

City of Springfield
Regular Meeting

MINUTES OF THE SPECIAL REGULAR MEETING OF
THE SPRINGFIELD CITY COUNCIL HELD
MONDAY MARCH 14, 2005

The City of Springfield council met in special regular session in the Council Meeting Room, 225 Fifth Street, Springfield, Oregon, on Monday, March 14, 2005, at 7:00 p.m., with Mayor Leiken presiding.

ATTENDANCE

Present were Mayor Leiken and Councilors Lundberg, Fitch, Ballew, Ralston, Pishioneri and Woodrow. Also present were City Manager Mike Kelly, Assistant City Manager Cynthia Pappas, City Attorney Joe Leahy, City Recorder Amy Sowa and members of the staff.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Leiken.

BUSINESS FROM THE CITY MANAGER

1. Springfield Tomorrow Update Stakeholders Board.

Senior Management Analyst Bob Brew presented the staff report on this item. The City of Springfield has named Tammy Fitch to serve as the council representative to the Springfield Tomorrow Update Stakeholders Board. The council has also agreed to name four additional representatives, including three lay-delegates and one business delegate.

The four partner agencies of TEAM SPRINGFIELD (City of Springfield, Springfield Utility Board, Willamalane, and Springfield School District 19) have determined it is worthwhile to update the coordinated planning effort known as Springfield Tomorrow through the development of a Stakeholders Board.

Each of the TEAM SPRINGFIELD agencies agreed to name five members to the Stakeholders Board, including one elected official, one business representative and three other community members. Based on council direction, staff has developed a list of Springfield and Glenwood residents representing several different stakeholder groups. Springfield staff are coordinating with staff from the partner agencies to develop a diverse panel representing a broad range of community interests.

Mr. Brew distributed a matrix of all candidates for council consideration. He noted that Dave Carvo had been nominated by Springfield Utility Board (SUB) and could be removed from the city's list. He also said that Steve Moe was under consideration by the Springfield Public Schools, but had not yet accepted that and was still available for the city position. He noted that potential candidates Lee Beyer and David Jacobson could not be reached.

Councilor Lundberg said she spoke with Don Moloney. She discussed Mr. Moloney's background with the Police Planning Task Force (PPTF) and as a downtown business owner and noted his interest in serving on the committee. She would recommend considering Mr. Moloney for appointment.

Councilor Ballew agreed.

Councilor Woodrow agreed that Don Moloney would be a good choice. He would also highly recommend Diana Garcia.

Councilor Ballew recommended Steve Moe and Gayle Decker.

Councilor Fitch agreed with all four. They would represent different areas of the town and a business owner would be represented.

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR LUNDBERG TO APPOINT GAYLE DECKER, DIANA GARCIA, STEVE MOE, AND DON MOLONEY TO THE SPRINGFIELD TOMORROW UPDATE STAKEHOLDERS BOARD. THE MOTION PASSED WITH A VOTE OF 6 IN FAVOR AND 0 AGAINST.

BUSINESS FROM THE CITY ATTORNEY

1. Utility Tax Referendum to Ballot.

RESOLUTION NO. 05-11 – A RESOLUTION REFERRING TO THE ELECTORS OF THE CITY A MEASURE REPEALING ORDINANCE NO. 6105 AUTHORIZING SPRINGFIELD TO LICENSE AND IMPOSE PRIVILEGE TAX UPON UTILITIES DOING BUSINESS IN THE CITY.

City Attorney Joe Leahy presented the staff report on this item. A successful referendum campaign was completed in opposition to the Utility Tax ordinance adopted by the City Council on December 6, 2004. The City Council must now pass a resolution to put this measure on the May 17, 2005 ballot.

On December 6, 2004 the City Council adopted Ordinance No. 6105 to provide for licensing of utilities and imposing a privilege tax upon utilities doing business in the city with an effective date of April 1, 2005.

