

**Rivergrove City Council Meeting Minutes**  
**SPECIAL MEETING 7:00 PM**  
**August 27, 2018**

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**CALL TO ORDER AND ROLL CALL**

The meeting was called to order at Lloyd Minor Park at 7:00 p.m.

Present: Mayor Heather Kibbey, Council President Arne Nyberg, and Councilors Carolyn Bahrman, Brenda Ruble, and Bill Tuttle were present. City Recorder Leanne Moll declared a quorum.

**CONSENT AGENDA**

**1. Minutes from the August 13, 2018 Meeting**

Council decided to continue the approval of the August 13, 2018 minutes to the September 17, 2018 meeting.

**UNFINISHED BUSINESS**

**1. Type IV Hearing to amend Ordinance #80-2011, regulating park and boat ramp hours**

Mayor Kibbey began by explaining that she can't remember a more difficult decision that City Council has had to face. She explained that Council has carefully studied all items of testimony and researched all options regarding the boat ramp. Council has done their due diligence to follow the proper procedures and carefully research all options.

Mayor Kibbey noted that three questions came up about the legality of the boat ramp and the procedure chosen by Council. She addressed these first. The question of whether or not the boat ramp is legal arose in three items of testimony. Mayor Kibbey ran this question by City Attorney Bill Kabeiseman. He explained that the boat ramp is absolutely legal. The testimony questioning the legality of the boat ramp assumed that the regulation of the boat ramp is a land use decision. A land use decision occurs when someone applies to build a new home or to modify a property in some way. Council's regulation of the boat ramp is not a land use decision. Council's Type IV deliberation about the boat ramp is a discussion about whether or not to amend Ordinance #80-2011 that sets the hours of park and boat ramp. Any other change that Council decides does not need to be an ordinance. Other regulations may be decided by a resolution with no notice to the public, however the public has been invited to participate in this community-wide discussion.

An item of testimony requested to know if the boat ramp was a Conditional Use and did the boat ramp need a Conditional Use permit. Mayor Kibbey explained that a Conditional Use is a use out of the ordinary. Rivergrove is a community that is entirely zoned as residential. Conditional use usually requires a permit. However, the boat ramp existed as such before Rivergrove became a city. The ramp was adopted by the City of Rivergrove in 1975 and was mentioned in the City Council minutes at that time as a boat ramp. Rivergrove's Conditional Use permitting ordinance was not adopted until 2003. According to City Attorney Bill Kabeiseman, the boat ramp is entirely legal.

Mayor Kibbey continued by explaining that City Council spoke to many different agencies and entities to research the City's options. They communicated with Metro, Clackamas County, the Army Corp of Engineers, Riverkeepers, the Department of State Lands, the Oregon Marine

Board, the Oregon Department of Fish and Wildlife, the Oregon Liquor Control Commission, and City Attorney Bill Kabeiseman.

Councilor Ruble gave an apology for what happened at the July 11, 2018 City Council meeting. She apologized for not knowing the public notice law for the State of Oregon. She mentioned that the boat ramp came up during public comment and that there should be no discussion and no decision taken if a non-agenda item is presented to Council during the public comment time.

She explained that the residents who brought the concerns adamantly communicated that the boat ramp nuisance was a grave emergency and that Council needed to act immediately. Councilor Ruble noted that Council called a Special Meeting as quickly as possible to undo the wrong and to correct the error.

Councilor Ruble noted that at the July 11, 2018 meeting, Marcel Lahsene asked City Attorney Bill Kabeiseman twice if the boat ramp could be closed. Councilor Ruble noted that other residents at the meeting heard those questions as a demand that the boat ramp be closed. Councilor Ruble acknowledged the tension in the community, but explained that that very tension has been productive and that she hopes the boat ramp issue can bring the community together to find a creative solution that serves all the residents of Rivergrove.

Councilor Ruble addressed Mr. Lahsene's question again. She asked if Council can close the boat ramp. From research, the answer is no, City Council may not close the boat ramp. Councilor Ruble explained that she read and researched federal, state, and local laws regarding public rights to use rivers and looked at court decisions and how they might help Council to understand their role as the Rivergrove Stark Boat Ramp gatekeepers.

Councilor Ruble commented that by the time ancient civilizations arose, river boats of many types were already well developed and rivers were commonly used as boundaries between tribes, farms or nations.

