

New Plymouth City Council Meeting  
MONDAY  
18 May 2015  
7:00 pm  
New Plymouth City Council Chambers (Library)

On the 18th of May, 2015, the New Plymouth city council meeting was called to order at approximately 7:00 pm by Council President Bill Warnke. Roll call was taken with council members Warnke, Mayer and Kurth in attendance.

Staff members in attendance were Beau Ziemer and Andy Gerhke.

Regular Agenda – **Councilman Mayer moved to approve regular agenda. Councilman Kurth seconded the motion. The voting was unanimous in favor of the motion.**

Consent Agenda – The consent agenda included 20 April 2015 Public Hearing Minutes, 20 April 2015 Council Meeting Minutes, Sheriff's Report and Claim Approvals totaling \$133,718.32. **Councilman Mayer moved to approve consent agenda. Councilman Kurth seconded the motion. The voting was unanimous in favor of the motion.**

Old Business

None

New Business

Greg Wiese to discuss groundhog control – Mr. Wiese was not present.

**Councilman Mayer moved to table the discussion of groundhog control by Greg Wiese. Councilman Kurth seconded the motion. The voting was unanimous in favor of the motion.**

Beth Earles to discuss the city's disregard for city code and state statutes - Ms. Earles read a prepared statement to the council, as follows:

At the last meeting, delinquent water/sewer accounts were discussed and it was stated they were \$100,000 three years ago. I think it begs the question why, when the council receives a monthly delinquency report. Why was it acceptable and allowed at \$70,000, \$80,000, \$90,000? According to the minutes and media reports the staff worked with families with illness, working part time, school part time, raising families and unable to meet their financial obligations. I know personally a citizen who at the time had not paid their water bill for six months and was still waiting for the city to turn them off. Why? The city subsidized these citizens and continues to subsidize the schools, the senior center, and the Rebekkah Lodge. Why?

In November 2012, the staff sent a letter to property owners telling them the city would put a lien on their property if they didn't pay the delinquencies owed for water/sewer services. An award was given as a result of this action. It was the opinion of the city attorney a few years ago that you cannot put a lien on properties for utilities. The subject comes up at every clerk's training and the answer is always the same. State statute allows utility companies to lien properties. You are not a utility company, you are a municipality. The award is tainted and not impressive. In February, the council told a property owner they could not get their deposit back until their renter submitted a deposit. The code simply states services are not available until a deposit is paid. Where in the statutes does it allow to you to hold a person's money hostage? And the effort to pass as stated in your discussions a fine to punish citizens because it's inconvenient for your staff to do their job. There has been a statement on the water bills for nearly six months in regards to a late fee of \$25 and reconnect fee of \$100 when you haven't passed these fees. These are the actions you are proud of and citizens are to be impressed by? A recommendation for those who are habitually delinquent, ten miles north they are welcome and the combination of fees is \$30.00.

At the last meeting you held a public hearing to take testimony on the proposal to increase the late fee and reconnect fee. At the regular meeting the motion made was to keep the proposed ordinance the same. In regards to the ordinance, the motion was made to approve Ordinance 344 by title only, suspending all further readings. What does that mean to approve by title only? Suspend further readings implies the ordinance has been read once. The ordinance was not read by title only or in its entirety. The ordinance amends Title 3, Section 3-3-9 (C) increasing the reconnect fee to \$100.00. There was no amendment to Title 3 Section 3-3-9 (B) which relates to the late fee.

State statute requires an ordinance to be read three times, one of those is to be read in its entirety. An ordinance takes effect when proper readings have been conducted, the ordinance is passed by a roll call vote of the council and recorded in the minutes, and the ordinance is published.

The council not properly reading an ordinance or taking a roll call vote is another example of the city's disregard for state statutes and appears to be standard operating procedure. An ordinance hasn't been passed properly since early 2009.

Two numbers have now been assigned to the ordinance amending the code in regards to the reconnect fee increase.

The council minutes of June 1, 2009 reflect Ordinance 321 assigned to the issuance of a sewer revenue bond. A motion was made to approve and waive the second reading. Where is this ordinance?

