

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

Tuesday, September 23, 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 (via phone), Councilor White, Councilor Allen, and Councilor Wilson.

ABSENT: None.

STAFF: Erich Mueller, Finance Director and Acting City Manager; Debbie Stickney, City Recorder; and Shelby Rihala, City Attorney.

GUESTS: See Attached.

Mayor Daoust read a statement into the record recognizing Junki and Linda Yoshida's donation of \$1 million to Mt. Hood Community College (attached as Exhibit A).

2. CONSENT AGENDA:

2.1 ACCEPT MINUTES: August 26, 2014 Joint City Council / Urban Renewal Agency Regular Mtg.

2.2 RESOLUTION: A resolution approving an Intergovernmental Agreement between Metro Regional Government and the City of Troutdale for funding of the Year Twenty-Five Annual Waste Reduction Program.

2.3 RESOLUTION: A resolution approving improvements to the old police station site.

2.4 RESOLUTION: A resolution providing advance authorization of economic development travel expenses of the Mayor.

MOTION: Councilor Anderson moved to approve the Consent Agenda. Seconded by Councilor White. Motion Passed Unanimously.

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

None.

4. PUBLIC HEARING / ORDINANCE (Introduced 9/9/2014): An ordinance relating to the Troutdale Riverfront Renewal Plan and establishing a procedure for transfer of the former Sewer Treatment Plant property.

Mayor Daoust read the ordinance title.

Erich Mueller, Finance Director, stated there were no issues raised at the September 9, 2014 meeting that needed to be investigated and further documented. Tonight is the second public hearing. Following the hearing the Council can consider taking action on this ordinance.

In May of this year the City entered into an Exclusive Negotiating Agreement (ENA) with Eastwinds Development, LLC which resulted in the Valuation Formula and Select Deal Terms for the sale of the City's former sewer treatment plant property located in the Urban Renewal Area, which the Council approved on August 26, 2014. That was one step of many in this process. This is just the next step which would move the ownership of the property from the City to the Urban Renewal Agency (URA). There will be many more steps along the way before the property will potentially be transferred to an outside party, Eastwinds Development, LLC.

The appraisal process is ongoing, as well as the other matters that were addressed in the Term Sheet that was approved. If the Council approves the ordinance tonight it will still require another 30 days before it becomes effective. There are a number of provisions/conditions that also need to be satisfied before the property would actually be conveyed from the City to the URA.

The draft Special Warranty Deed is included in the packet. It provides the assurance that the property would be developed in a manner that is consistent with the goals and requirements of the Plan.

At some point later this fall, as we make our way through this process, we will start another ordinance process for the potential sale of the property, which would have two additional public hearings. This continues to be an open, upfront and transparent process as the City moves forward.

Councilor Allen asked in Section 7 of the ordinance, can you give me an idea of what funds we plan on disbursing?

Erich Mueller replied what I anticipate in this particular circumstance is primarily those costs associated with completing the survey work with the engineers on the easements, any costs associated with the title insurance policy, the appraisal costs, and any additional fees associated with obtaining the No Further Action (NFA).

Councilor Allen asked so no development at this time?

Erich Mueller replied I don't anticipate there being any costs associated with actual development. It is simply going to be the costs associated with accomplishing the transfer from the City's ownership to the URA's ownership.

Mayor Daoust opened the Public Hearing at 7:11pm and asked, is there anyone here that would like to speak to us on this ordinance?

No testimony received.

Mayor Daoust closed the Public Hearing at 7:11pm.

MOTION: Councilor Wilson moved to adopt an ordinance relating to the Troutdale Riverfront Renewal Plan and establishing a procedure for transfer of the former Sewer Treatment Plant property. Seconded by Councilor Anderson.

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

Motion Passed 7-0.

Erich Mueller stated Doug MacCourt is here this evening and would like to provide an update on where we are in the process of moving forward on the URA.

Doug MacCourt, Ater Wynne, stated we have received the draft closure report from our consultant, AMEC Environmental. This is the document that goes to DEQ with a request that they approve the site and determine that there is no further action in terms of environmental issues on the property. We are reviewing it now and I expect that it would get to DEQ by the end of the week. DEQ has estimated that they will try to get a decision out by the end of October.

We have had some press interest in the animal waste removal from the Eastwinds site. I received a call from KATU. They interviewed Matt Wand, general counsel for Eastwinds, on-site yesterday. I also had a short interview. They asked very general questions about what was happening and who was getting notified.

