

MINUTES
Troutdale City Council – Regular Meeting
Troutdale City Hall – Council Chambers
104 SE Kibling Avenue
Troutdale, OR 97060-2099

Tuesday, July 14, 2009

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

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

PRESENT: Mayor Kight, Councilor Hartmann, Councilor Wand, Councilor Thomas, Councilor White, Councilor Kyle and Councilor Daoust.

ABSENT: None.

STAFF: Dave Nelson, City Administrator; Charlie Warren, Public Works Director; Scott Anderson, Chief of Police; Debbie Stickney, City Recorder; and David Ross, City Attorney.

GUESTS: See Attached.

Mayor Kight suggested moving Agenda Item #7 ahead of Item #6. Council agreed.

2. OATHS OF OFFICE:

Sergeant Rodney Wilkerson and Sergeant Carey Kaer.

Chief Scott Anderson recapped the process that the City went through to select Rodney Wilkerson and Carey Kaer as Troutdale's newest sergeants and gave a brief bio on each.

Mayor Kight administered the Oath of Office to Sergeant Rodney Wilkerson and Sergeant Carey Kaer.

3. CONSENT AGENDA:

3.1 RESOLUTION: A resolution authorizing the Mayor to sign a Settlement Agreement with Verizon negotiated by the Oregon Municipal Audit and Review Committee relating to Privilege Tax payments received from January 1, 2002 through December 31, 2005.

3.2 RESOLUTION: A resolution authorizing the Mayor to enter into an Intergovernmental Agreement between Multnomah County and the City of Troutdale to continue our participation in the Community Development Block Grant (CDBG) program.

3.3 RESOLUTION: A resolution approving the Collective Bargaining Agreement with employees represented by AFSCME Local 3132.

Councilor White read the consent agenda.

MOTION: Councilor White moved to accept the Consent Agenda. Seconded by Councilor Kyle. Motion Passed Unanimously.

4. AWARDS:

4.1 Citizen and Youth of the Year.

4.2 Get a Life Band

4.3 Lyman Doremus – Recognition of 100th Birthday

John Wilson stated I am the Chair for the 37th Annual SummerFest in Troutdale. Every year we select a Citizen and Youth of the Year. We received multiple nominations. This year the committee has selected Donna Edgley as the Citizen of the Year.

Mayor Kight stated for twenty years Donna has been an active, selfless and vital member of our community. Her dedication and devotion to the children in the Reynolds School District has been consistent and unflagging. Donna has been active in the Reynolds School District PTA at Troutdale Elementary School, Reynolds Middle School and Reynolds High School. She was an active member of the graduation night committee and the Reynolds High School Boosters. She has also been an assistant coach for the volleyball teams. Donna Edgley has worked tirelessly in the background for years making Troutdale a better place for our children.

Donna Edgley thanked the City for this honor.

Mayor Kight presented Donna Edgley with a certificate recognizing her as the Citizen of the Year for 2009.

John Wilson stated in 2002 the SummerFest Committee decided to start recognizing an outstanding youth every year. This year we had seven nominations and the Committee has chosen Karlei Forrester as the Youth of the Year.

Mayor Kight read the following from the nomination form submitted, "For Karlei making a difference and participating in her community plays a huge role in her life and is a representation of her as a person. For the past year and a half, she has dedicated valuable time to volunteering for the Trauma Intervention Program (TIP). TIP is a non-profit organization made up of specially trained volunteers who provide emotional and practical support to victims of a traumatic event and their families within the first few hours of a tragedy. TIP is citizens helping citizens in crisis. To participate in this organization you must complete a 60 plus hour course and then proceed thru a graduation ceremony. As a TIP teen volunteer Karlei is able to reach out to her fellow peers in the community and lend a helping hand. This opportunity has prepared her for real life situations that she may encounter as she journeys through her life. For the past 2 years Karlei has been a National Honor Society (NHS) member at Reynolds High School. This club is set forth for honorable students to help our community through volunteering. Throughout the year NHS has put on the Red Cross Blood Drive, Community clean-up events such as park cleaning and tree planting. Karlei finds it very rewarding and beneficial in so many ways to help in her

community and the difference it makes to her in her life and everyone else's. In addition Karlei is the Development Chair for the East County Youth Relay for Life organization. Relay for Life is the American Cancer Society signature event performed all over the globe. Another accomplishment for Karlei was being a part of the Varsity Dance Team for three years at Reynolds High School. In the 2006-07 season Reynolds Raider Dancers received the State Champion award. And something that Karlei really enjoys is being in the Big Brother Big Sister program as a volunteer, where she is a big sister to a little girl by the name of Maria who is very special to Karlei. Karlei is a member of the Reynolds High School Rugby Club and a participant of the Adventure Club."

Mayor Kight presented Karlei with a certificate recognizing her as the 2009 Youth Citizen of the Year.

Karlei Forrester stated I am very honored to receive this title and to represent the teens of Troutdale.

Councilor Daoust stated Bob and John are the founders of the Get A Life Band. They will be playing in the SummerFest parade this Saturday. This band started 15 years ago right here in Troutdale; it was there very first parade.

Bob stated John and I started the band in 1994. We played in the Presidential Inaugural Parade last year; we have had three national write-ups on our band; CBS Katie Couric show; and NPR News did a story on our band last year. We are very proud.

John stated we just played in San Francisco's Chinese New Years Day parade and won first place in the All Adult Division this year. We will be bringing over 100 people to Troutdale in our band. We have twirlers, a dance team and a flag team.

Councilor Daoust presented the Get A Life Band with a plaque in celebration of the band starting in Troutdale and being a part of the SummerFest celebration this coming Saturday. The plaque reads, "The City of Troutdale – July 18, 2009. Celebrating the 15th Anniversary of Get A Life Marching Band, Troutdale SummerFest Parade is where it all started in 1994."

Mayor Kight stated next we will be honoring Lyman Doremus who is 100 years old.

Mayor Kight presented Lyman Doremus with a certificate that read, "In Recognition of his 100th Birthday, The Mayor and City Council of the City of Troutdale, on behalf of the Citizens of Troutdale, honors Lyman Doremus; Avid Golfer, Dancer and Bowler. Born July 21, 1909 in New Haven, Connecticut; Farmer and New York-New Haven-Hartford Rail Road Employee, credits his longevity to plenty of exercise and good eats." Lyman is currently living at 1323 SW Cherry Park Road in Troutdale, at the Cherry Park Plaza.

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

Jim Davis, resident on SW Hensley, stated it was about ten months ago that I came to the Council with a problem we were having on our street. I am here tonight to thank you for the help and quick action that the Council and the City took to alleviate the problem we were

having with the speeders on Hensley Road. It has made a wonderful difference. It has drastically reduced the speeding on the road and we haven't had a single person end up in our front yard since the speed humps were installed.

6. PUBLIC HEARING / ORDINANCE: An ordinance amending Troutdale Municipal Code Chapter 8.28, Nuisances, adding a provision to prohibit camping and making other changes.

