

**City of Rainier
Regular Meeting Minutes
February 21, 2012
Rainier City Hall
106 West "B" Street
Rainier, OR 97048**

Mayor Cole called the meeting to order at 7:09 PM.

Council Present: Mayor Cole, Sloan Nelson, David Sills, William Vilardi, Scott Cooper, James Bradfield, Mike Avent and Council President Phil Butcher.

Council Absent: None.

City Staff Present: Debbie Dudley, D. Wayne Smith, Dan Foultnr, Darlene Lavelle, Gregg Griffith, and Bobby Jo Brusco-Harding.

City Attorney Absent: Steve Petersen

Flag Salute

Mayor's Address: Mayor Cole read the names of ten service personnel who have fallen since the last council meeting and a moment of silence was observed.

Agenda Additions/Deletions:

Addition – OSHA violation: Cooper moved, Vilardi 2nd, to add to the agenda the settlement of the appeals citation. Mayor Cole stated this would become item C under new business. No discussion. **Motion passed unanimously.**

Addition – Butcher moved, Avent 2nd, to add to unfinished business after the January 9th meeting interim city administrator goals. Discussion included Nelson asking Butcher if he had goals for the Council to review and Butcher said he would like to address the issue. **Motion passed unanimously.** Mayor Cole stated this would be item E under unfinished business.

Visitors Comments:

Shirley Bartholomew, Rainier, thanked Dudley for a great job for the council selection committee and stated everything went like clockwork and the group also did a great job.

Connie Budge, Rainier, commented that at one time Mayor Cole had stated that View Street would be left on the agenda until it was done and since she has been out of town she asked for an update. Mayor Cole stated it was inadvertently left off and would be included on future agendas until the project was finished. Dan Foultnr, a public works crew member provided an update that the pipe was ordered, the catch basins were delivered and the project was on the board. Foultnr added they are going to be putting in

a drain ditch that would zigzag both sides of the road to prevent the water from going into Budge's garage. Foultnier added public works has everything ordered and in the shop.

Jan Moon, Rainier, said she understands the Council has the right to put somebody on administrative leave but she was upset over the manner in which Darrel Lockard was put on administrative leave because she thinks he has served the community well since 2008, has done a lot of positive things. Moon added that the events of the last couple of months have taken a toll on the community. Moon said there are people in the community who are constantly stirring things up and she thinks it is very personal. Moon challenged the Council to find a way to bring the community back together. Moon said she loves the community, is invested in the community and the Council has some major challenges facing them, the unit trains and any number of really major challenges and to waste time on a witch hunt seems like a waste of time.

Curt Lahti, Rainier resident for about a year, addressed the Darrel Lockard thing and in his view point as a long time business owner and manager of employees it looks like it was handled poorly, it is his understanding in Lockard's contract he was supposed to be given goals and expectations by July 1st and that was never done and that his yearly evaluation wasn't done until September and in the evaluation he was given satisfactory or better in every category by the Council members that provided feedback and that was in November of last year. Lahti added that in January Lockard met with the Mayor and Interim City Administrator and no issues as far as Lahti knows were brought up but in that meeting it was stated that goals and expectations would be given to Lockard at some point in the future and two weeks later there is a reprimand letter and given a forced leave of absence with a police escort. Lahti said that in his experience and part of it law the Council is setting the City up for a really big problem because Lockard was not properly managed. Lahti said he would recommend taking a close look at employee management policies and address those issues and correct them for the ongoing future of city employees and the City. Lahti offered his services to help by volunteering his time to provide guidelines and policies on how to do that properly so the City is not put at risk.