On December 8, 2004, Chief Petitioner, Fred Simmons filed a Prospective Petition of Local Referendum Measure and accompanying documents. Mr. Simmons gathered the required number of signatures and completed a successful referendum campaign in opposition to the Utility Tax. The Springfield Municipal Code Section 2.245(2) states that *“When any petition circulated and filed in the exercise of the initiative and referendum as provided in this chapter calls for a special election or for the submission of the measures contained in the petition at the next regular city election, it shall be the duty of the council . . . to call by resolution an election to be held on the date specified in the petition to submit to the legal voters of the city the measure contained in any such petition for approval or rejection”*.

The ballot title for this measure reads as follows: REPEALS ORDINANCE AUTHORIZING CITY TO IMPOSE PRIVILEGE TAX ON UTILITIES.

At the March 7, 2005 council meeting, discussion was held regarding the option of putting the referendum forward to the voters or repealing Ordinance 6105. Discussion was also held regarding a possible proposal from the League of Oregon Cities (LOC) for a statewide Utility

Tax. Council consensus was to wait one week and revisit this item during a Special Regular Meeting scheduled for March 14.

A Resolution calling for an election regarding the Utility Tax Ordinance is attached for council consideration and approval.

Mayor Leiken asked City Attorney Joe Leahy if there was anything he wanted to add.

Mr. Leahy said it was a continuing matter and there was nothing further to add.

Mr. Kelly said staff was available for questions from the Mayor and council.

Councilor Woodrow asked when the tax would go into affect if it was referred to the voters.

Mr. Kelly said that had been an ongoing discussion. Staff discussed and researched this complex issue. Until that issue was clarified, no money would be collected between April 1 and the election. Staff felt that if the utility tax was repealed, no money would be collected during the period of April 1 through May 17. If the Utility Tax remained intact, staff would return to council with further research and make a recommendation on whether or not to begin collection from April 1 or May 17. It was still under review.

Mr. Leahy said the city would not send out application fees until a decision was made.

Councilor Lundberg she was not going to make the same motion she made last week. She thought this issue would be divisive enough. If this were moved forward to voters, it would show consensus by council in that respect. She said she did not believe any state legislation was going to come out from Salem during the last week, but it did give council time to reflect. She was still quite opposed to the tax.

Councilor Ballew asked if during the period the Utility Tax was not being collected, franchise fees would still be collected. She thought that when council voted to enact the Utility Tax, they had repealed the franchise fee.

Mr. Kelly said the franchise fee was not repealed when the Utility Tax ordinance was passed. The franchise fee was still in place, but the ordinance for the Utility Tax included a credit for franchise fees paid. The companies that currently pay the franchise fee would receive a credit toward the Utility Tax.

Councilor Ballew said no one likes to pay a tax, but the only thing new with the Utility Tax would be taxes on wireless. Payment for use of the right-of-way is diminishing as source of revenue. This type of taxing is used by the city to provide services to the citizens of Springfield. She does not see this as a new thing, just an expansion into a new technology. She said she would support sending it to the voters.

Councilor Pishioneri said he would encourage waiting to allocate the use of the funds. He noted that due to Measures 47 and 50, the city has taken money from many other funds to assist with short falls in the General Fund. Through attrition and/or loss of positions, the city has made up the additional short fall in funds. There is an average of \$800,000 in shortfalls each year. The primary duty of the council is to exercise fiduciary responsibility. Based on that, he feels the city needs to find secure and stable funding. He said he feels the Utility Tax is stable and fair. It

provides funds coming from the services that are not paying for the right-of-way in Springfield. The cost may be passed on to the ratepayers, but it would be passed on to all users and not a certain group, such as property owners. Based on these predictable shortfalls, and the fact that public safety departments make up most of the budget use, citizens provide levy money for these services. Voters wanted a jail and told the council to find funding for the jail. The Utility Tax would help the city to accomplish that. He referred to Councilor Ballew's statement that "at the end of the day you have to have enough money to run the joint". In summary, he feels it is best to trust the common sense and will of the voter and let them decide on the Utility Tax. He feels the council should make it clear that the funds will be used to run the city and by doing so would keep our public safety intact and healthy, including the jail. He said he supports the Utility Tax and supports putting it to the voters. He said the voters need to know that this money will have to go to public safety and eventually to jail. The funds should not be dedicated, but earmarked.