(This item will be handled after Agenda Item #7)

7. PUBLIC HEARING / ORDINANCE (Introduction): An ordinance imposing a tax on motor vehicle fuel dealers, providing for administration, enforcement and collection of the tax; amending the Troutdale Municipal Code by adding a new Chapter 3.36.

Mayor Kight read the ordinance title and opened the public hearing at 7:45pm.

Charlie Warren, Public Works Director, stated as directed at the last work session I am here to provide you with additional information on a proposed gas tax.

Charlie Warren presented a PowerPoint Presentation (Exhibit A to these Minutes). The gas tax is an imposed tax on vehicle fuel. We are proposing a \$.02 per gallon gas tax. The reason this is coming forward now is because there is a Bill that the State of Oregon has passed that gives us a narrow window to impose a local gas tax. If it is not imposed at this time then the next opportunity to impose a gas tax would be in the year 2014. The City has about 41 miles of city-owned streets that we maintain. In 2008 we established that about 31% of our streets were in excellent condition and 50% were in good condition. In that 2008 report we showed that the road conditions were going to be reduced given our existing expenditure level. It is our objective to maintain that excellent and good ratio if at all possible. We have a program that we use to rate our streets and it shows how the streets degrade over time. We give each street an in-house street rating. We recommend that we do a crack seal every 3 years, a slurry seal every 7 years and an overlay every 28 years (that was the rating assigned in 2008, I would recommend every 20 to 25 years). Slide 5 shows how pavement behaves and what happens when you delay improvements. It shows that at about year 20 you reach a level where a \$1 repair cost becomes \$4 to \$5 if you wait another seven or eight years. It is imperative in my mind that the City maintains a schedule for maintenance of our streets so they don't reach a condition of poor or very poor. Once you see alligator cracking on a street you have to completely rebuild it. The funding outlook in 2008 showed that our ending balances were going downhill and that by the year 2017 we will be out of money. This projection reflects that we would only be doing overlays and not complete rebuilds of any streets. At our work session we talked about what revenues we might need in the future to maintain our streets, and to construct new streets because our city can't be stagnant. We are going to be building new streets in order to handle the economy that we want to support. At the current funding level you will have a larger percentage of street conditions going from excellent to good. By 2016 you would be in a situation where the cost to repair the streets are very rapidly going to enter into that \$4 or \$5 category. In 2008 we indicated that we have

a deficit of \$453,000/year if we were to maintain our goals for our city streets. Since that time the economy has been very bad and some things have occurred. Slide 9 provides more up-to-date financial information. The alarming thing to me is the fact that we are receiving less revenue, specifically from the state. We had budgeted \$845,000 for the beginning fund balance, and revenue of \$689,000. Our actual revenue for this year is in the neighborhood of \$500,000. There is a significant drop. Erich Mueller, our Finance Director, showed me that we have a total drop in revenue and also an increase in expenditures of approximately \$200,000 this year. Our projection to be able to make it until 2016 before we need something drastic has just been stepped up and we are probably looking at 2011 to 2013 if we are lucky; that is if we do nothing. At this point I am telling you the Council, and I am asking the citizens, to understand that it is necessary that we do something. If we wait for the economy to turn around it may be very detrimental to our assets (city streets). Unfortunately at this time we have a significant problem because the gas tax can only be applied now and if we wait until 2014, I have just showed you we have a significant problem. There is really only one other alternative that works. A local motor fuel tax at \$.02/ gallon would generate about \$320,000 per year (slide 10). We just showed you that in 2008 we projected that we needed \$453,000 per year to maintain our streets; in reality it is going to probably be in the neighborhood of \$600,000. The state's new gas tax does get us some additional revenue, but as I just indicated Erich is showing me that we have a deficit of about \$199,000. We will receive around \$120,000 to \$140,000; that doesn't even make up the \$199,000 that we need in order to get to the 2008 scenario. The other alternative is to implement a street utility fee. This is a fee that is added to the monthly water/sewer billing. I have estimated that a \$6/month utility fee would net us \$453,000 per year, but a \$7 to \$9 fee would get us closer to the amount needed (\$600,000 to \$700,000). The disadvantage of that is that only the citizens of our city pay for that. The advantage of a gas tax is that not only your citizens pay for it, but it is more closely aligned to those who actually use the facilities, and you get the pass-through traffic that pays for it as well. A two cent gas tax, based upon 15,000 miles per year at 20mpg would cost about \$1.25 per month per vehicle. It is substantially less for your citizens if you go with a gas tax. In my view the local gas tax is not only more advantageous, but it also passes the cost to the people that actually use the streets. What happens if we implement a funding strategy after the year 2014? I think we are in significant danger of stopping our overlay and slurry seal program probably within the next few years. In the next budget session I will need to be making staff cuts and other cuts in order to keep our roads maintained, and I don't think we want to get to that point. We have done a good job in the city; our roads are in great shape but we need to keep them that way. We need to be proactive.

Councilor White asked would we be including diesel?

Charlie Warren replied yes.

Councilor White asked what is the current total tax on a gallon of gas?

Charlie Warren replied the state has a \$.24 tax and they are proposing a \$.06 increase. If you add all of them together I think it is over \$.40.

Councilor White stated I think the city has done a good job with our streets. How much time do we have before it is critical?

Charlie Warren replied when we looked at this in 2008 we were hoping to get to 2016-17 but the situation has changed and we are within two years of a significant problem. If you wait until 2014 then we are two years into a catastrophe for our streets because then we are into that \$4 to \$6 cost to repair the streets, and trying to play catch-up at that time in my view is impossible.

Councilor Kyle stated on the second page of your staff report you were referring to a \$160,000 figure. Where does that come from?

Charlie Warren replied Sandy is probably the best example and they receive \$120,000 per year from their gas tax. I looked at the revenue from the different cities and it is just a projection.

Councilor Kyle stated this number is important to me; to say we are going to have a tax is important to me. I would really prefer that number to be a little closer to reflecting what our local area has. Is there any way to determine something more accurate that reflects our area because we are on I-84 and to me that is huge.

Charlie Warren stated I doubt that we are going to be able to talk directly to the service stations and get that kind of proprietary information. I think I have done my due diligence with looking at other communities and trying to come up with an educated guess, but it is not perfect.

Councilor Kyle asked do we get a portion of the \$.03 that the County collects?

Charlie Warren replied they spend money on some of the streets in Troutdale such as 257th.

Councilor Kyle replied I understand that; but nothing comes in to us.

Charlie Warren replied no.

Councilor Kyle stated you had a slide that showed our estimated budget with the revenue coming in at less than what was projected. Could either of you detail for us the sources of those revenues? Is it entirely from the State?

Erich Mueller, Finance Director, stated there are two revenue lines specifically related to streets and then there is miscellaneous related interest income on balances. The two meaningful revenue lines are overwhelmingly the state gas tax, and then there is a secondary one in 2007-08 of \$13,000 that we received into an account we refer to as County Road Transfer, which I believe is for us performing maintenance on some of the roads that fall under the responsibility of the County that are within our jurisdiction.

