

CITY OF GEARHART  
Public Hearing and Regular Meeting of the City Council  
Wednesday, August 7, 2024  
6:00 pm On-site and Virtual/Telephonic

A public hearing and regular meeting of the Gearhart City Council was held Wednesday, August 7, 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 Smith, Councilor Preston Devereaux, Councilor Reita Fackerell, Councilor Dana Gould, Councilor Sharon Kloepfer, City Administrator Chad Sweet, City Attorney Peter Watts, City Planner Garrett Phillips, Executive Assistant Krysti Ficker, City Treasurer Justine Hill, Police Chief Josh Gregory (*Council Meeting only*), and Fire Chief Josh Como (*Council Meeting only*). A quorum of the Council was present.

At 6:00 pm Mayor Smith opened the public hearing for section 6.078(8) preservation and removal of trees GZO text amendments. He read the hearing's disclosure statement. There were no conflicts of interest, no ex-parte contact, or no personal bias declared by any member of the Council. There were no audience challenges to the Council's ability to make an impartial decision. Mayor Smith asked City staff to go over the staff report.

City Planner Phillips went over the staff report. He explained that Ordinance 942 amends the zoning section that addresses preservation and removal of trees in the City of Gearhart. The Ordinance has the recommended proposed changes made by the Planning Commission. City Planner Phillips went over the Planning Commission's process and discussions (e.g., clarifying intent, process history, more tree protections, clarity on tree definition, dealing with hazard tree situations). He mentioned that proposed language does allow residents in certain hazardous/safety circumstances to remove a tree based on an arborist's recommendation without first obtaining a permit. It also allows for City staff to make determinations that a hazardous tree can be removed. He briefly went over specifically impacted sections in Ordinance 942 (Section B Definition; Section C Applicability; Section D Requirements; Section F Exceptions). He noted that additional amendment changes were submitted by a Council member that would be available for discussion later in the Council meeting. He noted that additional changes could be made after public comment and/or Councilor input.

Mayor Smith asked if there were any proponents.

- Deanna Mancill (2945 Hwy 101 N) felt that the invasive species listed in the proposed Ordinance was not robust enough. She referenced a historical story about a Siberian Elm tree issue that was not methodically controlled and continues to spread. She would like the weeping willow to be added and perhaps other species that create problems on properties. She suggested working with the Necanicum Watershed Council to create a more robust species list.
- Angela Sidlo (516 Summit) read a letter submitted by Robert Carson (226 Ridge). Before she read the letter, she requested clarification on if the riparian zone was being considered during the tree removal planning process. She is concerned about the watershed areas and being good stewards of Gearhart's beautiful older trees. Carson's letter "ardently supports a strong ordinance regarding the preservation and removal of trees, and the encouragement to plant more trees."
- Robin Lane (715 2nd Street) reiterated the sentiment from Robert Carson's letter. She is a proponent of taking care of our beautiful place. She feels the trees represent Gearhart and provide beauty, shade, and ecological environments. She feels that tree removal is something that cannot be left in the hands of individuals. She thinks that people should know what others are doing to the trees. She would like to see Gearhart's resources protected.

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

Mayor Smith asked if there were any neutral comments.

- Ivars Lazdins (701 5th Street) has an issue with a specific tree on the Ridge Path that he feels is dangerous to his property. He went over the history of the tree situation and indicated he would again like clarification from the City on removing the tree. Mayor Smith was not aware of the situation and indicated he would follow-up on the specific tree concern.
- Matthew Johnson (338 Summit) reviewed the tree amendment paperwork provided by City Hall and appreciated all the hard work put into the process. He requested additional clarification on the need for mitigation that was referenced on the tree cutting permit application. Administrator Sweet clarified that the tree cutting permit application referenced was a draft document and had not yet been finalized. City Planner Phillips clarified that currently major tree removal of 5+ trees does require a Planning Commission decision that is dependent on applicants providing mitigation options (e.g, planting replacement trees). He noted that it was accurate that while drafting the initial draft application for tree removal with proposed new requirements, staff did add a question on mitigation as a prompt to assist the applicant in providing complete information; however, based on feedback provided during the meeting, staff will need to continue refining applications that represent both major tree removal projects (mitigation required for decision making) and less than 5 tree removal projects (do not require mitigation for decision making). Councilor Gould had

City Planner Phillips clarify that the draft tree removal application submitted in the January packet was intended for use with both a major (5+) or a minor tree removal project. City Planner Phillips emphasized that the draft application was more for illustration purposes and was awaiting further revisions until a finalized ordinance was adopted; however, it was originally intended for both tree removal processes.

