

REGULAR CITY COUNCIL MEETING

March 11, 2008

A. Call to Order – Pledge of Allegiance Mayor Gainer called the Regular City Council meeting to order at 6:00 p.m.

B. Roll Call – Excused Absences Councilmembers present included Councilmember Mather, Councilmember Nixon, Councilmember Overhauser, Councilmember Huff, Councilmember Stockton, Councilmember Trulove, and Councilmember McKeehan. Staff members present included Ms. Fisher, Ms. Niemeier, Mr. Schwartz, Mr. Richardson, Mr. MacDonald, Ms. MacDonald, Mr. Sale, Ms. Cooper, Ms. Rodriguez, Mr. Noland, Mr. Winters, and Mr. Wahl. Mayor Gainer stated that Councilmember Stockton requested to be excused from the March 25 meeting due to vacation. Councilmember McKeehan moved to approve the request. Councilmember Trulove seconded. Carried unanimously.

Councilmember Overhauser moved to move Items 10 and 12 to first on the agenda and to remove Item 11 because it is still in discussion. Councilmember Stockton seconded. Carried unanimously.

C. Minutes of the Regular City Council meeting of February 26, 2008 were approved as distributed.

D. Claims and Vouchers nos. 93501, 93502, and 93540 through 93644 in the amount of \$424,951.61; payroll warrants nos. 52894 through 52943 in the amount of \$32,900.27; direct deposits nos. 23078 through 23227 in the amount of \$259,946.06; claims warrants nos. 93508 through 93539 in the amount of \$302,565.24; and transfers to claims clearing fund for distribution in the amount of \$8,756.20 for a total payroll of \$604,167.77 were approved as read.

E. Claims for Damages Ms. Niemeier stated that the Kooistra claim for \$3,321.97 for damage to a vehicle has been sent to our insurance pool.

F. Small Contracts None

G. Information Items Judge Tripp presented the Municipal Court annual report. He stated that the City of Spokane wants to have their own district court. The County Commissioners must decide by May 1 whether to adopt the plan made by the districting committee. The committee recommendation says that the plan is legal but it raises concerns. Implementation of the plan should not affect the contract with the City of Cheney and the County. Judge Tripp stated that he enjoys serving the community.

H. Appointments None

I. Citizen Comments Camille Andersen, 2614 Oxford Circle, stated that she is the ASEWU Council Representative for Legislative Affairs. She knows the Recreation Center is a concern to some. She stated that she has lived in Cheney for ten years.

J. Action Items

1. 08-036 – Ordinance U-34 – Wastewater Connection Charge Amendment: Ordinance U-34 Mr. MacDonald stated that they went back and looked at the financial impact if we were to incrementally implement the connection charge. He is asking for the second reading of the ordinance. It has been brought back for the full increase. State law allows the city to implement charges to connect to the city's wastewater system. It takes into account both historical investment and future cost to accommodate growth and expansion. The proposed connection charge is for both historical and future investment. Future investment pays for the debt service on the wastewater treatment plant expansion. Each community has its own historical investment, so each community's costs are different. Shawn Koorn, HDR Engineering, provided a spreadsheet that showed the costs of incremental implementation. If we incrementally implement the connection charge then we would be subsidizing the SRF loan with existing reserves. Mr. MacDonald explained that system development charges and connection charges are the same thing. Christie Bruntlett, 499 Annie Place, stated that there is some confusion about fees and rates. These are fees. She questioned if there is a way to get the reserves back to where they were if we subsidize this out of the reserves. Mr. Koorn stated that if the city collected revenue from the connection fee, those funds that are not used on an annual basis would go into the