Law governing the use of rivers dates back to these early days. For instance, a document, known as The Body of Civil Law, which became the foundation for our current river law, was published in 534 AD under the direction of the Roman Emperor Justinian. And in fact, the doors of the US Supreme Court are sculpted with an image of Justinian and his law.

Ancient law held that it was a public's right to use rivers and their banks, no matter if the actual ownership of the property extended to the middle or across the river. It was forbidden to do anything to a river or its banks to impede navigation or the use of a river's banks by the public. That law was adopted by countries around the world and the first law passed by the newly created US Congress declared that rivers navigable in canoes shall be "forever free." It reaffirmed that law in 1796, to cover all future states and the law was amended by Congress and through case law in the intervening years.

This law applies only to "navigable rivers," of which the Tualatin is one. There are five classifications of "navigable" and the Tualatin meets four of those designations---navigable in the ordinary sense, navigable by Commerce Clause (based on historic commerce), navigable by title (jurisdiction was transferred to the state) and navigable under the Clean Water Act. So, the river laws apply to the river and banks below the high-water mark.

Under the law, the public has the right to fish, swim, wade, kayak, canoe and boat, and picnic, without interference from the City or neighbors. The City has been informed that the fines for violating this body of law are steep.

As is stated in the law, "while it is beyond question that the riparian owner is entitled to be protected from any unnecessary intrusion on his premises...he takes his title subject to this right vested in the public." To reiterate, no matter how annoying or stressful these public uses of the river may seem to the surrounding property owners, the Oregon Marine Board has emphatically warned the City that there is nothing that the City can do to interfere with the public's enjoyment of boating, fishing, swimming, wading, or picnicking along or in the river below the high-water mark.

Councilor Ruble addressed the other concerns of the surrounding property owners. One suggestion was to limit the boat size or allow only non-motorized boats. The Marine Board communicated to the City that, "This is not in your authority to regulate." The only boating regulations on the Tualatin River are "towing of waterskies and other towed devices prohibited." City Council cannot impose boating regulations above and beyond this.

In her conversations with the Oregon Marine Board, Councilor Ruble learned the City can put posts or boulders in the park area across from the ramp to limit driving on the park grass which would in essence limit boat size without actually regulating boat size.

Councilor Ruble then addressed the request to limit ramp usage to ingress/egress for boats only. The Marine Board noted if we regulate our ramp for ingress/egress only we have just interfered with the public right of fishing, swimming, wading, and picnicking on the waterway and below the high-water mark.

Councilor Ruble also addressed the resident-created sign that redirects ramp users to other parks and boat ramps in the area. She cited resident Scott Mandel's testimony which was a carefully documented study of driving time to and amenities of these alternative parks and ramps. Despite the boat ramp sign stating that other parks were only five minutes away, Mr. Mandel found that in low traffic times the mean drive time to all three parks was 12.6 minutes and afternoon drive times to Brown's Ferry Park are 15-30 minutes. It took Councilor Ruble 50 minutes to commute to Cook's Park in Tigard during high traffic time. Therefore, Councilor Ruble said that it is not appropriate for the City to advertise that these amenities are only five minutes away. [Note: this sign was removed in August 2018]

Councilor Ruble asked if it is reasonable that the City advertise the amenities at other parks. Councilor Ruble attempted to paddle board to Cook's Park in Tigard. In many places in the Tualatin River, she had to carry her board in portage because the water was so shallow. She stated that it is not possible for a boat to enter the Tualatin River at Cook Park during this time of the year. In fact, Stark Boat ramp is the only place that motorboats can safely run without risk of hitting rock. Councilor Ruble explained that motorboating is a declining recreation. There are fewer and fewer licenses authorized each year. The State Marine Board is self-funded by the cost of motorboat licenses, so restricting motorboats may cause the unintended consequence of less dollars for river regulation and enforcement.

Councilor Ruble reiterated the State Marine Board's warning that the City can not interfere with the public's enjoyment of boating, fishing, swimming, wading, or picnicking along or in the river below the high-water mark. Directing people to another park or boat ramp could be looked at as interference.

Councilor Ruble said that the City may post the Tualatin Riverway Map printed by the Riverkeepers as a way of educating the public to other access points. However, that type of sign may increase the usage of the Stark Boat Ramp because the possible future addition of the boat ramp on the Riverkeeper's map reaches a wide audience. Mayor Kibbey explained that Stark Boat Ramp is no longer included on the Tualatin Riverway Map on the Riverkeeper's website.

