

## BOARD OF COMMISSIONERS

### MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 8, 2008  
Marion County Courthouse Square

9:00 a.m. Board Session  
Senator Hearing Room

**PRESENT:** Commissioner Sam Brentano, Commissioner Patti Milne and Commissioner Janet Carlson. Also present were John Lattimer as chief administrative officer, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

Commissioner Brentano called the meeting to order.

### **PUBLIC COMMENT**

None.

### **PRESENTATION AND PROCLAMATION**

Domestic Violence Awareness Month. – Walt Beglau and Jane Downing, Mid-Valley Women’s Crisis Service.

Walt Beglau, District Attorney, reported that October is Domestic Violence Awareness Month. He introduced Jane Downing from the Mid-Valley Women’s Crisis Service and said this was their second stop in a countywide campaign presentation around domestic violence. Mr. Beglau acknowledged the board for their continued support and extended his appreciation to the many volunteers and advocates dedicating their life to domestic violence.

The commissioners thanked Mr. Beglau and Ms. Downing for bringing this proclamation forward. The commissioners commented that it takes special people to work in this field and they are grateful to all the tireless volunteers. Discussion then followed on changing the language in the first line of the proclamation to state that “domestic violence is a serious crime and a widespread social problem.”

**MOTION:** Commissioner Milne moved to approve the proclamation with the additional wording added that, “domestic violence is a serious crime and widespread social problem.” Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

The board then read the proclamation.

## CONSENT

### BOARD OF COMMISSIONERS

#### OLCC Application – Recommend Approval

TNT Hollywood Tavern, Salem

#### OLCC Application – Ratify Recommendation

Video Y Tienda Mi Barrio, Salem

### BUSINESS SERVICES – HUMAN RESOURCES

Approve recommendation to adopt and establish the classification of IT systems analyst.

### HEALTH

Approve amendment #2 to receive \$122,898 from the Department of Human Services 2008-09 intergovernmental agreement for financing of public health services.

### PUBLIC WORKS - BUILDING INSPECTION

Approve an intergovernmental agreement with Gervais School District to collect Construction Excise Tax (CET) on behalf of the Gervais School District.

### PUBLIC WORKS – PLANNING

Receive hearings officer's dismissal of Appeal of Written Determination for Annamarie Schmidt application.

### TAX COLLECTOR

Approve an order authorizing the county to advance taxes levied for certain taxing districts for the year 2008-09.

### TREASURER

Approve an order distributing revenues from ORS Chapter 530 timberlands for the fourth quarter of FY 2007-08.

Approve a resolution increasing the change fund from \$400.00 to \$600.00 for the Juvenile Alternative Programs Division.

**MOTION:** Commissioner Carlson moved approval of the consent calendar. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

## ACTION

### BOARD OF COMMISSIONERS

1. Consider approval to receive \$380,098 from the Office of Justice FY 2008 Earmark Program for the Kids First Initiative. - Hitesh Parekh, Barb Young

Barb Young, senior policy advisor, reported they were here today to ask approval for a grant award for the Kids First Initiative in the amount of \$380,098 from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) Earmark Programs for 2008. The Kids First Initiative was approved as part of Marion County's federal agenda in January 2007. She said they worked with the congressional delegation over the last year for an earmark for this program. On February 25, 2008, the county received official notification of the earmark and funding from the Office of Juvenile Justice Delinquency Prevention for the program. Once the notification was received the community partners were gathered together and the plan was solidified, all components were finalized and outcomes were created. This is a multi-faceted initiative and comprehensive approach to dealing with intergenerational crime and seeks to provide up to 200 high risk families in Marion County with intensive home visits, parenting classes, substance abuse treatment, counseling and on the job training programs. Both adults and juvenile teen parents will be served by this grant over a one-year period. The Kids First Initiative consists of five major components and they have been broken down into prevention, intervention and treatment. There is a Family Home Visitation Program, the Juvenile STAR Court for mental health treatment program, Juvenile Fostering Attachment Treatment Program and additional parenting classes for the Children of Incarcerated Parents Initiative. Finally, there is a transition program for adult offenders and their children called the Center for Family Success.

Ms. Young introduced Sue Miller, executive director of Family Building Blocks and Kimberly Allain, executive director of St. Vincent De Paul as two major players from the community in the Kids First Initiative.

Sue Miller thanked the board for having an aggressive legislative agenda that really prioritized children and families. She said she appreciated the board's leadership in making Marion County a great county for children to grow up in. She explained that Family Building Blocks is a child abuse prevention program. The program keeps children safe by supporting parents and teaching them the skills to be really good parents. They also try to teach the parents to become self sufficient. Ms. Miller said that with this Kids First agenda they have been able to add two more home visitors to their staff as well as a connector position for the Fostering Attachment Drug Court.