Eastwinds has indicated that they believe that they will now be starting the excavation on October 6th rather than the end of September. That is probably a good move since the weather will start to get a little moister, which will help with the odor reduction.

We are in the process of preparing the draft Purchase and Sale Agreement (PSA). We have had some good initial discussions with Eastwinds legal counsel on that. We are on schedule with those negotiations.

Councilor White asked when will we be brought up to speed on the appraisal?

Doug MacCourt replied I met the appraiser on-site last Wednesday. We expect to receive the appraisal within the next week. They are also preparing an estimate for the demolition costs. Eastwinds will also be having an estimate prepared for the demolition costs. The Term Sheet says we will select the lowest estimate.

5. PUBLIC HEARING / ORDINANCE (Introduction): An ordinance adopting a new chapter of the Troutdale Municipal Code, Chapter 3.35, "Marijuana Tax".

Mayor Daoust read the ordinance title.

Shelby Rihala, City Attorney, stated Measure 91 on the November ballot is a measure legalizing recreational marijuana. It contains in it a section that preempts local governments from taxing marijuana and gives that sole authority to the state. It also contains a provision repealing any provision of a local ordinance or charter which conflicts with the preemption clause. Several local governments are approaching this by implementing a sales tax prior to the possible passage of Measure 91 in the hopes that they would be able to grandfather in a sales tax on marijuana in the event that the measure passes.

Before you is a draft ordinance for your consideration. This is principally based off Ashland's ordinance. Ashland was the first city to pass such a tax. Several other governments have since passed their own ordinances.

The taxing rates are proposed at 5% for medical marijuana and 10% for recreational marijuana. Those are completely discretionary and open to Council's consideration. It is a sales tax and is based on gross revenues.

Mayor Daoust stated this ordinance, if we pass it at our next meeting, would have an effective date of November 14, 2014 which is after the November election date. I am assuming that it is still timely as far as the effective date.

Shelby Rihala replied there are a couple of different thoughts on that. The first is that a taxing ordinance cannot be passed by emergency, you need the full 30-days in order to implement a taxing ordinance. Council could have a first reading tonight and a second reading at your next regularly scheduled meeting, and then the tax would be effective on November 14th. The consensus among city attorneys is that as long as the ordinance is effective prior to the effective date of the ballot measure, which is 30 days after the November 4th election, so December 4th, so long as the local ordinance is effective prior to December 4th that it is sufficient. There are some that say it should be passed prior to the vote. I have seen no legal briefing to explain that other than it would be one less thing to challenge. It is expected that this will get a legal challenge because of the strong preemption clause in it. I cannot guarantee that it would withstand that. The expectation would be that it would be one less facet of the ordinance to challenge if it was effective prior to the day of the vote. There are some councils such as West Linn that are holding special sessions. It is really being approached differently depending on the jurisdiction.

Councilor Anderson asked if this passes it would be regulated by OLCC, correct?

Shelby Rihala replied correct.

Councilor Anderson asked currently do any cities that are considering something levy a city sales tax on alcohol or anything else administered by the OLCC, or is that part of state shared revenues?

Shelby Rihala replied that is part of state shared revenues. The liquor tax statute mirrors the preemption clause in this proposed marijuana statute in terms of preemption. So local governments are preempted from taxing liquor using the same language that the marijuana tax proposes.

Councilor Anderson asked in a sense aren't we targeting marijuana? Isn't that we are doing, targeting a substance? That is my feeling of what we are doing. I can see where this is going to be challenged because of the ambiguity. With the adoption of this ordinance are we in essence signing on to be plaintiffs and incurring legal expense to fight that challenge? Would we be better off by just sitting back and taking no action and watching whatever happens and save some legal fees?

Shelby Rihala replied there are a couple of ways to look at that. First, Council always has the authority to repeal an ordinance. So if it was legally challenged, instead of fighting it you could simply repeal the ordinance and the challenge would be mute. As I understand it the City of Gresham has adopted a zero percent tax. The reason that some cities are pursuing this, even with a very low tax, is simply in the hopes of preserving their local ability to tax marijuana.

Councilor Anderson stated which in theory I am inclined to agree with. However, I can't get by that we are targeting one area here. That is what I am struggling with. I am glad we are having the discussion, but that is the one thing that I can't get by. I am rather dismayed that there is not many members of the public here tonight because this is a hot button issue and it is a big decision for us.

Councilor Allen stated I know it is not directly taxed by the city but don't we also target alcohol and tobacco.