Councilor Ruble noted that the residents who raised their concerns repeatedly noted the traffic issues in the neighborhood relating to the boat ramp. One property owner noted that there were forty cars on Dogwood Drive from 10 AM until evening. Councilor Ruble took just under one hundred trips to the boat ramp in the last few weeks. During those trips, she only saw people on the ramp two times. One time, an elderly couple was struggling to load their kayaks on their vehicle and a young man who was kayaking jumped out of the water to help the couple load their kayaks. Councilor Bahrman repeated the quotation: "Everywhere there are friendly people. If you can't find one, be one."

Mr. Lahsene had explained that no one comes to the boat ramp in the extreme heat and that Councilor Ruble's count was not accurate. Councilor Ruble and Mayor Kibbey repeatedly visited the boat ramp one weekend with temperatures in the 70s. They saw only four cars parked on the street the entire weekend.

Councilor Ruble explained that July Fourth is a busy holiday at any park or on any river, and the Fourth of July fell between the two busy weekends this year which prompted the residents close to the boat ramp to complain. With July Fourth occurring mid-week, recreational facilities saw increased usage two weekends this year instead of just one.

Councilor Ruble asked if forty cars in a Rivergrove neighborhood was an unreasonable amount. According to Clackamas County, on Childs Road, 3,600 cars travel west and east every day. On a non-holiday Saturday, 1,600 cars travel on the road.

Councilor Ruble explained that on the east side of Dogwood off of Sycamore there was a traffic situation where cars were running through the three-way intersection at Sycamore and Dogwood without stopping. Councilor Ruble observed the intersection for 1 hour, 15 minutes. In that time, twenty-three cars ran the stop sign. If she estimated how many cars traveled through that intersection on one Saturday, it would likely be at least 160 cars. Based on these examples, forty cars do not seem to be excessive for a neighborhood in Rivergrove.

She noted that cars do sometimes block driveways and mailboxes. The City has proposed several solutions to the property owners near the boat ramp, including painting the curb, creating a non-parking fire zone, placing cones or installing no parking signs. Mayor Kibbey noted that all of these solutions were rejected by the property owners near the ramp.

Councilor Ruble addressed another point made in a letter of testimony that claimed that the City has an increasing population. Councilor Ruble noted that only three new homes were built in 2015-2018, four if you count the one that is still under construction. There are two more single-family homes that have received a development permit and will be constructed in the next year. The City has very few open lots left to build on.

Councilor Ruble also brought up the issue of enforcement. The Clackamas County Sheriff's Department does not have the personnel to enforce any non-emergency regulations the City

may place on the boat ramp or on parking. Councilor Ruble noted other issues in Rivergrove that the Sheriff did not assist with, including a homeless family setting up camp in a park and the smoking of marijuana in the summer during arid conditions, causing a potential fire hazard in Heritage Park.

Councilor Ruble explained that the Oregon Marine Board communicated with the City that any regulations that the City enacts must also be enforceable by the City and not the residents who own nearby property. The Oregon Marine Board does not want a resident who lives near the boat ramp to be ensnared into a harassment lawsuit.

Councilor Ruble cited the issue of marijuana use on the Rogue River. The many county and municipal governments that oversee the river can't seem to enforce or prohibit marijuana use on the river. Marijuana regulation might be outside our reach to try to accomplish as well.

Councilor Ruble explained the reason the Marine Board patrol boat travels at a higher speed up and down the river is it has to ride on top of the water so it doesn't hit rocks in shallow areas. The Washington County drift boat would have a difficult time making it to Rivergrove due to shallow water. When a situation arises, the City should contact local authorities first as they would be the most likely first responder.

Councilor Ruble suggested that Rivergrove needs to educate the community about these issues. She recommended that the City hold a barbeque or parade at Lloyd Minor Park on the Forth of July weekend, as was tradition in Rivergrove years ago. If the City can have a friendly, informative presence at the park, the City can help people use the boat ramp responsibly and educate people as necessary. This type of event would create community and help the City enforce problems through education. Councilor Ruble explained that in any real disaster, emergency personnel often can't reach us and the people who are available to help are our neighbors and others around us.

