

**CITY OF PORT ORFORD
REGULAR SESSION of the COMMON COUNCIL
GABLE CHAMBERS
MONDAY, JULY 16, 2007 at 7:00 p.m.**

Councilors present: S. Abbott, J. Hewitt, J. Marshall, J. Campbell, M. Finch, Sr.
and Mayor J. Auburn

Councilors absent:

Staff present: M. Murphy, City Administrator; J. B. Trew, City Attorney
S. Halse, Police Sergeant; B. Manes, City Recorder

Others present: J. Stoler, Curry Local News Service; Evan Kramer, Port Orford Today

Citizens present: ~25

Call to Order/Pledge of Allegiance

Mayor Auburn called to order this Regular Session of the Common Council of the City of Port Orford in the Gable Chambers, Monday, July 16, 2007, at 7:00 p.m. He then asked all present to please rise and join him in the pledge of allegiance.

Additions to the Agenda

Mayor Auburn then stated he would like to add to the Consent Calendar the appointment of Steve and Jeannie Carter as Buffington Park Hosts. They were recommended by the Parks Commission, interviewed and underwent a satisfactory background check.

MOTION: Councilor Finch moved to add Steven and Jeannie Carter's appointment as park hosts to the *Consent Calendar*. The motion was seconded.

Roll Call Vote:

“Yes”: S. Abbott, J. Hewitt, J. Marshall, J. Campbell,
M. Finch, Sr.

“No”: None

Motion Passed: 5 to 0

Mayor Auburn stated that one thing not on the agenda was the proposed zoning changes ordinance and he proceeded to give the status of that as follows: It needs to be written up as an ordinance as well as the changes to the Comprehensive Plan, to be checked by our Planner and Attorney. The June 25th Meeting Minutes should be on the website under Special Sessions and the resulting updates to the proposed zoning changes should be on the website. The first reading will be at the August meeting; the second reading and vote will be at the September meeting at which time we can do one of three things: we can refer it to the voters as a measure on the ballot, we can vote yes or we can vote no on the zoning ordinance.

Special Reports

Port Orford Volunteer Fire Department Annual Report – Gayle Wilcox

Gayle Wilcox stated that council had her written report which basically states that in her estimation the fire department has been doing an excellent job. She noted they had trained more than ever over the last year with fire fighters in a 40 hour first responder class, in a wildland class; they train extensively with Sixes and Langlois Fire Departments, the Port Orford Ambulance and Police Department, as well as some training with the Ophir Fire Department. She stated they appreciate the support from the other fire departments, ambulance and police, and this multi-agency cross training has paid off when responding, especially in the case of motor vehicle accidents.

Gayle reported that she applied for a grant in February and it was reported to her at that time that they would probably receive a portion of the grant which had a maximum amount of \$20,000. She applied for \$19,900 and was just notified that they had been granted the full amount. This money will go toward additional turnouts and wildland gear.

Mayor Auburn noted that **Gayle's** report had no amount of calls responded to during the year. **Gayle** estimated that there were about 60 to 70 calls, including motor vehicle accidents.

Councilor Finch stated that he would like to personally thank the Port Orford Fire Department for a fantastic fourth of July fireworks shoot. Gayle thanked him and replied that a lot of work went into that weeks before as well as the evening of the fire works.

High Speed Internet Report – Ed McQuade

Ed McQuade reported that he was a member of the high speed internet committee and wanted to let everyone know what they were trying to accomplish. The objective of the committee is to try to convince a high speed provider to provide service to the City of Port Orford. The problem is economics, as due to our small population installing the necessary equipment is more costly than can readily be recouped from the number of available users.

Port Orford is among the two percent of zip codes in the state of Oregon that do not yet have high speed internet. The committee has tried Harborside, Verizon, Northwest Technical, ComSpan and can generate no interest, but they have not given up. Recently Charter announced they were going to put in a fiber optic cable from their facility in Gold Beach all the way to Coos Bay, which may be good news for us as that cable costs a lot of money. We can't just hook up to that cable as it takes other equipment and some upgrading of the City's equipment to the tune of about \$250,000.

