



# SCAPPOOSE *Oregon*

MONDAY, NOVEMBER 18, 2024  
CITY COUNCIL MEETING  
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=-soJXXH3Exk](http://www.youtube.com/watch?v=-soJXXH3Exk) and [www.youtube.com/watch?v=Dj\\_zoqvzjdw](http://www.youtube.com/watch?v=Dj_zoqvzjdw).

## Call to Order

Mayor Backus called the November 18, 2024 City Council meeting to order at 7:00 pm.

## Pledge of Allegiance

## Roll Call

Joseph A. Backus	Mayor	Benjamin Burgener	City Manager
Tyler Miller	Councilor President	Chris Fluellen	Interim Chief
Jeannet Santiago	Councilor	Susan M. Reeves	City Recorder
Kim Holmes	Councilor	Laurie Oliver Joseph	Community Development Director
Andrew Lafrenz	Councilor	Charlotte Baker	Contract Administrator (left at 7:44pm)

**Excused:** Councilor Marisa Jacobs

**Remote:** Max Bondar (left at 7:18pm)

## Approval of the Agenda

Councilor Holmes moved, and Council President Miller seconded the motion to approve the agenda. Motion passed (5-0). Mayor Backus, aye; Council President Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

## Public Comment

JJ Duehren, Scappoose, explained all the events they did this year went extremely well and that is why she is in attendance this evening to hand out some awards to Mayor Backus; Council

President Tyler Miller; Interim Police Chief Chris Fluellen; and Public Works Director Dave Sukau for all their hard work at the events. In addition, she thanked Councilor Holmes and Associate Planner NJ Johnson (who she will bring an award for next time). She stated they work really hard on all these events, and they are grateful for the support of the City of Scappoose.

Mayor Backus talked about the billboard directing people to Chapman Landing Audubon Society, and thanked JJ for helping with that.

JJ Duehren explained she has been working with the Audubon Society for a couple years now, they're called the Bird Alliance of Oregon. She explained as those of you that know her know that she is very concerned about wildlife and our planet and so she thinks it is so essential that we do our part.

### **Consent Agenda ~ November 4, 2024 City Council work session minutes and November 4, 2024 City Council meeting minutes**

Council President Miller moved, and Councilor Holmes seconded the motion to approve the Consent Agenda ~ November 4, 2024 City Council work session minutes and November 4, 2024 City Council meeting minutes. Motion passed (5-0). Mayor Backus, aye; Council President Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

### **Presentation**

Interim Police Chief Fluellen and Mayor Backus presented a plaque to retired Police Sergeant Justin Stevens.



"Thank you Sergeant Justin Stevenson for your 29 years of dedicated service in Law Enforcement including your outstanding service to the citizens of Scappoose, Oregon since 2019. It was an honor working with you and you wore your badge well!"

Congratulations Justin!

### **Old Business**

**Ordinance No. 920: An Ordinance Relating to Land Use on Remand from LUBA; Amending the Scappoose Zoning Map, Adopting and Implementing the Hearings Officer Final Order, and Approving the "Buxton Ranch" Planned Development, Subdivision, Conditional Use, and Sensitive Lands Development Permits**

Mayor Backus read the title for a second time ~ Ordinance No. 920: An Ordinance Relating to Land Use on Remand from LUBA; Amending the Scappoose Zoning Map, Adopting and Implementing the Hearings Officer Final Order, and Approving the "Buxton Ranch" Planned Development, Subdivision, Conditional Use, and Sensitive Lands Development Permits

Mayor Backus asked does any Council wish to declare an appearance of bias, ex parte contact or conflict of interest regarding this matter?

Councilor Lafrenz recused himself.

Council President Miller explained he doesn't have any new ex parte contact, but he does have the contact that he explained previously and that is Joel Haugen's emails that he thinks went to all of Council. He doesn't recall actually reading those just because of the issue at hand.

Councilor Holmes explained as stated at the last meeting, she also received similar emails from the Friends of the Floodplain and requested to be removed from the list. She also received a text from Joel about a week preceding the last meeting, encouraging her to abstain from a vote, and received an e-mail from Mr. Haugen this week or last week encouraging the same.