Councilor Daoust stated your numbers look reasonable. I would say that the \$160,000 per year is probably conservative giving the volume of traffic we have flowing through Troutdale as compared to Sandy. Mr. Mueller, are you okay with the numbers that are being presented?

Erich Mueller replied I think they are the best that we can estimate based on the fact that we can't get our hands on some of those specific sales numbers. I defer to Charlie and Olaf regarding estimating the cost needs.

Councilor Daoust asked when you calculated \$7 to \$9 per month for a street utility fee, was that based on making up our total deficit of \$450,000.

Charlie Warren replied the original \$7 to \$9 was based upon the 2008 report, which was before my time here. I just quickly ran those numbers and as I indicated they would get you closer to the \$600,000 to \$700,000 that we need. If you were to initiate that amount right now that would bail us out, but I don't think it is as fair on our citizens.

Councilor Daoust stated I calculated what the gas tax would cost me and it came up to \$1.05 per month for one car. That is only if I buy all of my gas in Troutdale, which I don't.

Councilor Wand asked do you know what percentage of gas sales are made to Troutdale residents versus outside residents at the seven gas stations we have in Troutdale?

Charlie Warren replied I don't know that figure and I don't know how to get it unless the gas stations would volunteer that information.

Councilor Wand asked have you located any independent scientific studies that will tell us the affect of citywide gas taxes on our local gas stations?

Charlie Warren replied no. Probably the best example that we have is the fact that Multnomah County has had this \$.03 gas tax for a number of years.

Councilor Wand asked have you had any direction from anyone within the City of Troutdale, Council or staff, to draft up or pursue a street utility fee?

Charlie Warren replied I have not.

Councilor Wand stated when we talked about this at the work session the proposal was for a \$.01/gallon fuel tax, and now what we have before us is a \$.02/gallon fuel tax. What was the process that you went through and how did you come to a proposal for \$.02/gallon versus \$.01/gallon?

Charlie Warren replied the \$160,000 per \$.01 came from me. After that work session we discussed how much revenue we would get from \$.01. Then the City Administrator, City Attorney, Finance Director and I discussed how much revenue we could gather. I did an

analysis of what our deficit was. Looking at the original slide show (2008) that showed a deficit of \$453,000 it became obvious that a \$.01 gas tax wasn't going to do it.

Erich Mueller replied at the work session we didn't know what portion of the \$.06 gas tax that is being imposed by the State would come to the cities.

Councilor Wand stated a lot of our city streets are cul-de-sacs or are within subdivisions, they are not high traffic roads. What is the rate of decline and the quality of our city streets on an annual basis? Have you taken the low traffic into account in your analysis of the degradation of our streets?

Charlie Warren replied I have. We have a program that does a calculation based upon the amount of traffic, its age and its current condition. In the last twenty years the City of Troutdale has had incredible growth so we have inherited streets that are in extremely good shape. The condition of a street starts as excellent and after five years it drops to good, even in a cul-de-sac that doesn't get much traffic the asphalt degrades. The nature of asphalt is such that when you drop down below 100 vehicles asphalt doesn't behave very well; it actually degrades faster. Because of that some of those cul-de-sacs will actually degrade faster than your well-traveled streets. Keeping slurry seal on the street keeps that index up and protects the surface.

Councilor Wand asked have you explored any options for prolonging street quality?

Charlie Warren replied slurry seal is one of the better ones. There is a cool-mix and it drops about 50° in temperature and it is better for the folks working behind it; it is also a better quality of asphalt. We are always looking at the new technology.

Councilor Wand asked do we pay for the entire slurry seal program from shared gas tax revenues from the State?

Charlie Warren replied other than the \$13,000 that Erich Mueller identified, yes.

Councilor Wand asked have you investigated the legislative history for the imposition of the statewide gas tax to determine whether it was intended to be the sole source of funds for street repairs and maintenance?

Charlie Warren replied it couldn't possibly be.

Councilor Wand asked have you investigated into our historical budgets in Troutdale to determine a reason why no general fund property tax revenue currently goes towards street maintenance?

Charlie Warren replied I haven't.

Councilor Wand asked who drafted the proposed ordinance?

David Ross replied I am responsible for it but it is essentially the same ordinance that is in about eight other jurisdictions.

Councilor Wand stated the way I read the ordinance the FedEx facility that is being built would be exempt from the fuel tax. Am I reading it accurately?

David Ross replied that wasn't my intention. It is a tax on distributors so if someone is buying fuel to be stored in their own tanks then theoretically the tax would be paid on that.

Councilor Wand stated I thought I read that there was an exemption for moving large quantities.

David Ross replied I will look into that.

Councilor Wand stated under Section 3.36.040(A)(2), it appears to say that the use of gas is also taxed. Is that the way that you read that section Mr. Ross?

David Ross replied that would be the tax on the distributor.

Councilor Wand stated I am trying to get at what we mean when we use the word "use". Are we charging them tax inside their truck as they are driving over?

David Ross replied no.

Councilor Wand asked would you flag that and get me some more information about what that means and why that language is in there. In Section 3.36.060 we are requiring a second permit for our gas stations located within the City of Troutdale. Is that right?

David Ross replied you will notice that it talks about a tax administrator and it is anticipated that if this is passed that we will enter into an IGA with ODOT to collect the tax. The permit that is referenced here is the permit that they presently get from ODOT.

Councilor Kyle asked so it is not an extra permit?

David Ross replied it is not. If ODOT in fact does collect the tax for us it would be the permit application and process that the dealers already use with ODOT.

Councilor Wand asked so under this proposal the City has the option of requiring its own permit or we can contract that out to ODOT?

David Ross replied yes. There are some cities, Sandy for example, that collect the tax directly from the retail service stations and they collect it themselves. Most cities use ODOT as their agent to collect the tax at the same time that ODOT collects the state tax.

Councilor Wand stated I notice that in two sections of the ordinance there is a burden shifting provision where the city can come in with a piece of paper and say this is what we think you

owe us and then it is incumbent upon our small business to prove their innocence. That seems a little backwards to me. Typically the proponent of a position in court is required to prove it and not the person that is trying to defend them. Can you explain why we have that burden shift in here?

David Ross replied this tracks the language of the state statute ORS 319, and this ordinance was reviewed by ODOT. Again, it is not anticipated that the tax would be collected from the individual service stations. I think ODOT collects the tax from the distributors.

Councilor Wand stated I also noticed that with any enforcement action the attorney's fees only go one way, towards the city. If the city or the taxing administrator prosecutes someone and loses they don't get their attorney fees. Is there a reason why we wouldn't have the rules the same for both sides?

David Ross replied again, this ordinance tracks the language in the state statute.

Councilor Wand stated in Section 3.36.160, one of the exemptions in here is for bulk sales. What is the purpose of exempting the vehicle fuel that is sold in bulk?

David Ross replied I am not sure that is actually referencing sales, or if it is just referencing conveying and transporting it through the city.

Councilor Wand asked under Section 3.36.170 (A1 and A2), the way that I read that is if the dealer sells gasoline for export outside the city they are exempt. When would that occur?

David Ross replied I don't know.