Therefore, in order for their marketing manager to put Port Orford in the budget for the equipment to put us on the fiber optic cable we need to show support for the cable and let them know there are people who will sign up. The committee feels this is our best chance

so they recently sent out a survey form regarding interest in high speed internet with the yearly water report, but received only 42 responses. The response was encouraging as 31 of those 42 would be willing to pay more than \$30 for high speed internet; and the number who wanted high speed internet was 33 of 42, which is a good percentage. However, **McQuade** continued we need that 42 to be over 100 responders, so he said he was here tonight to bring some forms for people to fill out and to let everyone know that the forms will be distributed with the Port Orford Today, and to ask everyone to fill one out and turn it into the Fun Zone.

Mayor Auburn thanked Ed for his good work and his contributions to the committee. Councilor Hewitt then stated that as a member of the committee he would like to add that the forms will also be available at Java John's, the Library, the City office and you may return them to any of those places, plus the utility bill box next to the ballot box at City Hall.

Citizens Concerns (Sign Up)

Zak Draskovich read a long letter into the record regarding an incident with Sergeant Halse where Mr. Draskovich felt his life was being threatened. The letter was previously sent to the Mayor and the Councilors, Police Chief Mark Creighton and the Attorney Generals office and is filed with the packet.

Sergeant Scott Halse stated that the violation did not occur on hwy 101 as **Zak** stated, the violation occurred as he left the stop on Jackson Street and made a right hand turn onto 18th St., and that is what is written on his citation. It is a pending court case as we have not yet had the hearing so that is all I will say at this time.

Councilor Campbell stated that the incident has been investigated and there are some conflicting statements involved, but it has been investigated.

Chris Hawthorne thanked the Mayor, Council and the citizens of Port Orford and stated that he would like to make a few comments about some of the issues in town. As residents and property owners of any community we are faced with decisions that will affect us for years to come. Members of this community realize that change is inevitable and our decisions now will determine the viability and livability of our town for the future. Different people have differing ideas on the way to embrace change. Quality development in the commercial area of south Port Orford is only going to happen if those willing to make the investment are reasonably assured that their efforts are not going to be eclipsed by an industrial or commercial enterprise that is not appropriate for the area. They are also going to need assurance that the City is not going to make this investment more costly than necessary by making unreasonable requests. Even though not everyone, including me, agrees on the details, I feel that the Planning Commission and the City Council are trying to give the commercial property owners as well as the residents of the city some of these assurances.

Hawthorne continued by stating that an official's ability to make decisions based on the good of the entire community can be seriously impaired when a vocal few threaten recall

if an issue is not decided in their favor. When this happens, recall becomes the tool of a disgruntled and/or self-serving few. The ease with which a recall can be initiated regardless of its validity, also dilutes the pool of candidates willing to serve the community. As the recall legislation currently stands, the reason listed on a petition for initiating a recall is not even required to be truthful. The right of recall is a necessary tool in insuring the accountability of elected officials. However, in many cases, the lack of parameters or regulations regarding the process gives undue power to a small minority of people and does not necessarily represent the will of the majority of the citizenry. I want to urge all citizens of Port Orford to give very serious thought to what they are doing to our community when they sign a petition for a recall. Thank you.

Departmental Reports

Administration

Councilor Hewitt asked if Mike would like to name the person who made all the allegations at the contentious Planning Commission meeting. Mike replied that there were several, and it was just one of those kinds of meetings it was contentious from beginning to end, and he noted that he hated to see things degenerate into a fight rather than getting some real work done. That meeting's minutes will be transcribed word for word and you will see what transpired.

Public Works

Councilor Abbott asked Mike about the potential subdivisions on Deady St. and Vista and where their water was coming from. Mike replied that it would come from the City water system. Councilor Abbott asked if we could provide for that and Mike replied that we could if we didn't have an extremely dry year.

