

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

Tuesday, May 8, 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; Paul Elsner, Interim City Attorney; Sarah Skroch, Office Support Specialist; Dave Nelson, Chief of Police and Amy Pepper, Environmental Specialist.

GUESTS: See Attached.

2. CONSENT AGENDA:

2.1 ACCEPT MINUTES: February 13, 2007 Regular Meeting.

2.2 RESOLUTION: A resolution entering into a new public road crossing underpass agreement with Union Pacific Railroad for NE Drovers Trail Road.

MOTION: Councilor Ripma moved to adopt the consent agenda. Seconded by Councilor Kight. Motion Passed Unanimously.

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

None.

4. REPORT: AMR's Annual River Safety Program Report

Randy Lauer and Dave Mull of AMR showed the Council a PowerPoint Presentation (copy included in the Packet) with statistics on the 2006 River Safety Program, which was the ninth year of the program.

Dave Mull stated we staff Glenn Otto Park from 10am until 8pm every day of the week from Memorial Day through Labor Day. We continue to loan out life jackets; last year we handed out over 1,000 life jackets. Last year at Glenn Otto Park we had over 26,000 visitors from

May through August. We performed 3 rescues and 41 assists. We called the police five times for illegal activities. We had one ambulance request and three out-of-area requests. We believe that we have directly prevented some drowning incidents due to our on-site rescue services and more importantly our prevention activities. We have increased swimmer safety due to some awareness interventions and we have increased the use of life jackets by all age groups.

Councilor Ripma thanked AMR for an excellent program.

Councilor Thomas stated I think this is a fantastic program. I appreciate that AMR has stepped up and taken the lead nationwide on helping to prevent the loss of life and your educational program.

Mayor Thalhofer thanked AMR for providing this program.

Councilor Canfield thanked AMR.

Councilor Kyle expressed her appreciation for the service AMR provides at Glenn Otto Park and thanked AMR for their participation in the Bite and Bluegrass Festival.

Councilor Daoust stated I am very proud of AMR and your program. My pride shows because when I talk to people about Troutdale I always make sure that I mention the life guard program on the river.

Councilor Kight stated we really appreciate the work that AMR is doing at the river. This program is funded by private donations, no taxpayer dollars are involved.

5. DISCUSSION: Discuss Senate Bill 1042 which would give local communities control over private casino locations.

Senator Laurie Monnes Anderson stated I have been asked to come and give you some history on how SB1042 came about and I would like to hear your concerns and views. There were several residents of Wood Village and Fairview who came and approached me regarding the possible initiatives that were going to be on the ballot in November of 2008. They were concerned that people in Bend, Coos Bay or Klamath Falls would determine that it would be okay to have a private casino located in Wood Village. After hearing their concerns, in March I filed SB1042. It went to the State Senate Committee on Education and General Government and they liked the bill. The original bill was that the electors of Wood Village would be able to have input just like the whole state has input on whether a casino should be located in Wood Village. The Mayor of Fairview felt that there should be amendments to that bill; I had no problems in allowing the bills amendments to be printed. It was a little unfortunate that I did not see the amendments until about 5 minutes before we testified for the bill, but the Mayor gave an excellent testimony to the Committee and convinced them that the amendments should go in. Since the bill has passed we have had some concerns regarding it. I have talked with the City of Fairview and told them about the concerns and that we hope to get the League of Oregon Cities involved in this. The bill is up tomorrow and what I will put on record is that this is a bill in progress, it is not the final form but because we are coming up to the deadline of getting senate bills out of the Senate and over to the House,

the changes will occur over on the House side. I have already been told that there are three amendments; I am not sure who they are coming from. I have talked with the Mayor of Fairview and I know they have submitted some amendments. I am still waiting to talk to the proponents of the casino to see how they would like to see the bill changed.

Councilor Ripma stated the League of Oregon Cities did not like this bill and wanted some changes made. Do you know what changes they are proposing?

Senator Laurie Monnes Anderson replied they did not testify before the Committee.

