

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

Tuesday, April 10, 2007

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

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

PRESENT: Mayor Thalhofer, Councilor Kight, Councilor Ripma, Councilor Thomas, Councilor Canfield, Councilor Kyle and Councilor Daoust.

ABSENT: None.

STAFF: John Anderson, City Administrator; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Kathy Leader, Finance Director; Paul Elsner, Interim City Attorney; Debbie Stickney, City Recorder; and Travis Hultin, Chief Engineer.

GUESTS: See Attached.

2. CONSENT AGENDA:

2.1 ACCEPT MINUTES: December 12, 2006 Work Session, January 9, 2007 Regular Meeting, January 30, 2007 Work Session, February 6, 2007 Work Session and February 27, 2007 Work Session.

2.2 RESOLUTION: A resolution approving a personal services agreement for legal services.

MOTION: Councilor Daoust moved to adopt the consent agenda. Seconded by Councilor Thomas. Motion Passed Unanimously.

3. PROCLAMATION: Arbor Day – April 21, 2007

Mayor Thalhofer read the proclamation.

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

None.

5. PUBLIC HEARING / ORDINANCE (Introduction and Adoption): An Ordinance adopting a competitive cable franchise application process in connection with any franchise application submitted pursuant to §76.41 of Title 47 of the Code of Federal Regulations and declaring an emergency.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:05pm.

Councilor Thomas stated I represent the City of Troutdale on the Mt. Hood Cable Regulatory Commission (MHCRC) and I am also the Chair of the MHCRC. Tonight we are asking you to support the MHCRC in passing some basic guidelines that say if you want to operate a franchise in the City of Troutdale for cable services you need to follow these basic rules which would be defined by ordinance. As you know the FCC has recently passed rules that give us some time limits and very minimal requirements for cable franchises. What we are asking for with this document is to set the minimum standards which need to be provided for.

Mary Beth Henry, Mt. Hood Cable Regulatory Commission, stated I would like to explain why it is that this ordinance needs to be adopted as an emergency. On March 5th the Federal Communications Commission (FCC) adopted a rule that will take effect on April 20th. We have reviewed this very carefully with our attorneys and determined that we needed to put in writing the process that the MHCRC has used all of these years, and that is really what you have before you. The reason for the urgency is that our attorneys have advised us that it would be best to have this rule in place prior to April 20th. The easiest way to explain this is you are really just codifying our existing practice. For example we provide consumer protection and we want companies that are going to be competing in the video market here in Troutdale to also provide good customer service. We want 5% of gross revenue franchise fee for our cities general funds and that is a standard. The MHCRC is very pleased that both Verizon and Quest are seeking competitive video franchise in our communities. We feel that to be conservative and to make sure that we can protect our community interest with high-speed internet connections for our schools and our libraries, with our consumer protection and our franchise fees, that we need to put this process in writing that would need to be followed if you want to compete for a video franchise in the MHCRC territory.

Councilor Daoust asked if this ordinance is business as usual for you, what is the big deal with the FCC ruling that we need to have this in place?

Councilor Thomas stated the FCC rules stated that if we don't have a defined standard in the jurisdiction they can define the standard of service, write that up and give you 90 days to approve or disapprove it and if you don't do that in 90 days they get the franchise by default. What this does is adopts standards that are in our Code that says if you are going to offer cable services in Troutdale these are the basic minimum standards that you need to offer.

Mary Beth Henry stated the FCC basically listed ten minor items and then they had a catchall phrase that says you have to follow any other local laws in communities where you plan to offer service. That is why we want to make this a law. This has been our business as usual and our practice, but it hasn't been adopted law in any of the jurisdictions. I think it is important to note that representatives of Qwest, Verizon and Comcast were all provided

notice on the same schedule as all of our jurisdictions and asked to provide comments. We have not received any comments.

Councilor Kight stated so this ordinance will be applicable to any provider.

Mary Beth Henry stated actually this new rule will apply to competitive providers but it outlines the same kinds of benefits that our current provider provides. The FCC, at the same time they issued this rule, they also issued what is called a further notice of proposed rule making and in that proceeding they are asking for our comments on whether these rules should apply to existing cable operators upon renewal and they are also asking for our input on consumer protection and whether local governments should be able to continue adopting local cable consumer protection laws. That is a proceeding that the MHCRC will participate in and we will be filing comments. At this time this rule actually applies to competitors.

Councilor Kight asked not to the current provider?

Mary Beth Henry replied no, but the ordinance that we are asking you to adopt tonight actually outlines the kinds of benefits and franchise fee payments that the existing operator does provide to us.

Councilor Ripma asked the rule that we are responding to was published on March 5th?

