

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

Tuesday, April 24, 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 Thomas, Councilor Canfield, Councilor Kyle and Councilor Daoust.

ABSENT: Councilor Ripma (excused).

STAFF: John Anderson, City Administrator; Rich Faith, Community Development Director; Kathy Leader, Finance Director; Paul Elsner, Interim City Attorney; Debbie Stickney, City Recorder; and Clyde Keebaugh, Parks and Facilities Supervisor.

GUESTS: Metro Councilor Rod Park; Kristin Cotugno, Oregon Department of Forestry; Mike McMenamin; Steve Abel; and Robert Mottice, Gresham Fire and Emergency Services.

2. CONSENT AGENDA:

2.1 RESOLUTION: A resolution declaring certain personal property as surplus and authorizing disposal.

MOTION: Councilor Kight moved to accept the resolution. Seconded by Councilor Thomas. Motion Passed Unanimously.

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

None.

4. REPORT: Metro Update

Metro Councilor Rod Park updated the Council on regional transportation, natural areas and Metro's legislative agenda. Councilor Rod Park showed the Council a PowerPoint Presentation (copy included in the packet) which contained information on the following: 2040 Growth Concept; how to stimulate development in centers, corridors, and employment areas; coordinating growth with neighboring communities; designating areas that shall not

be urbanized; designating and planning urban reserves; prioritize and invest in transportation improvements; 2035 Regional Transportation Plan (RTP) update; fiscal challenges; 2004 RTP projects unfunded gap; RTP - Update project timeline; Transit Oriented Development revitalized cities; Natural Areas – District 1 target areas and local share. Metro’s legislative agenda topics include: UGB evaluation cycle – HB2051; urban reserves/rural reserves – SB1011; and building codes – HB2540.

5. PRESENTATION: Tree City USA

Kristin Cotugno of Oregon Department of Forestry presented the Council with an award for achieving the Tree City USA designation for the 7th year.

6. REQUEST: A request by Edgefield to have events declared as “Events of Citywide Interest”.

Mike McMenamain stated it would be nice to have this issue taken care of once and for all so I would like to make a case for classifying Edgefield as an event of citywide interest. Edgefield has been a dream of ours forever and it is ongoing and keeps evolving. I think what makes it fun for us is the events and activities that go on there on a daily basis. Starting with the art, there is enumerable different kinds of art at Edgefield that change and increase all of the time. The history is reflected in the building that we restored and it is a lot of fun for people to tour. It is reflected in the gardens and land. We have music events every night of the year. We have performances, theater, golf, hiking, pool, a brewery, a distillery and conventions, reunions, weddings, business meetings and other types of gatherings happening almost every day. The history of the property is that it was a poor farm and we respect that and want to continue that tradition. In fact we do many things that they did in the old days such as farming. We have vineyards that produce about 1,000 cases of wine each year. Our dream was to combine all of these things into one. A farm does not have a lot of blacktop, it is historically a field and we certainly respect that. We have approximately 400 to 500 parking spots now and we have submitted a permit for another 100 parking spaces. I think there has to be a balance especially with property like Edgefield.

Steve Abel, Attorney for McMenamains, stated McMenamains has many circumstances where it needs temporary parking and that temporary parking under your Code can be allowed on unpaved surfaces when the Council finds that the event is of citywide interest. That is why we are here before you today, to receive a declaration from the Council that the Edgefield events, on a whole, are events of citywide interest because they reap a public benefit and there is the ability of the Troutdale citizens to attend those events. Receiving that declaration will provide us the ability to have temporary overflow parking adjacent to the Edgefield facility in those circumstances when it is necessary. We did park temporarily on the unpaved surfaces in previous years and during last years summer concert series. What we are trying to do at this point is to formalize that relationship by receiving the declaration from the Council.

Councilor Kight asked are we charging a fee for temporary parking?

Rich Faith, Community Development Director, replied no.

Councilor Kight asked what process do they have to go through to receive permission to have overflow parking?

Rich Faith replied there is no process.

Councilor Kight asked so they just park on the grass and that is it?

Rich Faith replied that is what they have been doing.

Councilor Kight asked and they didn't have to come to the city to receive permission to do that?

Rich Faith replied they were technically violating the Code in previous years and that is one of the reasons we now have a provision, which Council adopted last fall, that establishes this category called "events of citywide interest" in which only the City Council is authorized to declare and by doing that it gives them the right to park on unpaved surfaces without violating the Code.