reserve or pay for growth related capital. The fee is based on those things that are a direct benefit to future growth. Ms. Bruntlett questioned if there is a guarantee that the extra money would go into the reserves. Mr. Koorn replied that there is no guarantee. Bonnie Eccles, 214 N 6th St, stated that she thinks people should be paying their share. She questioned why one group of people should be able to pay their share over a number of years. Brian Anderson, 111 College Hill St. #83, stated that he is a real estate agent. His concern is the growth estimate. There have been seventy single family residences built over the last three years. There were thirteen last year. He has looked at the numbers and feels this pushes people out to other areas. Even in the best case scenario the growth is not going to reach the projected rates. Tom Balderree, 1715 7th St, stated that he looked at the connection fees. He can see the need, but not that big of an increase that quickly. If we raised fees across the board it would help. He would like to see it done incrementally. Art Hathaway, 816 Chestnut St, stated that he finds this very confusing. He would like to take a look at this and see what is really going on. The final analysis is that we would be subsidizing developers. He questioned if we want or need to do that. We need to take a look at our resources. He is concerned about water. He objects to the citizens being asked to subsidize growth. He would like to have this better explained to people. Ms. Eccles asked when we had the last rate increase. Mr. MacDonald stated that we raised rates in 2005. We were beginning the process of ramping rates to pay for the expansion of the wastewater treatment plant. Ms. Eccles questioned if we really need to subsidize business people if we have been increasing rates to customers. Councilmember Overhauser moved for the second reading of Ordinance U-34 in title and summary form only. Councilmember McKeehan seconded. Councilmember Trulove stated that if it was not for growth we would not need to expand the wastewater treatment plant. Our problem is that in the past we have not looked at the system development charges. That was a policy decision that was made years ago. What we are faced with is not whether the system development charge is correct, but we are talking about going from virtually nothing to a cost for the service. The question is whether that should be ramped in or just doing it all at once. We are talking about major capital expense to expand the plant. How we do this equitably is the question. Councilmember McKeehan stated that he originally thought it would be fair to ramp the fee, but he has thought about it and now feels that the connection fee in its entirety is fair. Councilmember Mather stated that any time you dip into a reserve fund there is never a guarantee that the money will be replaced. The fee does need to jump. Carried unanimously. Councilmember Huff moved to defer this to the next meeting. Councilmember McKeehan seconded. Carried unanimously.

2. 08-037 – Ordinance U-75 – Wastewater Rate Amendment: Ordinance U-75 Mr. MacDonald stated that Shawn Koorn from HDR Engineering is going to go over the rate analysis. He provided a memo to explain what has been occurring. Originally the rate increase was going to be 3% across the board. They looked at EWU and then decided that they should have a higher increase. EWU provided further information. HDR has reviewed it and determined that EWU should not have a double digit rate increase. City Council has the authority to have one or more classifications subsidize the other classifications. We need to raise rates by 3% per year. Mr. Koorn stated that there were a couple issues with the cost of service analysis. When they looked at the EWU information again they came up with a 12% increase. City staff met with EWU staff and they said the information was wrong. HDR looked at the numbers again. The consumption values were incorrect. The revenue requirement has not changed. The goal of the cost of service is equitable allocation of costs. It utilizes a generally accepted approach. Everything balances out to a 3% across the board rate increase. HDR recommends a 3% across the board increase with the caveat that things are looked at according to large and small commercial. Councilmember Trulove stated that we cannot count the commercial data as being useful. A 3% across the board increase is a very small amount. He questioned if the data from EWU is for a twelve month period or if it is a sample. Mr. Koorn stated that that was one of the changes made. It had included December and that was pulled out. It includes November, January, February, and March water. This is a better representation of volumes. The hard part is that you never really know what is coming down the pipe. Councilmember Huff moved to increase the EWU rate 6% this year and 4% the next five years, to increase commercial rates by 3%, and to get an analysis of small and large commercial and make adjustments as needed. That would be sufficient to cover the costs without raising rates to citizens. Councilmember Overhauser seconded. Councilmember Nixon asked if HDR gathered the information from EWU both times. Mr. Koorn stated that we were given information from EWU. Councilmember Nixon stated that it seems strange that all of a sudden there is less use at EWU when they find out we want a larger rate increase. Councilmember Huff stated that EWU does not pay real estate taxes. He met with Ms. Fisher, Mr. MacDonald, and Mr. Koorn earlier today. With 192 units open in September, there will be enough rates coming in without raising rates to citizens. Councilmember Overhauser asked why the numbers from EWU changed. Mr. Koorn stated that EWU gave us water meter data in a Microsoft Word document. They sent