Councilor Ripma stated while I understand the League of Oregon Cities concerns, I like the bill because I think casinos should not be encouraged in Oregon off of reservations. The process could be catastrophic for adjacent cities. I don't know if there is some other fix that could allow adjacent cities, who could be very negatively impacted, to have some sort of voice. If the bill simply leaves the decision to the city where the casino will be, I think that is very dangerous. I think the city will have tremendous economic pressure to want it without regard to the consequences to adjoining cities. I think cities that embrace and want these casinos are short-sided and they haven't a clue what they are getting into. I like your bill as a way of allowing the process to at least have a few more hurdles, particularly taking in the tremendous impact on adjacent cities. I understand where the League is coming from not wanting neighboring cities making decisions for other cities, but this is casinos we are talking about. I like your bill and I hope the house passes it or you come up with some other compromise, if it ends up in a committee, that gives Troutdale some say in whether this is a good idea.

Senator Laurie Monnes Anderson stated the economics is a tremendous factor here. Cities are struggling. The size of the casino going into Wood Village would be twice the size of Spirit Mountain and they gross \$185 million per year and net about \$85 million. That is a tremendous amount of money. The proponents of the casino are going to work very hard to pass this.

Councilor Thomas stated my biggest concern with your bill is the ability for cities to maintain their own control. Whether you agree with a casino or not is irrelevant in this case. I am not sure there is a need for this bill. I think the cities should have the right to define how they want to regulate their city. Personally I don't agree with casinos.

Mayor Thalhoffer stated I am concerned about some other city or cities being able to tell our city what we should or should not do. I am opposed to this casino but my opposition doesn't mean that I think the end justifies the means, I think the means are very dangerous. I will do everything I can to make sure that the casino doesn't happen, but I am strongly in favor of us retaining control of our cities. Wood Village is one of the smallest cities but that doesn't mean that they don't have the same sovereign rights that the City of Troutdale and every other city in the state has and the same right to exercise local control. Rather than having a vote like this and have a bill, the jurisdiction should be able to work this out themselves. It just seems that we could work together on this and find a solution without having a vote, which to me sets a dangerous precedent.

Councilor Canfield stated the bill primarily pointed towards the site in Wood Village. Before you submitted this did you contact anyone from the City of Wood Village regarding the proposed contents of the bill?

Senator Laurie Monnes Anderson replied no. The residents contacted me and I drafted it. Last week I called Mayor Fuller but have not been able to make contact with him.

Councilor Canfield stated the four cities are just trying to get along. Recently it was the City of Gresham and the roads issue with Multnomah County. It seems like it is a battle of who gets to the legislature first and I would rather have us working together. I am afraid this might take off the scab of a wound we are trying to heal. With regard to the casino siting itself; it should be noted that it was a dog track where thousands of people gambled for over 40 years. Gambling at that site is not a new thing. I don't think that it is the City of Troutdale's business or the City of Fairview's business to usurp the City of Wood Village's planning authority control and I think it sets a dangerous precedent regardless of what might go on this site. I don't think it is our business to tell Wood Village what they should do with their land. I believe in home rule. I often disagree with the League of Oregon Cities, but on this issue I agree with them one-hundred percent. I would urge you to reconsider this bill because it is a terrible idea as far as local control.

Senator Laurie Monnes Anderson stated I appreciate your comments.

Councilor Kyle stated I approach this from the home rule point of view also. I believe that the City of Troutdale has established some good processes for development and I trust that our neighboring cities have established equally good development processes. I certainly wouldn't want the neighboring cities dictating to Troutdale what we should or should not look at as far as business or development in our city. I do understand that this current version was amended from the original format and we don't know what it will look like when it is finished. My concern is that if this bill passes it will set a precedent for future developments and for other cities to interfere in our right to say what happens in our city. I believe that it might. My lack of support for SB1042, as it is written, doesn't mean that I endorse the entertainment center with a gambling byproduct, but it has everything to do with my support of home rule and a city's right to regulate its local matters.

Councilor Daoust stated I like SB1042 but the one change that I would make would be to drop Section 2B, which talks about the cities that are adjacent to the boundaries of the city in which the casino would be located. I would leave it up to the vote of the people in the city in which the casino is proposed. Wood Village knows what they are doing and they allow ample opportunities for people to get involved so we don't need a duplicative process for people to get involved in a land use decision, we already have it. Cities can testify during other cities land use applications.

Senator Laurie Monnes Anderson stated I am not sure if this is an amendment or not but the idea has been discussed that residents or cities within 500' of the casino should help determine that.

Councilor Daoust stated I understand this concept and the impacts it has on neighboring cities. If a nascar race track went into Troutdale, as we talked about, that would definitely

impact other cities but I would rather just leave it up to the individual city's land use process and not even include the 500'.

