

MINUTES
Troutdale City Council – Regular Meeting
Troutdale City Hall – Council Chambers
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060

Tuesday, June 24, 2014

1. ROLL CALL, AGENDA UPDATE

Mayor Daoust called the meeting to order at 7:00pm.

PRESENT: Mayor Daoust, Councilor Ripma, Councilor Anderson, Councilor Thomas, Councilor White, Councilor Allen, and Councilor Wilson.

ABSENT: None.

STAFF: Craig Ward, City Manager; Debbie Stickney, City Recorder; Ed Trompke, City Attorney; and Erich Mueller, Finance Director.

CONSULTANT: John Morgan, Morgan CPS Group, Inc.

GUESTS: See Attached.

Mayor Daoust asked are there any agenda updates?

Craig Ward replied there are no changes to the published agenda.

2. CONSENT AGENDA:

2.1 ACCEPT MINUTES: May 20, 2014 Work Session and May 27, 2014 Regular Meeting.

2.2 RESOLUTION: A resolution approving an Intergovernmental Agreement authorizing the City to become a member of the Managing Oregon Resources More Efficiently (MORE) Cooperative.

2.3 RESOLUTION: A resolution authorizing the City of Troutdale to become a party to the Oregon Public Works Emergency Cooperative Assistance Agreement.

Councilor Anderson read the consent agenda items.

MOTION: Councilor Anderson moved to adopt the Consent Agenda. Seconded by Councilor Wilson. Motion Passed Unanimously.

3. PUBLIC COMMENT: Please restrict comments to non-agenda items at this time.

Fred Fanatia, resident of Portland, stated I have some safety concerns at Glenn Otto Park. I am partner with Marks Snack and Tackle. The sapling trees on the beach are

overgrown. We can no longer see the Lifeguard shack down there. We would like to know what we can do to remove some of those trees so that we can have a visual of the beach area to assist with making it safer for everyone down at the beach. The Officers are having a difficult time seeing people down there with alcohol. Also, the Lifeguards brought to our attention that there is a large stump out in the water this year. As people are going down the river they are being directed by the current into the stump and folks are having a difficult time getting out of that area. I am concerned that someone will drown there this year.

Craig Ward, City Manager, stated public works is responsible for the parks and I will discuss this with Steve Gaschler our Public Works Director. We will have to contact the Department of State Lands regarding the stump in the river. Thank you for bringing this issue to our attention.

4. MOTION: A motion to approve the Mt. Hood Cable Regulatory Commission's 2014-15 Budget.

Councilor Thomas stated I am Troutdale's representative on the Mt. Hood Cable Regulatory Commission (MHCRC). With me tonight is Julie Omelchuck, MHCRC's Program Manager and Rob Brading the Executive Director for Metro East Community Media. I am here to highlight a couple aspects of the fiscal year 2014-15 Commission budget request and to seek your approval.

The Commission is an intergovernmental partnership among Troutdale, Gresham, Fairview, Portland, Wood Village and Multnomah County. Each jurisdiction appoints citizen representatives to the Commission. The Commission has oversight, enforcement and public benefit responsibilities for the cable franchises. Troutdale has two cable service franchises; Comcast and Frontier.

Over this past year, the Commission has provided many services to our communities and its citizens. Some of those benefits include:

- Community grants funded over \$1.7 million in 2013 for local schools, libraries, nonprofits and local governments to use technology to support local public services. Descriptions of the 2013 grants can be found in the budget narrative.
- Two community access channels were launched in high definition (HD) format this past year; the first in the nation for community channels. MetroEast's government affairs channel, where your Council meetings are carried, is now available as both standard digital and HD channels.
- The Commission coordinated the first major upgrade of the Institutional Network backbone, on-time and within budget. Without increasing costs to our schools, libraries and local government sites, the upgrade provides much needed additional network capacity.
- The MHCRC independent audit for FY2012-13 found that the MHCRC's financial statements fairly presented the financial position of the MHCRC Fund. The full audit document is available on the MHCRC's website.

The Commission focuses its resources on the following two priorities: 1) Maintain the Commission's core responsibility of franchise management and consumer protection; and 2) Manage the franchise public benefit resources to positively impact and support our communities.

A major work load for this past year and the coming year is a comprehensive redesign of the community grants program. Over the past year and a half the Commission has engaged in a comprehensive process to realign its grant investments to have greater impact in the community. This fall, the MHCRC will launch an initiative focused on improving academic outcomes for all students in Multnomah County. The MHCRC is pleased to be working in alignment with the All Hands Raised Partnership, which includes the school districts, community groups, business leaders, elected officials, funders and others throughout Multnomah County. The MHCRC has established a framework to develop funding partnerships with each school district in Multnomah County. The MHCRC has also contracted with Portland State University, Center for Student Success, to assist with research and evaluation design in order to gauge long-term impact of grant fund investments. I look forward to coming back to Council this fall to share more specifics about the initiative.

You have been provided a copy of the MHCRC's FY2014-15 budget request in your meeting packet. The MHCRC Fund Budget is on page 11. Troutdale will receive over \$60,000 from cable franchise fees, after disbursement of funds to MetroEast and to the MHCRC operating budget. The franchise fee revenue and disbursement detail is included on page 13. Each MHCRC member contributes to the MHCRC's annual budget. Troutdale's contribution for FY14-15 is \$16,499. You may notice that the MHCRC Fund has a large Beginning Balance for FY2014-15. This is mainly due to the education funding initiative set to launch this fall. The MHCRC is combining dedicated grant funds over a couple fiscal years which will be granted in this upcoming fiscal year. This expenditure is reflected in the Community Capital Grants line item.

