

CITY OF GEARHART
Public Hearing and Regular Meeting of the City Council
Wednesday, January 3, 2024
6:00 pm On-site and Virtual/Telephonic

A public hearing and regular meeting of the Gearhart City Council was held Wednesday, January 3, 2024. Council members, City staff, and the public were able to attend on-site, virtually, or by dialing in on a telephone.

Present were Mayor Kerry Smith, Councilor Preston Devereaux, Councilor Reita Fackerell, Councilor Dana Gould, Councilor Sharon Kloepfer, City Administrator Chad Sweet, City Attorney Peter Watts, Fire Chief Josh Como, AICP City Planner Garrett Phillips, Executive Assistant Krysti Ficker, and City Treasurer Justine Hill. A quorum of the Council was present.

Mayor Smith opened the public hearing for text amendment changes to the Gearhart Zoning Ordinance (GZO) at 6:02 pm. There were no conflicts of interest declared by any member of the Council. After hearing no challenges to the Council's ability to make an impartial decision by the audience, City Planner Phillips gave a brief overview of the proposed legislative text amendment to the GZO Section 6.070(88) Preservation and Removal of Trees. He explained that the amendments were the result of discussion at several public Planning Commission meetings in 2023. The Planning Commission decided to narrow the scope of the discussion to three main issues: 1) clarify purpose to provide more information to City staff and the Planning Commission on authorizing tree cutting activities; 2) provide a mechanism for collecting data on tree cutting information; and 3) simplifying the process for property owner to demonstrate the need for tree removal on their property. The ordinance would require a permit for residents to cut down any tree that exceeds minimum threshold. He mentioned that the way to measure the tree had been changed to circumference. He talked about the procedural requirements of the proposed amendments (e.g., public hearing, public testimony, voting). City Planner Phillips went over the City Council's options: 1) recommend staff bring forth a final ordinance to make the amendment official; 2) reject the amendments and recommend not being adopted; or 3) keep the public hearing open and request additional information from Staff, which could include sending it back to the Planning Commission. He went over the two criteria when considering approval related to the Comprehensive Plan, which were public interest and public needs. City Planner Phillips did not feel that there was a lot said about the tree removal process in the Comprehensive Plan and that the proposed amendments were consistent with it.

- Councilor Devereaux requested clarification on what designates a forest and City Planner Garrett said that in this context, it was referencing all the trees in the City. Councilor Devereaux also wanted clarification on the impacts of these amendment changes on preparing new home sites. Attorney Watts clarified that Section 8(c) specifically clarifies an exemption for constructing improvements,

“including the placement of structures and on-site sewerage disposal features, access ways, utilities, need to make essential grade changes, and other authorized activities.” Councilor Devereaux just wanted to stress the liability safety issues that certain trees create in our area. Mayor Smith requested continued discussion during the regular City Council meeting when the agenda item is being discussed.

Mayor Smith asked if there were any proponents.

- Bob Carson (226 Ridge) applauded the action of moving forward with saving trees. He feels that Gearhart has a huge variety of beautiful trees that provide habitat, buffers from strong winds, and carbon storage. He gave some additional suggestions; such as, increasing tree cutting distance from estuary areas, tree circumference being 19 inches, neighbor notification before a tree is cut, posting signs, and not allowing a sole City person approving permits. He also prepared a handout “Gearhart 2024 Tree Inventory.”
- Shannon Smith (774 Pacific Way) distributed handouts, which focused on Aquatic Resources of Special Concern (ARSC). She referenced correspondence prepared by Robin Lane (2nd Street) regarding trees. Over the last two years she has been in contact with the Department of State Lands staff members (Cary and Blauvelt). She feels that Gearhart has a special environment compared to other cities. She referenced ARSC. She would like to see the special forest environment protected. She referenced old growth trees in the area; impacts on wildlife; restricting building in certain areas, and preserving areas for generations to come.

Mayor Smith asked if there were any opponents, which there were none.

Mayor Smith asked if there were any neutral comments, which there were none.

Mayor Smith closed the public hearing for a zone change amendment at 6:30 pm and transitioned to Councilor discussion.