Mary Beth Henry replied that is correct.

Councilor Ripma asked it sounds like the FCC acted on this back in December?

Mary Beth Henry replied yes. On December 20th, no documents were provided to local governments or the public, but the FCC members themselves had drafts of the rule. On a 3 to 2 vote on December 20th they adopted the rule, but they didn't publish it for public consumption until March 5th.

Councilor Ripma asked isn't there a Federal Register where they have to publish things so many days in advance that wouldn't make this such a panic situation? Why does this require emergency action?

Mary Beth Henry replied I wish that were true. While the FCC adopted the rule no one outside of the FCC had seen it. It took the FCC about 90 days to publish it in the Federal Register. They don't have to publish it in advance.

Councilor Daoust asked is it open for public hearing right now?

Mary Beth Henry replied no. The rule has been adopted. It was against our strenuous objections that they adopted it because we had heard rumors of it, but again we were not allowed to see anything in writing prior to that December 20th vote or prior to March 5th. What we are doing is that local governments and public interest organizations, like Metro East Community Media, are all joining our national organizations and have filed an appeal. We heard today that it may be heard in the 6th Circuit. The organizations participating are the

National League of Cities, National Association of Counties, and the Alliance for Community Media. There is a large group of cities and public interest organizations are very unhappy with this rule because the reason we have franchising in the first place is that private companies are allowed to use our public streets and profit from that use. The reason for the urgency is because the FCC rule, unless our appeal is granted, will go into effect on April 20th and Verizon could come in that day and hand the City of Troutdale a franchise that says we will pay you 1% franchise fees, we don't believe in public access, the Institutional Network, we don't want to provide high speed for the schools and libraries either and we would have 90 days to act on that. It could take affect after 90 days if we haven't followed the process or denied it. We need to have some process in place for denying it and what this rule allows is if you do receive a franchise application in Troutdale we can go to our local rule to see if meets our basic standards and if it doesn't then we have grounds for denying the franchise. Alternatively, a company that would want to come and compete can look at our basic standards and will know what they need to supply if they want to compete in Troutdale.

Councilor Ripma asked when the FCC enacted this rule in December, it wasn't known that we had to adopt something?

Councilor Thomas stated until we actually saw the rule in writing we didn't know.

Councilor Ripma asked is our current franchise exclusive?

Councilor Thomas replied no.

Councilor Ripma asked I assume that other jurisdictions are doing the same thing we are doing?

Councilor Thomas stated we just left Wood Village and they passed it. It will be presented to the City of Portland tomorrow followed by Fairview and Multnomah County.

Councilor Ripma stated since it is a federal rule there must be other cable franchise organizations in the state.

Mary Beth Henry stated there are some other cities in the state that are looking at it but nationally there are about twelve states that have passed statewide video franchising laws and what the FCC rule did was left those state level laws in tact. For example the FCC rule does not apply to California because they passed a statewide franchising law as did Indiana and Texas and others. You have other folks like the Metropolitan Area Communications Commission, those jurisdictions in Washington County, they actually have a competitive video franchise that has been adopted by all of the jurisdictions, so they have competitors, Comcast and Verizon, that are already competing.

Councilor Ripma asked so they have a rule that was already adopted?

Mary Beth Henry replied well they had a franchise already adopted and it is very unlikely that there would be a third provider. It would be the third provider that would come in to trigger this in Washington County and because of the huge capital investment that is highly unlikely.

Mayor Thalhoffer asked is there anyone here that would like to speak to us on this issue?

No testimony received.

Mayor Thalhoffer closed the public hearing at 7:30pm.

MOTION: Councilor Kight moved to adopt the ordinance adopting a competitive cable franchise application process in connection with any franchise application submitted pursuant to §76.41 of Title 47 of the Code of Federal Regulations and declaring an emergency. Seconded by Councilor Daoust.

Councilor Kight stated I think our speakers spoke eloquently as to why we need to pass this and pass it very quickly to protect the interest of the City of Troutdale and our residents here that are cable users.

Councilor Daoust stated I support this to level the playing field for everybody and to promote competition.

Councilor Ripma stated I understand the reason why we need to adopt an emergency ordinance which has to do with events far away from us that we need to react to and I commend the MHCRC for reacting with this approach, I think it is the right way.

VOTE: Councilor Daoust – Yes; Councilor Kight – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhoffer – Yes; Councilor Canfield – Yes; Councilor Kyle – Yes.

Motion Passed Unanimously.

6. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Chapter 15.12 of the Troutdale Municipal Code, Fire Code and Fire Life and Safety Regulations, replacing regulations from the 2004 Oregon Fire Code with regulations in the 2007 Oregon Fire Code.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:33pm.