The MHCRC respectfully requests that the Council approve the 2014-15 proposed MHCRC Fund Budget.

Council had no questions regarding MHCRC's FY 2014-15 Proposed Budget.

MOTION: Councilor Anderson moved to approve the Mt. Hood Cable Regulatory Commissions' 2014-15 Budget. Seconded by Councilor Wilson. Motion Passed Unanimously.

5. RESOLUTION: A resolution providing for current FY 2013-14 Budget Transfers and Appropriation Changes.

Erich Mueller, Finance Director, stated this is the annual end of the year adjustments that I bring to the Council at the last meeting in June. We are moving around existing appropriations to line up the expenditures with the appropriations and the categories and

departments in which they occurred. The budget is prepared some 15 months in advance of now and frequently there are actual things that occur that we hadn't anticipated or planned on. In order to try and stay in compliance with the local budget law we are making adjustments here. Again, this is moving existing appropriations, we are not increasing appropriation. We are moving some from one particular department to another to account for an expenditure and we are also moving money from contingency appropriations to cover for items.

Erich Mueller reviewed the adjustments that are being made which are outlined in his staff report (copy included in the packet).

Councilor Allen stated as I was going through this some of the things I expected and understood the reasons why, but there were a couple of surprises in there. I just want to encourage when you start getting into larger numbers just put that in the update or something.

MOTION: Councilor Wilson moved to adopt a resolution providing for current FY 2013-14 Budget Transfers and Appropriation Changes. Seconded by Councilor Anderson.

VOTE: Councilor Anderson - Yes; Councilor Thomas – Yes; Mayor Daoust – Yes; Councilor White - Yes; Councilor Allen – Yes; Councilor Wilson - Yes; Councilor Ripma - Yes.

Motion Passed 7- 0.

6. PUBLIC HEARING / ORDINANCE (Introduced 6-10-2014): An ordinance amending the Troutdale Municipal Code Chapter 2.20 Committees and Commissions, pertaining to the membership of the Historic Landmarks Commission.

Mayor Daoust read the ordinance title. Back in 2011 we established this Commission with a membership of 7 but we didn't receive enough applications to fill the 7 positions. In 2012 we reduced the membership to 5 members. Lately we have learned of more interest to be on this committee. This ordinance would increase the membership back to 7 members keeping the membership at an odd number which helps prevent from having votes end in a tie. If we adopt this ordinance the terms for the two new positions would expire on December 31, 2017 and then become 4-year terms thereafter.

Councilor Allen stated I encourage participation by our volunteers and support this.

Mayor Daoust opened the Public Hearing at 7:26pm and asked, is there anyone here that would like to speak on this issue?

No testimony received.

Mayor Daoust closed the Public Hearing at 7:26pm.

MOTION: Councilor Anderson moved to adopt an ordinance amending the Troutdale Municipal Code Chapter 2.20 Committees and Commissions, pertaining to the membership of the Historic Landmarks Commission. Seconded by Councilor Wilson.

VOTE: Councilor Anderson - Yes; Councilor Thomas – Yes; Mayor Daoust – Yes; Councilor White - Yes; Councilor Allen – Yes; Councilor Wilson - Yes; Councilor Ripma - Yes.

Motion Passed 7- 0.

7. PUBLIC HEARING / ORDINANCE (Introduction): An ordinance adopting updated and revised Metro Urbanization Policies along with updated Metro population and employment projections into Troutdale Comprehensive Land Use Plan Goal 14 Urbanization, specific to Statewide Land Use Goal 14 Urbanization, in fulfillment of Task 6 of the City's Periodic Review Work Program.

Mayor Daoust read the ordinance title.

Craig Ward, City Manager, stated this is the final task necessary for us to complete Periodic Review, a process we began several years ago. John Morgan is a planning consultant who we employed to work on this task.

John Morgan, Consultant, stated I met with both the Citizens Advisory Committee (CAC) and the Planning Commission (PC) to go through this material.

This is an enigmatic task that the City is challenged with in that you are mandated by state law to adopt population projections as created by Metro, therefore, there is not a lot of discretion in this process. The reality is that there is a long history in this state of communities creating their own population projections, literally stealing growth from other cities or refusing to take it from other cities. About four legislative sessions back the Legislature said that these population projections would be coordinated at the county level. That subsequently has been modified in the Metro area to where they are coordinated by Metro. They are created by the professional demographic staff at Metro. The whole idea is to create scientifically based, rather than politically and aspirational based, population and employment projections. The Legislature, by statute, requires every jurisdiction to adopt these. We are here tonight to do that.

The population and employment projections created by Metro take into account a number of things. One is regional growth projections, which for the most part Metro has determined are fairly consistent with the past. We know that population projections are very cyclical and will go up and down on a micro scale, but on a macro scale they tend to be fairly consistent and predictable over time. Today Metro just released their projections for the entire Metropolitan area that will be used in the update of the Urban Growth Boundary (UGB) over the next year, and they are pretty much a perpetuation of business

as we know it which does mean that Troutdale has a market demand for growth. That is part of the projection. The second part that goes into it is available land. Troutdale has a fairly constrained supply of residential land; that comes into play. It also has a predisposition toward single-family development as opposed to multi-family development and that comes into play in terms of determining the capacity of the land inside of Troutdale for absorbing population. The second part of this analysis is on economic forecasts. The one thing that we know about Troutdale is there is a lot of land for significant employment growth compared to some of the other communities in the region.