Ms. Miller introduced Michelle Harvey who is one of the home visitors. Ms. Harvey shared a couple stories about the families they work with. She emphasized that one of the goals for the home visiting services is early literacy. Many of these families are very low income and have very limited access to children's books. A program was started called "Raising a Reader." Ms. Harvey explained that each staff member receives a kit of 15 bags filled with four early childhood books. These books are cycled throughout the families and every month the families receive a new bag of books that can be shared with their children. She said it is a wonderful bonding experience for a parent and child to sit down and read together and also encourages early literacy and language development for the children. It also provides a new experience for illiterate parents and encourages them to go to school to learn to read.

Ms. Miller introduced Heather Peasley who is with the Fostering Attachment Treatment Court. Ms. Peasley said her basic goal is to help parents become self sufficient so they can go into the working world or start out with a general education diploma (GED). The majority of the parents she works with do not have a GED. She helps the parent acquire a GED with community partners like Chemeketa Community College. The goal is to help these parents become self sufficient so they can provide for their family without public assistance.

Kimberly Allain, executive director of St. Vincent De Paul, said the Center for Family Success is a pilot program and is a collaboration of partnerships. It is intended to work with people with criminal histories through the adult drug court system, parole and probation, and with the community partners of Children of Incarcerated Parents. She relayed a story of a mother who was addicted to methamphetamine for 21 years. At the time of her arrest she had three-month old twins, which were taken into custody by the Department of Human Services (DHS). The mother had no prior criminal history, but was a functioning addict and a danger to her children as well as herself. It was the best thing that ever happened to this mother when the children were taken away and she was arrested. Ms. Allain said this mother had hit her bottom and it came to serve her well. She was offered the opportunity to participate in adult drug court, which she did. It was a very difficult experience for the mother initially, which it should be and soon she started discovering some things about herself that she had forgotten. She realized the drug was making her choices and she was serving the drug. This mother had the opportunity to go into treatment and learn to become a parent. Others started believing this mother's potential and she herself started believing her own potential. Once she had hope her motivation skyrocketed. This mother now has custody of her twins, is a student at Chemeketa Community College and raising her children. Through the Center for Family Success this mother has mentors and a support system that wraps around her. Ms. Allain said that the center's purpose is to help people that are motivated to change their lives.

**MOTION:** Commissioner Milne moved approval to receive \$380,098 from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Program for fiscal year 2008 Earmark Program for the Kids First Initiative. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

## **PUBLIC HEARINGS**

### **9:30 A.M.**

#### PUBLIC WORKS

A. Public hearing on proposed ordinance banning backyard burning within the Salem/Keizer Urban Growth Boundary. – Jeff Bickford, Sterling Anderson

Jeff Bickford, public works, introduced Bob Anderson, the chair of the Solid Waste Management Advisory Council (SWMAC). Mr. Bickford said they are here today to hear feedback on a draft ordinance that will specifically put some restrictions on the backyard burning of yard debris in the urban growth boundary (UGB) of Salem and Keizer. Back in 2006, SWMAC put together a sub-committee to investigate the practice of backyard burning. Based upon their investigation, a recommendation was provided to the full council to put a restriction on the backyard burning of yard debris within the Salem/Keizer UGB only. Open burn piles and burn barrels typically are an inefficient combustion process. In addition to the smoke, the levels of pollutants in the inefficient combustion are very significant and can cause a significant health and environmental hazard.

During the investigation process one of the findings was that one or two burn barrels used by a family during a year produced more dioxins into the environment than the Marion County Waste to Energy facility does in an entire year. The full council considered and passed the recommendation provided by

the subcommittee at their January 2007 meeting. A public hearing was held on December 5, 2007, regarding the draft ordinance. One of the largest concerns came from landowners with larger parcels. Since that time, the ordinance has been reviewed and amended several times.

Commissioner Carlson said that during her first term SWMAC actually brought a proposal forward to the board regarding the banning of burning of medical waste in Marion County. She said it was a highly controversial proposal. The Public Works Department had investigated the proposal as it was being brought forward to the board in its final stages. She said that one of the items that came forward was that it wasn't so much the medical part of the waste that was the problem, but it was the plastics part of the medical waste. In particular, it was PVC and that part of the equation connected the county to the idea of backyard burning and the statistics that have been summarized. She said that if people are burning plastics and garbage in piles or barrels, those pollutants are worst than medical waste.