Councilor Campbell asked what happened with the water leaks. The leaks were found and fixed and now we're losing more water than before. Mike stated that he doesn't know what happened, although we only had half a month with those nine leaks fixed, it should have shown less water loss, but it was more. Mike told him he really did not have the answer.

Councilor Hewitt asked Mike if American Leak Detection were through with the survey or if they would come back and check the fixes. Mike replied that they were coming back the 29th and 30th of July to finish their survey and to doublecheck the leaks that we did fix. They could have found one leak that we fixed that was masking another leak we haven't fixed, so they will check all of those.

Councilor Abbott asked if they were going to check the water tank as that is due for its annual maintenance. Mike told him that we would have to get the divers in to check on that.

Councilor Finch asked about the vehicle policy. Mike replied that he had a draft form of the policy that was almost finished, and he will get a copy of it to the council

Councilor Marshall asked about the summer public works position. Mike stated that he had one applicant and by the time she had applied it seemed inappropriate to hire someone for not quite two months.

Finance

Councilor Abbott asked about the line 55 item to the Curry County Planning Department for \$8,460, and what it was for. Mike answered that it was a building permit for the new library and was just a pass through item from the library construction fund. Councilor Abbot then asked about line item 988 Shoji Planning & Development for \$12,000. Mike replied that that was the final payment for Phase II paid for by the DLCD grant.

Police Department

Sergeant Halse sat in for Chief Creighton and stated that if he didn't know the answer, he would say so. He also stated that Mark had surgery on his eye and it is quite swollen, but he is doing fine. Councilor Hewitt asked about the missing audio tape from the June 25th council meeting. Scott stated that he didn't know anything about that. Mayor Auburn said to ask Beverley about that. Councilor Hewitt asked if we had the minutes from that meeting. She stated that there was a recording, but it was not from the tape. The minutes from that meeting are on the website. Councilor Hewitt asked if something was stolen or lost. Beverley replied that she did not know. She stated that she put two tapes in the machine and there was only one when she took them out. She then went on vacation for a week and when she returned the remaining tape rather than having tape on both spools as it had when taken out of the recording machine, was completely rewound onto one spool, and had nothing recorded on it.

Planning Department

Councilor Hewitt asked if there was any further report on Talus. Mike replied the Planning Commission did give Carey Corporation an extension of time until the January meeting to complete the necessary conditions for final plat approval and there's a fairly extensive list of things they have to finish up.

Liaison Reports

Chamber of Commerce

Councilor Hewitt reported that he missed the meeting as he was in Roseburg at the VA hospital having some tests. He noted that he had spoken to Jim Billings about it who said it was a pretty ordinary meeting and nothing in particular was discussed.

CTR & Streets

Councilor Marshall stated that since this was his first month taking over for Carl, and since CTR did not return his call, he guessed there was nothing special to report. He stated that he took a look at the streets, which he had never paid much attention to in the past, and discovered that our streets are not in very good shape. In particular he found a shouldering issue wherein the shoulder rock should meet the asphalt, but the shoulder rock is no longer there and there is a drop from the

end of some driveways and the asphalt breaks off and causes a crack right across the street. He stated that he spoke with Mike about it and they will try to get some ¾ inch gravel to blade and resurface the shoulder in those areas to prevent breaking and cracking of the asphalt.

Parks/TLT

Councilor Finch reported no action with TLT until later in the year. Parks has found an ORS for a Horse Arena, which covers the liabilities and what goes on in the arena. There were interviews for a Park Host and a married couple was recommended and are on the consent calendar. The Skateboard Park did very well over the fourth of July, and received a contribution of a \$6,500 vase from Hugh McKay to raffle off, and tickets can be purchased at Chetco; two for \$5.00, 5 for \$10.00 and 20 for \$20.00. The more tickets you buy the better chance you have to win it. The baseball group had a barbecue that went extremely well, and the proceeds will go to fix a broken door on the concession stand at the ball park. There has been some vandalism to the snack shack since the park host left. The Parks Commission is still looking for someone to give an estimate on the A-frame for a new roof and possible wall damage. Lastly, the Parks Commission wanted to thank Dolores Finch for all her work on the fourth of July.