In the staff report (copy included in the packet) I included the Metro projections. It is important to realize that when you adopt these projections you are not adopting a number, you are basically saying we hereby pledge that we will use the Metro projections when we do planning. Those may change over time, but we will use those projections. Those projections are used in two basic ways. One is to determine adequacy of land for projected growth, and secondly it is used for infrastructure master planning in order to assure that there is adequate sizing of streets, sewer, water, storm drainage, etc. to meet the needs of a growing population over twenty years. The projections (Exhibit A of the staff report) show that Troutdale grows at a pretty good rate, but it grows in a higher percentage of single-family than the surrounding area. It also shows a tremendous growth in employment compared to the surrounding area. Gresham takes the bulk of the growth and most of that is in multi-family. Troutdale far outstrips Gresham in terms of employment growth as a percentage increase. I think what the forecast tells us is that Troutdale will continue to be able grow as an employment center where a lot of the housing, especially the higher density housing, for employees will be created in the Gresham area.

The CAC recommended unanimously that this work be approved by you. The PC made one change in the proposed text and that was to take out a specific reference to 2035. They thought it would be easier if it didn't have a year reference and rather just said "the Metro projections".

What is before you tonight is a proposed ordinance. Attached to that ordinance is Attachment A. Attachment A is the chapter from the Comprehensive Plan – Goal 14 Urbanization. It includes three proposed changes in the text of that chapter. At the bottom of Page 1 of 2 is a narrative that describes this process and a brief narrative discussion of the proposed growth. On Page 2 under Policies, it includes the addition of a policy that reads, "6. For planning purposes, the City shall use Metro's forecasted population and employment numbers." That one sentence is the crux of this entire process. The PC's Findings of Fact and Recommendation are included and will be adopted by reference. This work has been vetted by the staff at the Department of Land Conservation and Development (DLCD) to make sure that it fulfills the requirements of the Periodic Review Work Task and is also consistent with state law. They will not give us a formal response until it is done. Informally they have assured me that this is exactly what is being sought in the periodic review requirements and is in compliance with state law.

Mayor Daoust asked how often does Metro do this?

John Morgan replied Metro does its UGB expansion once every five years. In that process the first thing they do, which happens in year three of the cycle, is they create the urban growth report which was issued today. This report includes these regional population projections. For the next two years the region will go through the process of deciding what to do with those projections in terms of identifying areas for expansion of the UGB if needed, determining a needed acreage of both employment and residential land and figuring out where it best goes. Craig and I have discussed there is probably a significant role for Troutdale to play in that process. The requirement to maintain a 20-year supply of buildable land is built into state law. It doesn't mean that is rolling every year, it means that about every five years you check that information and bring your land database inside the UGB up-to-date.

Councilor White asked by adopting these projected numbers, is that going to weaken our case for completing Troutdale? We are trying to gain some of the last remaining area of growth to the south of 800 acres.

John Morgan replied no it doesn't. I come back to the fact that the State said you will adopt Metro's projection. There really isn't much to do with that. Making the argument for those 800 acres then comes down to the allocation of the regional population projection. What the report says is over the 20 years the Metropolitan Region will grow by close to 700,000 people taking it from 2.3 million to 3 million over the course of 20 years. There is no reason to think that Troutdale couldn't argue that those 800 acres are an appropriate place to put some of that.

Councilor White stated to me this is exciting news. It is what we already knew about Troutdale and that is that we are poised. I think that is the type of growth that we want to see. With our available land for industry I think we are going to run into a shortage of executive type housing. I think a lot of those people would like to live in Troutdale since they will be working here. I don't know if we can influence that in any way.

John Morgan replied if by executive housing you mean mansions on 2 to 5 acre lots – that is very hard to come by inside the UGB. You will find resistance to doing that kind of development because it makes fairly inefficient use of land. If you are trying to establish an UGB for the purpose of protecting farm and forest land and creating efficiency, that really isn't a very efficient development pattern. I do know that there is opportunity, especially on steeper hillsides, to go with larger lots. There are some development tools that may come into play. Basically what Metro says, what the State Housing Rule says, is this community is required to create the opportunity for the market to create housing at an average of 8 dwelling units per acre. If you do a bunch of 1 or 2 acre lots that is fine as long as you go with some real high density housing somewhere else.

Councilor White stated you describe that 800 acres perfectly. It is kind of rolling hills, steep slopes and valleys; that would be ideal for 1 acre mansions.

Mayor Daoust stated the number on the table in the staff report that got my attention was the addition of 525 single-family residential dwellings over the next twenty years. I tried to envision where all 525 homes would go within Troutdale and I can't come up with it.

John Morgan stated that bodes well for any aspiration to expand the UGB area for Troutdale.

Mayor Daoust asked how did they come up with that number?

John Morgan replied a lot of it is assumptions on things like infill; the willingness of a person who owns a half acre lot to break it into three lots. These projections are completely dependent on the market fulfilling them, which the market may never do or it may demand more.

Councilor Anderson stated the number that jumps out to me is the jobs number. Especially the statement that Troutdale is going to create the jobs and the people who fill them will be living in Gresham. I think we could probably market ourselves and see what we can do about that. Are the bulk of these jobs industrial? What percentage?

John Morgan replied about half. The projection is about 10,000 new jobs in the area, of which half would be industrial. About 2,000 will be retail and approximately 2,300 would be in the service industry.