Mr. Bickford said that the medical waste issue was the predecessor to the backyard burning issue. When the medical waste investigations were being conducted is when burn piles and barrels were discovered to be such a pollutant. He added that the ordinance specifically addresses the burning of yard debris within the Salem/Keizer urban growth boundary and that burning any kind of garbage is always against state law.

Sterling Anderson, planning director, summarized that a public hearing was held on December 7, 2007. One of the overriding concerns of some of the landowners was from those owning larger parcels. Mr. Anderson emphasized that this ban only applies in the Salem/Keizer urban growth boundary. The current draft of the ordinance does allow for certain exceptions such as agricultural burning, recreational ceremonial fires and barbecues with no waste involved. The prohibitions in this ordinance would be for the burning of yard waste within the urban growth boundary of Salem/Keizer. He added that there are certain exceptions requiring a permit. They would include the burning of yard debris during daylight hours on the owners property that is more than two-acres in size or contiguous properties under the same ownership totaling more than two acres in size. Another permitted exception would be the burning during daylight hours for disease or pest control. In addition, the daylight burning on properties currently classified by the Marion County Assessor's Office as being assessed for farm or timber for deferral purposes and the open burning of yard debris during daylight hours that are created during a natural disaster. Any permit that would be issued would clearly identify what can or cannot be burned, which would exclude any waste or plastics. Mr. Anderson said they anticipate a phased in approach to enforcement regarding the proposed ordinance if adopted. The first year would be an educational process. Mr. Anderson recommended that the board receive testimony today and direct staff how to proceed on this proposal.

Commissioner Milne confirmed with Jo Stonecipher that the board would not be making a decision today. Ms. Stonecipher said this matter is not on the board's agenda to actually adopt the ordinance today.

Bob Anderson, chair of SWMAC said that after studying what happens when PVC's and other plastics are burned it made sense to look at backyard burning. Burning even small amounts of PVC create polyvinyl chlorides, which from a health standpoint are devastating. The problem with backyard debris burning is what actually ends up in those burn piles. Normally a person has to put something on the pile to get it burning whether paper or cardboard. The problem with cardboard is a lot of it has a plastic film in between the corrugation now. Typically, plastic type cardboards being burned create halogenated

hydrocarbons and are quite devastating from a health standpoint. These burn piles burn at a very low temperature and there isn't enough draft to get those chemicals up out of the air that people breath.

Commissioner Carlson asked Mr. Bickford to comment on the backyard burn ban that occurred in the Salem/Keizer area. Mr. Bickford said it was approximately 1998 and coincided with the implementation of the yard debris pickup program in Salem/Keizer. He said that there are other options available. Even within the urban growth boundary the garbage service is essentially the same as what the people inside the city have. He added there are also a couple locations where you can drop off loads of composting.

Commissioner Brentano asked if Browns Island was available for yard debris and Mr. Bickford answered that it was not.

Commissioner Brentano noted for the record that the board received two letters opposing the ban, one from James and Laurie Brassfield and one from Steven Sundet.

#### TESTIMONY:

##### Support:

Sandy Grove, 4723 San Diego Drive, Salem, said her backyard is the city/county boundary. She said she has a neighbor behind her that burns whenever she wants and it has made many of the neighbors very unhappy. She supplied pictures and a map to show her house and where the neighbors burn pile is located (exhibit A and B). She has called the fire department numerous times and the Department of Environmental Quality once. She said many of her neighbors have heart and lung problems and the smoke doesn't help them.

Helen Cobb, 4215 Macleay Road S., said she is for the ban because her neighbor burns all types of rubbish. She said she asked her neighbor to please move his burn pile because it is only two feet away from her property line. She showed pictures of the neighbor's burn pile and said that sometimes the burn pile has burned all night (exhibit C).

Luke Fortier, 5460 Monterey Drive SE, said he recently moved back to Oregon after being gone for 10 years and he is opposed to any burning at all and is in favor of the ban. He and his son are both asthmatic and have developed this condition since moving back to Oregon.

##### Opposition:

Tom Quintal, 1718 Sonya Drive SE, said he is opposed to the ban and is caught right in the middle because his land is only about one and one third acres. He has about 150 fir trees that are approximately 50 feet tall. Each year they generate a tremendous amount of limb break. He also has about 50 fruit trees and 140 grapes that produce a lot of debris. He said he doesn't know what his alternative is because he can't get equipment or trailers to the back of his property and he is trying to figure out how he will comply with the ban. He said he read there is an exception for burning of diseased material. He said his apple and pear trees all have disease unless they are sprayed heavily with pesticides. He is wondering what he is going to do with all the yard debris if he is not able to burn it. He spoke of the DEQ website and the rules on it are very detailed. He said he understands that people want to stop this due to global warming etc. He felt it all came down to money and he would pay a fee to burn his

material. He said he was not against burn barrels and felt that people could put a lot of things in these barrels that create problems. He felt there should be a way to deal with this extra material each year.