Rich Faith, Community Development Director, stated Chapter 15.12 of the Troutdale Municipal Code establishes our fire code and various fire and safety regulations. The amendments before you this evening would adopt the 2007 edition of the Oregon Fire Code, which is amended by Gresham Fire and Emergency Services who is our contract provider. These are really housekeeping amendments and the purpose is to bring our fire code up to date with the 2007 edition of the Oregon Fire Code and to also be consistent with Gresham's Fire and Emergency Services Fire Code and it will improve the efficiency and effectiveness of their ability to administer the fire code. The Gresham Fire Marshal is the primary advocate for this and is the person who structured these amendments.

Gus Liam, Gresham Fire Marshal, stated Robert Mottice is one of my senior deputies and he also represents us on the State Code Committee. Robert will be going over the changes I have made to the Oregon Fire Code. Every three years nationally we go through a code cycle where the national model codes are amended. Gresham Fire and Emergency Services is an exempt jurisdiction. What that means is that the state says that we have the certifications and experience and the necessary people to provide services and the procedures and processes in place equal to or better than what the state can do so the state exempts us from their oversight with caveat which is when we do make local amendments that we run our code through them for their approval. They have reviewed and approved our code. We have tried to make as few amendments as possible but there are some things in our local statistics that required us to make a few changes in this code cycle that we did not have before.

Robert Mottice reviewed all of the changes shown in the redlined copy of Chapter 15.12 (shown in attachment A to these minutes).

Councilor Daoust stated you made efforts in the beginning to cross out Troutdale City Council and replace it with the word jurisdiction, but in the later half you kept Troutdale City Council in.

Gus Liam stated your staff made the changes; they adapted the Gresham ordinance to your ordinance.

Councilor Daoust asked does Gresham have the same identical language as this?

Gus Liam replied Gresham's language is not completely identical to this because it was modified somewhat by your staff to more fit the needs of your city. All of the "meat" of the code itself and the amendments are intact and are in your ordinance.

Councilor Kight stated under Section F, you indicated that Gresham has fees for inspections and re-inspections. I am assuming that Troutdale does not at this time?

Gus Liam replied that is correct.

Councilor Kight asked on your fee schedule for Gresham, are you suggesting that Troutdale should have something similar to what Gresham has as far as an inspection fee program?

Gus Liam replied it would be my hope that you would adopt a resolution to include fees for inspections. Since we instituted this in Gresham, and Wood Village followed suit and adopted it, the number of re-inspections that we make in those cities have drastically been reduced because folks know that they have to pay a fee for that re-inspection so they abate their hazards and because of that those cities are safer. It also reduces staff time of having to keep going back to businesses to get them to abate their hazards.

Councilor Kight asked when you do an initial inspection and you identify something that is not in compliance, is their a fine assessed as a result of that?

Gus Liam replied no. It is a fire safety survey inspection. What we have found is that before we had the fees we would go back the following year and find the same hazards. Now when we go back we are finding that folks are keeping their hazards abated and part of that has been public education but for the most part it has been the fee schedule.

Councilor Kight stated so there is a financial incentive on the part of the business to be in compliance because they don't want to pay the re-inspection fee. If you are required to re-inspect a business and you find ten different violations, is there a cost per violation?

Gus Liam replied no, but there is an additional cost for the ensuing visits. After the second visit the inspector finds that they have not abated all of the hazards there is a \$400 administrative fee that is applied to that business that recurs monthly until those are abated.

Councilor Kight asked is this applied to multi-family housing, rental property?

Gus Liam replied it applies to triplexes and above.

Councilor Kight asked does this apply to a home business?

Gus Liam replied no.

Councilor Ripma stated I can't tell from the way this is worded, is it correct that natural cut Christmas trees are not banned by this ordinance?

Robert Mottice replied that is correct, this ordinance will allow them. The state code currently does not allow them.

Gus Liam stated with the exception of one and two family dwellings. What the state did is with their wording fresh cut Christmas trees would not be allowed within apartment dwellings. Apartment dwellings are a residential dwelling and by state statute we can not control what a person puts inside of their apartment. We can control the public places of an apartment complex, but not within the dwelling itself. The state made a mistake and they have recognized that and I expect that will be changed. Our wording goes back to the model code language which does not restrict them in residential dwelling units.

Councilor Ripma stated on page 3, Item F, Section 804.1.1 reads, "Natural cut trees shall be prohibited in Group A, E, I-1, I-2, I-3, I-4, M, R-1, R-2, R-4 and SR occupancies." Then it lists exceptions and Item 2 reads, "Within dwelling units of R-2 occupancies". I can't tell what that means. Can you explain why that language means that they are not prohibited?