- Councilor Devereaux talked about the root system of certain trees being wide and shallow, which can lead to uprooting. He has concerns about the impacts of implementing these amendments on property owners not being able to quickly deal with hazardous trees.
- Councilor Kloepfer requested clarification from City Planner Phillips regarding the last two pages of the staff report in the packet, which appears to have some discrepancies compared to other documents in the report. City Planner Phillips clarified that the last two pages were part of an interim draft, not the recommended proposed amendments. Councilor Kloepfer had concerns over language referencing circumference. She felt that the language change from 30 inches in the interim draft to 38 inches in the recommended proposed appears to be deliberate. Mayor Smith clarified that the current language

says 12 inches in diameter. City Planner Phillips said that the Planning Commission considered a variety of changes and discussed circumference; however, they did not recommend a change in size. Administrator Sweet clarified that a 12 inch diameter tree equates to 37.7 inches circumference. Councilor Kloepfer also requested clarification on the tree committee approval/denial process. City Planner Phillips clarified that the process of approval/denial will not be changing except for the implementation of a new application form.

- Councilor Gould referenced the need for tree removal in an emergency setting (e.g., winter storm). She has concerns that the City Administrator may be unavailable and safety issues may need immediate attention. She also requested clarification on if any cost analysis for increased staff time for implementing the new procedures was conducted. She felt that removing language regarding an arborist defining a diseased tree opened up the City to potential interpretive liability. City Planner Phillips said there was no cost analysis performed. He also stated that there were no changes to language in terms of what individuals should do when they have a hazardous tree issue. Councilor Gould does not know much about trees, but feels that the language on the measurement needs to be clearer. Again she reiterated that she has concerns over not having language specifically regarding an arborist defining a diseased tree. She feels it is a liability issue and that an arborist provides good due process because City staff are not tree experts. Councilor Gould also requested additional clarification from Bob Carson on his tree inventory list in terms of addressing invasive species. She supports language allowing the removal of invasive tree species.

Mayor Smith called the regular meeting of the City Council to order at 6:54 pm.

There were no conflicts of interest declared by any member of the Council.

Approve Minutes.

- ON MOTION by Councilor Kloepfer, 2nd by Councilor Fackerell to approve the minutes of the December 6, 2023 regular meeting of the City Council, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
- ON MOTION by Councilor Fackerell, 2nd by Councilor Gould to approve the minutes of the December 12, 2023 worksession of the City Council, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

There was no Planning Commission report due to no meeting in December.

Mayor's Report. Mayor Smith reported that a Town Hall meeting will be held on Tuesday, January 23 at 3:00 pm to discuss the facility needs for emergency services and potential land acquisition. He encouraged

everyone to bring their ideas. He also requested volunteers to assist with creating a standardized City of Gearhart sign design by emailing mayorsmith@cityofgearhart.com. He feels this is something that needs to move quickly. The purpose is to make City signs uniform in design.

Councilor's Reports. Mayor Smith opened discussion for each Council member's report.

- Councilor Devereaux had no new information to report.
- Councilor Fackerell reported that after the last Council meeting the Bench Committee met with Administrator Sweet to discuss how they could hurry the process forward.
- Councilor Gould assisted in reviewing the Employee Handbook, answered emails, and is planning to attend the Small Cities meeting in Bay City on February 2. She is also planning for the holidays coming this summer and working with the State to collaborate efforts.
- Councilor Kloepfer met with Administrator Sweet and representatives from Oregon Parks regarding the bench placement in the dunes, which seemed positive. She also gave a brief update on the Gearhart elk situation. She updated Clatsop County Planning Commissioner Pam Wev. Councilor Kloepfer was one of four people to testify during the visitors section at the Oregon Department of Fish and Wildlife Commission's meeting in December to express concerns over the elk issue in Gearhart. She also went over current elk sightings in Gearhart. She plans to continue her work with the elk issue.

City Officer Reports.

- Chief of Police. No staff from the police department was in attendance; however, the department's December data report was available.
- Fire Chief. Fire Chief Como went over the department's December data report, including a call breakdown, mutual aid, and comparisons to last year. He introduced the Fire Division Chief of Training & Operations, Adrienne Park.
 - There was a swearing in of the new Division Chief of Training & Operations, Adrienne Park, who accepted the oath.
- City Treasurer. Financial reports were submitted in the Councilors' packets. Treasurer Hill followed up with questions from the last council meeting. She feels the City is meeting its financial revenue targets. She acknowledged increased expenditures in the police department budget and appreciated Police Chief Gregory's proactive approach to minimizing expenditures. She thanked water customers for their continued patience with the meter reader issue; thanked the auditors for attending the meeting; and talked about some specific expenditures. Administrator Sweet added a comment on overtime.
- City Attorney. Attorney Watts continues to be an active participant in getting more accurate population forecast estimates to ensure Gearhart is getting the correct portion of their State Revenue