Councilor Kight stated the case really hasn't been made regarding what impact this would have on the surrounding communities. You talked about the size of the casino, but you didn't talk about the police that are involved, both local and county, and you didn't talk about the traffic or the social impacts on the community.

Senator Laurie Monnes Anderson stated I think that Mayor Fuller could give you a better explanation because they have done a study on the impacts on transportation and Gresham would probably have remarks regarding police and fire. Regarding the social issues, on average 3% of those who gamble become addicted and it is more like one out of four regarding drug and alcohol problems. Those are huge for the state and that is where our general fund money goes.

Councilor Kight stated when you say 3% everyone in this room hears a single digit, but when you multiply that by 100,000 people that is 3,000 individuals. That is 3,000 homes that are affected negatively because of the result of gambling. Could you tell us what the impact would be by having this closer to a metropolitan city.

Senator Laurie Monnes Anderson stated it is called convenience gambling and locating a gaming facility within a metropolitan area makes it very convenient. People love to gamble. We would probably have more problems with gambling addiction having it located in a metropolitan area. When you go to the Indian casinos you have to travel. This would have a huge impact on our tribes because many people believe that it would take business away from the tribes.

Councilor Kight stated this is an odd position. We have three cities that are almost seamless, you don't know when you are passing from Troutdale into Wood Village or into Fairview. A case could be made that what affects one city affects all. When you talk about locating a casino in a large metropolitan area, i.e. Portland/E. County, we are going to be negatively impacted. The carrot of course is that there is going to be a percentage that will be given back to the city governments and that appears to be attractive, but there is also the social costs, police, fire, traffic and so on. You have indicated that the gambling casino that is going to replace the Multnomah Kennel Club will be the twice the size as Spirit Mountain. I am trying to figure out how that will happen, unless they build vertical. We do know what impact Spirit Mountain has had on the community and the discussion in the Oregonian about the fire department, traffic problems along Highway 14 and so on. I can't imagine that kind of traffic on our local streets. What is your personal feeling about allowing the other electors, in other words the cities that are affected the most, to vote on whether or not they want a casino in their community?

Senator Laurie Monnes Anderson replied I was more interested in just having Wood Village vote on it, but I hadn't talked to the other cities. The residents who wanted the bill were from Wood Village and from Fairview. I am representing my constituents.

Michael Mason stated I am a lobbyist for the Confederate Tribes of the Warm Springs. We have heard the 3% figure and we have also heard a somewhat lower figure with regards to

the social issues. There have been studies on the social impacts of the various tribal casinos over the last several years and they haven't hit the 3% figure for problem gambling but they have come up with some interesting reports that challenge some of the preconceptions about gambling, at least in the Indian communities. There is actually less crime associated with the casinos than a lot of people have thought. The Warm Springs Tribe has not taken a position on SB1042, it is really a matter of local control and the powers of cities and we don't take positions on bills of that nature. It is self-evident that it would cause a great deal of trouble for the tribe's casino on the Columbia.

Councilor Ripma asked are you at all familiar with the constitutional amendment that is being floated for the siting of a casino?

Michael Mason replied I have read it.

Councilor Ripma stated it permits the siting of the casino in Wood Village and overrides the constitutional prohibition of a non-tribal casino. Does it have any impact on state land use rules, or override any other features of state law?

Michael Mason replied I am not completely familiar with whether or not it overrides the land use laws.

Councilor Ripma stated my concern is that the constitutional amendment that would have to pass before a Wood Village casino could even happen, could override all of that and leave us without power.

Michael Mason stated the oddest thing about the proposed ballot measure is that it allows one site and one site only in one city. That is very unusual.

Councilor Kight asked is your particular organization going to oppose the two statewide initiatives, the change in the constitution and in the state law?

Michael Mason replied I would expect so. We just went through a rather extended election process and we have five new tribal council members, that is the largest turnover any of us can remember. I can't speak for what the council would do at this point; they need to consider that carefully. At the same time I don't see how they can afford not to oppose it. When you look at the financial picture for the Warm Springs with the sharp reduction in available timber and the number of layoffs that they have had in the last six years, they can't afford not to have significant expansion of their gaming. They have a very small casino now which nets under \$5 million a year and their budget is close to \$80 million. They are responsible for providing almost all of the services on that reservation.