Planning

Councilor Finch reported that the Planning Commission meeting was quite interesting and is covered in the Planning Report.

Port

Councilor Marshall reported that the dredging operation at the port began late on Friday and they work around the clock, seven days a week. They estimate they will be working about 12 to 14 – 24 hour days, and try to go 18 feet deep as that depth lasts about two years. The port decided to withdraw from the LUBA affair that was going on. Gary Anderson has applied for some grants. The tuna is in as well as halibut.

Watershed/Lake

Councilor Abbott reported that the Watershed Council met on June 20th. Chris John, a member of that council and a Riparian Specialist for the South Coast Watershed Councils, spoke about the work that needed doing at the Hubbard Creek watershed. He showed pictures of the before and after of some work he had been doing there, and our watershed looks pretty healthy. Also Todd Confer of ODF&W spoke regarding the management of a trout and warm water fishery in Garrison Lake. This is something in the works, and he was here for a couple of days taking samples of the fish in the lake and brought that report to the watershed council.

There are no meetings in July and August as is the tradition, but in September there will be a field trip to the Hubbard Creek reservoir and the public is welcome

to join in. Chris has agreed to lead that trip, which will be the third Wednesday in September at 7:00p.m.

Mayor's Report

Mayor Auburn stated that there was a lot of time spent on selecting a replacement for Carl Eskelson. Time figuring out what to do regarding council action on zoning ordinances, and he felt there was a clear path now as to the procedures. It was fun judging the 4th of July parade, he commented. Mayor Auburn reported that they interviewed a very good candidate for the Public Works Superintendent position, but unfortunately he decided he was not interested in the job. We learned quite a few things from that interview; however, one of which is that our pay scale is not that bad for that position. He also reported that he spoke with Scott Halse and Judge Pesonen about their differences and there was no resolution so it is on the agenda tonight.

Old Business ~ None

New Business

Approve Resolution 2008-01; Adopt Wages and Salaries

It was pointed out that the Resolution was 2008-01, not 2007-01 and the fiscal year was 2007-2008, which dates had not been changed from the template used to write the resolution.

MOTION: Councilor Finch moved to accept Resolution 2008-01 Adopting Wages and Salaries for FY2007-2008. Councilor Marshall seconded the motion.

Councilor Abbott asked if these wages and salaries had been budgeted. The Mayor replied that they were the wages and salaries set in the 2007-2008 adopted budget.

Roll Call Vote:

“Yes”: S. Abbott, J. Hewitt, J. Marshall J. Campbell,
M. Finch, Sr.

“No”: None

Motion Passed: 5 to 0

Approve Resolution 2008-02; Intent to Award Library Construction Bid

Attorney Trew pointed out that the record should show that the council in reference to this resolution is acting as the local contract review board, which under the charter is the council with a different job.

Mayor Auburn pointed out that council had a sheet containing all the bids, showing DLB Construction as the low bidder, and the Architect and the Library Board recommend them.

Councilor Finch asked that Attorney Trew explain what he previously said regarding the council's role in awarding the bid. Attorney Trew replied that in awarding bids the council appointed itself to function as the local contract review board some years ago. The local contract review board reviews bids under the public contracting law.

Mayor Auburn stated that in this case it was an intent to award the contract. Attorney Trew stated that he wished he hadn't emphasized that, as they were awarding, were they not?

Tobe Porter, Director of the Library, stated that this was all about intent, which is a requirement from USDA, so at this point it is just for intent. Then we notify the architect the council has done this and he puts this together (holding up a fat notebook which contains the contract between the City and the contractor) which has to be reviewed by the City Attorney. So it was her understanding that the actual awarding does not occur until this contract is signed, but right now USDA says you have to do this intent to award before you can actually award. She emphasized that that was her understanding of it.