Steve Lovegren, Rainier, stated he has an issue with how the water and sewer bills are handled and the way people get their water shut off because they can't afford to pay it. Lovegren said there are four agencies right now that are trying to pay the bills for these people and they are being charged an extra \$30 to shut it off and turn it back on. Lovegren stated he has been charged over \$100 for helping simple people and the Ministerial Association, Salvation Army, United Way and HOPE all pay the bills but they don't find out until the water is shut off. Lovegren said that twice he has had a get together with the unemployment department, United Way, CAT, HOPE and the library and has tried to advertise through the City's mail and was beaten out by a police survey except for a little blurb on the back of the bill which some people who can't afford to pay the bill don't open it. Lovegren said another time he tried to add a personnel notice with the bill, but was told private literature couldn't be included in the public mailings.

Lovegren said Dudley offered to display those notices on the table where there is public information. Lovegren said he has tried several ways to contact people who need help and he stated the City gives people a month to pay, then a two week notice if they don't come in and fill out an agreement form and then it is shut off. Lovegren suggested giving people a 48 hour notice prior to shut off and then contact him and he will pay the \$50 to keep it on and then a payment plan could be worked out but he doesn't want to pay \$30 after the water is shut off. Lovegren stated that people get aid with food, their children have to be fed on weekends, Clatskanie PUD pays people's electric bills, United Way and CAT will send people in different directions where you can get help, Columbia River PUD has a program, NW Natural Gas will work a deal and everybody will work with you except City Hall. Mayor Cole asked what the legalities are in regard to public record and people who have their water shut off. Dudley said it was a public record and expanded by stating City Hall works diligently to make sure everybody gets notices about agencies that may provide assistance and worked with Lovegren in hosting an open house here on February 9th to help residents understand what assistance may be available from outside agencies. City Hall works diligently to provide notice to customers before they are shut off, the late notice includes an agreement to make a payment arrangement, and includes agency information they can contact if they need help with the bill. Dudley added Lovegren was correct that if the service is shut off there is a turn on fee but City Hall makes every effort to notify the individuals about payment options and available help. Dudley said the payment agreement is sent with the late notice and include the agencies that offer help; unfortunately it seems that the interruption of services is actually what spurs individuals to seek help. The City has done everything we can to make sure everyone knows help is available, the payment agreement is there and all they have to do is fill it out or give us a call so we can work with them to set up a payment arrangement. Mayor Cole clarified that individuals do not contact Lovegren until they are shut off and asked Lovegren what kind of success rate he is having with people that get the two week window and then give him a call and say it is going to be shut off in five days. Lovegren said he gets some before shut off and added that most people are so broke they don't open their mail until they have to. Dudley asked Lovegren how many people attended the open house that provided assistance information and Lovegren said three people came. Avent asked if there was some way Lovegren could do a work group that could come to City Council with some other alternatives and he always feels obligated on the water and sewer rates because when the GO bond was passed it was promised there would not be any passing on of additional rates so he thinks it deserves to be looked at and maybe one council member could meet with Lovegren and if it is worked out together there is a better change of solving the problem. Dudley added that by including the payment agreement and a list of agencies who may provide payment assistance with the past due notice, it was our hope that it would spur individuals to contact us to avoid the interruption of service. Mayor Cole asked how many clients have been helped and Lovegren said he has taken care of four himself. Lovegren said he would like that when it gets down to the day services are going to be shut off to go out and talk to the people, hand them their notices and tell them they have 48 hours to go to City Hall, call HOPE or

call him. Mayor Cole said he knows sometimes they won't answer the door and or the phone. Avent said he doesn't know the answer but would like to form a group. Mayor Cole asked council if anyone would like to volunteer and Cooper volunteered and Judith Taylor, citizen, also volunteered. Butcher asked Lovegren if he worked with the Community Action Team and Lovegren said he did not. Mayor Cole asked Lovegren to exchange telephone numbers with Cooper and Taylor and then come back to Council with some ideas. Cooper asked Dudley to coordinate that meeting and added that Avent wants to be part of the group; Dudley said she would and Avent said he would like to be an alternate. Dudley said rarely do we have people not able to turn their water back on and it is the interruption of services that spurs action. Lovegren added it's not the water they can't afford to pay but the water and sewer. Lovegren stated that if you shut their water off they are still using the sewer although the City isn't getting any money for the water and the sewer. Dudley said she would check the legality of providing contact information to an outside agency. Mayor Cole stated if it was public record of who was getting shut off then we could just send Lovegren the list. Dudley said she would check the legalities involved and Mayor Cole said he didn't have a problem of sending Lovegren the list if it was legal.

