

MINUTES
Troutdale City Council – Regular Meeting
Troutdale City Hall – Council Chambers
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060-2078

Tuesday, July 8, 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 (via phone); Debbie Stickney, City Recorder; Ed Trompke, City Attorney; and Erich Mueller, Finance Director.

GUESTS: See Attached.

Mayor Daoust asked are there any updates to the agenda?

Erich Mueller replied there are no changes to the posted agenda.

2. CONSENT AGENDA:

2.1 ACCEPT MINUTES: June 10, 2014 Regular Meeting, June 17 Work Session, and June 24, 2014 Regular Meeting.

2.2 RESOLUTION: A resolution approving an Intergovernmental Agreement with the Port of Portland for cost sharing of the NW Graham Road Improvements.

2.3 RESOLUTION: A resolution approving an Intergovernmental Agreement with Multnomah County to provide services to older adults.

Councilor Wilson asked to have Item #2.1 pulled from the consent agenda.

Mayor Daoust replied we will pull Item #2.1 and discuss it separately.

MOTION: Councilor Thomas moved to adopt Consent Agenda Items #2.2 and #2.3. Seconded by Councilor Anderson. Motion Passed Unanimously.

Mayor Daoust asked Councilor Wilson to speak to Item #2.1

Councilor Wilson stated when we were discussing the demolition of the police station (at the June 17 Work Session) it was mentioned by Erich Mueller that we demolished the

police building under “making site improvements” as the reason, but the police building was demolished because it says, “demolish existing police facility and make site improvements”.

Councilor Thomas asked are you referring to the language in the ballot measure?

Councilor Wilson replied yes.

Mayor Daoust asked so if we go to the June 17 minutes what statement are you referring to?

Councilor Wilson stated about half way down on page 4, “Erich Mueller replied there wouldn’t be any limitation on us selling the property. The bond provided funds to make site improvements, which we interpreted as removing the old building. We have performed those site improvements. Nothing in the bond language requires us to retain the property or to use it for any particular purpose.” Bond Measure 26-116 specifically states that we are going to demolish the police facility building and make site improvements. We didn’t interpret removing the old building, the bond measure said that we were going to demolish it.

Erich Mueller suggested adding the following notation at the end of that paragraph in parenthesis: (Erich Mueller misspoke – the actual language of the bond measure explicitly provides for the demolition the old building.)

Councilor Wilson said that would be sufficient.

MOTION: Councilor Thomas moved to adopt Consent Agenda Item #2.1 – the June 10, 2014 Regular Meeting minutes, June 17, 2014 Work Session minutes with the correction stated, and the June 24, 2014 Regular Meeting minutes. Seconded by Councilor Wilson. Motion Passed Unanimously.

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

Stayce Blume, owner Skyland Pub and resident of Corbett, stated the Bite of East County will be held on July 26, 2014 and out of our appreciation for use of Columbia Park we wanted to bring each of you your own passes to the event and some admission tickets for you to give out to people.

Dean Hurford, Portland, stated we have invited Gresham, Fairview, Troutdale and Wood Village Councilors. We understand that you may or may not be able to accept these tickets so you are welcome to give them away. We have been working on this event for a couple of years. This event is put on by businesses. We are not doing this to make a profit. We are doing it for a charitable cause. Zarephath Kitchen provided around 180,000 meals last year. The first year of this event I believe we donated in excess of \$5,500. We appreciate you donating the park and the fees. We are expecting around 2,500 people.

There will be some great bands. We targeted a local charity, Zarephath, to keep it in our community. The event runs from 11:30 to 7pm on July 26 at Columbia Park.

Councilor Anderson stated our business people are maligned quite regularly for being in it just for the money. While you are in it to make money, because that is what makes a business successful, you also give back. Thank you, I appreciate it.

4. APPOINTMENT: A motion to appoint Jon Lowell to Position #6 on the Historic Landmarks Commission. This appointment will take effect on July 24, 2014 and the term will expire on December 31, 2017.

Mayor Daoust stated we originally had seven positions on the Historic Landmarks Commission (HLC). We reduced it to five members after not having an initial interest from citizens to serve on the HLC. During the last recruitment we had two additional applicants interested in serving on the HLC, Jon Lowell and Phil Matson. I contacted both of these folks and Jon Lowell is still interested in serving and Phil Matson declined because he is busy on the Parks Advisory Committee.