Attorney Trew then stated that he assumed she got her resolution from Rich Turi. Tobe replied that she had one that was done at the June meeting where Rich Turi recommended DLB Construction to the Library Board; the Library Board concurred and recommended to the City and the City concurred in June. This intent resolution is the next step. Attorney Trew stated that he knew what an intent to award and what an award means, and he deferred to Rich Turi and to Tobe that this resolution is what it's supposed to be.

MOTION: Councilor Finch moved to adopt Resolution 2008-02 Affirming Intent to Award the New Library Construction Contract to DLB Construction, Inc. The motion was seconded.

Roll Call Vote:

“Yes”: S. Abbott, J. Hewitt, J. Marshall J. Campbell,
M. Finch, Sr.

“No”: None

Motion Passed: 5 to 0

Municipal Court

Mayor Auburn stated that Municipal Judge David Pesonen felt that he could not fairly judge cases presented by Sergeant Halse and Chief Creighton. Chief Creighton has ordered the Police Department not to enforce traffic and ordinance infractions. Both of these situations are unsatisfactory. Councilor Campbell stated that Chief Creighton has rescinded his order to the police department to refrain from enforcing infractions for the time being.

Sergeant Halse stated that they have not stopped because Chief Creighton stated he would not sacrifice public safety while this problem is waiting to be resolved. We are writing citations and doing everything we normally do. This is the time of year when we

have a lot of tourist traffic and is not the time to ignore infractions and sacrifice safety, but this issue does need to be resolved.

Mayor Auburn then called on David Pesonen to tell why he feels he cannot hear these cases.

David Pesonen stated that Sergeant Halse didn't touch on some of the background which underlay his decision as a judge, and that was that last September, not quite a year ago, in a number of cases he had decided as a matter of justice the person cited should receive a partial refund. Not a dismissal of a citation, but a partial refund which is permitted under the code. Those went before a couple members of the council who had responsibility for reviewing those decisions and who returned them to the court clerk unpaid. These were people who had posted their fines and then at the court proceedings by affidavit Judge Pesonen had decided they were entitled to some of their money back.

Mayor Auburn interjected an explanation that the council members in question refused to sign the refund checks the court had ordered for those particular citations. David Pesonen replied that was the specifics of the matter that precipitated a staff meeting to which Mayor Auburn invited him to explain his position. He stated he did so, he believed, to the satisfaction of those present with the exception of Councilor Finch who walked out of the meeting, and he agreed to something that no judge in his experience had ever agreed to before. That was to furnish a written explanation of his decision in each case he had decided after a trial before the court or a trial by affidavit. Most trials are by affidavit from out of state persons who send an affidavit or letter, which he reviews each month. Sometimes he decides to order a refund, sometimes he doesn't depending on the merits and the facts of the case.

As part of those explanations, in three cases, one in December of 2006, one in January of 2007, and one in March of 2007 (they were issued by Sergeant Halse), and the judge had affidavits from the persons cited, he read them, weighed the evidence and felt that if the person had appeared in court with an attorney they would have impeached Halse's testimony. In those cases, he ordered a refund. The explanations he gave for those decisions were explanations the council had requested, and which were given them in his capacity as a judge. He received a letter addressed to Mike Murphy, John Trew and himself from an attorney in North Bend which was a Tort Claim Notice, which is advance notice required if someone intends to sue a municipality giving the municipality an opportunity to settle the matter. The letter accused Judge Pesonen with tortuous interference with the officer's economic relations, breach of his contract, defamation and negligence – none of which he said. None of those words were used in any of the reports he issued.