- Bill Corti (815 S Ocean Ave / 3963 SE Lake Rd, Milwaukie) would like clarification on the process of minor tree removal on private property. He has concerns that someone is not going to be reviewing the tree removal and the level of honesty on those removing trees should be verified. Administrator Sweet clarified that the trees would be reviewed before removal. Bill Corti feels that a tree committee may be a more viable option. Administrator Sweet said that both he and the Building/Planning Assistant would be able to review trees. Bill Corti also requested clarification on the ability for property owners to remove trees or was there a specific requirement that an arborist had to be hired. City Administrator Sweet clarified that an arborist would not be required for tree removal; however, it was mentioned that dunes tree removal has a different process.
- Don Frank (988 Summit), a Planning Commission member, reiterated City Planner Phillips process and decisions regarding the efforts put into the amendment revisions by the Planning Commission. He clarified the intent of the changes, which were to allow the City a formalized documentation of trees removed; as well as the ability to respond to questions/comments. He addressed Angela Sidlo's questions about the riparian zone (zone not applicable in proposed Ordinance because riparian area is under different requirements). Don Frank gave a personal example of hazard trees that he went through regarding trees on public property that impacted his property. He stressed that Gearhart is a semi-rural community and that the implementation of the proposed amendments would not change the character of Gearhart. He also supports the idea of Deanna Mancill's request of expanding the invasive tree species list. As a Planning Commissioner he wanted to share the tree removal planning process and give some feedback.

Written Correspondence submitted late and acknowledged in the regular City Council meeting: Cameron La Follette (Testimony for Tree Ordinance Hearing); Robert Carson (Testimony at the Public Hearing of 7 August 2024); Bruce Prator (Ordinance 942 Tree Removal File #23-05ZTA); Alix Goodman (Friends of Lesley Miller Park).

At 6:46 pm, after hearing no further comments, Mayor Smith closed the public hearing. He requested clarification on how to proceed with Councilor discussion. Attorney Watts gave some potential options, which included making a motion to approve the Ordinance to be consistent with the newly distributed red line version or further discuss the Ordinance that was recommended by the Planning Commission.

Attorney Watts also noted that another point of clarification may need to be addressed regarding the City's elected/appointed officials' interpretation of the responsible party involving tree removal on City owned property, as well as public right-of-way property. In other jurisdictions where he has worked, trees that were in the public right-of-way, but adjacent to a private residence, were the property owner's responsibility; however, based on the City of Gearhart Mayors' (Widdop/Cockrum) directions, the City has been taking responsibility for removal. There was continued discussion. Councilor Devereaux had concerns over liability, especially in extreme weather situations. Attorney Watts talked about sovereign immunity and City's awareness of safety issues. Councilor Kloefer felt that the Planning Commission did not adequately address some important items in the amendments changes. She spent time reviewing and editing, which included a heritage tree definition, language regarding the riparian zone, and a few smaller changes. Because distribution of the potential revisions were not distributed as Councilor Kloefer had wanted, she would like time for the public and City Council to review her proposed changes.

- ON MOTION by Councilor Kloefer, 2nd by Councilor Fackerell to reopen the record in the September meeting regarding the preservation and removal of trees text amendments, MOTION was approved 4 yeas (Fackerell, Gould, Kloefer, Smith) - 1 nays (Devereaux).
- Administrator Sweet asked some clarifying questions of Attorney Watts. It was clarified that there will be a continuation of the public hearing in September and that the red line revised version proposed by Councilor Kloefer will be open to the public to review. He also went over why he recommended that the red line version was not distributed before the public hearing. He touched on procedures for individual Councilors requesting specific changes to items on the agenda. He reiterated how important that decision making amongst Councilors be in a public meeting.
- Mayor Smith ended the discussion by reiterating the approval under ORS 197.763(6) allowing the continuation of the record on the preservation and removal of trees text amendments prior to the September City Council meeting at 6:00 pm. Public hearing and comments were ended.