Councilor Anderson replied not directly though. They are part of the state shared revenues. We don't target it directly because we can't, but with this one we are trying to go through a loophole that appears to target one substance because we can because it is ambiguous.

Shelby Rihala stated to the question of state shared revenues on this, the way the measure is proposed is that it would not be the same kind of revenue sharing like liquor tax, which is based on population. The formula that the measure proposes is 10% to cities and 10% to counties of the total state taxes. The revenues would be distributed based on

how many wholesale, retail type facilities are in the city itself. There is a potential that Troutdale could get zero dollars.

Councilor Allen asked are we likely to have increased expenses due to the sale of marijuana?

Mayor Daoust replied I will try to answer that. One of my main concerns with recreational marijuana possibly being approved is the cost of enforcement. The law enforcement folks cannot say for certain what it will cost if the measure passes, but they are united that it will cost time and money that they don't have. Since there is no test for marijuana impairment for vehicle driving as there is for alcohol impairment, patrol deputies need to be specially trained to identify those that are impaired. The cost of training all patrol deputies will be costly in our already strapped law enforcement budget. There is no property limits. Measure 91 will allow each household to possess a half pound of usable dry marijuana, an ounce of concentrated THC, a pound of edibles, a six pack of tinctures and four plants of any size and maturity. An apartment complex with fifteen units could have 7½ pounds of marijuana plus 60 fully mature plants if people take advantage of this. We can't say for sure what the increased costs would be, but I am positive there will be; I don't see how there can't be. Marijuana is a Schedule 1 drug according to the Drug Enforcement Administration meaning it has a high abuse potential. The impact of legalization has too many unanswered questions and could have too many unintended consequences. I feel, as Mayor, we just need to be prepared to pay our enforcement bills and this is one way to do it. It may be challenged, but we better get our foot in the door if we are going to do it. We have to do this now because we won't have a chance later.

Councilor Wilson stated you mentioned having a special session. If we had a special session could we get a jump on the vote to get this passed?

Shelby Rihala replied yes. You could get a jump on the vote, you couldn't get a jump on the 30-day implementation. You would have to count backwards 30 days from November 4th for your special meeting to have the required 30 days before it is effective because it is a taxing measure.

Councilor Wilson stated so we are almost out of time.

Councilor Anderson stated we could have a meeting on September 30th.

Councilor White stated I think this is a worthy tool to have in the tool box. If there is public outcry we will hear from them. The people I have talked to in Troutdale feel the opposite; they feel like marijuana is a gateway drug. We want to be known for the Gateway to the Gorge. I think there are better places to test this idea out then here in Troutdale. I am in favor of Councilor Wilson's suggestion and making this a little more airtight. I am ready to approve this myself.

Councilor Allen stated as a young man I took care of a terminally ill fellow that used marijuana in his last days. I saw its value for medical purposes. What concerns me here

the most is also what I have experienced when we have demand increasing and supply not there you get criminal elements that fill that gap and that tends to contribute to social problems, in which we may need to beef up our police staffing.

Councilor Wilson stated so you are saying that we will need the tax to help take care of that.

Councilor Allen replied yes.

Erich Mueller stated with the deadline, having the tax in place does give the Council flexibility to raise it, lower it, or repeal it. The other aspect is that taxing in general tends to have an economic impact on business decisions. From a context standpoint, not having it could make a particular jurisdiction more attractive as an operating location because it would have a lower cost of operation for a business. To some degree I believe there are some concerns on the part of cities that they don't necessarily want to become attractive as a location if the neighboring jurisdictions are more costly. I had not included Gresham in my staff report. I am not sure if they are ultimately going to adopt a zero percent tax or put something above that in place. Fairview is also in the process of considering this. I contacted Mr. Peterson at Wood Village and based on their charter they are unable to accomplish it in this timeframe.

Mayor Daoust opened the Public Hearing at 7:35pm and asked is there anyone here that would like to speak to us on this agenda item?