This letter was submitted to the City's insurance carrier in Eugene, and on July 9th the City's insurance carrier responded to Sergeant Halse's attorney stating that they had completed investigation of Sergeant Halse's claim against the City of Port Orford and Judge Pesonen, reviewed the affidavits, tickets and case summaries, and stated that it was their position that the comments contained in the judge's writings did not rise to the level

of defamatory or disparaging comments, and noted that in addition Judge Pesonen would have absolute judicial immunity for all of the acts complained of as they were committed within his judicial discretion. Pesonen continued quoting from the City's insurance carrier letter to Halse's attorney stating that the evidence leads them to believe the City is not liable for Halse's alleged damages and under the circumstances they respectfully denied Halse's claim.

That is where the situation now stands, and Pesonen stated, until word is received from Sergeant Halse's counsel or from Sergeant Halse that they do not intend to pursue this matter further, he is in a conflict situation within all the judicial rules that apply to judges, as well as to attorney's because he happens also to be a member of the bar of California and Oregon. If a case comes before him in which Sgt. Halse is the charging officer, or Chief Creighton, who has joined in this claim, according to the letter from Sgt. Halse's attorney, no matter how he decides that case somebody is going to believe that he didn't decide it on the merits. Somebody is going to say that he decided for the police in order to curry favor with them, or he decided in favor of the defendant in order to punish the police. There is no way he could hear those cases.

Pesonen continued by noting that when Chief Creighton sent his email a week or so ago stating he was going to suspend police action and order all his officers to not enforce the law. What he said was, we don't have a municipal court, what he really said was, we don't have a police department.

He gave some statistics stating that on May 23 there were 67 citations, of those there were three affidavits, two by Officer Fink and one by reserve Officer Boggs, none by Chief Creighton or Sgt. Halse. At the June 27 court proceeding there were 108 citations and one trial by affidavit and Officer Fink was the citing officer. So, Pesonen asked, what is the issue here? The issue is that there is a law suit pending, which has no merit, is frivolous and in his opinion was launched for political reasons, and he wants it resolved as much as the council does. He offered three solutions: that Sgt. Halse bring his case which the circuit court judge will throw out, he can drop his case, or we can go into mediation and he added, the state has an office of mediation with professional mediators, and see if we can't work this out.

Sgt. Halse stated that since he had a pending tort claim against the City and Judge Pesonen and has retained an attorney he can make no comments about the case in hand. He will not retract his decision to do this because he was denied his right to be heard by the City for about four months before he decided to do this in the first place. Councilor Hewitt asked Sgt. Halse if he would be willing to enter into mediation. Halse replied: "No I'm not."

Councilor Abbott stated mediation was an appropriate solution and it was too bad Sgt. Halse was not amenable to it. Councilor Hewitt stated that this was an untenable situation with a judge who cannot hear cases involving two officers, and didn't know how much longer this could go on. He would urge Sgt. Halse to bring his case as quickly as possible

to get it adjudicated in the courts and if that is delayed for any amount of time we may have to take further action at some point.

Councilor Campbell stated that it seemed to him there have been problems with this judge for about a year now, and since the contract has expired I think we could make a change there and go forward. There have been a lot of problems since we took on this judge and the one before that he forgot there even was one as there were no problems.

Councilor Finch stated that the judge's contract ended on June 30th and the judge wrote a letter stating that if we didn't come to his terms he would no longer be our judge. Mayor Auburn stated that he had not heard that from the judge, and another councilor said "Nor did I". Councilor Abbott stated that he understood fully the judge's predicament as he has somebody threatening to sue him in a court of law, so how can he hear a case involving that person and remain fair and impartial according to the judicial cannons. Judge Pesonen has no choice in this matter other than to recuse himself from these cases.

Councilor Finch asked Councilor Abbott if he was not directed by the council to inform the judge that we were not going to renew his contract? Councilor Abbott replied that he would not dignify anything he had to say to him with a response.

Mayor Auburn stated that the City did not renew the judge's contract and he was now serving at will and this was by mutual agreement between the City and Judge Pesonen.

Councilor Hewitt then attested that he had attended many of the court sessions to see how they operated and he thought that Judge Pesonen had been fair and honest in all of his judgments and he didn't believe that anytime he had returned any of the fine money it was untoward, but rather was within the law as he is allowed to do. Councilor Hewitt disagreed with Councilor Campbell when he said there have been problems with the judge as he didn't see any problems at all and felt the judge has done a fine job.