MOTION: Councilor Anderson moved to appoint Jon Lowell to Position #6 on the Historic Landmarks Commission, with the appointment taking effect on July 24, 2014 and the term expiring on December 31, 2017. Seconded by Councilor Wilson. Motion Passed Unanimously.

5. PUBLIC HEARING / ORDINANCE (Introduction and Adoption): An ordinance adopting a new chapter of the Troutdale Municipal Code, Chapter 1.06, "Home Rule Authority" and exercising the Home Rule Authority of the City of Troutdale under the Oregon Constitution, and declaring an emergency..

Mayor Daoust read the ordinance title.

Ed Trompke, City Attorney, stated the Charter of the City in Section 5 says that the City has all of the powers that are allowed to the City by the State and Federal Constitutions and other laws. One of those powers has been the exclusive jurisdiction within the realm of local regulation within the city limits. As the Council discussed at your last meeting Multnomah County has adopted an ordinance that purports to apply within the City of Troutdale without the consent of the Council. The matter is subject of a challenge in Circuit Court tomorrow. As a result this ordinance was drafted by me at your request and direction in order to provide that the City clearly says to the Court that the City has exclusive jurisdiction over regulatory matters within the city limits unless it consents to those regulatory matters, or if required to have them by the Oregon Constitution. There are two or three provisions in the ordinance because some state laws apply anyway, some other things apply anyway and so I carved those out to make this as clear as we could make it. There is a typo that was pointed out this evening on page 1 of 2 in the third finding on the third line it says, "where statutes preempt its authority in favor of the exercise state power", that should read "where statutes preempt its authority in favor of

the exercise of state power...”. This simply says that the City has explicit power unless it consents to the other regulatory matters.

Mayor Daoust asked will this be provided to the Circuit Court of Oregon?

Ed Trompke replied if you would like I will provide it, or I can provide it to the attorney who is representing at least one resident of this city at the hearing tomorrow with an email stating that it was adopted tonight and that it is the intention of the City Council that it be taken into account by the Court, if the ordinance is adopted. If you prefer I can attend solely for that purpose.

Mayor Daoust stated it would be my preference to at least provide it to the court.

Ed Trompke replied I can email it to the Judge in the morning.

Councilor Allen asked would there be any legal difference in how we present this?

Ed Trompke replied the City has not intervened in the matter. The City could file it with a one page letter, amicus brief, bringing this to the courts attention that the City has adopted this ordinance and that it speaks for itself.

Councilor Thomas stated that sounds like a good idea to me.

Councilor White asked is there anything else, any further action if this goes to an appeal for example?

Ed Trompke replied the City could intervene on appeal; the City can intervene in a case at virtually any point with the permission of the Court. That shouldn't present a problem. The Court of Appeals has allowed interventions many times.

Councilor Allen asked would it be better to do the amicus?

Ed Trompke replied that way it becomes an official part of the court record.

Councilor Allen replied I think I would prefer it to be filed.

Mayor Daoust asked is that the same as a cover letter?

Ed Trompke replied in a very minor way, more than a cover letter. It would have the case heading on it and say that the attached is provided for the Court's education and information at the hearing. It is a little more formal because it is on pleading paper, but it doesn't have to be much more than that.

Councilor Wilson asked would it be better to have you read it into the record than it would be to just mail it in?

Ed Trompke replied it wouldn't be mailed in. It would be emailed or hand-delivered in the morning. Would it be better to read it into the record? There really isn't a provision for that in the court proceedings. It would be better to submit it in writing.

Councilor Anderson stated whether we email it, show up in person, or have it delivered, the ordinance itself is what we are worried about here, correct?

Ed Trompke replied yes. The ordinance does emphasize what everybody seems to have thought Home Rule meant between counties and cities for a long time. The Attorney General's opinions from the 60's say that. Your own city attorney gave you some information about that some months ago. It is unusual that the county adopted the ordinance that it did. This should clarify the City's position.

Councilor Anderson asked and it is your professional opinion that it will do so and that it will stand up to any challenges?

Ed Trompke replied it will stand up to any challenges unless the Courts decide that they want to redefine what home rule means. I have to tell you that they do that generationally. The last time it was heavily redefined was in 1978 in a 4-3 decision and it was bitterly contested. I would never purport to tell you that I can read the minds of judges.

Councilor Allen stated I would prefer that we file.