Councilor Kight stated one of the restrictions is that you can't park in a vegetation corridor or a slope district. Are they doing that now?

Rich Faith replied none of their designated paved parking lots fall into that category. For the temporary overflow parking on unpaved surfaces, probably the only area that may come close to a protected water feature is on the extreme west end of the campus where Arata Creek is. They would need to maintain a 50' buffer from Arata Creek.

Councilor Kight asked what is the downside to doing this?

Rich Faith replied this is not a staff driven request. The structure of the Code is that the Council deals with these requests to be declared an event of citywide interest. If they were requesting that this be determined a community event or a special event then I would follow the definition of the Code and I could make that determination. I have determined in the past that what occurs at Edgefield does not meet the definition of a community event or special event and therefore it technically did not qualify for overflow parking on unpaved surfaces and that is what prompted this amendment that is now in the Code.

Councilor Kight stated I find it curious that you found this not to be a community event. How did you determine that?

Rich Faith replied the definition of community event is shown in Exhibit C and is, "An activity or program that is sponsored by, or offered with assistance from, the City in connection with a community group including, but not limited to, the Chamber of Commerce or Historical Society." I could not find that the Edgefield activities qualified under that definition. The definition for a special event is, "A fundraiser or similar activity that is sponsored by a non-profit organization including, but not limited to, car washes, breakfasts, dinners, and auctions". I could not find that the events at Edgefield met that definition.

Councilor Kight stated those are fairly narrow definitions. Mike, how would you counter that argument?

Mike McMenamain replied I would defer to my legal counsel.

Steve Abel stated those are correct definitions that Mr. Faith gave you and those were the source of the controversy about temporary overflow parking at Edgefield. In the discussions with staff we worked out an accommodation last year to allow for parking during 2006 on a temporary basis with the understanding that an amendment would be made in 2006 that would add a new category, events of citywide interest, and we would have the opportunity to come before Council and ask for a declaration to have our events declared events of citywide interest and therefore we would be allowed to have the temporary overflow parking on unpaved surfaces.

Councilor Kight asked is there any unpaved areas that McMenamains is currently parking cars on that would impact the environment?

Steve Abel replied no.

Councilor Kight asked does this also affect signage, or is that a separate issue?

Rich Faith replied if they are declared an event of citywide interest they would also qualify for signage and they could put signage around the city to promote or advertise their event.

Councilor Kight asked is it your intent to put up signs around the city?

Steve Abel replied no.

Councilor Thomas asked have you considered other ways to accommodate parking surfaces besides paving?

Steve Abel replied the temporary parking for this facility is on the east and west sides of the facility and currently both of those areas are fields. For the number of days that we have temporary parking in those areas I don't believe that it is economically feasible to do that. Frankly the environment is better off leaving it as natural turf and having temporary parking in the dryer months.

Councilor Thomas stated looking at your list of events, to me they are clearly business opportunities more so then events for the community. High school reunions, family reunions, weddings and anniversaries, those aren't generally considered community events.

Mike McMenamain asked you don't see a music festival as a citywide event?

Councilor Thomas stated I see citywide value, but not citywide event?

Mike McMenamain asked what do you consider as a citywide event?

Councilor Thomas replied to me they are events that the city is more involved in, something that is held at Glenn Otto Park and involves more than just one business. They have events in downtown that involve multiple businesses. If the primary issue really is parking, then we can deal with that without necessarily giving special consideration for everything else. I really don't feel like it fits.

Steve Abel stated events of citywide interest have a two-part test to it. One, is the event open to the citizens of Troutdale and two, will the event provide a public benefit. Our sense is that our events provide both of those; they are open to the citizens of Troutdale and they will provide a public benefit. Edgefield is an important employer in the city.

Mayor Thalhoffer stated Edgefield itself is an activity of citywide interest, everything that goes on there. Lots of citizens of Troutdale attend the events at Edgefield.

Councilor Canfield stated I think I am on your side with this. We have the Larch Mountain Artisans at Glenn Otto every year. You have artists. There are music events at Glen Otto and you have music events. Every type of artistic endeavor that we have you have but it is not all of the time. Basically what we are talking about here is, are we going to make you pave the parking lot or not. Paving versus not paving, they equally have positives and negatives and it is a wash to me. I think the events at McMenamins are of public interest to Troutdale residents because of the unique facility.

Councilor Kyle asked are you charging the citizens of Troutdale for events like the Allison Krause concert?