Paul Wilcox, resident, stated I would be interested in hearing from the Councilors what the intent of this ordinance is. If the purpose is to enhance income to the city then it would appear that the more marijuana retailers the better. If, however, it is intended as a deterrent to retailers locating in Troutdale due to the added tax burden, those retailers will choose to locate in adjacent nearby communities that do not levy the tax. I suspect the latter, which is fine but just be open and honest about your opposition. In the Oregonian I saw that Forest Grove proposed 5% tax for medical and 10% tax on recreational and they dropped the 5% tax on medical. I would like to quote a couple sections from the initiative itself, "Section 58 – Marijuana laws supersede and repeal inconsistent charters and ordinances. Sections 3 to 70 of this Act, designed to operate uniformly throughout the state, shall be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed." In my reading, this pretty much shoots down your whole tax idea. There is actually an option for an outright prohibition if that is what you are after. "Section 60, Petition and election for local option. The governing body of a city or a county, when a petition is filed as provided in this section, shall order an election on the question whether the operation of licensed premises shall be prohibited in the city or county." If that is what you want then let the voters decide just like Wood Village citizens decided on the casino. The idea of targeting marijuana as a specific product, if you want to put a gross receipts tax on something how about alcohol and tobacco? You have law enforcement issues with those products also.

Mayor Daoust closed the public hearing at 7:40pm.

Councilor Allen stated I wanted to point out that my concern when supply doesn't meet demand is not the substance so much as it is the criminal elements that may use violence to control territory. That would be my concern and need for increased policing. If supply were to match demand then I would obviously be less concerned.

Mayor Daoust stated if we really wanted this to be a strong deterrent we would have a 50% tax rate. There is no limit on the tax rate we set. The 5% on medical and 10% on recreational is not an outrageous amount, it is a reasonable amount that doesn't paint a target on us. It seems to be what the other cities are looking at. I will be open and honest, I don't care if it is a deterrent. In fact I want it to be a deterrent. I don't want to be the city that is attractive to the sales of marijuana. I do not want that. You can call it a deterrent all you want and I would agree one-hundred percent. We currently have a one-year moratorium on dealing with medical marijuana facilities which we still need to address. That is a different issues, but we still need to address the zoning, etc.

Councilor Ripma stated I agree with Mayor Daoust on my motivation for supporting this. I also think it is a longshot that it will be upheld. I agree that the way the initiative is worded in a couple of places makes it unlikely that this will fly, but you never know and it is now or never if we want to go forward with it. We are not completely alone doing this, other cities are considering it. I think it is worth a try. I also share the concern that there will be a cost associated with the legalization and this might help to defray some of the costs. We can't tax tobacco and alcohol; that is not an option for us. But we can do this and it is now or never. I am glad it is being brought forward. I would also favor having a special meeting next Tuesday to complete the adoption of the ordinance just to remove one possible impediment to it being upheld.

Councilor Wilson stated I would agree with having a special session.

Councilor Thomas stated that makes sense to me.

Council consensus was to call a special meeting on Tuesday, September 30, 2014 to hold the second public hearing and consider the adoption of this ordinance.

6. STAFF COMMUNICATIONS

None.

7. COUNCIL COMMUNICATIONS

Councilor Wilson stated I was going through the draft IGA for the Metro Enhancement Fee and I would like to have a provision added to the IGA that states that no funds from this IGA can be withheld from the City of Troutdale if Metro finds us out of compliance in another area.

Mayor Daoust asked what meeting is that scheduled for?

Erich Mueller stated I am not sure that Metro is ready to bring that forward to us. It is planned to come to us once they get their adoption accomplished.

Mayor Daoust asked Mr. Mueller to make note of what Councilor Wilson brought up. We will be discussing this issue probably in November.

Councilor Ripma welcomed Shelby Rihala. I served with Shelby on the Oregon Hanford Clean-up Board for about 5 years.

Councilor Thomas stated it was a great idea to acknowledge Yoshida's donation to Mt. Hood Community College. I also want to thank the Mayor for his willingness to travel to help the Urban Renewal District.

Mayor Daoust updated the Council on the following:

- The Town Hall meeting last Tuesday was very successful. There were a lot of good constructive comments made.
- The League of Oregon Cities Conference is in Eugene this coming weekend.
- On Saturday, October 4th there will be a ribbon cutting at 10am at the taekwondo business in the Cherry Park shopping center.
- October 9th East Metro Economic Alliance is holding a candidates forum for the Troutdale candidates for city council. It will be held at Fairview City Hall at 11:30am.
- Also on October 9th the Trauma Intervention Program Dinner Auction is being held at the Marriot Waterfront in downtown Portland.

8. ADJOURNMENT:

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

Meeting adjourned at 7:52pm.

Doug Daoust, Mayor

Approved October 14, 2014

ATTEST:

Debbie Stickney, City Recorder

Exhibit A can be viewed with the meeting packet or on microfilm.