Mayor Smith called the regular meeting of the City Council to order at 7:04 pm.

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

Approve Minutes.

- ON MOTION by Councilor Fackerell, 2nd by Councilor Gould to approve the minutes of the July 3, 2024 regular meeting of the City Council as amended (page 4), MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloefer, Smith) - 0 nays.

- ON MOTION by Councilor Kloepfer, 2nd by Councilor Fackerell to approve the minutes of the July 24, 2024 executive session of the City Council, MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
- ON MOTION by Councilor Gould, 2nd by Councilor Devereaux to approve the minutes of the July 30, 2024 worksession of the City Council as amended (page 3), MOTION was approved 5 yeas (Devereaux, Fackerell, Gould, Kloepfer, Smith) - 0 nays.
  - Councilor Kloepfer asked for clarification on Council receiving the finalized Klash contract and inquired about their person of contact.

There were no questions or comments on the Planning Commission minutes that were in the Councilors' packets.

Mayor's Report. Mayor Smith mentioned that he had been out of the area. He attended the Representative Javadi Town Hall. Mayor Smith will continue his discussion with Representative Javadi regarding Gearhart's water rights. He attended the LOC Small Cities meeting that was co-sponsored by Gearhart. He felt it was a good meeting.

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

- Councilor Devereaux gave a brief update on the public service building project. He mentioned the creation of an RFP Architecture and Engineering Services selection committee, which is not part of the regular Klash meeting group that he and Councilor Gould participate in. He encouraged everyone to come to the next Town Hall meeting.
- Councilor Fackerell attended the Clatsop Regional Housing Taskforce meeting in July. They talked about the housing needs analysis process and planning housing over the next 20 years. She feels that the composition of the Taskforce representatives makes it an interesting and valuable group because you are able to learn a lot about different communities. She also met with Administrator Sweet about the completion of the Bench Committee's responsibilities, which the bench project will now be led by City staff. She thanked the Bench Committee (Kloepfer, Zimmerman, Fackerell) for their contributions.
- Councilor Kloepfer participated in the 4th of July beach clean-up. She shared a story about her experience in the Wellington/Little Beach area. She attended the Clatsop City/Countywide Elected Officials meeting, which discussed the repeal of Measure 110 and the new FEMA floodplain changes. She also went to the LOC Small Cities meeting. One of the topics discussed was recreational immunity, which she mentioned will sunset in 2025 so public support will be needed. Also discussed was information on housing infrastructure funding and the one time expansion of the urban growth boundary.

- Councilor Gould corresponded with citizens about the public safety building project, the tree ordinance amendments, and other coastal issues. She feels many of the issues overlap and decision making should be made with an all encompassing view. She thanked everyone for their constructive feedback and criticisms. She welcomes continued constructive suggestions. She attended a CIS sponsored training on the US Supreme Court decision in the Grants Pass v Johnson unhoused issue. She participated and enjoyed the 4th of July festivities. She thanked all who contributed. She appreciated the organizers of the Street Dance and enjoyed assisting in the set-up/clean-up of the event. She gave a shout out to the emergency responders who worked with other emergency responders throughout the County. She also attended the Clatsop City/Countywide Elected Officials meeting and the LOC Small Cities meeting. She does feel the FEMA BIoP may have major impacts and should be considered in decision making. She also attended both police/fire facility tours that were open to the public.