Share funds. Accurate numbers are also needed to conduct another Buildable Lands Inventory. He mentioned an application coming before the Planning Commission regarding zoning. He does not know the historical reasons why Gearhart is zoned the way it is; however, if the Council is ever interested in reviewing zoning, they could consider making it a priority on a comprehensive basis. Attorney Watts also touched on a housing bill that clarifies urban growth boundary (UGB) language, which he is monitoring. He has also received some questions on short-term rentals (STR) outside of the City limits. These STR properties are not subject to the City's STR ordinance. He explained that the unincorporated areas would need to be annexed into the City to be covered. He also mentioned that Gearhart police do not monitor or provide daily service to unincorporated areas. If areas approach the City, an intergovernmental agreement may be an option to provide enhanced police coverage. There was brief discussion amongst the Council regarding gated communities in Gearhart; annexing into City limits; enhanced agreements; amending ordinances; potential options; tax value; and UGB legislation.

- City Administrator. Administrator Sweet's report was sent to the Councilors in their packets. Mayor Smith asked about the terminology "Immutable Data Backup & Recovery Testing." Administrator Sweet explained that it has to do with taking City data and making sure it is secure.

Visitors. Glen Kearns, CPA, Partner of Accuity LLC provided a highlight of the City's June 30, 2023 fiscal year end. He stated that City was given an unmodified or clean opinion, which means that no issues or problems were detected. As part of the audit process, the State of Oregon requires a review of compliance issues, which include things such as Budget law and procurement. The City was found to have no notable issues in these areas. Overall the health of City seems good, with a reasonable unrestricted ending fund balance as of June 2023. He mentioned that carry over balances looked solid. He indicated that staff were organized and ready for the audit. Councilor Kloepfer was interested in page 20, Fund Balance Policies. CPA Kearns explained that there is not a requirement to have a formally adopted general fund carryover amount and that it can create some challenges. There was no recommendation to move forward with implementing a minimum fund balance policy. Councilor Kloepfer had two follow up questions regarding upgrading the City's accounting software and the protection of the City's investment funds. Treasurer Hill explained that a new accounting software program is still a long-term goal and that the majority of City investments are placed with the Oregon Local Government Investment Pool.

Public Communications - Written & Oral. Mayor Smith read the oral public comment statement on the agenda. There was written correspondence submitted by: Dan Blue, Recology Government & Community Relations Manager (Recology Sustainability Report) and Department of State Lands (Opportunity for Public and Agency Review and Comment). Councilor Devereaux was interested in the purpose of the information provided by the Department of State Lands, which Mayor Smith explained was a procedural requirement to notify the City.

- Shannon Smith (774 Pacific Way) mentioned forwarding a 239 page document from the Department of State Lands that has references to the removal of natural substances for land use. She talked about an example of property in Gearhart that the developer wanted to have four lots but was only able to have one. She segued into a conversation about research reserves. She explained that there is new information available to create your own designated reserve, which may include infrastructure funding. Based on information she has received, she believes there would be an economic and educational benefits to the community in creating a research reserve. Councilor Klopfer asked Shannon Smith if she could provide some additional information on the research reserves.
- Bob Carson (226 Ridge) presented a draft proposal for the Three Streams Reserve project. He explained that local streams, the estuary, and an unspecified area of floodplains, wetlands, and other low-lying lands need to be protected. He talked about organizations that already offer some protected areas; goals of the project; benefits of the project; and potentially new partners. He is interested in continuing preservation of the local area.

Due to the length of the meeting, Mayor Smith approved a five minute recess at 8:00 pm. Meeting resumed at 8:06 pm.

Ordinances/Resolutions.

Second Reading - Ordinance 940 - An Ordinance Regulating the Operation of the Water System of the City of Gearhart, Governing Responsibilities, Establishing Fees, and Providing Penalties for Violations Thereof. Mayor Smith opened the discussion and invited the public to comment.