Council President Miller explained he needs to amend his ex parte contact as he also received the same e-mail that Councilor Holmes just described within the last few weeks.

Councilor Santiago explained also just like Council President Miller and Councilor Holmes she received the same type of communication from Joel, and she didn't really read it.

Mayor Backus explained he also received the newest one within the last two weeks.

Mayor Backus asked if anyone wants to challenge any Council Members impartiality or legal capacity to participate in this matter? Seeing none, he stated he is looking for a vote.

Motion passed (4-0). Mayor Backus, aye; Council President Miller, aye; Councilor Santiago, aye; and Councilor Holmes, aye.

### **New Business**

#### **Resolution 24-17 Authorizing A Loan from the Special Public Works Fund**

Contract Administrator Charlotte Baker went over the staff report. The City's loan application with Business Oregon's Special Public Works Fund for the Keys Road Reservoir Project was approved on October 15. The loan is for \$2.95 million with a 4.09% interest rate; the City does not anticipate using the entirety of the loan. Interest on the loan accrues as each disbursement is made to the City. However, funds from this loan will not be available to the City for project expenditures until a contractual agreement has been entered into by both the City and Business Oregon. Finalizing said agreement requires the passage of Resolution 24-17, which authorizes City Manager Burgener to execute the agreement, outlines sources of repayment, the City's tax-exempt status, and details on reimbursement bonds. The resolution must be adopted as written by Business Oregon. Staff recommends Council approve Resolution 24-17 and authorize the City Manager to enter into a contractual agreement with the Special Public Works Fund at Business Oregon in order to finalize the loan for the Keys Road Reservoir Project.

There was a discussion on the interest rate.

Councilor Holmes moved, and Councilor Santiago seconded the motion that City Council approve Resolution 24-17 and authorize the City Manager to enter into a contractual agreement with the Special Public Works Fund at Business Oregon in order to finalize the loan for the Keys Road Reservoir Project. Motion passed (5-0). Mayor Backus, aye; Council President Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

#### **Cancel December 2, 2024 City Council meeting**

Mayor Backus explained there is nothing on the December 2 Council agenda at this time, so we are looking for a motion to cancel that meeting.

Councilor Santiago moved, and Council President Miller seconded the motion to cancel the December 2, 2024 City Council meeting. Motion passed (5-0). Mayor Backus, aye; Council President Miller, aye; Councilor Santiago, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

## **Announcements – information only**

### **Calendar**

Mayor Backus went over the calendar.

### **Updates: City Manager; Police Chief; Councilors; and Mayor**

City Manager Burgener went over the department reports that are included in the Council packet. He spoke about the Oregon Ethics Commission training that Council and staff attended today. He explained he spoke with the Economic Development Committee and Park & Rec Committee. He talked about putting together a City Wellness Committee and that they will be meeting tomorrow.

Community Development Director Laurie Oliver Joseph gave an update on the recertification of the levee.

Interim Police Chief Fluellen gave an update on the Police Department and community events that will be coming up.

Councilor Santiago gave an update on the Economic Development Committees meeting with City Manager Burgener. She talked about the Keep it Local Holiday Sweepstakes and gave updates on other local events.

Council President Miller talked about the Oregon Government Ethics Training today and thanked the City of St. Helens for hosting. He explained he attended the last Columbia County Board of Commissioners meeting. He gave an update on the broadband project.

Mayor Backus thanked JJ again for the billboard directing people to Chapman Landing. He thanked Joel Haugen and Pete McHugh for putting on the Mike Sheehan Memorial Chess Tournament and said unfortunately he was beat by a preschooler. He explained Whoville opens December 1. He stated he will be on Koin News next week. Santa will be visiting Heritage Park on December 2.