eighteen months of data. HDR took the numbers and put it into an Excel spreadsheet. The word document had commas and periods in the wrong spots. There was also a miscalculation at HDR. There were no changes to the numbers. Councilmember Overhauser asked if the information included December. Mr. Koorn stated that it did and that was removed. Mr. MacDonald stated that staff should have had a conversation with EWU before it was on the agenda. Councilmember Overhauser asked if the errors were contained in the data we used. Mr. Koorn stated that they were. The meter reads never changed. The calculated consumption was incorrect. Bonnie Eccles, 214 N 6th St, asked if this is based on water usage. Mr. Koorn stated that it is and they used a winter average. Carried with Councilmember Stockton and Councilmember Overhauser voting nay. Councilmember Huff moved for the first reading of Ordinance U-75 in title and summary form only as amended by the Council. Councilmember McKeehan seconded. Carried with Councilmember Overhauser and Councilmember Stockton voting nay. Councilmember Trulove stated that he thinks this is very reasonable. Councilmember Huff moved to defer this to the next meeting. Councilmember McKeehan seconded. Carried with Councilmember Overhauser voting nay.

3. 08-046 – Resolution D-418 – Traffic Safety Commission Nighttime Seat Belt Emphasis Mr. Sale stated that this is a renewal of the grant to reimburse us for overtime to do this program. Councilmember McKeehan moved for passage of Resolution D-418. Councilmember Stockton seconded. Carried unanimously.

4. 08-049 – Resolution D-420 – Interlocal Agreement with Airway Heights Police for Data Entry and Warrant Housing Mr. Schwartz stated that he is serving as the City Attorney for the City of Airway Heights and this could be a conflict. He has been told the only true matter is the price and Airway Heights has agreed to pay the City more. Councilmember Huff moved for passage of Resolution D-420. Councilmember Trulove seconded. Carried unanimously.

5. 08-048 – Resolution D-421 – Approval of Binding Site Plan BSP 01-07, Buffalo Partners, LLC (Del’s Farm Store Lot) Mr. Richardson stated that this was submitted in the summer after the moratorium was passed. It has been waiting since then. Ms. Rodriguez stated that this is an application for a binding site plan for 2222 First Street, which is where Del's Farm and Feed is located. The request is to divide it into two parcels. This can be approved as long as the department heads find it acceptable and they have. Public Works has reviewed it and will require an easement for a water line that runs east-west. We have not received data on where the utilities connect. We may require easements for those. If there are not separate utility connections, they will need to be separated. The Light Department will require an easement for an overhead connection. The Building Department has reviewed it. Under the zoning code, there is no standard for size, dimension or setbacks. No new development is proposed at this time. Councilmember Huff moved to approve Resolution D-421. Councilmember Trulove seconded. Mayor Gainer asked if there will be an easement for transportation since there is an entrance on each end. Ms. Rodriguez stated that it would be the owner’s decision. It is not on the plat. Brian Westby, Adams and Clark, stated that he is representing Buffalo Partners. He will offer that suggestion to the client. He thanked staff for the assistance with this. He appreciates them keeping him informed throughout the process. Bonnie Eccles, 214 N 6th St, asked if fire access is okay. Ms. Rodriguez stated that the Fire Department was given the information and there is no problem. Carried unanimously.

6. 08-050 – Resolution D-422 – SAFER Grant Acceptance Mr. Winters stated that we were notified on February 29 that we received \$210,850 in SAFER Grant funds. He would like to hire two firefighters. Councilmember Huff moved to approve Resolution D-422. Councilmember Overhauser seconded. Councilmember Trulove stated that he has serious reservations about being able to meet the future budget for personnel. By making this decision, we are committing ourselves to increasing revenue to pay for this. Carried unanimously.