#### City Officer Reports.

- Chief of Police. Chief Gregory gave a brief 4th of July recap. Overall he felt things went well. He went over July police statistical data. He feels the numbers demonstrate that the police have been busy and proactive. Councilor Kloepfer commented that seeing the police out in the community is a wonderful thing.
- Fire Chief. Fire Chief Como went over the department's July data report, including a call breakdown, mutual aid, and comparisons to last year. He gave a brief recap of the 4th of July (staffing, events, action items). On behalf of a citizen, Councilor Kloepfer requested clarification on firefighters suiting up when responding to outside jurisdictions mutual aid calls. Chief Como explained that it depends on the type of mutual aid given because not all response calls require volunteers/staff to be suited up in full gear.
- City Treasurer. Financial reports were submitted in the Councilors' packets. Treasurer Hill mentioned that overall beginning fund balances are higher than anticipated. She noted that short-term transient room tax, although slightly lower compared to this time last year, remains strong. The City has received the funding check to support the fire department's staffing grant. She discussed specific budgeted transfers (General Fund, Bench Program, Road District, Water Reserve) that were done. She mentioned noteworthy expenditures, which included payments for the annual SAIF workers' compensation requirements, fire department communication services, interest obligations in debt service, and groundwater modeling services. She also noted that there are several expenditure line items that have already exceeded their budgeted amounts (Planning Postage, Water Part-time Labor) and that a new account has been added in Court (Postage).

- City Attorney. Attorney Watts was able to pass on some potential issues to the City during the 4th of July celebrations and suggests expanding the 4th of July informational campaign to more High Schools in the Portland metro area next year. He referenced the US Supreme Court ruling in the Grants Pass v Johnson case involving camping. He noted that Gearhart's current City Ordinance appears to be working well; however, if additional changes need to be made, it should be easy to modify. He briefly talked about the Sheetz v El Dorado, California case. He suggested that if the City does implement any system development charges, they are reasonable, aligned with the Comprehensive Plan, and are actually related to City services provided. He does feel that overall citywide fees should probably be reviewed to ensure they are appropriate and fair. Attorney Watts also mentioned that other fire departments have implemented cost base fees for responding and providing services outside of the City limits. He explained that for these extraterritorial services, a reasonable fee could be applied. Unless there is Council objection, he has been asked by the fire department to bring a draft document outlining the program to a future meeting. He also commented that there may be some reasonable, temporary regulations implemented to ease some of the 4th of July parking/vehicle issues, which could be determined through the public meeting process.
- City Administrator. Administrator Sweet's report was sent to the Councilors in their packets. He mentioned code enforcement and a current project with aligning commercial business signs with the City's sign Ordinance requirements. The City is fully staffed, and has been busy, especially in the municipal court department. He noted that the fire department had deployed staff to assist with the Governor's conflagration declaration request. This program is a reimbursement program and all salary and equipment usage is paid by the State of Oregon. Public works has been tasked with a requirement to conduct inventories of service lines and to identify service line material type on houses of a certain age. The purpose is to identify those service lines made of lead, which none have yet to be detected. Administrator Sweet mentioned that the grant funded tennis court resurfacing project is moving forward. Councilor Kloepfer asked if there was any more information on sound mitigation around that area. Administrator Sweet indicated there had been two options investigated (increased vegetation and acoustic fence panels), but no action. He discussed the water rights application process. He indicated that building permits numbers are down. He also gave a reminder about the next Town Hall where the Klosh group will be introduced and go over procedural processes for the public safety building project. He said that City staff did a 4th of July hotwash to improve for next year. He invited any interested party to the next Planning Commission meeting to learn more about the FEMA BIoP changes.

Visitors. None.

Public Communications - Written & Oral. Mayor Smith read the oral public comment statement on the agenda. There was written correspondence submitted by Jack Zimmerman (Social Media and Council Correspondence); George Van Hoomissen (Building on the Oceanfront Public Park); Maria Black, Stephen Black, Beth Cameron, Todd Cameron, Jill Garvey, Tony Garvy, Pat Roberts, Muffie Latourette Scanlan, Lynn Shortman, Bob Shortman, Andrew Stein, Peggy Stein, Jim Whittemore, Kathleen Zimmerman, Jack Zimmerman (Lesley Miller Park); Friends of Lesley Miller Park (Building at Lesley Miller Park); Richard Senders (Location of New Public Safety Building); Accuity (Councilor Correspondence); Garret Phillips (PICM Flood Regulations Impact Summary). Mayor Smith acknowledged late written correspondence that was received for the tree ordinance public hearing.