Councilor Wand asked Mr. Warren, have you done any research into the obligation to retain records for a period of three years and what the cost would be on the service stations that would be required to retain these records?

Charlie Warren replied if ODOT administers this that wouldn't be required of the service stations it would be required of the distributors.

Councilor Wand stated looking at the auditing requirement in Section 3.36.210, the city or the taxing administration gets to make any examination of all accounts, records, stocks, facilities, etc. Wouldn't the simple discovery process in the administrative proceeding gather all of that information if the taxing administration thinks that someone isn't paying their taxes? What is the purpose of having this level of involvement in the personal business records of one of our businesses?

David Ross replied, again it is not anticipated that we are going to have much involvement. It is anticipated that the tax administrator (ODOT), which is acting on our behalf, would collect the tax at the same time that they collect the state tax and the county tax.

Councilor Wand stated the last page under Section 3.36.260 it talks about sidewalks, bikeways and paths within the city but it seems to me that we are imposing a fuel tax on motor vehicles and we really ought to craft that more narrowly so that we are actually focusing the use of those revenues on the areas where we have motor vehicles.

David Ross replied that has gone through several iterations. It actually started out very narrow and it just kept getting broader.

Erich Mueller stated 1% of the state gas tax goes into our bikes and pathways program by statute.

David Ross stated that can be refined if that is a concern.

Charlie Warren stated what you may consider is some restriction if it is not within a right-of-way or adjacent to a street. When you are building a street the sidewalks and curb are part of that and generally speaking the bike lane is going to be part of it.

Councilor Wand stated and I don't have any problem with that. It just seems to me that if we are imposing this on motor vehicles we wouldn't want to use those funds on a path through a park.

Councilor Thomas asked what percentage of the streets that are dropping from a rating of excellent to good is just part of the normal 5 year drop off?

Charlie Warren replied when you drop from excellent to good that is 100% of it. Unless you are building a brand new street it is not going to be excellent.

Councilor Thomas asked so that would be expected even if we continue to maintain them?

Charlie Warren replied well what we need is new streets and we have been getting a continual stream of new streets because the economy was great. Now the economy isn't great and people aren't building so we are not inheriting those brand new streets. If we get enough revenue and we start rebuilding sections such as N. Graham Road, when that street comes on line it will be rated as an excellent street for five to six years.

Councilor Thomas asked other than Graham Road, are there any other streets that the city will be building in the next five to ten years?

Charlie Warren replied we have other sections of streets that we would like to rebuild that are listed in our Capital Improvement Program.

Councilor Thomas asked what about brand new streets?

Charlie Warren replied the city doesn't generally build brand new streets because that is done by private developers.

Councilor Thomas stated you talked about planning for the future and looking at fuel tax revenues. What we have going on right now is a big push to reduce the amount of fuel being used. Did you figure that into your calculations?

Charlie Warren replied yes. That is part of what Mr. Mueller was showing me with the revenue from the state going down because of the economy, and people are turning to alternative fuels.

Councilor Thomas stated in Section 3.36.190 - Fuel in vehicles coming into city not taxed - it says that if you bring it in in your fuel tank it is not taxable. If you bought fuel for your boat and had it in a separate vehicle how would that work? The way I read this is you couldn't buy the fuel outside of Troutdale and bring it into the city and put it in your boat. Would that be a violation?

David Ross replied I wouldn't think so.

Mayor Kight asked you indicated that there will be improvements made to Graham Road. Graham Road will be the backage road for FedEx. Could the degradation of Graham Road happen much quicker with the high use of the large delivery trucks?

Charlie Warren stated what I am proposing for a rate increase doesn't include the major renovations such as Graham Road. For those types of projects we are talking about system development charges, which we also have a severe shortage of revenue in because of the lack of development. We have budgeted \$1.1 million for improvements to less than half of N. Graham Road which will serve as the back route for Frontage Road. When we rebuild that section it will have to be built to a much higher level than any residential street because of the FedEx facility. That is also why we are looking to the Port of Portland for help in paying for some of those costs. It will take more than our gas tax to build those types of projects that stimulate our economy. What I am talking about today is trying to keep and maintain what we have. If you want to start stimulating more business and attract industry we need more money.

Mayor Kight asked if we imposed a \$.02 gas tax we would still have a shortfall of approximately \$133,000, is that accurate?

Charlie Warren replied the \$.02 gas tax gets us approximately \$320,000, which is \$133,000 short. But the new \$.01 tax that the state is imposing will get us \$130,000 to \$140,000. That makes it look like we are breaking even but what Mr. Mueller is showing me is that our state revenue is dropping significantly, over \$100,000 so we are still \$100,000 short even with a \$.02 local gas tax.

Councilor Hartmann stated with regards to Section 3.36.230, I want this to go on record as an area that would require a revision in my mind. There is no said process by which a small business owner warrants an inspection of their books or records. This, as I read it, does not represent any cause for our city to have the power to walk in the doors of any small business

and examine their records. I do not see anywhere in here a cause that warrants this particular section.

David Ross replied the intent is not that we are going to be collecting the tax from individual service stations; the intent is that ODOT is going to be collecting the tax from the distributor at the same time that they collect the state tax and the Multnomah County tax.

Councilor Hartmann stated if that is the intent then shouldn't this be omitted.

David Ross stated I think if we omit ODOT's, or the tax administrator's ability to audit books I think that is an invitation. Tonight, on your consent agenda, you just recouped \$70,000 from a franchisee based on an audit performed for a twenty-four month period.

Councilor Hartmann asked was that audit performed based on a cause? Something triggered that audit; there was a cause. There is not a cause outlined here that would warrant that kind of audit.

David Ross replied this doesn't say that anyone is going to do it. In the broad sense, because city is defined as city or agent or someone with whom we contract to administer this; it gives them the ability to do it but it doesn't require it. Doesn't our transient occupancy tax ordinance have the same provision?

Councilor Hartmann stated I am not saying that the provision shouldn't be there for an audit, but the process by which we trigger an audit must be defined and I don't see that here.

Councilor Thomas stated in Section 3.36.130 - Failure to file monthly statement - if this was to be administered by ODOT does that still require the dealerships to send reports to the city of all of the retail sales for the month?

David Ross replied what ODOT explained to me was that they collect it from the dealers on the first of each month.

Councilor Thomas stated when they bring in a load of fuel, let's say it is diesel, the truck dumps the diesel into a tank and then the diesel is taken out of one side of the tank and it is put into trucks that are exempt from the tax, and out of the other side of the tank they are making retail sales. How do you know what portion of that is retail sales versus non-taxable sales?

David Ross replied I think the dealer keeps track of that and notifies the distributor and then there is a refund and credit section where they are refunding the tax and the distributor can use that credit towards their next payment.

Councilor Thomas asked do we have any idea what the cost will be to contract this out to ODOT?

Charlie Warren replied when I spoke to ODOT about that they said it is based on an hourly fee and based upon the amount of fuel that they have to keep track of. They said it was a nominal fee.

Mayor Kight called for a break at 9:09pm and reconvened the meeting at 9:22pm.