Councilor Fitch said she voted for the Utility Tax in December, and she believed Springfield citizens that currently have land lines, especially low-income citizens, would not see a difference in cost. Their phone bill would see a different line name, but the five percent franchise fee would be replaced by the five percent Utility Tax. This tax reaches out to new wireless technologies which are utilizing and providing services to bring in revenue. She discussed the number of people who have only wireless lines. The Utility Tax would be a tax on businesses for the opportunity to do business in Springfield. This was one of the ways to pay for services that all citizens need. She said she would be supportive of referring this to the voters. She would love to hear from the citizens. She said she hoped the citizens were supportive of how council operated the budget in a conservative manner.

Councilor Ralston said he agreed new forms of revenue needed to be found, but he was opposed to this tax. The issue now was whether or not to refer this to the voters. He said if he voted to refer this to the voters, it may give the impression that he supported the tax. If he voted not to refer it to the voters that could be interpreted as meaning he didn't believe the voters were smart enough to make the right decision. He has always been a supporter of the voters making the final decision. The only thing he could do was to refer it to the voters, but he made it clear he was opposed to the tax.

Councilor Woodrow said that the public knew Councilor Ralston voted against this tax so referring it to the voters would not change that fact. Councilor Woodrow said as a councilor trying to do due diligence, he has been out talking with his neighbors. Most of the citizens in his neighborhood are retired and live on a fixed income. He asked his neighbors what they thought of the Utility Tax. His neighbors said they did not like it, but would support it because they realize the funds are needed. Councilor Woodrow said he would support referring this to the voters.

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR PISHIONERI TO ADOPT RESOLUTION NO. 1. THE MOTION PASSED WITH A VOTE OF 6 FOR AND 0 AGAINST.

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR FITCH TO ALLOCATE THE REVENUES RECEIVED FROM THE UTILITY TAX TO THE GENERAL FUND AND EARMARK IT FOR PUBLIC SAFETY. (* Motion amended below)

Councilor Ballew said she feels the revenue from the Utility Tax should just go to the General Fund because there is currently an \$800,000 deficit in that fund. This council and future councils

would allocate through the budget process to the appropriate area. She said she would not support dedicating the revenue.

Councilor Pishioneri said it is important to emphasize this council supports the jail and/or public safety facility project in the forefront. He asked if it would make a difference how the money was spent by using the term earmarked rather than dedicated.

Mr. Leahy said he did not know if there was an answer to that question.

Mr. Kelly said there was a difference. If it was council's intent to dedicate the funds, that is what would be publicized to the community in the public information campaign. If future councils changed that, there could be questions. Using the term 'earmarked' would indicate that, should the Utility Tax remain in affect following the vote, the money would be a General Fund revenue and this council supports earmarking those funds as long as this council remains, to public safety with the express purpose to staff the jail, if that is their priority.

Mr. Leahy said he would concur with Mr. Kelly's opinion. This council could not bind future councils with any action, but it would send a message regarding what this council would do with the funds.

Mayor Leiken said \$17M was earmarked for the West Eugene Parkway (WEP) which stayed intact through several councils. He felt the term earmarked was more binding.

Mr. Leahy said council could state that it was this council's intent to use the revenue for public safety. He said he could not give council an opinion on other terminology being binding or not.

Mr. Kelly said the deadline to have this go forward was on Tuesday, March 15. It would be best to choose language council was comfortable with.

Councilor Ralston said he agreed with Councilor Ballew. He said he was afraid that if the council tied the revenue from this tax to public service and it was voted down, it would reflect negatively. He also didn't want Emergency Medical Services (EMS) or any other department to be off the hook to try to balance their own budget. He felt any funds should be put to the best use at the time. The funding for the jail would need to be dealt with specifically. He said he would not support anything that earmarked the money for public safety specifically.