- Tom Thies (292 Woodland) gave a thank you to all the volunteers. He talked about local parks in Gearhart, but was interested in the official naming of them. He feels like people do not know the names of the parks and it would bring clarity to have them officially named.
- Audrey Knippa (282 Woodland) addressing the City Council on the issue of why fireworks are not banned within the City limits of Gearhart. She mentioned they are prohibited in State parks, the City of Cannon Beach, and in other Cities in Oregon (Lincoln City, Portland, Milwaukie, Eugene). She shared some statistical data regarding firework damages and other negative impacts (PTSD symptoms, contributes to poor air quality, noise pollution, wildlife trauma, unwanted trash). She is proposing banning firework usage in Gearhart. She has spoken with other residents who also have concerns about the noise and pollution. Mayor Smith mentioned he felt there was some historical discussions on banning fireworks and he would look into the issue further. There was continued discussion on creating a referendum; difficulties with enforcing the usage of Oregon legal fireworks with a City ban and limited police; learning how other Cities with bans maintain successful enforcement; and issues with beaches still being controlled by Oregon Parks.
- George Van Hoomissen (276 N Ocean Ave) sent a letter last week to Mayor Smith and Councilors. He expressed opposition to the City moving forward with exploring the possibility of a public safety facility at Lesley Miller Park. He referenced a recent Daily Astorian article that mentions the importance of exploring both City owned properties as potential locations for the public safety facility, which he does not agree with. He wants Councilors and City staff to focus on the “we” when referencing ownership of the parks. He feels it is important when the City references properties “we” own to keep in perspective who the “we” is. He feels that the “we” is the public, the community; not City staff or City Council. He went over the ownership of Lesley Miller Park, the legal language attached to the deed; and his interpretation of the historical significance of the park preservation language. He feels there is support for a new facility; however, there is overwhelming opposition to building at the park. He believes that the focus on the park location is wasting public resources and generating hostility in the community. He urges the Council to



redirect. Mayor Smith acknowledged George Van Hoomissen's comments, but also mentioned that he wants to give the community informed choices, which he considers good governance.

- Attorney Watts suggested that the City could reach out to the County about eliminating the reversionary clause language. He talked about providing community options for locations. Councilor Gould also clarified she understands the value of the park, but also understands the essential need for a new public service building. She does not want to limit conversations.

#### Ordinances/Resolutions.

Ordinance 942 - Section 6.070(8) Preservation & Removal of Trees GZO Text Amendments. Mayor Smith referenced this item being tabled and reopened in September (*motion approved under public hearing section*).

Old Business. None.

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

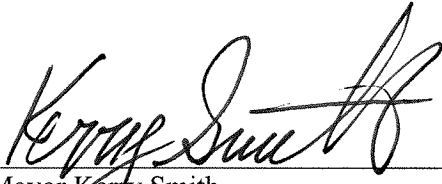
Announce Public Safety Building Architecture & Engineering Services RFP Selection Committee Community Members. Mayor Smith introduced the topic and Administrator Sweet went over the staff report. He talked about the selection process of the RFP committees (Klosh Representative, Fire Chief, Police Chief, City Treasurer, City Administrator, Community Member Robert Lee, Community Member Jay Speakman) and the timeline. There were no questions by the Council.

#### Council Concerns.

- Councilor Devereaux had no concerns.
- Councilor Fackerell had no concerns.
- Councilor Kloepfer talked about the Lesley Miller Park location. She personally feels that having a comparison of properties is advantageous; however, due to community angst over the location she feels that it should be taken off the table for consideration. She also has concerns over contractors working on Sundays against the ordinance restrictions. She has talked with Chief Gregory and understands it is a burden on law enforcement to enforce. She requested that notification signs be put up to assist with awareness.
- Councilor Gould had no concerns.

Mayor Smith requested adjournment.

- ON MOTION by Councilor Smith, 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 8:27 pm.



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Mayor Kerry Smith



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Chad Sweet, City Administrator