Mike McMenamin replied yes.

Councilor Kyle asked what about Chris Isac on July 3rd?

Mike McMenamin replied yes.

Councilor Kyle stated so your events are for profit?

Mike McMenamin replied yes.

Councilor Kyle replied I am not devaluing what you do; I just don't feel like you fit under this category of events of citywide interest. I want to look for another option. What Code are they violating by having this temporary parking?

Rich Faith replied Exhibit B to my staff report is a copy of Section 9.070 of the Development Code, Paving. Section A reads, "Parking areas, driveways, aisles, and turnarounds shall be paved with concrete, asphalt, or comparable impervious surfacing. Porous concrete, grasscrete, or comparable porous paving surfacing may be used in place of impervious surfacing to reduce stormwater runoff, when approved by the director. Gravel and similar erodable surfaces are not acceptable". That is our general rule for parking surfaces.

Councilor Kyle stated that applies to permanent parking surfaces.

Rich Faith replied which is why we have a provision under Section C for temporary overflow parking.

Councilor Kyle stated I think we need to redefine our temporary parking to address this issue.

Steve Abel stated one of the requirements of events of citywide interest is that it is open to the citizens of Troutdale. The requirement doesn't say whether it is open to the citizens for a fee or not for a fee. There is no fee obligation or non-fee obligation requirement. I think the intent of that provision is that attendance is open to the citizens of Troutdale. In other words, it is not a private event.

Councilor Kyle stated I am not saying that we shouldn't resolve this somehow. My feeling is that what you are recommending isn't the best way to address this.

Steve Abel stated we are approaching the summer season which is the time of the year when we need the temporary parking.

Councilor Kyle replied I understand that.

Councilor Daoust stated in the short-term I am okay with designating McMenamins as an event of citywide interest just to get through the next year. Could we handle this by giving them a permit for parking on their fields outside of this ordinance?

Rich Faith replied we do not have a parking permit for this situation. Council's declaration of McMenamins being an event of citywide interest would constitute a permit; it is not a physical document that will be issued but in essence they are seeking a permit from you.

Councilor Daoust stated declaring them an event of citywide interest is the simplest way to handle this without trying to create another category. There is too much precedence with this happening every year and when we put this ordinance together we didn't think about parking in the fields for McMenamins.

Rich Faith stated do you mean in terms of the language we are working under now?

Councilor Daoust replied yes.

Rich Faith stated I disagree. The issue of McMenamins came up before the council in a work session when we were discussing this issue. Mike McMenamini briefed the Council about the summer events that were going to take place at Edgefield and at that time it was pointed out that there is a problem with overflow parking which was not permitted under the Code.

Councilor Canfield stated Section 9.100 of the Development Code, Event of Citywide Interest, refers to a meeting, activity, or gathering of people for a single event. They are providing us with a list of events to be declared as events of citywide interest. If the Council decides to declare these events of citywide interest, does that mean that they can only utilize the overflow parking on these days or do we need to give them a blanket approval for their daily operations during the busy summer season?

Paul Elsner, Interim City Attorney, replied the way you have written the definition I would have to agree that you have to make a determination that each event qualifies as an event of citywide interest. You have broken it out into three subcategories; you've said it is a meeting, or it is an activity, or it is a gathering of people that you have determined is of citywide interest because, 1 - attendance is open to the citizens of Troutdale and 2 – that it will provide a public benefit. You will have to make that determination on each event or if you are trying to do it collectively you would need to say that McMenamins constitutes a gathering of people. I am not sure if that was the intent of the Council when they chose this particular language. I am not sure that you can approve it on a seasonal basis, however, you can look at the list of events that they have provided and identify each one that you believe qualifies under this and then say those events that you have identified meet the definition.

Councilor Canfield asked would it be acceptable to you if we were to approve each of your events listed as events of citywide interest?

Steve Abel stated the problem with that is the second page of events are the known events as of April 18th. That list is continually changing as the spring/summer progresses. Mike's request is asking that you declare all events at Edgefield as events of citywide interest.

Councilor Canfield asked if we loosely say that Edgefield meets the definition of events of citywide interest as a gathering of people, and some other business objected to that, is it defensible?