Councilor Ruble cited another example of a situation on the river with a canoe and its occupants. She explained that the people in the canoe could have been a potential problem and she dealt with it with kindness and compassion. She explained that it is important to interact with people with understanding. She believes the City can achieve this through community building and education.

Councilor Ruble explained the history of the Riverkeepers organization and the original riverkeeper, Attorney Robert F. Kennedy, Jr. Councilor Ruble is thankful that we have a waterway that is clean without sewage, oil, and toxic sludge. We should be grateful for the work the Riverkeepers and fishermen have done. She asked how the City can educate people to take care of and value the river.

Councilor Ruble returned to the issue of parking. She cited an idea from a resident that the City issue parking permits. Again, the City can't enforce parking permit violations because we don't have a municipal court.

Councilor Ruble explained that the City could easily put a parking lot at the east side of the park that is mostly grass and rarely used. She explained that if parking near the boat ramp is truly an issue, creating more parking spaces is an option that Council should be willing to explore.

Councilor Ruble addressed the complaints about fish hooks on neighboring docks. She explained again that the Marine Board clearly stated that the City can't limit fishing on the river.

This is out of our jurisdiction. Councilor Ruble suggested that instead of getting upset at the fishing hooks on docks, appreciate that the fishermen were the original Riverkeepers that saved the river.

Councilor Ruble went on to address complaints about drinking on the boat ramp. Councilor Ruble continued by explaining that the City cannot enforce alcohol consumption on the water. Regulating alcohol consumption on the water is the Oregon Liquor Control Commission's responsibility. The City could regulate open containers with signage on the top part of the ramp when people are not in a boat, but keep in mind the City would have no way of enforcing that regulation. We would need to address the enforcement issue if we sought regulations of this type. Councilor Ruble explained that the City could not regulate alcohol consumption if it was occurring in a boat at the bottom of the ramp because it is not under our jurisdiction.

Councilor Ruble stated that the City could also construct signs that say "no smoking," but how would the City enforce those regulations?

Councilor Ruble suggested to the other Councilors that our best way to regulate behavior might be through education rather than enforcement.

Councilor Ruble addressed the complaints about trash on the boat ramp and in the river. She explained that the Tualatin River is a water highway. According to the Marine Board, trash is a normal occurrence along the river just like along any other highway. She recently realized that the City has a trash can in Lloyd Minor Park that is picked up regularly. She wondered if the City could paint or decorate the trash can, so it was more noticeable to park and boat ramp users and people realized it was a City can available for public use.

She also asked if the City should organize a regular trash cleanup date. Mayor Kibbey said that Council should set a date for a ramp cleanup during the current meeting. Councilor Ruble agreed, stating that the more open the ramp is, the fewer issues people have with entering and leaving the water.

Councilor Ruble explained that sanitation and the lack of bathroom facilities was another complaint the City received. She noted that a port-a-potty in the park is an option. She questioned whether or not people would use it. She gave a couple of examples she had observed where bathroom facilities were available but individuals used the river instead. Councilor Ruble noted that the Colorado River is a source of drinking water for 40,000,000 people and the thousands of individuals who raft down the river are allowed to pee directly into the water where it can be diluted and washed downstream. Maybe instead of adding port-a-potties in the park, we should educate boat ramp users to "Dilute Don't Pollute," and to pee in the river. Maybe there is an uphill battle to try to change this behavior.

Councilor Ruble addressed the noise concerns. She explained that many who live in Rivergrove deal with noisy situations, including I-5, Pilkington Park particularly during soccer season, and Childs Road with 3,600 cars a day. She explained that water amplifies sound. The community can create a buffer by planting native plants as outlined in the Rivergrove Reads book *Bringing Nature Home*. Since Lloyd Minor Park does not have many plants which help diminish noise, residents who do not live on the river are still being affected by the noise.

One complaint detailed the scraping noise of the boats as they are being dropped into the river. Councilor Ruble asked if the City should extend the ramp, making it easier to launch boats, so that that scraping noise is no longer present.

In conclusion, Councilor Ruble stated that throughout history federal law has upheld the rights of the public to enjoy free access to the public waterways. Reducing the boat ramp hours would likely be declared an infringement on the rights of the public to use and access the river. Government trustees are obligated to maintain the value of these systems for all users including future generations. Councilor Ruble explained to the other Councilors that she thinks Council should keep the current hours as defined in Ordinance #80-2011. She also noted that Council needs to continue researching the legality of limiting boat ramp use from 8AM to 8PM or 9PM and would like Council to explore if the hours need to be extended from dawn to dusk, in order to uphold public river rights.