Councilor Lundberg said if it was in General Fund, council could choose to use those funds for public safety. She said she would rather keep it open. A work session was just held regarding how the city would pay for infrastructure. If the Utility Tax remained, she would prefer choosing prudently how to spend those dollars.

Councilor Woodrow asked Mr. Kelly what the General Fund paid out on an annual basis for the Police Department.

Chief Smith said including the levy it was about \$11M; Fire and Life Safety (F&LS) was about \$5.5M. Public Safety combined was about seventy to seventy-five percent of the General Fund.

Councilor Woodrow said if council earmarked and suggested the city use the revenue from the Utility Tax for public safety, it would relieve that amount from the General Fund that could be

used anywhere. He said he would suggest showing the community that the council was working toward public safety being self-sustaining.

Mr. Kelly said council had the right to do whatever they liked. Staff had an obligation to educate the voters and point out the importance of voting through a public information campaign. As staff goes out to educate the public, people will ask how the revenue would be used. Without specific direction from council, staff would answer "for General Fund revenue". That may be convincing to voters or not. Staff would need guidance from council if they wanted to be more specific in the public information campaign.

Councilor Fitch said she strongly felt the funds had to be with the intent to go to public safety as the city's number one expense. It was most important to our citizens and a high priority. She said if council wanted to have the Utility Tax defeated, they should not specify what the funds would be used for. She noted that when the gas tax was put out it was dedicated for repairs of the roads. Signs were displayed when repairs were made to the roads explaining that the work done was because of the gas tax. The citizens of Springfield passed a measure for a public safety building, including courts, administration and the jail. Council's part was to find a way to fund the jail operations. Public safety has many issues that need to be addressed. If some of the burden can be relieved in the General Fund by having this fund public safety, the General Fund could still have money for the Library, other development, etc. To have the fairest chance to pass this, council needed to have the intent of the funds to go to public safety.

Councilor Pishioneri said the voters approved a levy in 2002 to fund police, and in November 2004, voters passed the measure to build the public safety facility. He said it seemed the voters were expressing where they wanted to go with these measures. He felt it would be a mistake to cloud the Utility Tax by just putting it in the General Fund. Instead, council should acknowledge that they heard the voters loud and clear that they want funding for public safety. He felt it was the direction from the voters and it would be a mistake to say it would go in the General Fund.

Councilor Lundberg said when the measure in November was passed, everything was within the scope of our finances, other than the jail. The only impact was operations of the jail. The piece that wouldn't be done until financing was found was the jail itself.

Mr. Kelly said that was correct. In the measure for the public safety facility, it stated that the bonds were not for staffing, but only for construction. Council passed a subsequent motion that construction of the jail component would not begin until adequate funding was found for staffing of the jail.

Councilor Lundberg said the staffing for the courts and the rest of the police facility was already in place. When the Utility Tax was passed, it was for the General Fund. She said it seems that it has evolved since the Utility Tax went into effect. She thought the Utility Tax was to go to the General Fund when it was voted on originally.

Mr. Kelly said there was no discussion when the tax passed about where the funding would be going. It occurred rather quickly and with little controversy. There was no question asked of council as to what they would use the funding for and there was no question or debate on that issue. There was no direction to staff regarding allocation of that funding. Since the referendum, and approval to go forward with a public information campaign, staff has had discussions with council leadership asking where the funding should be allocated. That issue was not part of the original discussions in December when the Utility Tax was passed.

Mr. Leahy said the summary of the ballot title, stated that “revenue generated would go to the General Fund in the city”. He said he has been working on an information sheet that was reviewed by the Secretary of State’s office that indicated that the public information could include the major recipients of the General Fund. He said he was told by the Secretary of State, the top four could be included. Those include public safety, library, community development and general services. Council is not tied to say just General Fund, but can recite where money from the General Fund would go. Council makes the decision where General Fund money is spent. The decisions made tonight were not to pass the ordinance so the ordinance does not have a chance. What council needed to do, from the legal perspective if they choose, was to let the voters know what this council intended to spend the money on so the voters could make an intelligent decision. He said it was within the prerogative of this council to say initially where money would be spent. It was not council’s job to make the measure pass or not pass. Council’s job was to give accurate information to the voters so they could make an intelligent decision.