Councilor Abbott stated that he felt Mr. Finch was out of line for refusing to sign checks that the court ordered to be paid as Mr. Finch does not have the authority of the City to refuse to sign checks that the court ordered. He noted that for the record.

Councilor Marshall stated that he would add that he spoke with Sgt. Halse some months ago and he doesn't understand how it got this far as it was a simple matter of verbiage. It could have been taken care of five months ago and he still doesn't understand why it was not taken care of. Sgt. Halse stated that he begged the City to mediate this problem for four months and the City refused to take action to hear his case, that's why we're here.

Councilor Campbell asked how Chief Creighton became a part of this as he doesn't recall him being involved. Judge Pesonen stated that Sgt. Halse's attorney recites that the matter was investigated by Chief Creighton and that Chief Creighton was backing Sgt. Halse. In effect Chief Creighton is a corresponding witness within the language of the law to this case. He put himself out front in support of this claim and he didn't have to do that. Also, he never contacted Judge Pesonen in this investigation and the first he heard

about it was the letter from Sgt. Halse's attorney. He asked where is the investigation; there wasn't any investigation, the Chief talked to the Sgt. who reports to him and he backed him up. That's what a Chief is supposed to do, but he doesn't have to do it in writing in a legal claim, that's the difference.

Pesonen then turned to Councilor Campbell and noted that earlier in the discussion he had stated there were troubles with the judge in the last year. The troubles Pesonen stated were that he didn't roll over and do everything the police wanted him to do. That's what a judge is for. The police accuse, the judge decides and applies justice, fairness and equity. Most of the time the police are right, of those 175 cases of traffic citations of May and June only five were contested. These people paid their fines, they knew they were wrong and the police were right to cite them. So, Pesonen continued, whatever problems you believe you've had, I haven't seen you in my court since I've been the judge – in the thirteen months I've been the judge here – so you must be getting that information from Chief Creighton and Sgt. Halse since you're not getting that information first hand.

Councilor Campbell stated that he saw letters from Judge Pesonen, and the judge replied that he had seen letters to the Mayor and the City Administrator regarding issues on his contract, and on May 3rd the Mayor told him that the council had decided that his one year contract would be converted to an at will contract. He replied on May 15th that he appreciated the reasons the City wished to convert the contract from one for a term to one at will and he had no problem with that, but he hoped those same reasons applied to other City employees whose duties involved interaction with the court and who may currently have term contracts. Judge Pesonen then addressed Councilor Finch and noted that it was not true that Councilor Abbott was advised to tell me that my contract had been terminated as it was not terminated, but rather the terms were changed and he agreed to the change. After an interjection by Councilor Finch, Judge Pesonen stated that that was not his business, rather his business was to run a court fairly, to administer justice and to see that that is done in his court, and he will continue to do so as long as the council permits him. He left the dais to a round of applause from the audience.

Mayor Auburn suggested that Councilor Abbott, an attorney and member of the bar in Oregon, hear cases that Pesonen feels he cannot hear. He noted another option would be to fire the judge. Councilor Hewitt stated that Sgt. Halse could file his case and get on with it. Sgt. Halse stated he had a year and 10 months left before he had to file, when asked by the council. Mayor Auburn felt that 22 months was too long a time without the judge being able to rule in some cases.

Councilor Abbott stated that he would be willing to serve pro tem to hear Sgt. Halse's cases, and he would be fair and impartial. He stated he was not anxious to do this, but he would be willing to do it to resolve this matter for now, and would serve at no cost. He also let it be known that he would not favor any motion here tonight to get rid of our permanent judge.

MOTION: Councilor Hewitt moved to appoint Councilor Abbott as Judge pro tem in the Municipal Court of Port Orford for cases brought before Judge Pesonen that he cannot hear. Councilor Marshall seconded the motion.