- Tom Thies (292 Woodland) wanted to address Section 5, Meters. He felt the language implies that if the meter fails, a private citizen would have to pay to replace the meter. He felt that a failure of a City meter on City property should not be the financial responsibility of the private citizen. He agrees that new construction would pay for a newly established meter.
- There was discussion on Section 5 and Attorney Watts provided some modified language clarifying that no fault damage to a City meter was not the financial responsibility of the owner.
- ON MOTION by Councilor Gould, 2nd by Councilor Kloefer to approve Ordinance 940 as amended regulating the operation of the water system, governing responsibilities, establishing fees, and providing penalties and violations, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloefer, Smith) - 0 nays.

Second Reading - Ordinance 941 - An Ordinance Amending the City of Gearhart Zoning Ordinance Regarding the Placement of Political Signs in Gearhart. Mayor Smith opened the discussion and invited the public to comment. Councilor Fackerell requested clarification on why holidays (e.g.,

Fourth of July) was left out of the language. Attorney Watts clarified that the City would be doing another ordinance for other temporary signs, which would include holiday signs.

- Councilor Devereaux requested clarification over restricting signage placement (e.g., trees, shrubbery) on private property. Attorney Watts talked about the intent of the language in the ordinance. Councilor Gould suggested language in Section 1D Placement that clarified political sign placement on the public right of way. Councilor Fackerell asked about language regarding the area between the street and the sidewalk. Attorney Watt clarified that people are usually acting in good faith and just do not realize that they have placed signs in unallowable areas. He mentioned there was specific language that allows the City to collect signs placed in the public right of way.
- ON MOTION by Councilor Gould, 2nd by Councilor Kloepfer to approve Ordinance 941 as amended, which allows an addition to the City of Gearhart zoning ordinance regarding the placement of political signs in Gearhart, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

Old Business. None.

New Business. Mayor Smith invited the public to comment on the new business items.

Audit Compliance. Mayor Smith opened the discussion. Treasurer Hill explained that this is a requirement of the audit process. It is something that had never been done before; however, this year the City's auditors have provided guidelines and information to assist in fulfilling the requirement to report audit deficiencies to the State. The City has one deficiency that needs to be reported and that is Organizational Structure. This is a common finding due to the City's staff size. To offset this deficiency the City has internal controls to assist in providing reasonable assurance of compliance, transparency, and prevention of fraud. Mayor Smith stressed the Council is important in oversight and should ask questions or request clarification. Treasurer Hill also mentioned their active role in the budgeting process. Councilor Kloepfer wanted clarification on if they were active enough, which Treasurer Hill affirmed they were (e.g., review financial reports, approve appropriation adjustments, budget members).

Employee Handbook Amendments. Mayor Smith opened the discussion. Treasurer Hill explained that the employee handbook is an important reference document. She mentioned that in April 2021, the City used an employee handbook template from CIS, the City's liability insurance carrier, to create a new handbook. The proposed amended January 2024 handbook is essentially the same document with some revisions. City staff have been working with an attorney at Miller Nash, that specializes in human resources, on updating and revising the handbook that accurately reflects City policies and

practices. Administrator Sweet went over the amended handbook with the City's supervisors. She explained that the goal was to have a document that supports our employees, assists supervisors, and provides liability protection for the City. She also thanked Mayor Smith and Councilor Gould for their continued reviews and input. Treasurer Hill noted that the original handbook file had been transferred around to different organizations and programs, which made it impossible to easily track changes. Highlighted changes were: page 9 – added required language on the Workplace Fairness Act; page 14 – additional language that allows the extension of the introductory period based on department needs; page 17 – language in compensatory time was revised to align with City practice; page 19 – language was added that ties wage/salary increases to be based on satisfactory work performance; page 20 – added similar wage/salary language under performance review; page 20 – revised the section on employment of PERS retirees; page 22 – the section on sick leave was revised and language added for Oregon Paid Sick Time; page 24 – the federally recognized holiday of Juneteenth was added; page 25 – Paid leave Oregon language was added; page 29 – additional benefits were added to this section for already established benefits that were not listed; page 31 – PERS language was modified; and page 35 and 37 – a recording policy section was added. There was also discussion on why the Employee Handbook had to come to the City Council for amendments, which was decided was not a legal requirement.