Gus Liam replied A means assemblies, E means educational, I means institutional, M means mercantile and R means motels, hotels and apartments and the SR is the special requirement occupancies. The exceptions say if they are in an area of those occupancies protected by an automatic sprinkler system they are not prohibited. It also says that within dwelling units of R2 occupancies they are not prohibited, those are your apartments. What

that means is that the exception to that rule of where they are restricted are in R2 apartments, but the dwellings themselves they can be in.

Councilor Ripma asked where are the single-family homes in this list?

Gus Liam replied there is an exception to this in the code itself that is an exception to one and two family dwellings.

Councilor Ripma stated so we don't have a full copy of Section 804.1.1 and somewhere in that it says that they are okay in single-family homes.

Gus Liam replied correct.

Councilor Ripma asked is this the current rule for house numbering or are we adopting a new rule that requires 6" high contrasting numbers with a minimum stroke width of 0.5 inch and larger?

Gus Liam replied these are not for homes, they are for commercial occupancies. That is the current language in your code.

Councilor Thomas asked is back yard burning part of this ordinance?

Gus Liam replied no.

Councilor Thomas asked on Page 4, Section E, the new language that reads, "In addition to the imposition of an administrative enforcement fee, the City Administrator, or the City Administrator's designee, may enforce abatement proceedings or civil action..." I am not sure how we do that or how that fits with what Troutdale does.

Gus Liam replied I am not sure how you do that, but this was added by your staff so that if people do not abate, then you have the ability to have enforcement action.

Mayor Thalhoffer asked is there anyway to make it mandatory that residents make their house number more visible?

Gus Liam replied this is basically a commercial fire code. There are some things in here that are general that also apply to homes like general fire precautions. The addressing is not within the scope of residential. You certainly have the ability as a city to pass an ordinance for residential lettering and numbering.

Councilor Kyle asked on Page 1, Section D, should the last line read the City of Troutdale instead of City of Gresham?

Gus Liam replied that was actually referring to what the City of Gresham had adopted and that any reference otherwise from your code applied to that. I don't see any reason why it couldn't read the City of Troutdale. You are not actually required to adopt the fire code

because Gresham Fire and Emergency Services has the jurisdiction and has adopted one. That might be a better question for your attorney to answer.

Paul Elsner, Interim City Attorney replied I think it is probably correct as written since they are independent and the City of Gresham is basically acting as an independent agency and so they would be the ones to adopt any regulations. They have been authorized by the state to adopt regulations. What you are adopting here is allowing them to change their code and it would then be reflected in yours.

Councilor Kyle stated I guess I was confused because it doesn't read City of Gresham Fire Department.

Paul Elsner replied the fire department doesn't have the ability to enact anything, they have to go to their city council. The way this is written it allows you to basically give the City of Gresham the authority to adopt these new regulations and then they will become applicable here. There are some legal problems with that, but I will not get into that tonight. My sense is right now you are adopting a specific code and that is the most important thing.

Mayor Thalhoffer asked is there anyone here that would like to speak to us on this issue?

No testimony received.

Mayor Thalhoffer closed the public hearing at 8:05pm and stated we will have a second hearing on this ordinance in two weeks.

7. RESOLUTION: A resolution adopting the North Troutdale Storm Drainage master Plan dated February 2007.

Travis Hultin, Civil Engineer, stated in 1990 the original North Troutdale Storm Drainage Master Plan (NTSDMP) was adopted by the City Council. Since 1990 changes have occurred in the basin that rendered this plan out of date with respect to regulations, physical characteristics and development. As a result we felt it was time to update the plan. We worked with a firm named Otak to prepare this new North Troutdale Storm Drainage Master Plan. The Plan basically looks at the North Troutdale basin which covers an area bounded on the north by the Columbia River, the east by the Sandy River, on the west by the city limits and on the south it varies but more or less the Union Pacific Railroad. In order to prepare the plan, our consultants crafted a new hydrologic and hydraulic model of the major components of the system. We looked at the capacity of the systems that are in place, potential development in the future, the demands in place on those systems, areas that we might find trouble and we determined what types of projects will be needed in the near and distant future to address those to provide capacity. The results of the Master Plan identify six capital improvement projects. Two of those are recommended for execution in the near future and the other four are dependent upon development within the basin. We held an open house to present this draft plan to the public and give them an opportunity to comment. There were a couple of folks that attended that mainly had questions, there were not any comments or additions requested. Staff would ask that the Council adopt the Plan.

Councilor Daoust asked what funds would pay for these capital improvement projects?