Commissioner Brentano asked Mr. Quintal if the 150 fir trees were Christmas trees. Mr. Quintal said they were not, but were put up for a property shield because it was open vacant land. When there is a windstorm he loses many branches. He said he has even bought a shredder and can't keep up with the extra material.

Marvin Raul, 5566 Rodell SE said he spoke against the burning ban before and is still opposed to it. He said he sees the ban as a zoning issue that really is more city planning and not a county issue. When he moved out of the city limits, he was given a fact sheet by the district fire department that listed the things that were permissible to burn and what was not. He said there were quite a few things that were permissible and he doesn't know what happened since then. He said this new proposal would curtail the list quite a bit and he felt there were currently plenty of controls.

Carol Nagey, 6634 Christie Court SE, Salem, said he is trying to understand where the boundaries are. He said he lives on a little over 2 acres. He spoke with someone from the county and they indicated that it is the same as the city of Salem boundary. He moved onto the property 20 years ago and he said that he could sympathize with people that have health conditions, but on the other hand many of the people are retired and on fixed incomes. He thinks there needs to be other options, even if it is burning just once a year. He said even if the debris could be hauled it is not cheap.

Allan Brinlee, 4391 Glenwood Drive SE, said that most of his neighbors have one-third to one-half acre lots and that most of them have fir, fruit or cottonwood trees that create a lot of debris. Many of the people in his neighborhood are retired and cannot afford to keep up with it anymore. He said that they have been burning there for 25 years and people have to be able to get rid of the debris.

Robert Gilder, Wiltsey Road SE, said he understands part of the confusion because he has been in and out of the urban growth boundary on Wiltsey several times in the last 28 years. He said he is exempted because he has three acres, but he felt bad for people just having under the two acres. He felt the existing laws adequately cover everything. He agrees that people should not be burning garbage and plastics, but should be able to burn yard debris.

Kirstin Lurtz, assistant legal counsel with Marion County said she helped the Public Works Department draft this ordinance. She said this ordinance only applies to the Salem/Keizer urban growth boundary. The Salem/Keizer urban growth boundary can be found in maps on the Marion County website or on the city of Salem website. She felt that it was well defined and understands that the urban growth boundary has not significantly changed since 1989. She then spoke about the fees and said if everyone looks at section 7 of the proposed ordinance it explains that the Board of Commissioners will be responsible for setting the permit and penalty fees. The planning department will be responsible for enforcing this ordinance and processing the permit applications. They will have a schedule of the permit fees as well as the violation fines.

Ms. Lurtz addressed the statement that existing laws are adequate to take care of these problems. She said there was significant research done by employees in public works and legal counsel to look at that issue to see if there was a need to have this secondary regulation if there are laws on the books. She met with DEQ representatives as well as fire districts. She said the fire department does not have the

authority either in Oregon law or in the Oregon Administrative Rules to enforce violations of the DEQ rules or of a county burn ban ordinance. The Fire Department goes out to people's properties as a courtesy, but do not have any jurisdiction to issue citations. In order to cite people they would have to get legislative authority, train their people and equip their people with more tools. She said that within DEQ there is one person that deals with these issues in six counties and is only a part time employee. She said this person is able to take complaints, but then has to run the complaints through an administrative process. Essentially, this person's authority is to issue a letter telling people to cease and desist. To enforce anything, the complaint has to go through two other departments in the Department of Justice. She added that Oregon statutes do not make backyard burning a crime, whether it is yard debris or plastics.

Commissioner Milne asked if a Sheriff's Office deputy could be sent out to address the complaints. Ms. Lurtz clarified that there is now a portion in the solid waste ordinance that bans the burning of garbage and also the burning of materials that cause noxious smoke and other nuisance conditions for the neighborhood. However, backyard burning has not been a priority for the Sheriff's Office up to this point and because of other needs of the community, backyard burning would still be a very low priority for the Sheriff's Office.

Commissioner Carlson said this is the second public hearing held at a board session on this ordinance. She said the first draft ordinance was an outright ban with very few exceptions. She said they added at that public hearing the permit process and the two-acre and over exemption. She felt the two-acre minimum was to accommodate people that have a lot of yard debris. She asked what difference it would make for a person who had one or two acres and what options people would have that are located in the urban growth boundary and don't have two acres.