Unfinished Business:

- a. Approve February 6, 2012 Work Session Minutes. Sills moved, Cooper 2nd, to approve the minutes. The motion passed with Avent abstaining.
- b. Approve February 6, 2012 Regular Meeting Minutes. Nelson moved, Vilardi 2nd, to approve the minutes. The motion passed with Avent abstaining.
- c. "B" Street Update. Dudley reported Lockard were trying to schedule a meeting with Tom Weatherford because there were questions with regard to the agreements. Butcher said he did have a "B" Street update and stated that a document was presented to Dudley to put on the council agenda, approved conditions and set forth by the city attorney and Butcher wanted that on the agenda in the near future. Dudley added that was one of the issues she had asked Lockard about, the agreement Butcher gave to Petersen and after review Petersen had four issues. Lockard didn't have the answers so Dudley had requested a joint meeting with Weatherford to get the answers and report to Council. Mayor Cole said that was fine. Butcher said that in further rebuttal is that the City agreement was for February 15th we would have the paperwork so they can proceed with the construction of "B" Street so Butcher was wondering what was the delay in setting up the meeting with Weatherford. Dudley said she would check with Lockard on that.
- d. "C" Street Update. Mayor Cole said no change since the last time council met and it would stay on the agenda until it is fixed.

- e. Interim City Administrator Goals. Butcher said there was a follow-up from Carolyn Tilton wondering what was going on regarding city administrator goals and goals setting for the City of Rainier which would be beneficial at this time and everybody was on board with it when it was presented to the Council. Butcher asked why there had been no follow-up and put on the agenda. Mayor Cole responded by stating he directed Dudley to find other options than just one person that comes in and presents at \$3000 proposal and the League of Oregon Cities has the same service at \$1300. Dudley is researching that instead of paying Tilton \$3000 and that is why it is not on the agenda. Butcher said he thinks it is necessary the Council set some Interim City Administrator goals so we have some goals for the City Administrator and some goals for the City Council since we are already approaching the middle of March and we don't seem to have any goals to move forward on. Cooper reminded Butcher that part of the planning session was to teach Council how to set proper goals since the ones set for the past two years were never completed. Butcher said we need to establish that in a procedure and he doesn't know if Council is being evasive on it. Cooper said he just told him we were going to get the education so Council could actually set some goals and how Council should function in that fashion so we could move forward in a productive manner. Cooper reminded Butcher, Mayor Cole just told then that he had asked Dudley to bring other proposals forward, and then we can make a selection and get that behind us and setting goals. Cooper added that to set another set of goals now, like Council has for the last several years and has never got accomplished doesn't mean a lot. Butcher said he understood that and they are to help us out. Cooper added that Mayor Cole just explained what he has done to encourage a good program and be fiscally responsible. Nelson reminded Butcher, that Council had decided to wait until the new council members were appointed and this is the first meeting after they were appointed. Butcher said this was the next meeting and wanted to know why it was not on the agenda so they have some city goals to move forward in the City, what is the problem, does the Mayor set policy or does the Council set policy. Cooper stated Council decided they were not going to move forward with bringing the training on board until they had all the new council members and Butcher said that was not what was decided at the last meeting. Cooper, Nelson, Vilardi and Mayor Cole said that was what was decided at the last meeting. Butcher repeated check the references. Mayor Cole said Council never decided to move forward with Tilton, this is one product that was brought before City Council and you (Butcher) wants to jump on it. Mayor Cole said he wants to bring in a few and maybe Tilton is the one Council goes back to but Council has a responsibility to spend the public's money wisely, and it isn't one person comes in and Council jumps on that one, you have to look at other options and he wasn't impressed with what she had to offer. Avent said that as far as timing what would Council be looking at so we address Butcher's concern and move forward. Butcher asked if anybody has a vision for the City and Council, what is the vision for the City, do we have any vision. Mayor Cole cut the