Councilor Allen stated I can't help but notice that during my time of service for the City the amount of planning that we end up having to go through with all of the state mandatory goals, the amount of growth that we actually realize and the effect that those plans have on real growth seems very disproportionate to me. Is there any let-up on these goals?

John Morgan replied once every six or so years, jurisdictions over 10,000 have to update their Comp Plan.

Councilor White stated a state expert has told us that due to our lack of inventory that we won't be required to do another periodic review.

Councilor Thomas stated what I noticed was the projected population. When I first came on council it was at 22,000 to 23,000 and to see it come down to 17,000 means we don't have to have quite as many people sitting on top of each other. I appreciate the fact that they have come down to a more reasonable number. I do like the projections for the potential job increases.

John Morgan stated I think the track record for Metro in the last few years has been much more spot on with market reality than in the past.

Mayor Daoust stated this is the first hearing on this ordinance. We will be bringing this up again in two weeks.

Craig Ward stated I would like for John to be in attendance for the second hearing on this ordinance. Unfortunately John is not available on July 8th, so the second hearing won't take place until August.

Mayor Daoust opened the Public Hearing at 7:50pm and asked, is there anyone here that would like to speak to us on this issue?

No testimony received.

Mayor Daoust closed the Public Hearing at 7:50pm.

8. STAFF COMMUNICATIONS

Craig Ward stated a week from this Friday is Independence Day and City facilities will be closed. The Police Department will be conducting enhanced patrols for fireworks enforcement.

At this time we have a fairly light agenda for the July 8th meeting. At our last work session we talked about having an executive session on property acquisition. If it is the Council's desire we can have that executive session on property acquisition following the regular meeting.

Mayor Daoust asked on July 8th, what specifically are we going to be talking about regarding the chronic nuisance ordinance?

Councilor Thomas stated the ordinance that Ed Trompke is drafting.

Ed Trompke stated the ordinance will be tailored to the Lake Oswego code. I am working with staff in my office this week and plan to get a draft to Craig by the end of the week.

Council discussed whether this should be a work session or a regular meeting agenda item. The consensus of the Council was to schedule it on the regular meeting agenda as the first hearing, with the second hearing at the August meeting.

Mayor Daoust asked is there a work session topic for July 8th?

Craig Ward replied yes, moving municipal court and council meetings to the Police Facility.

Mayor Daoust stated we will have a regular meeting, a work session and an executive session on July 8th.

9. COUNCIL COMMUNICATIONS

Councilor Anderson stated in the news this week, it has a dateline of Troutdale and it has to do with this County ordinance. The Outlook editorialized on it today. Mr. Trompke, I

want to get your take on this and what if anything should this Council be doing regarding it.

Ed Trompke replied what the Council does regarding this is policy. I will tell you what my take is of the current status of the Ross vs. Multnomah County litigation and what it means to the City. Multnomah County adopted an ordinance that is specifically permitted by the Oregon State Law for either a city or a county to adopt. It prohibits any person from carrying a weapon that is loaded in a public place with certain exceptions for hunting, concealed weapons permit holders, police officers; there a bunch of exceptions. The County is now charging one person who was arrested in the city limits with violation of that criminal County ordinance. That is unusual because ordinarily counties don't enforce their police power regulations inside city limits, they only enforce tax and similar kinds of ordinances in city limits. The statute, ORS 203.240 says that statutory counties, they are not home rule counties with their own charters, can't do that without the council's consent. They can only enforce inside the city limits with the city's consent.

The question is, can Multnomah County, which is a charter county, exercise its Home Rule Authority to enforce an ordinance in the city limits without the city's consent. It has never come up before in any kind of recorded decision. However, I don't see this case, in particular, as having any precedential effect for the City. The reason is it is a criminal statute and there are four different provisions of the Oregon Constitution that deal with home rule. Article XI section 2, prohibits the legislative assembly which otherwise has virtually unlimited powers, from adopting charters in cities, and at the same time says that any cities that do adopt their own charters under Article IV Section I(5) must obey the State Constitution and the criminal laws of the state. The State in that respect has now adopted these criminal laws and has preempted the field; there is a specific statute that says all gun laws are being preempted by the State Legislature and cities and counties only have the authority that is being delegated to them in three or four statutes that follow the preemption law. The City only has statutory authority, it doesn't have constitutional home rule authority to adopt gun control ordinances. As a result any decision in this case will only cover this particular statute. My take on the case is that it will turn on what the Legislature meant when it adopted this statute. The statute basically says cities or counties may adopt an ordinance that prohibits people from carrying loaded weapons in a public place except for the following. That is exactly word for word what Multnomah County adopted. So they are clearly entitled to adopt that ordinance, the only question is can they enforce it in the City. If they can the Multnomah County ordinance also says that it won't enforce the ordinance in any city that adopts an ordinance on the same subject. Troutdale may have done that; Troutdale has its own set of gun ordinances but it does not prohibit every person from carrying a loaded weapon in a public place. The court is going to look at that and say is that the same subject or is it a different subject because it is a little different. I can't tell you what the court will do with that.

The bottom line on it is, I don't see it as having any precedential effect; I don't see it as opening the door for the County to then say we are going to adopt a zoning ordinance and we are going to overlay it on the City of Troutdale and you are going to have to live with it. This is separate from the kind of home rule charter authority that Metro has

because Metro's charter and home rule authority seems broader. The one case on that point does seem to say that Metro's charter says it will adopt a functional plan which can overrule cities in the civil arena regarding zoning and other land use arenas. The city, county and Metro home rule rules are all different which makes it even more complicated to try and explain when there is very little case law.