7. 08-051 – Resolution D-423 – Bonneville Power Administration “Standstill & Interim Rate Relief Agreement” Mr. Noland stated that last year the Ninth District Court ruled that the BPA policy on collecting money from utilities was flawed. They are in a rate process to determine the correct amount. In the interim, BPA has offered relief in the form of repayment of monies collected from public utilities. The caveat is that we will not start litigation, which some are still considering. BPA may still pull this before March 25. Mr. Schwartz stated that he agrees with what Mr. Noland said. This was precipitated by political pressure. When the final rates are done we may get additional money or we could have to pay some back. It is unlikely that money would need to be returned. Councilmember Huff moved for approval of Resolution D-423.

Councilmember McKeehan seconded. Councilmember Trulove stated that the chance of having to pay anything back is very small. The last he heard, some thought they would sue. BPA may consider that a deal breaker. Mr. Noland stated that hopefully this will still be offered on March 25. Carried unanimously.

8. 08-020 – Resolution D-424 – Cheney Research and Industrial Park – Wetland Mitigation MOU Mr. MacDonald introduced Troy Rule from K&L Gates. One of the big issues was the discovery of two wetland areas. They are in a borrow pit that was excavated for fill material. The initial conclusion is that it was a wetland that was unintentionally created. DOE determined that it does need to be preserved. We would like to treat this like we did for Simpson Parkway. We are proposing to mitigate this off site. Allpak was told that it was critical for them to provide funding toward the mitigation expense. They will provide up to \$10,000. Dr. Quinn will assess this. Councilmember Huff moved for passage of Resolution D-424. Councilmember Trulove seconded. Carried unanimously.

9. 08-019 – Resolution D-425 – Cheney Research and Industrial Park – Wetland Consultant Agreement Councilmember Huff moved for passage of Resolution D-425. Councilmember Stockton seconded. Carried unanimously.

10. 08-021 – Resolution D-426 – Cheney Research and Industrial Park – Purchase and Sale Agreement Mr. MacDonald provided the funding breakdown. The total cost is \$1.8 million. The City and Allpak will split what is not paid for by the EDA grant. Allpak will have to provide a letter of credit. The City will pay \$203,700 split between several funds. Mr. MacDonald introduced Troy Rule from K&L Gates. Mr. Rule thanked Mr. MacDonald for working with him. He stated that this is a joint development with Allpak. Seventeen acres will be retained by Allpak. The City will acquire everything west of Fred Johns Way. All of the acreage will be developed into an industrial park. The construction would be funded through EDA funds and funds from the City and Allpak. The City and Allpak will work together on marketing and design. Construction of the infrastructure must begin by the fall of next year and must be completed by the fall of 2010. The purchase price is \$314,000. There is no security deposit. A development agreement between the City and Allpak must be executed prior to closing. Allpak must terminate an existing farming license. Mr. Rule stated that they made a great effort to negotiate a fair agreement. There are a fair number of “as is” conditions. This is a medium environmental risk property. Phase one and phase two environmental assessments were done and came back fine. We are able to pull out within thirty days for virtually any reason. He has reviewed the title report. Allpak will have to pay off the deed of trust. There is a residential use restriction. The largest issue is the environmental issue. Issues with the wetlands tied up the negotiations for a while. The wetlands have been determined to be jurisdictional by the Department of Ecology. We do not know if they are jurisdictional under federal rules. The City will have the authority to take the primary role in the development. Allpak will give the city \$10,000 to market the property. The City is required to allow Allpak to review any agreements for \$50,000 or more. The project is subject to EDA standards. Non-compliance with EDA standards may mean that we could have to give some of the money back. The City has drafted an ordinance that would require any property that benefits from grants funds in a business park zone to comply with standards of the grant. That would ensure that we do not have to give any money back. The next step is to move forward with development. It would be useful to use a public development authority for development. The purpose of the PDA would be to develop, improve, manage, and market the property. It is probably best for the City to retain title to the property because the City applied for the grant. Councilmember Trulove moved for passage of Resolution D-426. Councilmember Stockton seconded. Joe Tortorelli, Economic Development Northwest, provided an economic impact analysis done by Greater Spokane. Mr. Schwartz stated that this is a great opportunity for the city. He talked to Mr. MacDonald, but is not clear on the use restriction. There is also language about an as is sale and hazardous substances. He questioned if this is a waiver under MTCA. Mr. Rule stated that there is strong language in this relating to hazardous materials. It is an open question whether MTCA could be waived. Phase one and two reports show it is clean. There is not an express waiver of rights relating to MTCA. Mr. Schwartz questioned if a sale is subject to compliance with the grant. Mr. Rule stated that the sale would be free and clear, but we have a business overlay zone that would make purchasers comply with the requirements. The zoning would be there even in a sale. Carried unanimously.