discussion off stating it was going nowhere and stated that Dudley contacted the LOC, they are bringing it back and the question was what exactly are we looking for. Butcher added it was to set goals, to learn a process so the goals start going the same direction. Mayor Cole said the \$1300 might be \$600. Dudley added the LOC has a training department with a number of trainers, they sent 23 pages of information regarding training they offer. Dudley said the City has the opportunity to identify specifically what they want for training, we can send the information that we got from Karen, we can review that information so that we can target specifically what we need, obviously we have new council members so it might be beneficial to readdress council training, goal setting, strategic planning, mission statements, and ethics. LOC offers many options and the price was significantly less. Mayor Cole stated that in all fairness he wanted a couple more presenters rather than just one. Cooper stated he liked the first one until he saw an email showing other options. Mayor Cole said the process is moving forward and Cooper asked Dudley if this could be a work session item. Cooper said it is all their responsibilities to make sure the new council members get the information on what Tilton brought, he did like a lot of it and he agreed with Butcher until he saw what Dudley had we need who can come up with the best price and the best service.

New Business:

- a. Approve a contract with Althof Contracting for Road Construction on 010 "A" Road, with an estimated cost of \$3,000 to \$4,000, as recommended by our consultant CBR Forestry. Nelson moved, Vilardi 2nd to approve the contract for road construction. Cooper asked if that was the area with the mix of timber and Mayor Cole said it was and complimented Byron Rickert on his quality of work as being the City's consultant. The motion passed unanimously.
- b. Approve request by Friends of Fox Creek for the City to donate cedar chunks out of the slash piles along the 012 road and grant permission for them to retrieve these chunks. Avent moved, Cooper 2nd, to approve the cedar chunks to Friends of Fox Creek. Nelson said they are trying to retrieve the cedar to have it milled into boards for duck nesting habitats along Fox Creek and around that area. The motion passed unanimously.
- c. Settlement of appeal. Dudley reported she and Lockard met last week with OSHA regarding the appeal on the citations the City received regarding the accident in October 2011. Dudley stated the next step would be to hire an attorney and appeal to the Oregon Attorney General. Dudley added that OSHA notified the City that the first penalty was not reduced and will remain at \$4500, the second penalty was reduced from \$1150 to \$500, the third penalty was reduced from \$1150 to \$500 and the fourth penalty is affirmed and will remain at \$4500, so two of the citations were classified at high serious and the other two were reduced to medium serious and the amount the City will need to remit is \$10,000 instead of