### **NFIP Pre-Implementation Compliance Measures Update**

Community Development Director Laurie Oliver Joseph went over the staff report. Cities across Oregon are being asked to report to FEMA by December 1, 2024 which PICM (Pre-Implementation Compliance Measure) they will be enacting to address compliance with a Biological Opinion issued to FEMA following a lawsuit successfully claiming FEMA's rules threaten takings of certain Endangered Species Act (ESA) listed species. The PICM regulations



will apply to development within the floodplain or riparian buffer zone, where the floodplain-affected zone is also within 170-feet of the top of bank of the riparian area of a river, stream or body of water. Staff estimates that this affects roughly 29 acres of land within City limits and 10 acres of land in the Urban Growth Boundary. As a result of a 2009 lawsuit brought against FEMA by environmental advocacy agencies, a Biological Opinion and RPA (Reasonable and Prudent Alternative) document was released by the National Marine Fisheries Service in 2016 to address FEMA's compliance with the ESA. The Biological Opinion found that FEMA's National Flood Insurance Program (NFIP) in fact threatened eighteen ESA listed species, namely salmon and the resident killer whale in Oregon. The RPA provided recommendations to FEMA on how to amend Oregon's NFIP to mitigate the threats to these species. In 2021, FEMA issued a draft NFIP Implementation Plan to show compliance with the ESA. In 2023, FEMA began evaluating proposed changes to the NFIP outlined in the Implementation Plan through an environmental impact statement (EIS), in compliance with the National Environmental Policy Act (NEPA). FEMA recently contacted Oregon cities and counties in August 2024 with required next steps to implement PICMs on a local level. In contacting local governments, FEMA shared that it anticipates completing its own Final Implementation Plan by 2026 following the EIS process, and fully implementing the Final Implementation Plan in 2027. In the interim period before FEMA has finished amending its NFIP regulations, FEMA has asked communities to begin taking action to address this Biological Opinion themselves. Communities participating in the NFIP must inform FEMA of their selection of one of the three following PICM options by December 1, 2024:

1. Prohibit all new development in the floodplain.
2. Incorporate a FEMA-drafted model floodplain ordinance into local development code, requiring that developers demonstrate that a proposed development in the Special Flood Hazard Area will achieve "no net loss."
3. Require permit applicants to develop a Floodplain Habitat Assessment documenting that their proposed development in the Special Flood Hazard Area will achieve "no net loss" on a case-by-case basis, also referred to as the permit-by-permit approach.

More information on the NFIP and ESA integration can be found on FEMA's website here:

<https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>.

#### **Analysis of PICM options:**

##### **Option 1: No development in floodplain – Not recommended**

- This option prevents any future development within the floodplain or riparian buffer zone, where the floodplain-affected zone is also within 170-feet of the top of bank of the riparian area of a river, stream or body of water.
- Restricting development will result in a loss of property value.
- Potential for takings claim – this option would require that the City mail a Measure 56 notice to all affected landowners since this prohibition could severely restrict affected landowners' development potential, available land uses, and therefore property value.

The City could be liable to fairly compensate the landowners for this loss in property value of the affected parcels.

**Option 2: Model floodplain ordinance – Recommended with Revisions**

- FEMA released PICM model floodplain ordinance language in August; however, this is in the process of being updated by FEMA based on feedback they've gathered in the past few months of public outreach to agencies and DLCD. The updated model ordinance should be available sometime in December.
- The model ordinance would incorporate a path to FEMA's required ESA compliance (including mitigation), ensuring "no net loss" standards are being met for three critical categories within the floodplain: trees, impervious surfaces, and undeveloped space.
- This would likely be an interim ordinance until FEMA implements the Final Implementation Plan in 2027, at which point FEMA would likely release updated model ordinance language (although FEMA has said that these updates are likely to be minor and not a complete rewrite of the current model ordinance).
- It will take time to prepare the new floodplain ordinance for adoption. FEMA has set a deadline of July 31, 2025 to have the model ordinance language adopted.

