

- Actual vs. Potential:
  - Actual: The decision will result in a "private pecuniary benefit or detriment."
  - Potential: The decision may result in a "private pecuniary benefit or detriment."
- Includes relatives, household, businesses.
- Must disclose both. For actual, must recuse oneself. Recommendation: Leave the room.
- Can overlap with bias.
- In addition to appeal issues, can result in personal liability for the official (fines, plus up to 2x financial gain).
- Call OGEC

## Other Government Ethics Issues

- Use of Position or Office (ORS 244.040(1))
  - Prohibits every public official from using or attempting to use their position to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official.
  - Examples: Using public resources to conduct private business
  - Sometimes overlaps with conflict of interest
- Gifts (ORS 244.025)
  - A "gift" is anything of economic value (including discounts or forgiveness of debt) not offered to the general public
  - Does giver have a legislative or administrative interest in the decisions or votes of the public official?
    - Refers to an economic interest distinct from the general public in the decision or vote of a public official
  - If so, maximum \$50 total per calendar year.
- Includes relatives, household, businesses.
- Can result in personal liability for the official (fines, plus up to 2x financial gain).
- Call OGEC

## Public Meetings Issues

- The Planning Commission and City Council are both subject to Oregon Public Meetings Law (ORS 192.620 et seq.).
- All meetings must be publicly noticed and open to the public.
- Applies to meetings where decisions or deliberations on matters of official business occur.
- Includes electronic communication.
- Also includes so-called "serial meetings," where a quorum isn't directly involved in the meeting at the same time or the same place (HB 2805 (2023)):
  - Non-contemporaneous electronic communications (e.g. e-mail, social media)
  - Through an intermediary

## Hearing Requirements

### Quasi-Judicial Hearings:

- Notice requirements
- Staff typically provides a script to open the hearing which meets other requirements ("raise-it-or-waive-it," identifying criteria)
- At the "initial evidentiary hearing," anyone can ask for time to present additional argument or evidence. Record must be held open or continuance granted.
- Applicant gets seven days after record closes to submit final written argument. Applicant can waive seven-day period.

## Hearing Issues

- Presiding Officer has inherent authority to maintain order and decorum
  - Reasonable rules for conduct of meeting
  - Order and length of public testimony (may be specified by ordinance or other rules)
- Disturbances
  - Provide a warning
  - If behavior continues, ask to leave the meeting
  - If they do not leave, they can be treated as a trespasser
  - Tip: Call a recess



## Criteria and Findings

- Criteria: Approval or denial must be based on standards and criteria adopted by ordinance.
- Findings: Decision must be accompanied by a statement explaining the relevant criteria, facts relied upon, and justification for the decision based on the criteria.
  - Decision must be based on substantial evidence in the record
  - Resolve conflicts in the evidence

## Appeals

- Local Appeals
  - Applications are generally divided into categories in the code (Type I, Type II, etc.) which will define the initial decision maker and the appeal body
  - Appeals can be "de novo" (a completely new hearing process) or "on the record" (no new evidence; decision based on record from initial decision maker)
- Further appeals
  - LUBA
  - Oregon Court of Appeals, etc.
- Remand
  - Some local discretion regarding process.
  - Be mindful that appeals may result in remand, so you may be making a new decision on the same application again in the future. Consider implications for bias and ex parte contacts with conduct after making a decision.

## 120-Day Rule

- Final decision (including all local appeals) must be made within 120 days after the application is deemed complete.
- Failure to meet this deadline:
  - Requires the City to refund at least 50% of fees/deposits (or unexpended portion)
  - Allows the applicant to file a writ of mandamus in Circuit Court, where the application will be approved unless City can show approval would violate code.
- Can be extended in **writing** up to 245 days (or 335 days if the parties are undertaking mediation).
  - Tip: Have blank extension forms at hearings.

## Fixed Goalpost Rule

- Decision must be based on the standards and criteria applicable at the time the application was first submitted.

## Clear and Objective Requirements

- All "standards, conditions and procedures regulating the development of housing" must be clear and objective.
- If they aren't clear and objective, they cannot be applied.
- An alternative, discretionary path can be provided as long as a clear and objective path is available.
- Simple in concept; very challenging to accomplish in reality.

## Constitutional Issues

- A "taking" is a governmental appropriation of private property. Under the state and federal constitutions, the government must provide "just compensation."
- Can be the result of regulations that limit the use of property.
- More commonly, can be the result of exactions, meaning conditions of approval that require transfer of private property (e.g. road dedications, construction of improvements). These must meet two requirements:
  - Nexus: The relationship between the exaction and the underlying regulation of the property.
  - Rough proportionality: The exaction is related in nature and extent to the impact of the proposed development.