Ms. Lurtz said when she was first asked to draft the ordinance she looked at zoning maps and everyone's property that would be affected. She then counted the amount of people who had less than an acre, an acre, two acres, and four acres and above. She found that in the areas within the Salem/Keizer urban growth boundary where there is city being concentrated in terms of development on one-quarter acre or one-third of an acre or even less, those county properties are also generally of the same size. She said that as you look along Cordon Road to the junction of Highway 22, there is a very dense concentration of residential development and the county properties are also of similar size. If you have burning going on along that eastern border there are neighborhoods that are going to be affected and are the neighborhoods that are not allowed to burn under the Salem/Keizer ban. Further, south of Kuebler Boulevard, properties are larger in size and their neighborhoods are of similar nature. As Commissioner Carlson stated, the idea was to accommodate people who have immense yard debris to deal with, but also to accommodate those folks who live in neighborhoods that are more highly concentrated, where the smoke would be affecting more people as opposed to less.

Mr. Bickford said there are a number of options available to people if they are within the urban growth boundary. There is curbside yard debris collection available weekly with a 90 gallon cart. In addition, the garbage haulers will specifically provide the service of picking up a large quantity of debris from an individual. Another option would be to load the debris into a truck or trailer and haul it to the Salem Transfer Station. He added there are costs involved with these options, but they do offer other alternatives to backyard burning. Commissioner Carlson said she felt there was a fourth option within the permit process. She asked Mr. Anderson what kind of process someone would go through if they had less than two acres and disease. Mr. Anderson said they are going to attempt to make the process a

“one-stop” permit. He said the applicant could come in and identify their property and see if the property or the reason for the burning fits within the permitted exceptions such as if it is two acres or larger, whether it for the purpose of pest or disease control, or a weather disaster. He said he wants to simplify the process to the point a person could come in, work with staff and leave with a permit that allows them to burn.

Commissioner Brentano stated that it is not only obtaining the permit to burn, but the burn has to take place on the correct day.

Commissioner Milne said she was a little concerned about the property size too. She personally has a postage stamp lot and has lived there many years. The yard debris container is not big enough when it is time to trim everything. She felt there should be some sort of rationale; maybe changing the acreage size to one acre. She said she is concerned about a natural disaster happening and the problems it would create.

Commissioner Brentano said that in the past when there have been storms that create a lot of debris the county has suspended charges at the transfer station and allowances have been made.

Commissioner Milne talked about contiguous properties and felt that if the total property of four neighbors was equal to two acres and they wanted to burn once a year what would it hurt. She felt that the county was overlooking some ways to keep people from cleaning up their property and there needed to be more exceptions.

Commissioner Carlson said she felt education was really important, as well as helping people understand their options. She felt the ordinance was balanced, but worries about the ease of enforcement. If there were too many exceptions allowed it would make the ordinance impossible to enforce. She added that backyard burning is a huge public health issue, an environmental issue for the community and not just an annoyance.

Commissioner Milne asked if the suggestions she made regarding contiguous property owners would require a permit. She said the board’s purpose was to help people solve problems not create roadblocks to maintain their property.

Commissioner Brentano said he doesn’t disagree with Commissioner Milne, but definitely did not want to encourage neighborhood burn parties on an annual basis.

Commissioner Brentano said he thought the ordinance was close to being finalized. He said there have been some suggestions on minor changes and asked Jo Stonecipher how to proceed. Ms. Stonecipher suggested a work session or a management update to bring about more direction. She said this is an information hearing and the ordinance would come back to the board in the ordinary way when it was prepared to adopt it. She added this is not an emergency ordinance so the process would be read once and not less than two weeks later read again and subject to adoption. It would take effect 90 days after the adoption. The board does not have to hold another public hearing to receive public comment. This is not a quasi-judicial or restricted matter. Anyone that has additional comments they want to share may email the board, send letters or call.

Commissioner Brentano directed staff to look into the different suggestions they have heard today and

present it at management update within the next few weeks. Commissioner Carlson commented she is interested in the disaster definition and perhaps broadening it somehow without a government disaster declaration.

Commissioner Milne said she would like to visit with staff to talk about some potential language in the ordinance.

**MOTION:** Commissioner Carlson moved to close the public hearing and direct staff to come back at the earliest possible management update with recommendations for considerations. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.  
Commissioner Brentano adjourned the meeting at 11:16 a.m.

**Attachments:** Agenda

ABOVE MINUTES APPROVED

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CHAIR

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COMMISSIONER

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COMMISSIONER

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**If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168**

**Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o culaquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168 Marion County is on the Internet at: [www.co.marion.or.us](http://www.co.marion.or.us)**