Roll Call Vote:

“Yes”: J. Hewitt, J. Marshall

“No”: J. Campbell, M. Finch, Sr.

“Abstain”: S. Abbott

Mayor Auburn Voted “Yes” to break the tie

Motion Passed: 3 to 2

Mayor Auburn addressed Sgt. Halse, telling him that he and Chief Creighton could continue to write tickets and do whatever you need. He also stated he was sorry they couldn't have come to some agreement. They tried to settle this by having individual consultations with you and with the judge and that didn't work. We did have an Executive Session to talk with the City Attorney to get some advice, but he told us we couldn't bring you into the executive session, but we had to do it in an open session like what was done tonight.

Attorney Trew stated that the advice he gave was in response to a particular question regarding a particular ORS. He was sorry if he left the impression that it had to be in open session between the two of them. He then commented to the judge that he was sure he would administer an oath to Councilor Abbott at the time he became Judge pro tem. Judge Pesonen replied, “Of course”.

Approve Councilor Abbott's Absence From the City of between 30 and 60 Days, Missing one Regular Council Meeting

MOTION: Councilor Abbott moved to approve his leaving the City limits for 30 to 60 days, leaving on Wednesday July 18, 2007. Councilor Hewitt seconded the motion.

Roll Call Vote:

“Yes”: S. Abbott, J. Hewitt, J. Marshall J. Campbell,
M. Finch, Sr.

“No”: None

Motion Passed: 5 to 0

Approve Appointment of Replacement for Councilor Carl Eskelson

Mayor Auburn announced that he would like to nominate Ed Beck to replace Carl Eskelson, who passed away recently.

MOTION: Councilor Abbott moved to appoint Ed Beck to fill Carl Eskelson's vacant seat for the balance of the term. Councilor Hewitt seconded the motion.

Roll Call Vote:

“Yes”: S. Abbott, J. Hewitt, J. Marshall J. Campbell,
M. Finch, Sr.

“No”: None

Motion Passed: 5 to 0

Mayor Auburn then administered the Oath of Office to the newly appointed councilor Ed Beck. Councilor Beck received a round of applause.

Consent Calendar

8. Consent Calendar

- a. *Approval of Auditor Contract*
- b. *Approval of Appointment of J. Steinhorst to the Parks Commission*
- c. *Approval of Meeting Minutes:*
 - Monday, June 16, 2007, Regular Session of the City Council*
 - Monday, June 25, 2007, Special Session & Public Hearing(s) on Phase II Zoning*
- d. *Appoint Steven and Jeannie Carter as Park Hosts*

MOTION: Councilor Abbott moved to approve the Consent Calendar. The motion was seconded.

Roll Call Vote:

“Yes”: S. Abbott, J. Hewitt, J. Marshall J. Campbell,
M. Finch, Sr.

“No”: None

Motion Passed: 5 to 0

Continuing Action Items

Burn Pile Closure – Closed

Leak Detection

Mayor Auburn stated that American Leak Detection would be returning at the end of the month to finish up the rest of the city and check the leaks that have been fixed, and hopefully give us some advice as to where to go from here to solve our water loss problem.

One-way Street (13th from 101 East & Tichenor from 13th North to 14th)

Nothing more has been heard from the School District as to their decision.

Considerations

Citizen Considerations - None

.Staff Considerations – None

Councilor Considerations

Councilor Abbott suggested that if the proposed zoning ordinances are passed by the City Council in the discharge of its official duties, the citizens file to repeal the ordinance if they don't want it.

Mayor Considerations

Mayor Auburn read an article he was submitting to the paper for publication encouraging the citizens of Port Orford not to sign petitions or vote for the recall of three of the councilors.

Future Meetings

Regular Council Meeting, August 20, 2007, at 7:00 p.m.

Mayor Auburn adjourned the regular meeting at 8:30 p.m.

By _____
Jim Auburn, Mayor

ATTEST:

Beverley Manes, City Recorder