Mayor Daoust opened the Public Hearing at 7:25pm and asked is there anyone here that would like to speak on this issue?

Paul Wilcox stated I see paragraph C as being potentially problematic, particularly the second sentence, "C. State laws that are required by the constitution of Oregon to apply to the city shall apply to the city. Other state laws shall apply only with the consent and acquiescence of the city." There are literally thousands of state laws that are not specifically embodied in the state constitution. Is the City prepared to enumerate which of those apply within the city limits? Does the City really want to divorce itself that completely from the authority of the state? The emergency nature of this ordinance is stated to be in response to the suit against Multnomah County regarding MCC 15.064. MCC 15.064 is only one section of Multnomah County Ordinance #1199, which also encompasses MCC 15.051 and MCC 15.060 thru 15.067. All of these new or revised sections refer to firearms in one way or another. I wasn't able to find a copy of the actual suit against the County, so there is some question whether the challenge is against MCC 15.064, or Ordinance #1199. This might be a minor distinction of terminology, but it would appear that the City's basis for prohibiting county authority should have included every section of Ordinance #1199 or simply that ordinance in its entirety.

Ed Trompke stated with respect to the two sentences in paragraph C, "State laws that are required by the constitution of Oregon to apply to the city shall apply to the city." That is going to happen whether you want it to or not. The next sentence, "Other state laws shall apply only with the consent or acquiescence of the city." That is different from the county

ordinances because there are many statutes that do apply in the city and the city simply says that is fine. Generally speaking the legislature has allowed legislative authority, all of the legislative authority not delegated to the city, and then there is concurrent jurisdiction where both the city and the state have authority to regulate, and in those areas if the city doesn't object than it is acquiescing to the states authority. That is what that is intended to do; it takes into account where the city doesn't want to tell the state no this one doesn't apply, then it is acquiescing and it applies. That is different from the county ordinances. With respect to only picking out 15.064, 15.064 is the one that was discussed by the Council, in directing me to prepare the ordinance, as causing some issues with citizens of the city. The citizens are challenging the county ordinance. I don't think it is necessary to say any more than one ordinance. It could say more but that is the key one for the purposes of the emergency clause.

Paul Wilcox asked exactly which ordinance is being challenged in court tomorrow? Is it 15.064 or 1199?

Ed Trompke replied it is 15.064.

Mayor Daoust stated the reason for mentioning that is for the purpose of why we want to have the ordinance adopted as an emergency ordinance.

Ed Trompke replied that is the only reason for that to be included. This is an ordinance of general applicability that says that county ordinances only apply if the constitution requires them to apply in the city limits, or if the council consents to it. It applies to all county ordinances that are regulatory in nature and not taxes; taxes do apply.

Councilor Anderson stated so it is a global ordinance with an emergency clause specificity of 15.064.

Ed Trompke replied yes.

MOTION: Councilor Thomas moved to adopt the ordinance adopting a new chapter of the Troutdale Municipal Code, Chapter 1.06, "Home Rule Authority" and exercising the Home Rule Authority of the City of Troutdale under the Oregon Constitution, and declaring an emergency with the following change to Finding #3, "where statutes preempt its authority in favor of the exercise state power", to read "where statutes preempt its authority in favor of the exercise of state power".
Seconded by Councilor Anderson.

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

Motion Passed 7- 0.

Councilor Thomas asked do we want to talk about distribution?

Mayor Daoust stated we can. The only reason I brought that up was because I thought we should provide this to the Circuit Court of Oregon. I think we discussed it, unless we want to get more specific than submitting it in writing.

Councilor Anderson stated I really don't. The ordinance stands on its own. Ed will do the right thing. The reason this was an emergency was so that it could be delivered tomorrow; it will be delivered tomorrow.

Ed Trompke stated what I will do is take the direction from the City Council that it should be provided to the Court under an amicus or some other motion that will make it acceptable that will simply say it was adopted last night and the Council asked that it be provided to the Court for information purposes in the trial that is coming up tomorrow morning.

Councilor White stated this is a serious topic for us here in Troutdale. I would like it if we could be kept in the loop and advised on future steps so we are not in such a rush situation.

6. STAFF COMMUNICATIONS

Erich Mueller, Finance Director, reminded the Council to submit their League of Oregon Cities Conference registration forms to the Deputy City Recorder.