Mike Goss, resident, stated in looking at the ordinance and listening to the questions and answers tonight I can guarantee you that this will not be perfect and you will not come up with all of the information that you need to be able to make a black and white decision because I don't think a black and white decision is possible. Mr. Goss showed the Council a slide presentation (copy not submitted into the record). Primarily what a government owes to its citizens is safety and security. After that there needs to be infrastructure to make the city work. Then there needs to be services provided by the city, those types of things that citizens can't do for themselves. We have an infrastructure problem; we don't have enough money. This means that somewhere down the road we are going to be deferring road maintenance; that is not a good thing. (Mr. Goss showed slides with examples of deferred maintenance and the increased cost as a result of deferred maintenance versus the cost of routine maintenance.) The funding sources; you can tax property to pay for the maintenance. If you tax a property to pay for a road it is not a real direct tax, but if you tax gas the taxes pays for the people driving on the road. The gas tax is a better method. Who buys gas in Troutdale? We found that we really don't know. We know we have seven gas stations in Troutdale and we know that the bulk of the gas is purchased from the stations on Frontage Road. Many of those people are just passing through. If we impose a gas tax about 20% of that will be paid by people in Troutdale and about 80% of it will be paid by people that are just passing through. It is as close to winning the lottery that the City of Troutdale will ever get and the window of time to do that is pretty narrow. I never thought I would be sitting before you being a proponent of a tax. But in this case there are more reasons to do it than there are reasons not to do it.

John Wilson, resident, stated I have lived in many different states and when we relocated here in 1991 I looked at what the taxes were and there was no sales tax, no this and no that. As I have lived here I have found that we end up having to pay for our own destiny and I think what happens sometimes is our recession is longer because we are dependent more on our own local taxes, not taxes coming in from people visiting the state. When they talked about the cost of a monthly utility fee of around \$8/month, I would rather pay the \$1.25 in gas tax. I think the gas tax is more prudent in the long run because we would have people that are passing through paying for it instead of taxing the citizens completely, because we pay enough taxes as it is.

Glen Mackey, Flying J Manager, stated I am very concerned about this tax. Fuel prices are a very sensitive topic and people are very price conscience. I agree that there is a need to generate more revenues; I very seriously question that this is the correct way to do it. What I am interested in learning is, as the Council, have you done everything you possibly can to bring in new revenue to the City of Troutdale? If possible, I would like each of you to go on record to find out if the answer to that question is yes we have done everything and looked at

every viable option. If we can't answer yes to that then I would hope that you would say no to the gas tax.

Paul Thalhofer, former Mayor, stated I am here tonight to testify against this tax. This is not the time to increase the cost of fuel. If we add a \$.02 gas tax to the price of gas I don't think the people are going to be very happy with us. People are hurting out there; you all know that. People are losing their jobs every day. \$.02 a gallon, you think that is nothing? I shop for \$.02/gallon when I buy gas. Is it fair to say that we are going to let the folks who travel up and down I-84 pay for our roads? Or is it fairer to say we can pay for this ourselves. Our roads are in good shape and the economy is not going to be in the tank forever. Can we wait for a year to see if the economy gets better? You need to think about the impact on the residents. One of the other things that you have to think about is the small business folks, and the people who run/own the service stations. This ordinance is full of red tape for the businessman and adds to the cost of doing business. If you decide that you must act now and pass some kind of revenue enhancement, I don't think the fuel tax is the right way to go. I think the better way to go would be the street utility fee, but I don't advocate that for at least another year. 257th, Troutdale Road, Cherry Park Road, and Historic Columbia River Highway are not city streets so the people who use the city streets are usually Troutdale citizens. Many of the folks that use 257th and Troutdale Road are just passing through Troutdale. I think it would be fairer to impose a street utility fee on the folks who live here because they are the ones who will be traveling on the city roads. I am advocating that you wait a year on this; I don't think the roads will fall apart in a year.

Robert Canfield, resident, stated in football when a bunch of defensive players pile onto the quarterback it is a penalty called piling-on. In this bad economy that is what the government is doing at the federal, state, county and local level with transportation and gas tax; it is a piling-on. Someone should throw a flag; this is not right. When the average person fills up their tank they are paying on average \$7 in taxes. I fill up my tank about once a week so I am paying \$28/month in taxes. I don't want to dispute any of the information that city staff has told you; there is a need for maintaining Troutdale's roads. However, I agree with Mayor Thalhofer, perhaps this is not the time to increase Troutdale's gas tax. If you do decide to raise the gas tax the one thing I wish you would do is not play with this. The ordinance is proposing \$.02/gallon to start out with, however we all know that taxes never go away they only go up. So if you do this you should have the courage to just go for the maximum \$.05 if you actually have a problem with the revenue for street maintenance. There will be an economic impact. If you establish a gas tax in Troutdale it will put the Troutdale gas station owners at a competitive disadvantage. People will cross the street to pay one cent less for gasoline. People will go to Wood Village, Fairview or Gresham to pay a penny less for gas. I know this because I do it, and so do you. City staff said that it will only cost the average Troutdale resident \$1.25/month in taxes. There is always an inflationary affect to gas tax increases like that because not only do you pay that extra \$1.25 per month so does the guy who repairs your dishwasher, or mows your lawn, or replaces your sewer line if it breaks and so on. They are going to add that extra expense to your bill. There are citizens on limited incomes and senior citizens who can't afford this. Folks just starting out that just bought a new house can't afford this. Students going to school can't afford this. I know it has to be done eventually but I would ask that you reject this particular ordinance not only for the

reasons that I have stated, but for the reasons that a couple of the councilors have mentioned. I ask you to reject this ordinance.

Jerry Brawley, owner of the Chevron Station on Frontage Road, stated being in this business as long as I have we pretty much know what our competition does. The impact on our business of this \$.02 tax would be about \$50,000 per year. There are seven stations, and I am not one of the bigger players, but based on my quick calculation the number that I came up with was about \$700,000. In our business \$.02/gallon is huge. It may not sound like much when you are paying \$2.67/gallon. We are in a mini-serve market and our labor costs are double what they are in Clark County or anywhere in the state of Washington. The other thing is we have a \$.03 Multnomah County tax. Believe me the stations in Oregon City and in the 212 corridor, they do huge volumes because they don't have that \$.03 tax and people drive a long way to go there. In our case we will have this little island in Troutdale and the stations in Wood Village and all of the surrounding areas are going to prosper from this. The bigger companies are not here tonight to testify because they have a policy of not doing that sort of thing. This is something that will probably cost us two employees; it will take a big toll on our business. If there has to be more revenue I think there are better ways of doing it. Troutdale has a reputation of having cheap gas and if you take that away there will be a big impact on the other businesses on Frontage Road and the Outlet Mall.