- Councilor Kloefer requested clarification on holidays. It was clarified that granting paid holidays is at the City's discretion. There is no mandatory requirement for paid holidays. Councilor Gould noted that paid holidays can be a simple way to stay competitive in the workplace and to also retain employees. Councilor Fackerell had some concerns over language on page 47 regarding progressive discipline. There was some discussion over the intent of the language. Mayor Smith pointed out that the last paragraph on page 47 clarified the City's intent and rights. Councilor Gould asked about any references to seat belts and it is referenced on page 44 (While Driving on Business). She also has concerns over Search of Property on page 34. Attorney Watts also has some concerns. Administrator Sweet also had some concerns searching individual's personal property (e.g., vehicle, purse). He cited areas in the Employee Handbook that would still allow searching City owned property. Treasurer Hill clarified that the section of Search of Property would be removed and Attorney Watts confirmed this would be his recommendation to the Council.
- ON MOTION by Councilor Fackerell, 2nd by Councilor Gould to approve the City of Gearhart Employee Handbook as amended, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloefer, Smith) - 0 nays.

Gearhart Rural Fire Protection District Contract. Mayor Smith opened the discussion. He had a concern over the last paragraph on page 1 regarding the wording on the level of involvement regarding

the Fire Chief employment. Councilor Devereaux had the same concern. Administrative Sweet recommended changing language to still allow some participation and Attorney Watts was going to work on language.

- ON MOTION by Councilor Devereaux, 2nd by Councilor Kloepfer to approve as amended entering into a contract with the Gearhart Rural Fire Protection District, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.

Discussion - Preservation & Removal of Trees Zoning Text Amendment. Mayor Smith opened the discussion.

- Councilor Kloepfer applauds the Planning Commission for the application process for tree preservation. She noted that there was no language regarding mature foliage increasing property values. She has personally documented over 200 old trees taken down over seven years. She noted that the City of Gearhart is an incredibly beautiful place due to its old growth trees. Councilor Kloepfer feels that having all the tree decisions placed on Administrator Sweet puts an undue burden on him. She feels he is not a tree expert. She thinks it may be better to have the Planning Commission or a tree board make decisions on tree removal. She feels an arborist should be involved in the process; however, she has concerns over a potential conflict of interest when the same arborist evaluates and cuts down the tree. She feels that alternative measures should be noted, such as trimming or pruning, before removing “problematic” trees. She likes the idea of going to a circumference measurement; however, would like 30 inches as the City’s measurement. Councilor Kloepfer also claims that cutting trees can have a deleterious impact on neighboring trees. There was continued discussion on who would be responsible for paying the arborist; Administrative Sweet’s tree expertise and process; oversight; fines associated with unapproved tree removal; arborists requirements; and permit process. Attorney Watts reminded Councilors that substantial changes would change the approval process. Councilor Gould felt like there were some substantial issues that should be addressed, such as: a better definition of tree; cost analysis in staff time; the evaluation of the process for tracking tree removal; and the ability to remove invasive species. Mayor Smith requested that City Planner Phillips review discussion items and bring Council additional information in February.
- *ON MOTION by Councilor Gould, 2nd by Councilor Kloepfer to approve with further changes and as amended, MOTION was withdrawn after discussion.*

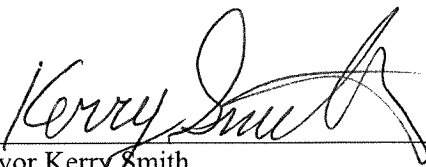
Council Concerns.

- Councilor Devereaux reported no concerns.
- Councilor Fackerell reported no concerns.

- Councilor Gould reported no concerns.
- Councilor Kloepfer still has concerns over the tree ordinance in terms of the riparian vegetation section because it does not list the estuary. Administrator Sweet explained that the estuary is not considered riparian by the City of Gearhart. He pointed out that it was in the Comprehensive Plan but was never codified in the zoning ordinance. She feels the Comprehensive Plan should align with the ordinance. Attorney Watts said the Comprehensive Plan is the vision/values of the City. He mentioned that changes in land use would require public notice and acknowledgment from the Oregon Department of Land Conservation and Development.
- Mayor Smith reported no concerns but noted additional follow-up may be needed.

Mayor Smith requested adjournment.

- ON MOTION by Councilor Gould, 2nd by Councilor Fackerell to adjourn the meeting, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays. Mayor Smith adjourned the regular Council meeting at 9:45 pm.



Mayor Kerry Smith



Chad Sweet, City Administrator