As it stands at the moment, subject to the Council deciding that they need to do otherwise, the next Council meeting will not be held until August 26, 2014.

The Mayor's Town Hall to gather public input on the future city hall is tentatively scheduled for Tuesday, September 16, 2014. This gives us enough time to make people aware of the meeting, return from family vacations, and it gives us time to advertise in the next issue of the Champion. We are working on some Flyers. The intent is to motivate the public to come and share with us their input on what they want in a city hall. Our consultants will be there to gather that information. I would like to confirm that the September 16th date was not going to be objectionable with the Council. ***Council agreed to hold the Town Hall on September 16, 2014.***

Mayor Daoust stated at the Town Hall we will probably get public input on not only what people want in a city hall but where they want city hall to be located.

7. COUNCIL COMMUNICATIONS

Councilor Thomas wished everyone a wonderful and safe summer.

Councilor White stated last Thursday I attended the grand opening of the new I-84 Bridges along with Councilor Thomas and Mayor Daoust. I wanted to thank ODOT for the fine job

they did, and the crew from Hamilton. It is a beautiful bridge. ODOT stepped up and was paying for flood insurance while there was an increased hazard with the four temporary bridges in the water during the construction. They sent out a notice reminding folks that the flood insurance that they were paying for expired on June 1st, so you are now responsible for your own flood insurance if you wish to maintain coverage. I thought I would read a portion of a letter from the Project Manager and Professional Engineer for ODOT: ODOT has been replacing the I-84 Bridges over the Sandy River and repairing the freeway bridges by Jordan Road since 2010. The new bridges reduce the potential for future flooding compared to the previous I-84 Bridges over the Sandy River because there are fewer piers in the water. The new bridges will handle future traffic growth and safely carry heavier modern freight and auto traffic. They will also improve access to the Columbia River Gorge and the Sandy River Delta Parks and Natural Areas for bicyclists and pedestrians.

Councilor Allen stated I like to promote peoples involvement in government. I like to respond to as many people as possible who are willing to talk with us or email us. I just wanted to say that on Paul Wilcox's email I did not respond back since I was not on the Council at that time, however, I do hope that all future activities that are important to our town are brought to the attention of Council. I just want to suggest that somebody does respond to him if they haven't already.

Councilor Wilson reminded everyone that SummerFest is on July 19th and encouraged everyone to attend.

Councilor Ripma wished everyone a happy summer.

Councilor Thomas stated I would like to thank the Chamber of Commerce for setting up the tents and providing the food for the grand opening of the I-84 Bridge.

Mayor Daoust informed the Council of the following:

- I will be attending a ribbon cutting ceremony at 8:30am tomorrow for Book Warehouse at the Outlet Mall.
- At 12pm tomorrow I will be at the Regional Mayors Meeting and the Small Cities Consortium.
- At 4pm tomorrow I will be attending the ribbon cutting ceremony at the Cedar Place Salon.
- At 6pm tomorrow there is a meeting of a new group called The Visionary Friends of Troutdale. The meeting will be held at the Barn Museum. This group is centered around Rip Caswell's proposal to have the park and statue of Sam Lancaster and Samuel Hill on E. Historic Columbia River Hwy. and Jackson Park Road where Rip is developing his property. They are hoping to complete the project by August of 2016 in time for the 100 Year Celebration of the Historic Columbia River Hwy.
- On Thursday I will be attending the East Metro Economic Alliance (EMEA) meeting at 10am. Councilor Anderson is the new Executive Director of EMEA.
- Terry Smoke is asking for a count of the number of flags for the downtown area.

- Councilor Wilson stated Terry wants to put up flags for 9-11 that list the names of everyone who lost their lives that day. They want to replace all of the flags that the Boy Scouts have on the poles right now with those flags for 9-11 and then change them back to the US flags after that. I am working on that for Terry.
- I will be attending the Oregon Mayors Association Conference from August 7th to 9th.
- July 26, 2014 is the Bite of East County at Columbia Park.
- August 2, 2014 is the Soulful Giving Blanket Concert at the Yoshida Estate. The proceeds from this event go to Randall Children's Hospital and Providence Cancer Center.
- August 3, 2014 is the Troutdale Cruise-In in downtown Troutdale.

8. ADJOURNMENT:

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

Meeting adjourned at 7:50pm.

Doug Daoust, Mayor

Approved August 26, 2014

ATTEST:

Debbie Stickney, City Recorder