William Rubert, Manager of the Chevron Station on Frontage Road, stated prior to working at the Chevron Station I was in accounting. There is a number that they track nationwide in an industry periodical, and in 2008 that number was 14.1 cents per gallon. That is what the average service station is generating in gross profit per gallon. That number ranges from 10 to 15 cents. While I recognize that there is an immediate need for maintenance I found myself sitting in the audience becoming very frustrated listening to staff. The presenter told us that the roads are in fantastic condition right now, and then he told us we should implement a \$.02 gas tax because our roads are going to be horrible in a certain number of years. If you figure that the average service station right now is making \$.10 per gallon, what is \$.02 of that? It is 20% of the small business owner's gross profit. The presenter also noted other cities such as Oregon City and Sandy that have gas taxes, but those cities are not located where they are bordering two other municipalities where people can just cross the street and get gas for \$.02 less just simply because of the tax. This will have an impact. If our volumes were to continue to drop we would be letting employees go and the other businesses down the street will suffer. Some of the local businesses in Troutdale that purchase their fuel from us have said that they will consider going to Wood Village or Fairview to get their gas. I can't see this as being a good thing for the people of Troutdale who probably aren't receiving a lot of notice on this matter. My fear is that this is being pushed because there is a moratorium coming and there is only a short window of time to act. I would hate to see the Council make a hasty decision.

Richard Cerutti, Owner of Pounder Oil, stated we are so close to Fairview and Wood Village that people would go there to purchase their fuel. We don't do a large volume at our small station, but we do have a lot of card-lock volume and the cost would be passed on to our customers so they would go down to the one that is in Wood Village or Fairview and buy their fuel because they are commercial customers and they purchase a lot of fuel. If we did pass

the tax on then we would have higher fuel prices then the stations down the street and then we would lose a good portion of our profits.

Mayor Kight closed the public hearing at 10:00pm.

MOTION: Councilor Wand moved to postpone consideration of the ordinance indefinitely. Seconded by Councilor Thomas.

Councilor Wand stated one of the things I haven't seen in this ordinance is a proposal that empowers the City of Troutdale to deny, refute or alter the laws of economics. The simple fact of the matter is that we are living in a state with the second highest unemployment in the nation. For decades now whenever a proposal has come before a governing agency where small business owners have come to that agency and said this will harm us, the answer has been it won't harm you that badly. What we have seen over the last few recessions is our state has come out of the recession last or nearly last. When the recessions have come they come to us first. At some point our small business owners die a death of a thousand cuts. The visionary question that I keep wondering is, when will enough be enough? For my mind the answer is right now. My vision for the City of Troutdale is that we become the most small business friendly city in the entire state. Passing a gas tax at this time, imposing it on our businesses and our residents, will not accomplish that. To answer the question posed by the manager of the Flying J, no we have not done everything that we can do to find another way. I am not prepared, just because the state has told us that we will have a moratorium, to jump the gun and short circuit the process and out of sheer panic impose a tax that will be harmful to our businesses and our city. I think we have discussed a very serious issue with our streets; I don't disagree with Mr. Warren's assessment that we need to provide for our streets. That is a critically important valuable piece of infrastructure and it is an asset of our city and we have an obligation to protect it. But I also know with absolute certainty that our residents expect their property taxes to pay for the assets of the city that are most important. Until I can go to my neighbors and tell them that I have looked at every other option and I have prioritized every penny that the city spends out of the general fund, as important as the streets are I am not prepared to impose a new tax. It is not the case that if we do not have a gas tax we will have a street utility fee; that is a false choice. Those are not the only two options. Streets and roads are critically important to us and I have faith that this council has the vision and leadership to look at our budget and make sure that we meet our priorities and obligations without a new tax. When we impose new tax we suck money out of the private economy. This is not the right time to pull money out of the private economy.

Councilor Thomas stated I agree with Councilor Wand. I also believe that if you are going to impose a tax that will affect the citizens they should have the opportunity to vote on it. I also agree that we shouldn't push things through just because there is a rule being imposed that we may not be able to do it later. Some of the worse decisions that I have ever made personally have been ones made in haste and I have regretted them. We all talk about being responsible with the taxpayers' money that we receive;

the other side of that is we need to be responsible with the money that the taxpayer has that they don't give us. Just because it is in their pockets doesn't mean it is ours. I haven't talked to a citizen in Troutdale that has said they want to pay an additional \$.02 gas tax. I personally purchase most of my gas in Troutdale; however, I will shop for cheaper gas. I understand the road situation; right now they are in very good shape. I think over the next two to three years we can come up with another option. I believe that when the taxpayer pays their property taxes they have an expectation that the city is going to take care of what they are supposed to do, which is maintain the roads and provide for public safety.

Councilor White stated we have not had the opportunity to look at every option; this has kind of been a rush job. Troutdale has survived for over one hundred years without a gas tax and the majority of our roads are currently indexed as excellent or good. Oregonians are currently paying \$.43/gallon in taxes and I can remember when that was the actual price for a gallon of gas. This fuel tax will be permanent and progressive. Proof of this is that it has already increased from \$.01 to \$.02 just from the time we held the work session until tonight. This tax has no merit. Having our neighboring communities like Corbett and Springdale paying for Troutdale Roads, similar to how Troutdale residents will be paying for the Sellwood Bridge. Red tape will increase the operating costs of our seven service stations at a critical time when economics are down. When gas reached \$4.20/gallon there was talk about reducing the fuel tax. The ordinance needs more work. Troutdale is known for its cheap gas and I feel fortunate that I live so close to these fine service stations that we have. I think we need to ride out this economic storm and I believe there is time to look at better solutions to this problem.

Councilor Kyle stated I am not going to support the motion although I don't like the ordinance either. At the work session we talked about a \$.01 gas tax and then it showed up as a \$.02 tax. I appreciate the testimony we received because that has informed us of what the \$.02 tax would mean. I don't think we have accurate numbers. When the council looked at the topic of gas tax last year it looked good to me but we didn't have accurate information and we don't have accurate information tonight. Although I am not going to support this motion, I do want to continue researching this information and have Mr. Warren work with these gentleman that showed up tonight to see if we can't get more accurate information. The \$.02 tax doesn't feel right to me.

Councilor Daoust stated I am not going to support the motion. Mayor Thalhoffer always taught me to look ahead into the future and that is what I am trying to do here. I am trying to get beyond, as hard as it is, the state of the short-term economy and I am trying to get beyond the cost at the pump right now because we all know how widely that fluctuates. I am trying to get beyond the details of administering this ordinance and the current street conditions. Mayor Thalhoffer always said to me you have to look ahead into the future and what you have to do right now. Even given the details and the data that you have right now you have to look ahead 10 to 15 years. When I do that I get beyond all of these things I just mentioned and I focus more on what the Finance Director is telling me, that our options are limited. You say we haven't looked at all of

the options. I say that our options are limited; we don't have many options. If you think we are going to take money out of the general fund for roads, you have to be kidding with what we just went through this last year. I am paying attention to what the Public Works Director and to Mr. Goss just said. These people are looking ahead to the roads we have to maintain, which is our responsibility. The level of deferred maintenance is our responsibility; it is not just Mr. Warrens. I am trying to keep that prospective. I don't want to just drop this and not discuss it anymore. I do think our options are limited so we need to address whether or not we are going to impose a gas tax.