Councilor Ralston asked why the additional motion regarding allocation was necessary if the ballot title states that the revenue would be used for General Fund.

Councilor Woodrow said it was a way to let the public know that this council intended to use the Utility Tax for public safety, which takes up the most of the General Fund.

Councilor Ralston said he did not believe council needed to be that specific at this time.

Councilor Woodrow said it was a matter of wanting to get the measure passed and to help offset the costs the city would continue to incur.

Mr. Kelly said the motion tonight would not need to be made unless it was the choice of the council. Council could say it would be General Fund revenue. He said as the city educates the citizens regarding this measure and encouraging them to vote, it would be important to determine the benefit to the citizens. There would be a point, if the measure were to pass, when staff would have to ask the council where they wanted the funding used. Citizens would ask where the funds would go and staff would be unable to be more specific without council direction.

Councilor Lundberg said it sounded like Mr. Kelly was campaigning.

Mr. Kelly said when people ask, he would like to have an answer. Council authorized staff to use \$5000 to produce a public information campaign. Typically, council would let staff know how the funds would be used. If council chose to use the funds for General Fund, that is what staff would communicate.

Councilor Woodrow modified his previous motion.

*** IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR FITCH TO ALLOCATE REVENUES RECEIVED FROM THE UTILITY TAX TO THE GENERAL FUND WITH THE INTENT TO FUND PUBLIC SAFETY. (* See below)**

Mayor Leiken said before he called for a vote, he would like to make a couple of comments. He asked staff for the timing on the construction of the public safety building including the jail.

Project Manager Carole Knapel said generally, it would take approximately 15 months for the design of the facility and possibly two to two and a half years for the construction. The total for this project would be about three and a half years.

Mayor Leiken asked when the Utility Tax would go into effect if it were to pass on May 17.

Mr. Leahy said he was still reviewing that issue. It would either take effect April 1 or May 18.

Mayor Leiken said between May 18, 2005 and sometime in 2008 when the facility was built, there was a window of time.

Councilor Fitch said she understood the jail would not be built without funding for operations, which would be fifteen months.

Ms. Knapel said fifteen months was correct if the entire facility was built at one time. There was an option of constructing the facility in two phases, which would be more expensive.

Mayor Leiken said in 2002 the city had two public safety measures. He referred to a measure that was put to the voters in 2000 which encompassed more than public safety and it failed. The public wants to know what they are voting on and where the funding will be used. This is a difficult decision and may pit councilors against each other, which is a sad day. There was agreement in referring it to the voters. If the council was going to refer this to the voters, council should give the voters an idea how the funds would be used. He said he would support this motion for that reason, although he said he didn't like supporting this now. He felt the decision to allocate the funds should have been made in December when the ordinance was passed. Council now has an obligation to send this to the voters. He said a tie vote didn't give him a lot of confidence.

Mr. Leahy asked for a ten minute break.

Mayor Leiken called for a recess at 7:48pm.

Mayor Leiken resumed the council meeting at 8:00pm.

Mr. Leahy said his office had made an inadvertent error that needed to be corrected. He distributed a copy of the ballot title that was published in the newspaper. The ballot title attached to the resolution was a preliminary draft that was inadvertently attached in the agenda packet. Council needed to rescind their earlier motion to refer this to the voters and refer the ballot title that was in the newspaper and was noticed in the newspaper to the voters.

IT WAS MOVED BY COUNCILOR BALLEW TO RESCIND RESOLUTION NO. 1. THE MOTION DIED FOR LACK OF A SECOND.

Mr. Simmons asked for several minutes to look in his vehicle for the ballot title that was distributed with the signature sheets for the referendum.

Mr. Leahy agreed. He noted that the caption and the question on the ballot title distributed in the agenda packets were correct. The summary was the earlier version. The correct ballot title was reviewed with the Secretary State's Office regarding the section stating revenue would go to the "General Fund which funds public safety, library, community development and general services."