**Motion:** Mayor Kibbey **moved** to not amend Ordinance #80-2011 and to leave the park and boat ramp hours as stated in the standing Ordinance. Councilor Nyberg **seconded** the motion. **It passed 5-0.**

Councilor Tuttle wondered if the complaint that the boat ramp is unsafe for unsupervised children and the City could be held liable if a child was injured or drowned. He asked if the City could put a sign up that states "No Lifeguard on Duty."

Mayor Kibbey noted that in 2017, the City posted a sign that asked all users of the boat ramp to close and latch the gate behind them when they enter or exit the ramp. Mayor Kibbey noted that the latch was currently not working. Councilor Nyberg said that it needs an adjustment and that he would take care of it. Mayor Kibbey explained that once the gate is readjusted, it will be very difficult for small children to reach the latch or open the gate on their own.

Councilor Ruble questioned how many signs Council wants to put up. She noted that a lot of signage may not be appropriate.

Mayor Kibbey said that she was in favor of a sign that asked boat ramp users to "Please Be Quiet and Considerate" or reminded them they were in a "Neighborhood Zone." She also said that the City could place a sign on the ramp that states, "Short ramp may damage trailered boats."

Councilor Ruble said she was in favor of a sign that welcomes people. If the boat ramp can be more inviting, people will respect the boat ramp and neighbors more.

Councilor Tuttle suggested that the City could ask volunteers to see how crowded the boat ramp is on Labor Day.

Mayor Kibbey noted that she would like to see some "No Parking" signs. She would like one to be placed on the west side of the boat ramp pointing east and one on the east side of the Gentry mailbox pointing west, so the signs would be blocking off a mailbox, driveway, and the boat ramp.

She stated that she was also in favor of placing something in the park at the curb across from the boat ramp to prevent large boat trailers from backing up onto and damaging the grass. She noted that Lisa Volpel on Kenny Avenue has offered boulders from her property and Jennifer Crock may be able to transport them with her tractor.

Councilor Nyberg noted that he is against taking park space for parking spaces. He believes that parking space in the park is not crucial.

Mayor Kibbey asked if Council should set up a date for ramp cleanup?

Councilor Nyberg asked Council to hold off until after October 1. He will be replacing the invasive species at his property bordering the ramp with natives, but he cannot plant the native species until after October 1.

In closing, Mayor Kibbey recapped the Council's decision. She explained that Council has decided to not amend Ordinance #80-2011 and to leave the park and boat ramp access hours as they are. She listed the many possible suggestions Council has made to limit the impact of the boat ramp on the surrounding residences: placing boulders in the park across from the boat ramp to protect the grass; improving the signage at the ramp, including painting the curb, creating a non-parking fire zone, or placing cones on the street.

She noted that Council seemed to agree that the City should not install a port-a-potty in the park and that a parking lot should not be constructed at this time in the east section of Lloyd Minor Park.

Mayor Kibbey said that Council needs more deliberation on the signage for the boat ramp.

Councilor Nyberg noted that plastic informational or educational kiosks are very expensive and the City may need to obtain a grant to fund that type of sign.

Mayor Kibbey explained that based on feedback from Councilor Nyberg, the boat ramp cleanup is postponed until October.

Councilor Ruble invited residents to her home at 7PM to watch *Apollo 13*, a movie that she had quoted earlier in the meeting.

Mayor Kibbey reminded the attendees that the annual Rivergrove Ice Cream Social was September 9, 2018 from 2-4PM.

Councilor Tuttle thanked everyone who attended the meeting.

Councilor Ruble asked City Recorder Leanne Moll to list the books she researched in the next *Rivergrove Report*: *The Riverkeepers* by Robert F. Kennedy, Jr. and *Public Rights on Rivers* published by the National Organization for Rivers. Mayor Kibbey noted that the City could purchase a few copies to place in the Little Free Libraries around the City.

### **ADJOURNMENT**

**Motion:** Councilor Nyberg moved to adjourn the meeting.

Councilor Tuttle **seconded**.

The **motion passed 5-0**.

The meeting was adjourned at 8:02 p.m.

Respectfully submitted,



Leanne Moll  
City Manager/City Recorder