Paul Elsner replied I can't say yes categorically. I think you are going to need facts placed in front of you which then allows you to make a rational determination that you had substantial evidence to support your determination, that it met each of these criteria. You can say that McMenamins, when it is active, is a gathering of people and you will construe that means that it allows you to look at a business as such if it has certain characteristics such as events or affairs that bring people to it that makes it a collection point and that in of itself provides a public benefit because it attracts people to the City of Troutdale. All of these events, except for the private ones, are open to the citizens of Troutdale. What I am suggesting to you is that the only way, given the constraints that you are operating under, is to basically look at Edgefield as a gathering of people. You may have to modify this definition to allow you more flexibility by adding another qualifier that says that you can do it collectively; you can assign this definition to a business. If you are trying to get through a difficult point now, the only way that I can see is to then say that this is a gathering of people. I am not saying that categorically it is defensible.

Mayor Thalhoffer asked Paul Elsner to prepare a suggested motion for the council.

Paul Elsner suggested that he work together with Mr. Abel on a resolution that would set out the necessary findings of fact that will support this.

MOTION: Councilor Thomas moved to table the matter until they come back with the resolution. Seconded by Councilor Canfield.

VOTE: Councilor Kight – No; Councilor Thomas – Yes; Mayor Thalhoffer – No; Councilor Canfield – Yes; Councilor Kyle – No; Councilor Daoust – No.

Motion Failed 2 – 4.

MOTION: Councilor Daoust moved to designate McMenamins Edgefield as an Event of Citywide Interest, collectively, all events at Edgefield; the basis for that would be that it is a gathering of people and most events are open to the citizens of Troutdale. Seconded by Councilor Kight.

Councilor Daoust stated I think we can justify this and if we feel uneasy about it we can work on more specific language in the coming year. I think we can easily justify this by calling it a gathering of people because most of the events are open to the citizens of Troutdale and there is a public benefit to the citizens of Troutdale and many others.

Councilor Kight stated McMenamins has been a premier entertainment center for Troutdale for many years. They already have a history of parking in this area to begin with. The last thing that we need to have happen is to take those areas that are now grass and pave them over with asphalt or cement. That is not the Troutdale style. The fact that all of your events could be attended by the people of Troutdale, who would be there to monitor what city they come from whether it is a family reunion or a concert, you are not excluding people from Troutdale. A lot of the people that live in the area attend your events. I am more than happy to do this because the flip side of this is you pave it over and nobody wants to do that.

Councilor Thomas stated I disagree with this because it is really an issue of parking. I think the concept of saying that we want them to pave it over is incorrect. I would never propose paving it over unless it becomes a situation where they are using it as overflow parking every week. Then it would be a question of whether it is really overflow parking or is it parking that you need to satisfy your business needs. I think the real issue here is how do we handle the parking concerns on the Edgefield property when they have events that bring in a lot of people. I think by saying that you are a citywide event opens it up to where almost anyone could come in and say they qualify. I don't believe that we can say that McMenamins is exempt from the parking rules. I don't know how to fix it, but I don't think this is the right way to do it.

Mayor Thalsofer stated I think McMenamins is almost like an amusement park in a way. You have Oaks Park and there are a lot of things you can do at Oaks Park and that would be an event or operation of citywide interest, especially in the summer. McMenamins has all kinds of functions going on throughout the summer and the year and they bring in people from all over, Troutdale included, so it is an event or facility of citywide interest because it is open to the public and is a benefit to the public. We are so fortunate to have McMenamins in Troutdale, it puts us on the map and brings in a lot of people, some of whom come and visit other merchants in the city. I see nothing but good to come of this, and I will support the motion.

Councilor Canfield stated I am going to support this. Staff does a wonderful job of creating these codes and the City Council has done a not so good job in this

particular instance. I think we have dug ourselves a hole here. This is an example of the government not doing what it is supposed to do. They had to bring in a lawyer to decide if you can still have what you already have, which is the ability to park on your unpaved land during events. The ridiculous thing is the requirement that we are talking about is in the sign code and has nothing to do with parking at all. This is messed up. Do we want you to pave your property for parking? I don't.

Councilor Kyle stated I am not going to support this and it doesn't have anything to do with the value of what you bring to our community. My personal opinion is that what you do does not support the intent of the events of citywide interest. I think this is a band-aid and I would rather we took some time to resolve this properly.

Councilor Daoust stated we can fix it in the next year.

VOTE: Councilor Kight – Yes; Councilor Thomas – No; Mayor Thalhoffer – Yes; Councilor Canfield – Yes; Councilor Kyle – No; Councilor Daoust – Yes.

Motion Passed 4 – 2.

Mayor Thalhoffer called for a break at 9:05pm and reconvened the meeting at 9:13pm.