Councilor Hartmann stated I believe that the proposal has not been thoroughly examined and that there is quite a bit of information left on the table to be discussed. The motion on floor is for us to postpone our decision indefinitely. At this point I am not in favor of postponing my decision; therefore I don't support this motion.

Mayor Kight stated we have heard testimony from the gas station operators that will be impacted, but I don't think they are the only ones impacted. One of the station operators indicated that when the price of gas went to \$4/gallon they saw a decrease in gallons sold. The public responded to the increase in price by not driving as much or driving cars that got better gas mileage. What is clear tonight by the presentation made by Mr. Warren is we have to look to the future and look at the cost of the deterioration of our roads and how we are going to pay for it. We have to make an informed decision based on the information that we do have. We are not obligated to impose a \$.02 gas tax. It could be a \$.01 gas tax. If the \$.02 gas tax will net us \$700,000 that would exceed what we were hoping to get. However, it appears that this issue is not going to go anywhere which is unfortunate. I would like to keep the conversation/discussion open. I agree with Councilor Daoust that the general fund is definitely not a funding alternative. I am a little disappointed that we are cutting off this discussion and I hope at some point we bring it back soon because we need to look for a funding mechanism.

VOTE: Councilor White – Yes; Councilor Kyle – No; Councilor Daoust – No; Councilor Hartmann – No; Councilor Wand – Yes; Councilor Thomas – Yes; Mayor Kight – No.

Motion Failed 3 – 4 *(see discussion below, Councilor Hartmann changed his vote from no to yes, therefore the motion passed)*

Councilor Hartmann stated I would like to make a motion that we do not pass the proposed ordinance.

Dave Nelson stated this is only the first reading of the ordinance; the second hearing would be held on August 25th and that is when you would take action on this ordinance.

Councilor Wand asked do we have to wait until after the second hearing to vote down the ordinance?

David Ross replied I thought that was what the motion to postpone indefinitely was intended to do. The motion to postpone indefinitely would have prevented a second reading effectively killing it with the moratorium coming up after September 28th. Tonight was just an introduction of the ordinance and the motion to postpone indefinitely would have been the procedural vehicle for preventing the second reading.

Councilor Hartmann stated I would like to make a motion to reconsider.

David Ross stated the motion to postpone indefinitely can be reconsidered only if it passes, which it did not.

Dave Nelson asked can we take a short recess to let the City Attorney research the question?

Mayor Kight called for a recess at 10:28pm and reconvened at 10:34pm.

David Ross stated council rule 2.08.170, in relevant part, states any council member may change their vote prior to the next order of business.

Dave Nelson stated that means that Councilor Hartmann can change his vote prior to us moving to the next agenda item.

Councilor Hartmann requested that his vote be changed to yes. The reason I had voted no is because I believe that the citizens of Troutdale and the business owners of Troutdale deserve a definitive yes or no from the vote of the people that represent them. I believe that the ordinance that is proposed is a limitation and I question the constitutionality of some of the clauses within it. There are also a lot of real people reasons why this particular ordinance and the fuel tax is inappropriate in my mind. With a 12% labor workforce report of our unemployment rate, 107% increase in foreclosures over the last year in Multnomah County alone and Troutdale being the highest per capita, with a combined gas tax of \$.06 from the state and \$.02 from Troutdale, and a doubled vehicle registration fee; that puts my home \$220 out of revenues that would otherwise service my children and my home. I believe that by turning Councilor Wand's motion down we would have had a chance to clearly state to Troutdale where we stood. I have clearly stated where I stand and at this time I would like to change my vote from a no to a yes.

CHANGED VOTE: Councilor Hartmann – ~~No~~ Yes.

Motion Passed 4 – 3 *(with Councilor Hartmann changing his vote from no to yes the motion "to postpone consideration of the ordinance indefinitely" passed)*

Mayor Kight stated I would propose to the Council that we schedule a work session to look at other funding/revenue alternatives to address the shortfall for street maintenance.

Councilor Wand stated we have been talking about having a work session to discuss other potential issues with the budget and I think this is one of the issues we need to discuss when we look at the budget.

Councilor Daoust stated should we also include a discussion about losing the business income tax in this same discussion, and the affect that would have on the city if we lose the \$450,000 out of the general fund.

Councilor Wand stated I would like to combine the discussions. We know we have three or four potentially big issues affecting our budget, in addition to some benefits like FedEx and other sources. We need to do some long-term planning on our budget.

Erich Mueller stated it is my desire to have a financial philosophical work session sometime in September to discuss monetary priorities for the city.

Council agreed.

6. PUBLIC HEARING / ORDINANCE (Introduced 6/23/09): An ordinance amending Troutdale Municipal Code Chapter 8.28, Nuisances, adding a provision to prohibit camping and making other changes.

Mayor Kight read the ordinance title and opened the public hearing at 10:45pm.

David Ross, City Attorney, stated this is the second hearing on this ordinance; it was introduced on June 23rd. We are proposing changes to the nuisance code to define camping and to prohibit camping in the public right-of-way. We are also taking the opportunity to do some housekeeping in the chapter including: Changing “director” to “city administrator”; changing the definition of vehicle to bring it more in-line with some of the vehicles we are seeing now; and to add personal service as a method of delivery in addition to mail or posting a notice because in the situation that we are talking about there may not be a building involve, it may be someone sleeping on the sidewalk or camping in a parking lot.

Councilor Hartmann stated at the last meeting there was a question regarding removing the language, “upon a public street or roadway”. The question was that it would possibly affect designated camping areas as well and how we would properly enforce that. On page 2 of the staff report it says in Section 8.28.020(V) we are going to strike “upon a public street or roadway”.

David Ross stated that is in the definition of vehicle; that doesn’t have anything to do with the camping portion of the ordinance.

Councilor Hartmann stated thanks for the clarification.

Mayor Kight asked is there anyone here tonight to speak to us on this issue?

No testimony.

Mayor Kight closed the public hearing at 10:50pm.

MOTION: Councilor Daoust moved to adopt the ordinance amending Troutdale Municipal Code Chapter 8.28, Nuisances, adding a provision to prohibit camping and making other changes. Seconded by Councilor Kyle.

VOTE: Councilor White – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Hartmann – Yes; Councilor Wand – Yes; Councilor Thomas – Yes; Mayor Kight – Yes.

Motion Passed 7 – 0

8. STAFF COMMUNICATIONS

Dave Nelson stated Summer Lake would like to schedule a work session with the Council.

Council agreed to schedule a meeting with Summer Lake on 8/25/09.

Dave Nelson stated Comcast sent us a notice of their 2009 rate review order. David Ross, Councilor Thomas and I have reviewed the notice and we don't see a need for the council to exercise our review authority. We have provided each of you with a copy of the notice. If any of you disagree with that please let us know tonight.

9. COUNCIL COMMUNICATIONS

Councilor Wand stated I had a discussion with our Police Chief and the temporary holding cell that Multnomah County had provided is now closed. The Chief is asking that the City Council consider sending a letter to the Multnomah County Commissioners to let them know that this is a minor expense in terms of the size of their budget, but it provides a huge benefit to the residents in East County because it allows us to have police service even when we have a person who has been taken into custody. What happens without this temporary holding facility is that our police officers are taken off of the street and they have to drive downtown and we then have one less police officer protecting our city.