What can the City do? The City can, if it wants to, intervene in the litigation. The trial is coming up July 9th and that is somewhat problematic because we would have to get the motion to intervene, have it heard and then file briefs to cite any factual evidence that needs to be put in and get witnesses to put in any factual evidence. There may be some and there may not be. It is unlikely but you never know until you really dig into a case. One step back from that might be that the City decides it wants to file an amicus brief (friend of the court) which says that the City looks at the law this way and we think the court should look at it the same way also because the City does have an interest in enforcing its ordinances and the City Council may believe that the City's gun ordinances do occupy the field and therefore the County's shouldn't be applied in the City; and we also believe that the Legislature intended, when it adopted these statutes back in 1973, that any ordinances adopted pursuant to the statute shouldn't apply in the City if they are adopted by a county. It's a matter of legislative intent and that means digging into the old typed manuscripts of the legislative committee hearings from the 1970's and finding out what they talked about at the time. I wouldn't be surprised if there is something in there that says that the consent of the city council is required because that is what the lawyers think that home rule division of authority requires; for the county to apply criminal laws in cities requires consent. Everyone has thought that since about 1967 when the Attorney General came out with his first opinion on the subject; there was two or three of them in 1967-68 and they generally say that city councils have to agree before the county ordinances will apply. It has just never come up in court so we don't have any real solid ruling on it. All of that research would need to be done whether it is an amicus brief or an intervention in the case.

Are there other things the City Council could do? The City could consider making a statement that it does or does not believe that it's occupied the field with its ordinances. I don't know what kind of weight that might carry, but it might. On a going forward basis, the Council has directed staff to negotiate with the Multnomah County Sheriff's Office (MCSO). You might want to bring this up in the negotiations because it is an unanswered question of whether the MCSO would feel compelled to charge people in the City with County ordinance crimes, or not. If it could be built into the contract, maybe it does and maybe it doesn't; that is a negotiation point. Also possible is to consider an agreement with the District Attorney's (DA) Office, who actually does the charging. The officers arrest and cite people but the DA's Office has all of the discretion to charge. It looks to me like under County Home Rule, Article VI Section 10, the County can't direct the DA's Office on how to charge so they can simply ignore those if the DA's Office believes or has any reason to believe that it is not the intention of the Legislature to make those ordinances chargeable in the city limits. It is complicated. There are a lot of things to talk about, but the DA's Office might be amenable to an Intergovernmental Agreement that would discuss that. It is too early to say at this point what anybody might think about it.

If you want to get involved in the litigation, either through intervention or through an amicus brief, you probably need to act very quickly. Discuss it tonight and direct staff as to what to do. If not, then you would simply sit back and watch what happens with the litigation and hope the court gets it right.

Mayor Daoust stated I have thought about this a lot and I have gone back and forth on whether the City should get involved in this particular court case. Reading between the lines and talking with people, both the City Attorney and our Chief of Police, I am inclined not to get involved with this court case. I just don't want this particular subject of gun control to be put on a stage and talking about home rule, which is a completely large discussion point of whether the County has the right to tell cities what to do; that is a discretion in itself. I feel real uncomfortable with using gun control, especially after what happened here, and putting Troutdale on the stage as possibly being viewed as getting in the way of anybody trying to discuss the gun control issue. I am afraid it might turn into that.

Councilor Allen stated wouldn't we need to have involvement in the case if we wanted to appeal?

Ed Trompke replied yes. If you want to appeal it the City would have to intervene and become a party to the case, or else hope that the other parties appeal and then you could get involved with an amicus brief.

Councilor Allen stated to me it is less about gun control and more about does the County have the ability to intervene in our ordinances, and if so then everything we do from that point forward could be changed. That would be concerning to me.

Mayor Daoust stated I think that is the extra step that you are jumping to that the City Attorney addressed already; it would not set a precedent because it is strictly in the criminal arena.

Ed Trompke stated and specifically in gun control; it would be limited to this set of criminal statutes that deal specifically with possession of fire arms. It is a specific preemption of all local authority in one statute with a re-delegation back to the cities and counties in equal amounts for either to adopt certain kinds of ordinances in four or five different statutes; different ordinances are allowed but nothing else is allowed with no discussion as to whether cities or counties trump each other in doing that. This case will only decide, in my opinion, what those statutes mean, specifically the gun control statutes.

Councilor Allen stated the second part of this is more about the tragedy that we have just been through and it being compounded by this new case, and from what I know this isn't really the type of person we want to go after. I find it kind of concerning. Maybe the Chief knows more details than I do. I think he knows more about the particular issue, but maybe not about how the town feels about him.

Councilor White stated to me this wouldn't set precedents on the gun control issue.

Ed Trompke stated yes it would.

Councilor White stated that greatly concerns me. I think we have no choice but to get involved. I think the Troutdale ordinance, whatever happens in Troutdale should be dealt with on our set of rules that we have in place. (Inaudible due to train whistle) If the Judge goes a different direction we will have no say; we won't have an opportunity to get involved.

Mayor Daoust stated I don't know that to be true. Right now our police do not enforce the Multnomah County ordinance. They arrested this guy under state law, which is all that the Police Chief said he needs to deal with gun issues in the City. The Chief prefers to just see the court case run its course and see what kind of decision the Judge makes as to what laws our Troutdale Police Department should enforce.

Councilor Ripma asked Ed, would the argument that we would make if we had a policy wanting to not have this become a precedent even for gun laws against our freedom to do what we want, would those arguments be made in this case anyway whether we intervened or not? Isn't the defendant going to argue that point? Are there other parties that are intervening in some way or another?