Ordinance 321 is also the annexation of the Treasure Valley Mennonite Church property. A public hearing was held June 1, 2009 before the council to take testimony regarding annexation and conditional use permits. At the regular meeting, the motion was made to approve the comprehensive plan change and rezone. Where is the motion to approve annexation? The council minutes for July 6, 2009 state "The Mennonite Annexation papers have not been reviewed by the city attorney and are not ready at this time". The council minutes for July 20, 2009 state "The Mennonite Annexation document was discussed. It is ready for Council review and the Mayors signature. The council did not think they needed to vote again on the annexation". What was this document? The ordinance states "passed and approved by the Mayor and City Council this 3rd day of August, 2009", yet according to the agenda and minutes for August 3rd, no council meeting was held due to lack of a quorum and business was postponed until the next regularly scheduled meeting on August 17th. The minutes for August 17th, state "The Mennonite Annexation, Moscrip Rezone and Record Destruction Resolution documents were discussed by staff and it was determined that a notary would be sought for to verify signatures and then the documents will be recorded."

The council minutes of June 1, 2009 reflect Ordinance 322 as a water revenue bond. The motion made was to approve and waive the second reading. Where is this ordinance?

Ordinance 322 is also a zone change for the property used for a parking lot at the Internet Truckstop building referenced as Moscrip Rezone. It appears the staff started to write ordinances at this time, rather than allow the city attorney to. The hearing held before the council was for comprehensive plan and zone change. The ordinance only relates to a zone change and doesn't appear to have been recorded at the county. The comprehensive plan change process has not been completed. This ordinance also states it was passed and approved on August 3, 2009 at a meeting that was never held. How did these ordinances get approved?

These ordinances were not brought before the council, proper readings were not conducted, there was no adoption of the ordinances and no roll call vote. Were they published? What is the validity of these decisions?

During this time, when it's apparent the staff did not have a basic knowledge of managing city government, you gave permission to destroy records and rewarded them with 4% raises.

Mr. Moscrip is a citizen who has given generously to this community and the Treasure Valley Mennonite School and Church have been good neighbors to the community for many years. Just as with the developers of the Pleasant Loop Subdivision, they submitted their applications and paid the fees to the city with the trust and understanding the process would be done correctly and completely. What was done is disrespectful, negligent and shameful.

Ordinance 330 was assigned to water and sewer rate increases. The minutes of August 16, 2010

reflect a motion made to accept the rates. There is no second motion to support the first. Died for lack of a second? The motion was made to adopt Ordinance 330 and seconded. The ordinance was presented again to the council on November 1, 2010 and the motion made to suspend the readings of the ordinance. The ordinance states it was approved August 16, 2010. This ordinance was written by the staff and is a mess.

Ordinance 332 adopting building codes had an effective date of January 1, 2011, enacted by the council on February 7, 2011, though the minutes for February 7th state no action taken pending further information for the council. February 22nd the motion was made to approve Ordinance 332 as presented and to suspend the first and second reading except by title. Was the ordinance read by title? The minutes for February 22nd also reflect "there were many guests in attendance, too numerous to mention but a sign up sheet is in the file." Seriously? Too much of an inconvenience to record guests into the record?

On April 16, 2012, a motion was made to approve the change to the personnel manual and that it be read by title only and suspend the reading. The clerk read the change to the personnel manual. A motion was made to approve as submitted and read. If this is an ordinance? What number was assigned and where is it?

Ordinance 341A correcting the legal description in Ordinance 341 regarding the annexation of Pleasant Loop Subdivision. Motion made to adopt. Add this to the list of procedural errors in regards to the Pleasant Loop Subdivision.

The following are motions made in regards to ordinances:  
Approve by title only and suspend the second reading.  
Approve the signing of the agreement.  
The ordinance was read into the record, moved to approve.  
Moved that the Mayor sign the Ordinance.  
Approve the agreement as presented.  
Suspend further readings of the ordinance and approve.  
Move to approve.  
Approve and suspend the reading and approve by title only.  
Approve the ordinance.  
Approve by title only.  
Move to adopt.

In six years, there has been four staff members in the office and over fifty years plus combined experience sitting around this table and this is the best you can do?

I'm not going to go into a lot of detail, but the way the council handles resolutions and executive sessions is no better. Resolution 1-2013 states the International Mechanical Code has been adopted by the City of New Plymouth by Ordinance 4-1-1. The resolution dealt with mechanical fees, which again, the public hearing notice for this was not published according to the state statute. What is Ordinance 4-1-1? You don't appreciate me standing before you expecting you to know state statutes, yet you expect citizens to know what Executive Session per IC 67-2345 1 (b)

or (i) is. The procedure for executive sessions have also not been followed according to state statute requirements since early 2009.