Councilor Kight stated hypothetically, if they were to pass both state initiatives and they actually were to locate a casino in the City of Wood Village, do you see a possibility of other casinos locating in the Portland Metropolitan area?

Michael Mason replied it does make one wonder how we could pass a constitutional amendment that would allow only one city to make a land use decision and not allow any of the other dozens of cities in the state to do that. I would not be surprised to see a lawsuit

saying that equal protection under the laws of Oregon have been violated and the door should be open to everybody.

Mike Weatherby, Mayor of Fairview, stated I am here as the Mayor of Fairview and I am here representing my constituents, my community and my council on something that we feel very strongly about. We have an issue here that is going to cause a great deal of impact on Fairview. Most of the traffic is going to come from Portland, the south, or it is going to come across the river. Looking at I-84, folks are not going to go down to 238th or 257th and come back, they are going to take Fairview Parkway and then they will go one of two ways, Glisan or Halsey. Fairview made a decision several years ago when the county wanted to enlarge it to four lanes to make it three so that it wasn't divisive, or a freeway going through our city. So what is the answer to this? How is this going to be a win-win situation? You can have a traffic study that says we will make it six lanes. What is that going to do to Fairview? In an Indian casino they don't offer alcohol to people like they do in private casinos, this could be an additional issue. We calculated that within 1,000 feet of the casino you would have more people in the City of Fairview voting than you would in Wood Village. If you are talking about the issue of Home Rule, what is worse, having the people who live in and who have an investment in this community who will have to suffer the consequences making the choice, or having a person in Coos Bay, Baker or a farmer living out on a ranch making a decision where there are no consequences. Where is the issue of people having control over what goes on in their community? There is a tremendous amount of money that is going to be involved in this. I feel very strongly about this. We are talking about a constitutional amendment and what we are talking about is some how having a voice in what affects our city. We contend that there will be more, if not as much, impact on our community and what will Fairview get out of it. I have had at least one person say that they will at least walk to the buffet. I am not here to argue the pros and cons. I am here as the Mayor representing my community and I hope the people will respect that. All we want to do is achieve legislation that will restore balance and power to E. County residents giving them a voice in things that directly impact their community. It is true that there was a gambling facility there but it was very simple and there wasn't alcohol. Fairview probably only had 2,000 people at the time and now it is a whole different community. What we want to do is to work to have something happen, some piece of legislation that would deal with this.

Councilor Ripma asked you are looking for some way for your city, or a city that is potentially negatively impacted, to have some say over and above someone far away?

Mayor Weatherby replied exactly.

Councilor Ripma stated I share your views.

Mayor Thalhoffer stated I understand where you are coming from. I understand what gambling does to people, but that really is not the issue. The issue to me is whether we will be setting a precedent for losing local control. I will do everything I can to fight the casino when that time comes but right now what is important to me is local control.

Councilor Canfield stated I appreciate your position. I am not sure, maybe you have information that I don't have about this presumption that this initiative will actually get on the ballot and it will actually pass statewide to change the constitutional prohibition of non-tribal

casinos. Because of the specific siting, I am not sure that it would ever pass. If you look at the way that the gentleman from Lake Oswego have gone about it, they obviously have a sponsor but they are unwilling to let anyone know who the sponsor is. On a comparison of social issues, I know most people are against gambling but there is a Fred Meyer across the street from Fairview Village and I know that they sell a lot of alcohol. I think we can all agree that alcohol abuse and the injuries, deaths and auto accidents are more serious than gambling. Just as a comparison, I don't see the cities rushing to ban alcohol or even Dottys, probably because the state gets a big piece of the money and they won't get that money from a casino. I respect where you are coming from. I believe strongly, as most of us do, that this is less about the casino and more about local control and home rule.

Councilor Daoust asked do you like SB1042 the way it is written right now?

Mayor Weatherby replied yes. It is not a perfect bill, but we need a vehicle to address this concern.

Councilor Kight stated one of the issues you brought up was the impact on transportation. You gave Halsey as an example which is three lanes now, two traveling lanes with a turning lane. You made the remark that you would have to go to six lanes. Do you have any idea what the transportation impact would be on your city?

Mayor Weatherby replied we don't know. There would need to be a study. I think the point is that there is no way to win. If we leave it the way we want it, it would be a nightmare and to expand it to allow the traffic would be so divisive it would be destructive to our communities.