Ed Trompke replied the civil case is five Multnomah County residents, one is a Troutdale resident, arguing that the statutes are not allowed to be enforced in the cities that the residents live in. The criminal case, I don't know what is going to happen with that. The DA's Office may not even continue the charge, they may simply prosecute on the state law charge. As the Chief said, the state law is plenty to charge somebody under to punish them for doing something wrong with a firearm. If I remember correctly, the person is alleged to have been carrying a weapon concealed in a backpack or some kind of a satchel in violation of the concealed carry statute.

Councilor Ripma asked could the County Commissioners direct the DA to pursue the county code or not?

Ed Trompke replied oddly enough no. When county home rule was adopted the DA's were not part of the Executive Department, they were part of the Judicial Department and the explanation in the 1958 Voters Pamphlet says this measure requires that no charter affect the selection ten year compensation powers or duties of judges or DAs; this is to ensure uniformity in the organization of the Judicial branch of government. So they can't tell DAs how to do their job.

Councilor Ripma stated that is good. Is the civil case and criminal case both going?

Ed Trompke replied yes.

Councilor Ripma asked if we intervened would we intervene in one or the other or both?

Ed Trompke replied it would be in the civil case, which is the Ross vs. Multnomah County case. The other case is simply proceeding through the criminal system and I have no idea what stage it is at other than the person has been charged.

Councilor Ripma stated I do not think we should intervene. We have a stake in this but it could be costly and of uncertain value. I am not saying that Ed and his firm wouldn't do the best job, but I think the arguments that we want made will be made. I agree with Mayor Daoust that it is not the right issue. I don't think it would have any long-term effect on our ability to govern our lives any more than we have lost already. Think of Item #7 in our packet tonight where we were invited to have a hearing and vote yes on an ordinance. It happens all the time. I don't mean to belittle this, but I think it is a very divisive issue. I think the issues at stake here are not as enormous as might be thought. I also think that the Judge will rule correctly; that the county ordinance doesn't apply. Just because of the long assumption, based not just on guess work but on careful readings of our Constitution and ordinances. I would prefer we stay out of it.

Councilor Thomas stated it is unfortunate the events that happened a few weeks ago. For me it is really more about the City maintaining its right to govern itself. I would prefer to see us file a briefing with the court. It does give us some options later on that we may not have otherwise. One of the comments I have heard from other people about this is why have a city council if somebody can just come in and step on you. I would want to make sure that we kept it separate. To me it is really about what the City's rights are under our own charter. It's not so much that there is a criminal case going on with a very unfortunate incident. It would be difficult to keep those separate because of the emotion behind both of these issues. We have a vested interest as a home rule city to be able to understand and know the laws that we want to have in place. We have had situations in the past, for example the Sellwood Bridge. This City Council stood up and said no we aren't paying for it. So the County went to the Legislature and changed the laws and now we have to pay for it. At least it went through a process and it wasn't just dictated to us.

Councilor Allen asked how much effort do we have to go through just to maintain the right to appeal since we don't have any idea how this is going to unfold?

Ed Trompke replied you would have to intervene in the case, appear, and file some briefs, and an oral argument and talk to the Judge about it. You would have to lose in order to appeal. There is probably 25-30 hours of work to put together a well thought out, well documented argument and present it to the court, assuming we get the intervention. You file a motion to intervene and the Judge considers it and the other side gets to argue yes or no. I would bet that the Judge would say that I don't want to delay this because it has been around a long time. Given the limited amount of time it would be a substantial amount of resources to get it done; it's not impossible but it is a fair amount of work.

Councilor Anderson stated I share Councilor Thomas' concern but I have to think that if the home rule issue comes into play every home rule city in Multnomah County will be up in arms over this. That is my issue with this. I trust our Chief and I trust you Ed. I just think

we sit this one out. They got our attention. I think this is an important subject that we needed to spend this time on because this is a big-time issue for us. But we don't have to be pioneers of everything; we don't have to react right away as much as some of us want to. I wanted to but then I heard people smarter than me saying that might not be the prudent thing to do. If I trust our staff, our Attorney and our Chief, I have to go with their recommendation even though part of me just wants to go get them on this one, but I don't think that would be the smartest thing to do.

Councilor Allen asked wouldn't it be a considerable effort, even if all of the cities don't like it, to change it after words?

Councilor Anderson replied the issue, as Ed pointed out, is the firearms issue. My issue with it is more along the lines of what Councilor Thomas said, and what you touched on Councilor Allen. These issues don't conjoin, but if they ever were to it would render us useless. I think we do a pretty good job managing the affairs of this City as elected officials and I certainly don't want to see that challenged. I think we all have our City's best interest at heart on everything. For policies to come in from elsewhere and to have our authority superseded, I don't think we are the only ones that would stand up and object to that and that is the issue that Councilor Thomas brought up. That is my overriding concern with this. I just don't get the sense that it is going to happen.

Councilor Allen stated it would only be the cities that the ordinances don't align with the County's. For me it is less about firearms and more about our ability to have a say in our own town.

Councilor Anderson stated I agree with that. I am just going to go off of what Mr. Trompke's advice was, that it is not precedential. The gun issue here will be compartmentalized; it won't mean the plastic bag bans, etc. It doesn't mean that Portlandcentric policies will migrate there way out here under County authority regardless of what we have to say about it. That is not what I heard from Mr. Trompke tonight.