On May 4, 2009, Rod Tegethoff discussed with the council the requirement for payment for city garbage service when he can haul his refuse to the county dump for no charge. It was determined the church is a commercial structure and as such he can elect to be removed from city services for garbage pick up. City Code 8-3-25 requires compulsory use of the system. Compulsory means required by law. Every owner and occupant of premises within the limits of the city must use the refuse collection system. How many citizens have elected to be removed from city services for garbage pick up? How many citizens have been told they didn't have to use the system? The current contract with Hardin Sanitation references the original contract. Possibly in breach of contract with Hardin Sanitation? How much revenue has Hardin Sanitation lost?

I've presented issues covered under Clerks 101, Planning and Zoning 101, should we visit Finances 101 in the near future? Want to make wagers how many quarterly reports have been published in the last six years? And if there are errors, they don't count.

#### Revenue Sharing

It has been nearly thirty days since I first presented my concerns to the council and have yet to receive a response. You had the opportunity to show real leadership and make things right. This is your legacy and New Plymouth's reputation. I deserve better as do the citizens of New Plymouth.

Greg Wiese to discuss groundhog control

**Councilman Mayer moved to untable the discussion of groundhog control by Greg Wiese. Councilman Kurth seconded the motion. The voting was unanimous in favor of the motion.**

Mr. Wiese stated that he was appearing before council to prevent a possible disaster concerning the Noble irrigation canal bordering city limits. He informed the council of groundhog damage along the canal bank and provided copies of photos of specific damage.\*see attachment\* Mr. Wiese then stated that he was aware that the Noble Ditch Company had taken steps to eradicate the groundhogs and correct the damage, but he felt that the problem had not been solved and a canal breach was imminent. Councilman Warnke asked Public Works Superintendent Ziemer if he was aware of a county entity that provided rodent control and he responded that he was not aware of any that specifically controlled groundhogs. Public Works Superintendent Ziemer then stated that Noble Ditch Company was actively baiting them and he had also spoken to a trapping company and determined that trapping was quite cost prohibitive. He made a recommendation to council that the city send a letter to the ditch company as well as the drainage district offering assistance with and requesting a resolution to the problem. Councilman Mayer commented that she would like to have Councilman York's input on the issue before any decision was made on how to proceed. Councilman Warnke stated that he would like to have more information about other entities that may help with the problem and felt that a solution needed to be found in a timely manner. Councilman Mayer requested that the item be kept on the agenda as old business to discuss at the next meeting.

ITD Park Pathways Community Choices Grant Program – City Engineer Andy Gehrke informed the council that he had contacted ITD regarding the city's grant application and had discovered that it had been overlooked. As a result, the deadline was approaching much sooner than anticipated. He stated that an agreement had been sent from ITD and, after reviewing it, he recommended that council approve with two changes to item #16. After some discussion of the recommended changes, it was determined that the corrected agreement should be ready to approve at the next meeting.

**Councilman Mayer moved to send the ITD agreement to City Attorney Bert Osborn to review with the recommended changes before the 01 June 2015 city council meeting. Councilman Kurth seconded the motion. The voting was unanimous in favor of the motion.**

Beau Ziemer to discuss a truck purchase – Public Works Superintendent Ziemer informed the council that a replacement pickup was needed by the public works department as the previous one used by the ditch rider was beyond repair. He stated that money was available in the budget up to \$10,000 and was requesting the council's input on the price range he should look in. Councilman Kurth asked for more information on the need for another truck and Public Works Superintendent Ziemer explained that it was used by the ditch rider in the summer months rather than paying a higher mileage reimbursement and was also used by his crew for the remainder of the year. After some discussion, the council requested that he present 3-5 options in a broad price range at the following meeting for approval.

Ordinances and Resolutions

None

Public Comments

None

## Mayor and Council Comments

Public Works Superintendent Zeimer commented that, in regard to the groundhog issue, it was unlawful to shoot them within city limits and there was some hesitation on the part of county residents to shoot at them towards city limits. He also stated that baiting them was not very effective and other options were expensive, so many issues needed to be considered when finding a solution to the problem. Councilman Mayer expressed congratulations to this year's high school graduates and reminded all to watch out for children in the streets now that the school year was almost over. Councilman Warnke thanked Ms. Earles for appearing before council and researching the information she had presented. He also stated that her information would be reviewed and considered.

## Adjournment

**Councilman Mayer moved to adjourn the council meeting. The motion was seconded by Councilman Kurth. The voting was unanimous in favor of the motion.**

The meeting adjourned at approximately 8:06 pm.

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Joe Cook, Mayor

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Gina Christensen, Deputy Clerk