Councilor Kight asked what other areas do you think would be negatively impacted?

Mayor Weatherby replied traffic and police issues. You are going to have people running red lights, speeding, erratic driving, etc. Then you have the problem with how are you going to fund the police. The so called 3% we believe is illusionary. In fact our attorney wrote something about that saying that is merely smoke and mirrors, those are my words not his. Mayor Weatherby asked Paul Elsner to speak more about this issue.

Paul Elsner, Interim City Attorney stated what I was speaking to was not the constitutional provision, it was the proposed statutory changes that would accompany the constitutional amendment and the creation of, I think, the Oregon Gambling Commission. The percentage of the allocation that is presently set out in the proposed legislation, if I recall correctly, is left up to the new commission. It is not left in tact in the statute and that can then be altered by rule. What could end up happening is that allocation scheme is not permanent and it could be readjusted. I was concerned about the way the initiative was drafted. In my opinion this was as poorly, if not more poorly, drafted than Measure 37 was.

Councilor Kight stated so the 3% could disappear.

Paul Elsner replied as I read it, yes.

Dave Fuller, Mayor of Wood Village, stated I am not here to debate the casino or the entertainment center. I believe that you have been given two documents from Wood Village.

One is an account of the process that this went through and the second is a letter from the League of Oregon Cities. Senator Anderson was right in stating that she never got ahold of me. It should be noted that she did have time to contact the other Mayors of the adjoining cities. Also in my letter I state that I tried to get ahold of her and she wouldn't even answer her phone calls. I think in the paper we saw that she was doing this in the interest of Wood Village. We have not had any Wood Village citizens come to our Council, staff or anyone else and say we want to vote on this. We haven't decided for ourselves yet what the process is going to be. This is over a year and a half away before anything is going to happen. There are two state votes and they are going to have to climb some very high mountains to get that done if it happens, and they have a right to do that. The State Constitution allows home rule for cities and municipalities. The principle of home rule is to provide voters of a municipality the power to control their own local government. The State of Oregon Constitution Article XI, Section 2, specifically states, "The legislative assembly shall not enact, amend, or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their own municipal charter". SB1042-3 has the affect of amending the city charter of Wood Village, Fairview, Gresham and Troutdale to require an affirmative vote by not only the legal voters of Wood Village but also the voters in each of the surrounding jurisdictions before an entertainment center with a casino could be located within Wood Village. Clearly this is a flagrant violation of the Oregon Constitution. The legislature is strictly prohibited from enacting any legislation that affects a city charter. The idea of allowing the voters in another city to determine the land use in their neighboring jurisdiction is infringement on home rule and prohibited by the Oregon Constitution. I think that pretty well states that SB1042 should never have occurred.

Councilor Ripma asked if Wood Village wanted the casino and the necessary constitutional adjustments were made, and neighboring cities alarmed at the prospect or for whatever reason decided that they would be negatively impacted and they asked you to not be in favor of that, would that change your mind?

Mayor Fuller replied we have not put forth a resolution or anything that says we are supporting this. We have not taken that step. This is going through a legal process to determine first of all whether or not the Oregon Constitution can be changed to allow a non-tribal casino. The second initiative then determines whether or not it can come to Wood Village. Am I in favor? I would love to have an entertainment center. Do I want a casino? I have mixed emotions about that. If this process goes forward, I invite people from all of the cities to sit down and assist in looking at the impact and what controls we should put in place to minimize those impacts. We aren't saying that we are going to do this alone; we want input from the other cities. Regarding the 3%, as I understand it, the only decision by this board will be based on what percentage of that 3% will go to Troutdale, Fairview and Gresham. We will get 2% in Wood Village.

Councilor Ripma asked so you would work with the neighboring cities to minimize the impacts?

Mayor Fuller replied absolutely.

Councilor Thomas stated some things that come to mind for me when we talk about home rule was the recent issue regarding Kohls wanting to be sited in Wood Village and essentially

the three smaller cities banning together and saying why not. My concern here is by setting a policy where the state comes in and says that specifically for this site you have to have a vote of everybody in the region, basically meaning all four cities. That is the part that concerns me on the home rule side. I look at Townsend Farms or the Alcoa site and something could be sited there that Wood Village likes but Fairview doesn't like and so we would be looking at going to the legislature to make a specific site for a specific use, hopefully legislature wouldn't do it but we have set a precedent to start that process. Once you have set the precedent for individual sites it is much easier to go back and justify doing it for another site. I think cities really need to have the ability to try to direct how they want to build their cities.