## Questions?

## Additional resources:

- [Oregonlandusetraining.info](http://Oregonlandusetraining.info)
- An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon (a bit dated, but still valuable)
- OGEC Guide for Public Officials (for conflicts of interest and other ethics issues)

OGEC Contact Information:  
Office is open M-F, 8am-5pm  
(503) 378-5105  
[mail@ogec.Oregon.gov](mailto:mail@ogec.Oregon.gov)

Ashleigh Dougill  
Beery Elsner & Hammond, LLP  
1804 NE 45<sup>th</sup> Ave  
Portland, OR 97213  
[dougill@gov-law.com](mailto:dougill@gov-law.com)  
[www.behlhp.com](http://www.behlhp.com)

Mayor Backus thanked Legal Counsel Ashely Dougill.

Mayor Backus ended the work session and went back into the regular Council meeting at 8:23pm.

### Discussion Regarding Interim position(s)

Mayor Backus explained currently we have a couple of interims, one being the interim city manager and the other being interim public safety director. He explained it is not something we see a lot here and it is kind of new to some of our Councilors. He explained in going through the Municipal Code we wanted to visit this for future Councils if this comes up again or to make sure we are following the Code.

Council President Miller explained with the current events going on we have had discussion with Legal Counsel about interim positions and it was brought up by Legal Counsel that many cities and the League of Oregon Cities has some model language for city manager pro tem positions. He explained this is something to review and see if Council is interested in and if it is something we are interested in pursuing then we would work with the City Attorney to draft the language to bring back to Council in an ordinance.

Mayor Backus explained when we were looking at an interim city manager, he thinks in the Municipal Code it states interim city manager for up to six months, and then it didn't really say anything after that. He explained he wondered what if they aren't quite ready, and what it that needs to be extended and that is kind of a gray area. He explained maybe we need to revisit that so if we need to extend it, it explains the process.

Council President Miller read the memo he handed out:



## Interim Position Discussion

Per the city attorney, the League of Oregon Cities has some suggested model language used for temporary personnel, such as a city manager. A google search revealed multiple cities in Oregon of various sizes have a "City Manager Pro Tem" position. Temporary city managers are appointed to this specific pro tem position/job description when a city manager vacancy occurs.

The following is an example of pro-tem position language the city may adopt:

*"When the city manager is temporarily disabled from acting as city manager or when the office of city manager becomes vacant, the Council will appoint a city manager pro tem. The city manager pro tem has the authority and duties of city manager, except that a pro tem city manager must first seek the approval of the majority of the Council for any of the following:*

- Appointing or removing employees;*
- Retaining contractors, or terminating contractors and consultants;*
- Restructuring departments, staff, classifications or positions;*
- Negotiating with a labor union;*
- Decisions regarding litigation the city is involved in or is likely to become involved in."*

**Issue/Discussion for council:** should the mayor and city council president work with the city attorney to finalize a city manager pro tem and police chief pro tem job description, that should another vacancy in the future occur, the city can appoint these temporary positions to the pro-tem position. Once the descriptions and any related actions are in final draft form by the city attorney, mayor and council president, the drafts will be brought back to council for a vote to approve and any other formal process that may be required by charter or SMC.

Mayor Backus asked what if Interim City Manager Lehman was involved in something now that required him to come back months down the road. He wondered if that is pretty common or typical if there is a litigation and he was the one that acted on it he might have to be the one to come back in the next few months until the case is done. He asked is that pretty standard, and is there a way to have avoided that?

Interim City Manager Lehman replied it very well could be that if there is a court action/legal matter he would have to come back and that would apply mostly to employee cases.

Mayor Backus explained in looking at this he is wondering if there is something we can do to protect the city manager, Council and the City going forward.

Interim City Manager Lehman explained his concern is if you get a city manager in and you limited what they can do what they think is best for the City.

Councilor Bailey feels we do need to have some kind of structural rule set for interim positions.

Interim City Manager Lehman explained if Council does move forward with these changes, he suggests sharing what the restrictions are with the new city manager before they take the job.

Mayor Backus explained the regular city manager wouldn't have the restrictions on them.

Council President Miller asked if this is the consensus of Council. He wants to make sure before they involve the City Attorney.

Councilor Holmes feels it is wise given the unknowns ahead of us and for whatever reason they don't have a candidate that they end up selecting they could have another interim, so she would be in favor of this.

Mayor Backus will do some further investigation in to researching this topic.

Council President Miller replied this only applies to interims.

Councilor Santiago explained this just helps know what the expectations are for the interim positions.

Councilor Lafrenz stated unless he is missing something, he doesn't see the benefits.

Interim Public Safety Director Jensen talked about appointing and removing employees that could be personnel issues and he doesn't know if a union would agree to have City Council go over their employees file essentially to make a determination whether or not to fire somebody. He thinks that could be problematic. He explained he feels the restructuring departments, staff, classifications, or positions is best handled by the department head. He also feels that retaining contractors or terminating contractors and consultants; and negotiating with a labor union is also best determined by the department head or at least have heavy input. He explained sometimes the decisions regarding litigation the city is involved in or is likely to become involved in can happen very rapidly. He explained we could keep Council informed of what is happening. He explained regarding any of those issues/concerns he would work with Council on.