\$11,520. Dudley stated the Council needs to approve the agreement, the settlement of an appealed citation stipulated final order. Avent asked what would be the ramifications to have the city attorney look at it because it is a substantial amount of money. Dudley stated that we met with the OSHA appeal board and we can have the city attorney review it but the next review is with the Attorney General. Dudley said it is on the agenda because the city has to respond by February 29th. Butcher said that we had an investigation that was conducted by OSHA to come in, we had a report come back from OSHA, did we contact the City Attorney for review? Dudley said she would have to defer that to Lockard since the report went to him. Butcher asked Dudley if she ever offered Lockard the opportunity to have that report reviewed, did Lockard ever see a copy of the report? Mayor Cole and Dudley said Lockard had a copy of the report; Lockard was responsible for completing the appeal to OSHA. Butcher wanted to know what date. Dudley and Mayor Cole said it was a couple of months ago when OSHA met with Lockard. Butcher; so he has seen a copy of it a two of months ago? Dudley said yes. Butcher said that therefore on Friday when he asked a question a week ago from last Friday he asked if the city attorney reviewed the information that was in the report. Dudley asked if Butcher meant the findings and he said the OSHA findings and she replied not to her knowledge. Butcher said we had to file an appeal and Dudley said that was correct. Butcher asked if that appeal was ever reviewed by the city attorney and Dudley said Butcher would have to check with Lockard on that and Butcher asked if he was offered city attorney advise and Dudley said you would have to ask Lockard. Mayor Cole said Lockard has been involved with this whole thing since the ditch was dug. Butcher said therefore somebody assumed liability for the city and somebody should be accountable for this action by withholding information from the council and this should have been brought to council and the city attorney reviewed before it went to appeals. Dudley reminded Butcher that this had been brought to Council on more than one occasion and the report had been posted publicly has required by law. Cooper stated that the public works director should have taken what ever action was necessary; Lockard is the public works director and is responsible. Butcher said Lockard hadn't seen the report. Cooper and Mayor Cole said Lockard saw the report and responded to the report when he filed his appeal. Mayor Cole said Lockard met with OSHA and reviewed their finding before the final report was submitted. Butcher said the City Interim Administrator receives the mail in and would not notify the council of findings of this would involve assuming liability for the City, would you not accept the responsibility is my question. Dudley stated if you remember correctly Council was informed about the accident and the OSHA violations, this was confirmed by the other Council members. Butcher said the OSHA report was reviewed and discussed in executive session so why didn't we have the city attorney review it. Cooper asked Butcher why it wasn't recommended in executive session and Butcher said why we didn't. Butcher said he was there in executive session and he didn't know that Tuesday

was the appeals hearing, he was never notified. Butcher said he was never notified of the OSHA report. Public Works Crew member, Foultnner, said Lockard posted the appeals notice and Butcher asked where it was posted and Foultnner replied at both plants and Mayor Cole said it was posted at City Hall. Avent said he thinks council should show the findings to the city attorney. Nelson, to Butcher, said it seems like Butcher is upset with the Interim City Administrator but if this was posted by our public works person who Butcher is a liaison to, Butcher should be having those conversations with him. Mayor Cole and Nelson asked Butcher if Lockard called Butcher since Lockard posted the notices and Butcher said Lockard didn't tell him. Nelson asked Butcher why Lockard didn't call Butcher since he and Lockard communicate. Butcher said if an OSHA report comes in and the City is named in it the city attorney should review it and liability not be assumed for the City and throw Lockard out there to dry and not offer him attorney services. Butcher said this is very upsetting and we are holding Lockard accountable. Mayor Cole told Butcher he understands Butcher is upset about this but again it's going nowhere, everybody was notified, Lockard knew about the OSHA stuff from the time the hole was dug, the injury, when OSHA came out and investigated, he was here for the initial interviews, he was here when the guy came out and said this is what is going to happen, you can appeal, Lockard went to the appeal, he was in charge of the whole thing. Butcher said that Lockard was not present to defend himself in that matter. Avent stated that once the city is named in a potential lawsuit, whether it is Lockard or not, somebody needs to step up representing the City. Mayor Cole said that with the time deadline of the 29th if you form the motion of pay the citation and the attorney reviews it and says you better pay it then you pay it and if the attorney says not to pay it yet the attorney would know how make contact and ask for an extension. Dudley asked for clarification if the council was giving the city attorney the authorization to go to the Attorney General and appeal it or just to review it for the legalities. Avent said he is looking for and understands what Butcher is upset about is when the city is named in any potential litigation. Dudley said it is a citation, not litigation, and Avent said it is the same to him when we have a \$10,000 bill we have to pay. Dudley said we got fined for safety violations, Lockard appealed, the violations were upheld. Mayor Cole said the Attorney General upholds the OSHA fines. Avent said he is not arguing for or against it. Vilardi said if this was given to the city attorney it would be more money out and we are going to have to pay it, we already appealed it, the decision has been made and what is the city attorney going to say. Butcher said without legal advice at any point of the way, you have an investigation report, it should have come to Council, Dudley could have picked up the phone, we got this report in and we need to review it, it is very simple. Cooper said public works at every meeting has a chance to discuss it at staff reports. Mayor Cole asked for a motion. Cooper moved, Butcher 2nd, to pay the OSHA fine settlement of the appealed citation. Bradfield said it isn't going to make any difference to have it reviewed by an attorney because the decision was