11. 08-038 – Resolution D-427 – Betz Park Master Plan – Consultant Agreement Mr. MacDonald stated that this is budgeted. Mr. Simmons is working on an RCO grant. Councilmember Huff asked if we would give them general direction. Mr. MacDonald stated that Sherry Pratt Van Voorhis will have public forums and

get input. Councilmember Huff moved for passage of Resolution D-427. Councilmember McKeehan seconded. Carried unanimously.

12. 08-024 – Ordinance U-74 – Modifying CMC Chapter 7.20 Regarding Animal Control Deferred

13. 08-052 – Ordinance U-78 – 2008 Budget Amendment – #2 Ms. Niemeier stated that this is the second budget amendment of the year. The firefighter positions will be put back in the budget. We will get 90% of the salary and benefits back. This will add \$60,000 more to the emergency fund. Costs are over \$100,000 and we have not received the City of Spokane bill yet. This will move \$12,500 from the Mayor's contingency to the Parks & Recreation fund for May Fest. We will ask for Hotel/Motel tax funds also. One firefighter will be paid out of the EMS fund. Councilmember Huff asked if the firefighters have to be hired after May 22. Mr. Winters stated that he called the Department of Homeland Security and they said we could hire before then. Councilmember Huff moved for the first reading of Ordinance U-79 in title and summary form only, that reading considered the second and third, and placed before Council for final passage. Councilmember Trulove seconded. Carried unanimously. Yes votes: Councilmember Mather, Councilmember Nixon, Councilmember Overhauser, Councilmember Huff, Councilmember Stockton, Councilmember Trulove, Councilmember McKeehan. Ordinance U-79 passed.

K. Council Reports None

L. Staff Reports Ms. Fisher stated that she has attending meetings in the community. She joined Rotary and is heading up a Relay for Life team that is competing with the Recreation Department. They are recruiting members. A facility study for city facilities is being done. Firefighter interviews will be on March 19th. The Light Department Administrative Secretary started today. Interviews will be set up soon with the lateral police officers. She was appointed to the MPAPAC board for public administration. The court districting committee looked at the petition from the City of Spokane and found that it was valid by law, but they have concerns. Ms. Fisher stated that she thinks Mr. MacDonald needs to be recognized for his work with Allpak. This is phenomenal for the city. Mr. Schwartz stated that he forwarded an attorney client memo to councilmembers dealing with the Douglass annexation.

M. Mayor's Report None

N. Executive Session Mayor Gainer recessed the meeting at 8:14 p.m. for executive session regarding matters of litigation. He asked department heads to stay and stated that it will last approximately thirty minutes with action to follow. Mayor Gainer reconvened the meeting at 8:55 p.m. Councilmember Overhauser moved to direct Witherspoon, Kelley, Davenport and Toole to file a Notice of Appearance in the Myers and Bogle cases. Councilmember McKeehan seconded. Carried unanimously.

O. Adjournment Councilmember McKeehan moved to adjourn the meeting. Councilmember Huff seconded. Carried unanimously. The meeting was adjourned at 8:56 p.m.

City Clerk

Mayor