Those services make up nearly ninety percent of the General Fund and the Secretary of State's office agreed that was fair.

Mayor Leiken resumed the council meeting at 8:03pm.

Mr. Leahy apologized to the council and to Mr. Simmons. He addressed the issue of the ballot title. The correct ballot title, before council now and published in the newspaper, was not challenged. The correct ballot title went through the Secretary of States' office to make sure it was neutral and fair. The voters would want to know what the General Fund meant, so Mr. Leahy included that description in the ballot title summary.

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR LUNDBERG TO RESCIND RESOLUTION NO. 1. THE MOTION PASSED WITH A VOTE OF 6 FOR AND 0 AGAINST.

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR LUNDBERG TO APPROVE RESOLUTION NO. 05-11 TO REFER TO THE VOTERS THE ATTACHED BALLOT TITLE. THE MOTION PASSED WITH A VOTE OF 6 FOR AND 0 AGAINST.

Councilor Woodrow repeated his previous motion.

* **IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR FITCH TO ALLOCATE REVENUES RECEIVED FROM THE UTILITY TAX TO THE GENERAL FUND WITH THE INTENT TO FUND PUBLIC SAFETY. (* See final motion below in bold)**

Councilor Ballew said she would not vote for that motion. She said she did not believe in tying their hands regarding general purpose funds.

Councilor Ralston said he understood their concern regarding public support of the measure. The thing that was important to him was the fact council told the citizens they would build and staff a jail. To say this revenue would be used for public safety and other services was misleading. He said he would prefer a motion stating that half the proceeds would be used to put in an account to be used specifically for jail staffing and operations and the other half going to support other general services. Two years from now that money would be spent and we would have a deficit. If the motion stated it was specifically for the jail he would support it.

Councilor Fitch said she would agree with the motion stating the intent was for public safety with the intent to help fund the jail operations. This council could not foresee future council and needs. Her intent was that it was for public safety to allow the jail to come to fruition. She said she wouldn't vote for construction of the jail to begin until funding for jail operations was in place.

Councilor Ralston said it needed to be a stronger statement. The intention was to raise enough money to fund and operate a jail. If the funds just went into public safety, it would be spent before the jail was built.

Councilor Fitch said it was broader because public safety was the number one concern of Springfield citizens. In the past, successful bond measures have included public safety, both

police and fire, the public safety facility and the jail. The jail was just one portion. She did not want to see a jail built without the police force to enforce the law.

Councilor Ralston said intent was a good word. He said he would be supportive if part of the motion was to staff and build the jail and support public safety, but he wanted jail included in the motion. The public would then know the council was working toward what they voted for.

Discussion was held regarding the motion.

*** IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR FITCH TO ALLOCATE REVENUES RECEIVED FROM THE UTILITY TAX TO THE GENERAL FUND WITH THE INTENT TO FUND PUBLIC SAFETY, INCLUDING THE JAIL. THE MOTION PASSED WITH A VOTE OF 4 FOR AND 2 AGAINST (LUNDBERG AND BALLEW).**

Councilor Pishioneri suggested changing the motion to “to assist in funding public safety and as a means to fund the jail”.

Council consensus was to leave the motion as last stated by Councilor Woodrow.

Mayor Leiken noted that if he were to vote to break a tie, it would be the exception to the rule. That has only occurred five times during his tenure as Mayor. He said that showed the cohesiveness and teamwork of this council. He said he appreciated the debate among council on this issue. All views were respected. There was a lot of respect among councilors.

Councilor Ballew said she received a letter as Chairman of the Metropolitan Policy Organization (MPO) from Jeff Scheick, Oregon Department of Transportation (ODOT) Region Manager II. This letter noted that the state was continuing to work on the offramps off I-5 near Franklin Boulevard.

ADJOURNMENT

The meeting was adjourned at 8:17 p.m.

Minutes Recorder Amy Sowa

Sidney W. Leiken
Mayor

Attest:

City Recorder