Mayor Kight stated the Mayors of Gresham, Fairview, Troutdale and Wood Village are going to be formally lobbying Chair Wheeler on this very important issue.

Councilor Wand asked what is the status of the letter that we discussed sending to Tri-Met regarding the bus layover issues.

Dave Nelson replied I have given the Mayor a draft letter.

Councilor Wand stated the East Multnomah County Transportation Committee (EMCTC) has been working on a lobbying effort to promote the corridor study. My understanding is that there is a draft letter that will be circulated. It may be in our best interest to discuss the issue

now and enable our mayor to sign the letter when it is finalized. Finally, we had a work session with Waste Management a couple of months ago and they had agreed to get a plan put together and provide it to us within 30 days. Has staff heard anything?

Dave Nelson replied I have not heard anything; I will follow-up on that.

Councilor Thomas stated Councilor Wand had brought up the issue of lighting the arch and that the council really hasn't decided on that. I haven't seen anything more, but I assume construction is going forward assuming that lighting can be added but I don't know that Council has actually decided on that.

David Ross stated Councilor Wand's issue was directed at the public contracting question and that has been resolved. It is not a sufficient amount of money that requires council action.

Councilor Wand asked who is making the call to add lighting to the arch?

Mayor Kight stated I think the council gave direction at some point.

Councilor Hartmann stated I never did.

Councilor White stated I remember deciding to add power to have the option of adding lighting at a later date.

Councilor Wand stated I thought we discussed it at a work session, not at a council meeting.

Mayor Kight stated if we need to take formal action on a \$14,000 item regarding whether or not we are going to light the arch, should it be a discussion item or on the consent agenda? What do you want to do to move this off center?

Councilor Wand stated I am open to a staff recommendation as to what is proper. I want to know that we are not sending an architect out to do a bunch of work that isn't authorized properly by city council and then they don't get paid for it.

David Ross stated the city council does not have to authorize this and the architect has been sent the personal services agreement to design lighting.

Dave Nelson stated if you would like us to bring forward a resolution we could do that.

David Ross stated we don't need a resolution; it is under \$25,000 and our code is clear. If there is a policy dispute amongst the Council then you need to resolve whether or not you want this lit or not. Public Works was clearly under the impression that we were told that if we are going to do the lighting we need to do it now otherwise it will cost three times as much to retrofit it. They are under the impression that their orders were to have the arch designed to be lit when it was built.

Councilor Hartmann stated my understanding at the work session was that it was going to be an unlit arch. We had discussed the option of should we or shouldn't we and it was a mixed bag but we felt that the budgetary item was already high and it would add additional dollars onto the project (the engineering costs and the redesign cost were going to be increased, plus getting the meter to the facility) and it would be a burden on the taxpayers monthly. We all agreed that may not be the best solution for us to go forward with. I don't know where the lighting got back on the table, but the last time I heard about it at the work session it was off the table.

Councilor Wand stated my concern is really with the process. This is a very controversial decision that we made to fund this arch. We put our credibility on the line and I think it was the right decision. I think lighting is fine; I am not telling you that I think lighting is a bad call. My concern is that I feel like we went into the fire and we made what I think is the right decision on a particular set of facts and now they are shifting and I don't understand why and I don't understand how it happened and I wasn't part of that discussion. We are representing the people and we need to know those answers and what is going on and how this came about because we are ultimately responsible. The process in this particular instance is a concern to me. The issue is not about the lights, it is about how did this happen and we didn't know about it.

Dave Nelson stated the \$14,000 is for the architect to design the lighting; that still doesn't light it. We are still not getting power to it. We have talked to PGE about where we would run the power to and we have asked them if they would donate the power. I think what we are trying to do is address the design issue for the lighting so it could be lighted at some point and time. We do not have power to it yet; we have talked about where it would come from. More specifically we talked about it when we were looking at moving it to Mayors Square because there is a city power source right there. What we are talking about is designing it so that it can have lights added to it and it will have a power source available when it gets connected. It is not going to be lit yet.

Councilor Hartmann asked what is the total additional cost for the changes? \$14,000 is for the design and then there will be the actual physical changes that are going to be incorporated to have the ability for power when we make a decision to implement that sort of a design change. That would equate a total of over \$25,000 which is why that was always a big issue.

Councilor Wand stated the question is whether Bremik will make the arch newly designed so that it can incorporate lights for the same price or whether they are going to send us a change order with an increased cost just to construct it. In order to feel comfortable with this I need to know that Bremik is on board, that they have signed the contract for the lump sum or the not to exceed sum and that no matter what the designer does to retrofit it or make it suitable to be retrofitted for lights, that the price will be the same. If we can settle those issues, \$14,000 for the redesign I would support that.

Dave Nelson stated we will know for sure when we see the contract. I spoke with Mike Greenslade today and he said we would have the contract tomorrow.

Councilor Wand asked does he know about this redesign?

Dave Nelson replied yes, he was part of the discussion.

Councilor Thomas requested that the Council be provided with a copy of the expense reports for the councilors, including the Mayor's credit card expenses.

Councilor Thomas stated we have a number of volunteers working around the city and my concern is the potential risk to the city. I would like the City Attorney to provide me with an opinion on that.

Mayor Kight stated they have signed a waiver.

Councilor Thomas stated I have heard some recent complaints about graffiti. Do we have any way to remove that? Do we have an abatement policy?

David Ross replied when we passed the graffiti ordinance we had originally drafted it such that the property owner would be responsible for the removal of the graffiti otherwise it would fall under the nuisance abatement ordinance but that part of the ordinance was not passed. The Chief has authority to abate it if it is on public property.

Mayor Kight read a letter that will be sent to Tri-Met and asked the Council for their approval to send the letter (copy not submitted into the record).

Council had no objection to sending the letter.

David Ross stated there was an issue raised about sending a letter regarding the corridor study?

Mayor Kight stated I don't think anyone has seen a copy of that letter.

Councilor Wand stated Commissioner McKeel is changing a sentence at the request of the City of Wood Village to satisfy a concern and then once we receive a draft it will be circulated. The August 25th meeting will be too late for the council to approve the letter. The substance of the letter is asking JPACT to follow the recommendations of the MOU that this Council passed along with the other four cities, and asking them to fund our corridor.

Mayor Kight asked Mr. Ross, could we email this letter to the Council for their review/approval?

David Ross replied you can't have a public meeting by email. Who are our representatives on EMCTC?

Councilor Wand stated the Mayor is the representative and I am the alternate.

David Ross stated what you could probably do is if the two of you agree that the language expresses the understanding of the Council then the Mayor would be authorized to sign it.

Council agreed.

10. ADJOURNMENT:

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

Meeting adjourned at 11:26pm.

Jim Kight, Mayor

Approved October 13, 2009

ATTEST:

Debbie Stickney, City Recorder