Councilor Thomas stated my first thought was that I don't want to be forced to do things that the City of Portland has done. But what it really came down to was whether or not we can maintain our home rule authority and not have the County dictate certain things that our citizens don't necessarily want. We have run up against that issue as Councilor Ripma mentioned about Item #7 which we were invited to vote yes. Those types of things do come down not only from the County, but from Metro and others. We get a fair amount of unfunded mandates. We do get a lot of those that we have no control over, but it would be nice to maintain the control of what we are supposed to have control over.

Councilor Anderson stated I agree with you. I just don't think this issue at this time and this venue is the right way of doing it.

Mayor Daoust stated Bruce McCain is going to be in charge of making the arguments and he is probably going to focus a lot on home rule, I would guess.

Ed Trompke stated he and I have traded a couple of emails and he seems to be focusing on that. I haven't communicated with him since I really sat down with this yesterday and decided that I didn't think it really was a true home rule issue, it is much more statutory – 166-170 statutes. But I don't know what his legal theory is.

Mayor Daoust stated I have seen Bruce McCain in action and if anybody is going to argue for home rule Bruce can do a really good job at that.

Councilor Allen asked can we at least provide assistance?

Mayor Daoust stated we have somebody already in this trial that is going to make the argument for us.

Councilor Allen asked can we at least provide assistance so that he has the best chance?

Mayor Daoust asked what assistance are you talking about?

Councilor Allen replied instead of taking the full 30 hours, at least correspond with our attorney.

Mayor Daoust asked like an amicus brief?

Councilor Allen stated Ed would know best how he could assist Bruce without being full-blown into it.

Mayor Daoust stated from what I understand an amicus brief would be a lower investment in time.

Ed Trompke stated and it could be limited in scope and not address all of the issues that would have to be addressed in an intervention. We could pick out which pieces of it that are of concern to the City.

Councilor Allen stated I think our concern is the right to govern ourselves.

Ed Trompke stated in criminal statutes as well as the civil statutes.

Councilor Allen replied right.

Councilor White stated I think Councilor Thomas hit it right on the head. I was present at Multnomah County when they passed their gun ordinance and I spoke against it. It was very one-sided and emotionally driven. Their numbers were very misleading because a lot of the gun deaths were suicide and they never made that public. I think this case is already decided. I think it will set the precedent that the Multnomah County governance, which I feel violates the Second Amendment, will become the standard for us here in Troutdale. When you think about 30 hours to get involved in this, that is a drop in the bucket compared to what has already been spent on gun control and protecting our rights.

I think it is well worth the money to get involved and I think we are not doing our job if we don't get involved. We are taking an awful big risk. I can already assure you after going through that experience that it's not going to go well for Ross. That is my opinion.

Councilor Ripma stated I don't agree. I think our rights as a city will end up being upheld.

Councilor White stated it is going to set the precedent Councilor Ripma; I guess you are okay with that.

Councilor Ripma stated it is exactly that that I don't want to get into. My opinion is this is not the place to draw the line and worry about the County passing ordinances. To pick this one when it has such limited precedential value and such high emotional content, I just don't agree this is the place.

Mayor Daoust stated I don't agree either. I think there is too much of a perception issue with this hot issue for us to get involved in this case. It will turn into a gun control issue; that is what the perception will be. I know how much we want to argue with control of our own city and we probably all agree with that, but the perception of this case will quickly turn to gun control. If we are going to get involved with this case and we are saying we don't want to do what the County wants to do with gun control, as bad as that ordinance may be, the perception will be that the Troutdale City Council wants to get in the way of that. That is the part that I am uncomfortable with.

Councilor White stated the ordinance is poorly written; it was emotionally written. That is why MCSO said they wouldn't enforce it and that is why Chief Johnson and Chief Anderson have said they wouldn't enforce it.

Mayor Daoust stated yes the Chief did say that. Chief Anderson said he would not have the City intervene or get involved with this case.

Councilor Allen stated we do need to make some changes to our own ordinances. Does this prevent us from doing that?

Mayor Daoust replied I don't think so.

Councilor White stated it won't matter though; the precedent will be set.

Ed Trompke stated I didn't want to suggest this but the Council could assert its home rule authority to the maximum amount allowed by law and say that no County or Metro ordinance will be enforced in the City without the consent of the Council except to the extent the Constitution requires. Then you would live with the Constitutional minimum amount of interference with the City.

Mayor Daoust asked no matter which way the case goes?

Ed Trompke replied if the court case goes that way then what you would have is the County having adopted an ordinance under a statute that says a city or county may adopt an ordinance to regulate, restrict, or prohibit the possession of loaded firearms in public places. You would have said that it doesn't impact inside the City limits except as the Constitution requires and they would have adopted something that says it does and then you would square it off and some court would have to decide it down the road.

Mayor Daoust asked so that is an ordinance we can adopt with a general statement like that?

Ed Trompke replied yes. It would go to the Constitutional maximum for the City to exercise as much independent authority as allowed under the Constitution. You could do that and it would apply in every aspect. This didn't seem like the best result because all it does is kick the can down the road. I was waiting to see if there was a general consensus here but there seems to be division in the City Council.

Councilor Allen stated since we don't know whether the can needs to be addressed or not, kicking it down the road would be preferable to me.

Councilor Anderson stated I would agree.

Mayor Daoust stated from the switch that just occurred, it sounds like we probably would not get involved with this particular case, but adopt something that gives us the control that we want. This would be a better approach.

Councilor Wilson stated I agree with that.

Councilor White stated I feel like we are throwing Ross over to the wolves.