Travis Hultin replied system development charges for the most part. We may have a couple that require some utility funds.

Councilor Daoust asked do we have enough funds to get started on the first two projects?

Travis Hultin replied yes.

Councilor Daoust asked what is the most prominent flooding problem that we have had?

Travis Hultin replied we have done really well. There were several projects identified in the previous Master Plan that you won't see in the updated plan. One of the reasons for that is because what we have found is that we don't have some of the problems that were previously predicted. In general we don't have any significant flooding problems that have been reported to us in that area. We have, on occasions, had flooding problems at the underpass where Columbia River Highway goes underneath the railroad. We don't see that every year, only during the bigger storm events.

Councilor Kight asked given the development that the Port of Portland will have on the Alcoa property, how will that affect the scope of work that you will doing?

Travis Hultin replied the development of that site was on our radar screen when we started this process, so that was factored into the hydrologic and hydraulic models for this study.

Councilor Kight asked on larger developments like this, are they doing anything cooperatively with the City as far as funding or providing some of the resources in order to pay for some of this other than system development charges?

Travis Hultin replied I am not aware of any developer contribution to these particular projects. The developer will be required to build local drainage facilities for their development.

Councilor Ripma stated this drainage basin area that is included in the report extends outside of the city. Are other cities participating in this?

Travis Hultin replied yes, we did involve all of the jurisdictions that this touches on; some were more involved than others. We worked closely with the Sandy Drainage Improvement Company throughout the process. The reason that the basin goes outside of the city limits is because the storm water does not observe any political boundary, so we have to look at the reality of where that runoff is coming from.

Councilor Ripma stated but we are planning for facilities of various kinds that are in fact outside of the city and I am wondering how that is handled.

Travis Hultin replied the facilities themselves that we are talking about constructing or improving would be within the city or within areas that are predicted to be annexed into the city. The basin goes outside of the city limits because you have storm water that falls outside

of the basin and runs off into the basin and then we have to deal with it even though it didn't originate in our city limits.

Councilor Ripma stated the Map 7.1 shows a pump station and other facilities that are obviously in Fairview.

Travis Hultin stated the pump station is included because that is the ultimate discharge point for almost all of the water that goes into the North Troutdale Basin. In terms of modeling the system they have to include that because if you don't model the behavior of the pump station you are not going to get accurate results for what the water levels are in the streams that use the pump station.

Councilor Ripma stated so you are saying that the pump station and other facilities are already there.

Travis Hultin replied yes.

Councilor Ripma asked are some of the recommended projects outside of Troutdale which would require the other jurisdictions to do?

Travis Hultin replied no. The only other jurisdiction that would be involved in several of these is the Sandy Drainage Improvement Company but that jurisdiction is within Troutdale.

Councilor Ripma stated I thought that our industrial area north was all inside this separate district which has its own fees and charged landowners, and set of pumps and levies etc. How does that relate to this?

Travis Hultin replied their mission is to operate the pump station and to maintain the drainage channels, the open drainageways that are out there like the creeks, ditches, etc. The pipe network that is in the North Troutdale area that takes water from the developed properties and sends it to these receiving streams, that is operated by the City of Troutdale and to some extent the County.

Mayor Thalsofer asked is there anyone here that would like to speak to us on this issue?

No testimony received.

MOTION: Councilor Daoust moved to adopt the resolution adopting the North Troutdale Storm Drainage Master Plan dated February 2007. Seconded by Councilor Canfield.

Councilor Daoust stated this is a comprehensive, thorough, up to date Master Plan.

Councilor Canfield stated I agree with Councilor Daoust.

Councilor Kight stated this Master Plan protects the assets of our City, particularly to the north. I think anyone who was here in 1996 and was impacted by the flooding we

experienced recognizes how important it is that we have properly working pump stations and dikes in place. These things require maintenance and upgrading. I want to thank the staff for a very comprehensive report.

VOTE: Councilor Daoust – Yes; Councilor Kight – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Canfield – Yes; Councilor Kyle – Yes.

Motion Passed Unanimously.

8. STAFF COMMUNICATIONS

John Anderson stated we received a communication from the League of Oregon Cities announcing their April 25th City Hall Day. I encourage councilors to attend.

John Anderson stated we have been contacted by Sharon Nesbit and she has completed her historical book on Troutdale. I was wondering how many volumes we should purchase for the city. We will be communicating with you at a later date to coordinate this.

9. COUNCIL COMMUNICATIONS

None.

10. ADJOURNMENT:

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

Meeting adjourned at 8:30pm.

Paul Thalhofer, Mayor

Dated: Approved June 12, 2007

ATTEST:

Debbie Stickney, City Recorder