made and it has been worked out and these are OSHA level decisions through an OSHA committee and that is how it is done and there is a board that review things and all we are going to do is incur an attorney bill. Vilardi asked if Petersen had OSHA knowledge and Mayor Cole stated he's not so sure Petersen would be able to do anything about it. The motion passed with Avent voting nay. Dudley clarified that means we are agreeing to the settlement and Mayor Cole said it was.

Staff Reports:

Chief Griffith – signed up for a national take back program where law enforcements agencies throughout the nation on April 28th take in prescription drugs that people have that have expired or they are not using for disposal. Griffith will provide more information at a later date.

Dudley – announced that the City of Rainier is hosting an open house for Congresswoman Susan Bonamici on February 25th, 1 – 2PM, at the Rainier Senior Center. To add to Butcher's comment with regard to the LOC they do offer customized training to fit our needs and she would like to get together with Bradfield and Sills to see if they have something specific they would like to include. We are working to set up a meeting with Tom Weatherford, there are some questions in regard to the right-of-way acquisitions and should have a meeting set up for later this week. Dudley would like to set up a time when Cooper, Keith from Utilize I.T. and herself can meet to re-identify the original scope, update any additional costs and then bring that back for presentation and approval. Cooper said to schedule that at Dudley's convenience any evening after 5:00.

Council Reports:

Sills – needs to get together with Chief Griffith regarding emergency planning.

Vilardi – nothing.

Nelson – he met with Friends of Fox Creek regarding the bridge at the park and they are still working on familiarizing themselves with putting the bridge off of West 2nd Street and on some city property over to the Fox Creek trail and will be coming to the City with that at a later date. There was an informational gathering Saturday regarding the coal trains coming through Rainier, it is a huge issue for this community, 1300 cars every day going through the community, the actual impact to our business community is devastating if we as a Council, a County or Port don't start to get a handle on that, encouraged familiarization with the project's impact throughout the county.

Cooper – encouraged everyone to visit with Bonamici regarding the coal trains.

Avent – appreciated the dialogue tonight of concerned citizens, this is a great community and we need to start working together and would like to pull citizen expertise in since we have a wealth of information.

Bradfield – nothing.

Butcher – got a copy of the marine board audit and it surprises him the letters that are dated and things that are not brought before the Council, April 25, 2011 the Marine Board says we owe them \$14,253.00 and they ask us to start sending reports in on June 1, 2011 and we didn't respond to the letter that he knows of and the audit goes on and on. Butcher said it is a sickening report that we have spent so much money in the past that they want their money back. We need to work together and not place blame and responsibility on singling out individuals and he would like everyone to read it. Cooper said he brought that up about the same time it came out in a city council meeting cautioning that he had been asked to investigate boat launch repairs and had a very interesting conversation with the same individual at the Marine Board who brought this back with the same results he brought to Council about 8 months ago. Butcher said he didn't know why we didn't respond.

Dearl Taylor, Rainier citizen, said a lot of people came tonight because the paper indicated Council was going to discuss the public works director and is that going to be at another time? Mayor Cole said it was going to be discussed in executive session at this time.

Al Guist, Rainier citizen, offered his help.

Executive Session:

ORS 192.660(2)(h) Consult with counsel concerning legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

ORS 192.660(2)(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

The meeting adjourned at 10:00 p.m.

Mayor Cole

Attested: _____
Debra Dudley, Interim City Administrator/
Finance Director