Ed Trompke stated what I would do is communicate to him the final draft of this. His trial is the day after your next meeting. This ordinance would not be in effect unless you declare it an emergency and then it could be in effect on July 9th when he goes to trial and he could put it in front of the Judge.

There was a consensus of the Council to direct staff to prepare an ordinance with an emergency finding for Council to consider at their July 8th Council meeting.

Councilor Thomas stated I had a request a couple of weeks ago from a family that I know that has a sight impaired child. They asked if beepers could be installed at 257th and Stark Street. I talked with Craig Ward who forwarded the information to Steve Gaschler, our Public Works Director. The County installed the beepers last week. I am very appreciative of the expedited manner in which this was handled. The family is also very appreciative. They now feel that their child can cross the street safely at that intersection.

The 4th of July weekend is coming up. I hope everyone has fun, but also be safe.

I would encourage staff to see what can be done at Glenn Otto to take care of the safety issue brought up earlier tonight.

Councilor White stated last Tuesday, along with my fellow Councilors and the Mayor, we attended the candlelight vigil at Reynolds. I wanted to thank Andrea Watson for the well-organized event. It was very touching. There was 2,000 candles lit. It started the healing process.

Councilor Allen stated I was impressed with our staff, our community and the communities around us that have supported us; I'm very appreciative.

I am not sure I got an answer; what we decided on earlier, does that kick the can very far down the road? Is there a decision that is going to happen on the 9th? I am not sure that we are so concerned as a Council to marry ourselves to this issue as much as we don't want the County telling us how to rule ourselves in the future.

Ed Trompke replied kicking the can down the road to the point where you adopt some kind of an ordinance that says, the authority of the city extends to the greatest extent allowed under the Oregon Constitution and includes non-enforceability of ordinances of other home rule counties within the City except with the consent of the Council. It says that the Council has to consent otherwise other home rule entity's ordinances are not enforceable within the City unless required by the Constitution.

Councilor Allen asked and there is nothing on the 9th that would squelch that?

Ed Trompke replied the Judge could ignore it. It would seem to me that under any well-considered interpretation of law, if this is in effect on the date of the trial the Judge would have to say I can't say what happened up until this was adopted, but after this was adopted its not enforceable on the City because you have two co-equal governments one saying it is enforceable and the other saying it is not.

Craig Ward asked is there unanimous direction from the Council to bring forward an emergency ordinance on July 8th?

There was unanimous consensus.

Councilor Wilson stated I also had a chance to talk to Andrea Watson. Over the summer the school district is going to have movies at Reynolds High School, and the libraries will be open at the elementary and middle schools. They are going to have a lot of interaction with the kids and schools to bring more closure.

Next Friday is July 4th, make sure you come to downtown to see all the flags that the Boy Scouts will be putting up.

Councilor Ripma stated I share the Council's views on the recent event and on the 4th of July.

Mayor Daoust stated there was a public service for Emilio Hoffman on Sunday at Good Shepard Church. It was very well-attended.

When it comes to getting involved with the high school there is an opportunity for all of us to get involved with a particular activity called Challenge Day. I was involved with that a year or two ago. Councilor Anderson and Craig Ward have participated. This is a proven program across the country. It allows the students a venue where they can express their feelings. I would encourage all of you to get involved.

Mayor Daoust read a statement into the record (copy attached as Exhibit A) pertaining to subcommittees of the Council for the purpose of assisting staff with contract negotiations.

Ed Trompke stated it is the deliberations that the Attorney General focuses on, which means that as city councilors you can't deliberate with the staff as to what is supposed to be accomplished, and you can't reach a consensus with the staff. You can have your own opinions and you can state your own opinions. Don't try to sway the staff as to what they are doing, where they are going with it; they will do what they are instructed to do. We are trying to keep everybody in a transparent process and trying to keep the public informed, but at the same time allow for frank and informal discussions at the level they need to be had when negotiating agreements.

Councilor Thomas stated the last half of the last statement in the first paragraph that reads, "...and oversee city staff on the same individual basis." I am not sure what that is intended to mean.

Ed Trompke replied when a person is at the meetings they are there as an individual, they are not there as a city councilor to oversee and direct staff as to how to proceed. That would be considered a deliberation if you are instructing people as to policy issues.

Councilor Thomas stated it was a bit confusing. I didn't want it to be read as though I am in charge of city staff.

Ed Trompke stated it means just the opposite.

Mayor Daoust stated there are reasons for doing this and part of it is because we have, as a Council, interjected ourselves into some of these negotiation sessions that typically this Council has never been in before. We created this ourselves. In order to stay clean with the Public Meetings Law, that is why we need to make sure that everybody understands that if the Council is going to be involved in stuff like this with staff we need to stay clean.

Mayor Daoust updated the Council on the following:

- The Historic Columbia River Hwy. reopened today.
- I attended the Annual Meeting of the West Columbia Gorge Chamber of Commerce. The Chamber is on a better path than they were before. I am very

impressed with the Chamber and the leadership that they have now. They are attracting more membership.

- The Sandy River Bridge dedication is scheduled for this Thursday at 10am.
- Officer Jeff Potter was involved in a bad motorcycle accident and is in ICU. **Council agreed to have the Mayor send Officer Potter a card on behalf of the Council.**

10. ADJOURNMENT:

MOTION: Councilor Ripma moved to adjourn. Seconded by Councilor Anderson. Motion passed unanimously.

Meeting adjourned at 9:05pm.

Doug Daoust, Mayor

Approved July 8, 2014

ATTEST:

Debbie Stickney, City Recorder