**Option 3: Permit by Permit approach –Recommended with Revisions**

- This will require that applicants complete a habitat assessment and mitigation plan as part of applying for a floodplain development permit to demonstrate that their project results in "no net loss" to floodplain functions. Staff would be required to assess each habitat assessment and mitigation plan on a case-by-case basis for compliance with this "no net loss" standard.
- FEMA released a Habitat Assessment and Mitigation Guidance manual in August to assist property owners and agencies with an understanding of what the assessment and mitigation plan should demonstrate as well as how to review the assessment once received at the local level. This guidance manual is quite technical and requires that a natural resource scientist/qualified habitat professional prepare the assessment. FEMA stated during a recent webinar that they are also proposing updates to the Habitat Assessment and Mitigation Guidance manual based on recent feedback during agency outreach efforts. The update is expected to simplify the guidance significantly.
- This option may not be economically feasible for applicants with smaller projects to hire a qualified professional to complete the assessment and mitigation plan. Further, this option would carry legal risk for the City due to the fact that it does not contain clear and objective criteria, a requirement for residential development standards.
- FEMA has stated that all communities will default to the permit-by-permit PICM on December 2<sup>nd</sup> unless they choose Option 1, or if they otherwise fail to inform FEMA of their PICM choice by their stated deadline. The City Attorney, however, has advised that any of the three options, including the permit-by-permit approach, must be codified in the development code as a requirement for floodplain permit issuance before it can be enforced locally. Because of this, staff and the City Attorney recommend continuing to

enforce existing development code language until the City has adopted a formal code amendment.

**Upcoming deadlines:**

- **December 1, 2024** – Communities must inform FEMA of their PICM choice. If no option is selected, communities will be defaulted to the permit-by-permit option.
- **January 31, 2025** – Communities must begin to collect data for floodplain permits, including the amount of fill and compensatory storage, impervious surface added, clearing/grading/tree removal, etc. FEMA is currently developing a reporting tool that should be available by this date.
- **July 31, 2025** – Communities must have fully implemented their PICM option.
- **January 31, 2026** – Communities' first data collection report using the FEMA reporting tool will be due.

Council President Miller declared a conflict of interest, due to his family owning several acres that are in the UGB and in the floodplain as well.

Mayor Backus updated the ORS for the Executive Session.

**Executive Session ~ ORS 192.660(2)(f) Exempt Public Recordors**

Mayor Backus read the Executive Session statement and then went into Executive Session at 8:03pm.

**Present:** Mayor Backus; Council President Miller; Councilor Santiago; Councilor Holmes; Councilor Lafrenz; City Manager Burgener; Community Development Director Oliver Joseph; City Recorder Reeves; and Associate Planner NJ Johnson (left at 8:22pm).

**Open Session**

Mayor Backus came back into open session at 8:31pm.

**NFIP Pre-Implementation Compliance Measures Update**

Mayor Backus explained the City staff recommend taking a hybrid approach and consider adopting an ordinance that incorporates the model floodplain ordinance language, and also allows applicants to choose the permit-by-permit approach, to provide ultimate flexibility for floodplain permit applicants. Ultimately, the goal is to ensure that all floodplain development results in "no net loss" to floodplain functions, which the ordinance the City adopts would ensure. City staff also recommends waiting to adopt an ordinance until DLCD has provided their assessment of clear and objective standards and to give time for FEMA to settle on the final



floodplain ordinance language and habitat assessment guidance manual. In the meantime, staff and the City Attorney will review the current model ordinance to strategize clear and objective approaches. Once this has been provided, staff will work quickly and diligently to bring the City into compliance with FEMA's PICMs and the Biological Opinion. Further, the City Attorney has advised that staff include a brief disclaimer statement in any development permit approvals we issue between December 2, 2024 – July 31, 2025 to state that we are only ensuring compliance with our development code and that they have the ultimate responsibility in meeting any federal requirements related to floodplains (including the ESA). It is anticipated that adoption of the model floodplain ordinance may still be able to follow the 50 Year Plan adoption process, but if needed, could be adopted separately to meet the July 31, 2025 deadline.

This approach is the general consensus of the Council.

### **Adjournment**

Mayor Backus adjourned the meeting at 8:33pm.

  
Mayor Joseph A. Backus

Attest:

  
City Recorder Susan M. Reeves, MMC