Mayor Backus explained he thinks definitely in the process we would ask the chief and city manager for their input, cover their questions, and make sure they are addressing the issues, but he can also see if a city manager or chief comes in for four months and they reorganizes the whole department and then they are gone, and it has to be done all over again. He would hope the interim would come before Council.

Council President Miller explained he doesn't understand why there would be an issue with this because it is still staff coming to Council making the case of why they need to do something. He doesn't think majority of Council is going to object with anything that is reasonable.

Councilor Santiago explained she thinks we want to do this to protect staff, and this is for someone who is not permanent.

Council President Miller explained we are trying to do the best and watch out for the City's interest.

Councilor Jacobs asked could Councilors who wanted to do their own research on this do that instead of going through legal counsel and be charged billable hours?

Mayor Backus replied yes.

Councilor Jacobs talked about having a job description for the interims which spells out their duties. She just wants to be mindful of how much money we are spending on some of these things with the attorney. She feels some of these things can be mitigated quite easily through a job description.

Council President Miller explained he does take issue with Councilors doing their own research on this and the only reason is because there are legalities involved in this too with what the Charter can have. He thinks the only thing that Legal Counsel would be doing is making sure that drafting the position which is going to be slightly changed from our current city manager position and then he believes it will have to be adopted to be compliant with the Charter as it has to be passed as an ordinance, which requires two readings.

Mayor Backus talked about googling cities that have pro tem city managers. He then explained that Interim City Manager Lehman has not done anything here that makes him think of any reason to do this. He stated it is more that he wants to protect him by giving him the expectations so he knows from the start what Council is expecting from him.

Councilor Holmes stated so the actions on this would be if people want to do research maybe get information or examples back to Council President Miller in a week.

Mayor Backus explained he will reach out and see if he can get some information.

### **Announcements – information only**

#### **Calendar**

Mayor Backus went over the calendar.

#### **Updates: City Manager, Police Department, Councilors, and Mayor**

Council President Miller moved, and Councilor Santiago seconded the motion to extend the meeting past 9:00pm. Motion passed (7-0). Mayor Backus, aye; Council President Miller, aye;



Councilor Santiago, aye; Councilor Holmes, aye; Councilor Lafrenz, aye; Councilor Jacobs, aye; and Councilor Jacobs, aye.

Interim City Manager Larry Lehman went over the police flow chart that was handed out to Council. He explained as far as the contract goes, they have done it differently than most. They have worked with the Union, and they really have enhanced quite a bit of their benefits. He explained normally the manager wants to get by as cheap as you can, and they tried to make it affordable, but we want to make it where police candidates/laterals would look at this as a good place to work. He feels the draft contract makes Scappoose attractive and competitive. Council will get a chance to look at the contract and they will have the final approval. He explained they have made it very clear to the Union that Council is the final authority for the contract. He thinks within a week we will have a contract ready to send off to our attorney for review, which the Union will do the same thing with their attorney. He talked about extending the Interim Public Safety Officers contract for six months. He talked about rebuilding the Police Department.

Interim Public Safety Director Brian Jensen thanked Council for doing the ALS Proclamation, as his family has been touched by that disease. He gave updates on the Police Department.

Mayor Backus explained he got a thank you regarding the Police Department for all they do from Betsy Johnson, and he wanted to pass that along.

Council President Miller talked about the City trying to get a booth at the Columbia County Fair this year. He thinks it would be a great opportunity for the City.

Assistant to City Manager Isaac Butman explained he can look into that.

Mayor Backus mentioned the Scappoose Festival is June 8. Scappoose High School graduation is June 1. He explained Scappoose ladies Track got second in State. He thanked Council for taking time out of their busy lives to help guide the direction of Scappoose. He stated we are unpaid volunteers that spend countless hours on a thankless job trying to do what we feel is right and the best thing for the citizens of Scappoose. He stated none of us have an agenda or anything personal to gain from the many hours and sometimes hard decisions that they make. He explained they don't always see eye to eye, and they don't all have the same beliefs, and they are from different backgrounds and experiences, which is good, as long as they can communicate cordially and in a respectful manner, which he believes they do very well. He explained they do have a very important decision coming up with the hiring of our new city manager. The city manager is the CEO of our City and will help lead us going forward. Hopefully we can all come together in a positive way to select a great candidate for the job.

#### **Executive Session ~ ORS 192.660 (2) (i) Employee Evaluations**

Mayor Backus read the Executive Session statement and went into Executive Session at 9:18pm and recessed until 9:23pm.

**Present:** Mayor Joseph A. Backus; Council President Tyler Miller; Councilor Jeannet Santiago; Councilor Kim Holmes; Councilor Andrew Lafrenz; Councilor Ty Bailey; Councilor Marisa Jacobs (remote); Interim City Manager Larry Lehman; and City Recorder Susan M. Reeves.

**Open Session**

Mayor Backus came into open session at 10:23pm.

**Adjournment**

Mayor Backus adjourned the meeting at 10:23pm.

  
\_\_\_\_\_  
Mayor Joseph A. Backus

Attest:

  
\_\_\_\_\_  
City Recorder Susan M. Reeves, MMC