7. PUBLIC HEARING / ORDINANCE (Introduced 4/10/07): An Ordinance amending Chapter 15.12 of the Troutdale Municipal Code, Fire Code and Fire and 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 9:13pm.

Rich Faith, Community Development Director, stated we introduced this ordinance to you at our April 10th meeting. Since that meeting there have been two revisions to the amendments recommended by our city attorney. The first change is to Section 15.12.010(D). This section is being deleted. According to the city attorney, a city can not adopt future amendments that some other body may make to a uniform code like the Fire Code. The second change is in Section 15.12.090(G) pertaining to liens. This section is also being deleted. According to the city attorney, the language that is proposed would create problems under the Measure 5 tax limitation. Staff is recommending adoption of the ordinance to implement these amendments to bring our Code into compliance with Gresham Fire and Emergency Services and provides consistency and uniformity in the two codes and will be more efficient for Gresham to administer. Robert Mottice, Deputy Fire Marshal with Gresham Fire and Emergency Services, is here to answer any questions you may have.

Councilor Kight asked if you have a rental property and the renter is faced with a fine because he didn't take care of some fire issues that the fire inspector found and the renter doesn't pay the bill, are you saying that there is no way to lien the property if the renter moves out and doesn't pay the fine?

Paul Elsner replied correct. That is a result of how they define the term tax in Ballot Measure 5.

Councilor Kight stated there are cities within the Portland Metropolitan area that if a tenant moves out and incurs a water/sewer bill which they haven't paid, it then becomes a lien on the property. Is that different?

Paul Elsner replied there may be circumstances there. As an example, most jurisdictions now require the property owner to sign a contract for the provision of water to that particular structure, therefore, it becomes not a question of tax law but rather a matter of contract. You have agreed as the owner of that structure that you want the provision of water and you agree in a contract with a municipality to allow for the creation of a lien on the property if there hasn't been payment of the charge.

Councilor Thomas stated in Section 308.3.1(C) talks about being amended to read open-flame cooking devices, basically barbecues. It specifically calls out one and two family dwellings. Subsection D talks about the LP-gas burners and again specifically calls out one and two family dwellings. My concern is that we have a number of dwellings in Troutdale that are not one and two family dwellings, they are multi-family dwellings that have decks where people barbecue. How would they be able to have a barbecue that is legal based on this definition?

Robert Mottice replied they would have to use the small barbecue with the one pound gas cylinder. The reason this is in the Code is that it has been in the International Code since 2000. Gresham chose to stay with the International Code and not vary to the State's amendment, that is why it is in here as new. The reason for this is that Gresham's fire history shows that is where we are having our fires, in apartments with briquettes and gas grills blocking the exits.

Councilor Thomas asked how do you enforce that?

Robert Mottice replied through inspections. We distribute door hangers and brochures and we work off of complaints.

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

No testimony received.

Mayor Thalhoffer closed the public hearing at 9:25pm.

MOTION: Councilor Thomas moved to adopt the 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. Seconded by Councilor Kight.

Councilor Thomas stated I think the fire code is absolutely necessary to guarantee public safety. The fire code and fire regulations are very important.

Councilor Kight stated the housekeeping measures that we are going to pass gives the fire department the tools to do their job the proper way without creating any problems.

We are looking out for the safety of the citizens of our community and this is one of the ways that the Council can do that.

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

Motion Passed 6 – 0.

8. STAFF COMMUNICATIONS

None.

9. COUNCIL COMMUNICATIONS

Councilor Thomas stated that the Mt. Hood Cable Regulatory Commission was approached by Verizon to seek a cable franchise. Verizon has said that they are willing to support what we currently define for our existing cable provider. Their goal is to have their system operating by the end of this year or beginning of next year.

Councilor Canfield thanked the members of the Budget Committee for volunteering many hours at the meetings last week to review and approve the budget. We were able to pay off some of the city's debt; replace some police vehicles and provide police with some equipment that they needed; we maintained good funding for our parks and recreation departments; and we also started the process to take care of a large backlog of maintenance issues in our existing city parks.

Councilor Daoust provided the Council with a copy of the brochure created by the 100 Year Celebration Committee to help raise money for the Centennial Arch.

10. ADJOURNMENT:

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

Meeting adjourned at 9:32pm.

Paul Thalsofer, Mayor

Dated: Approved Aug. 28, 2007

ATTEST:

Debbie Stickney, City Recorder