Mayor Thalhoffer stated local control is very important to me and it should be important to every city. I am opposed to the casino.

Councilor Canfield stated thank you for coming Mayor Fuller. I agree one-hundred percent with your position Mayor and I will back you up on that.

Councilor Kight asked if SB1042 passes, would that in fact supersede the home rule process?

Paul Elsner replied the concept of home rule that is embodied in Article XI, Section II of the Oregon Constitution is relatively complicated. It is not as broad as you might otherwise think. The state always has the authority to preempt local control except in very limited circumstances relating to the organization of government. In other words the state could not pass a statute and say to a home rule jurisdiction that you have to have five members on your council. That would be constitutionally prohibited. However, if the state wanted to say, as they have in the past under other circumstances, that local jurisdictions do not have the right to control, for example, the regulation of fire arms, they can do so without regard to the wishes of your local citizens or jurisdictions. So they can elect to preempt. Would the home rule constitutional provision trump SB1042? No it would not because as we read this, this does not address home rule and it is not an issue involving home rule. There are other statutes that in fact allow other jurisdictions to decide on even the existence of cities. My short answer is I don't think SB1042 is impacted by that Constitutional provision.

Mayor Thalhoffer called for a break at 8:59pm and reconvened the meeting at 9:10.

6. MOTION: A motion to consider an amendment to the MOU for the Corridor Study.

Travis Stovall, President of the Gresham Area Chamber of Commerce and the Executive Director of East Metro Economic Alliance, stated I would like to re-address the Memorandum of Understanding (MOU). There has been an amendment suggested in regards specifically to two items. You should have a redlined copy of the MOU showing the additions and deletions. There is new information/language on Item 2 which looks at the analysis of 242nd route being limited to consideration of the road being constructed below grade. My understanding of what that would look like is instead of a berm or a viaduct that would exist from I-84 up the hill to Glisan, there would be a need or desire to actually lower that road below grade. Not knowing the specific design or concepts, it could possibly go under Halsey and actually cut into the hill rather than either raising the grade up to the height of the hill or actually having a viaduct. That limitation was put there and was actually supported by the business community. Item 5 had additional language added saying that Multnomah County

should take part to help develop the parameter of this study. Multnomah County ultimately owns a lot of the connecting roads and does have an interest in seeing this study completed.

Councilor Ripma stated my concern has been that this is a waste of money and a study won't solve anything. It is really a disguised way of restoring the 242nd connector, which I happen to oppose. Is EMEA familiar with this regional mobility study that has been negotiated by Metro?

Travis Stovall replied we are.

Councilor Ripma stated it is an effort to identify transportation priority investments throughout the region. Isn't that going to supersede the purpose of this study? This regional mobility study is on a very fast track and has already put the 242nd connector in its place on the map. Aren't you at all concerned that they are preempting the purpose of this study? Do you support this initiative?

Travis Stovall replied yes we support the initiative in regards to looking at mobility throughout the region. Do we support the concept of already putting 242nd on the map and saying that is the designated route, we do not because we do not know what the answer to that is going to be.

Councilor Ripma stated what we were told at the East Multnomah County Transportation Committee (EMCT) meeting last night was this regional mobility study is going to identify investment priorities throughout the region, it is going to end up superseding the Regional Transportation Plan (RTP), which we have worked on for years. If it supersedes this study would you still support spending \$1 million on this study?

Travis Stovall replied I haven't seen the full concept of what the mobility study is going to look like and what it will encompass, so I can't say.

Councilor Ripma stated the regional mobility study was a staff level effort that excludes representatives of Troutdale, Wood Village and Fairview and we have no voice in it. If you are familiar with it, I am wondering do you think that it is worth going forward with this study? In the end it is obviously going to be decided by cities other than ours. Can you justify the \$1 million?

Travis Stovall replied without the study we can't effectively move forward with the changes that need to be made. We can not plan for the future without the information that is going to flow from this study. There will always be concurrent conversations and issues on the table at any given time but if we abandon something early in the game and say that this possibly could supersede something as we move forward, then we lose the ability to deal when it comes to the table with a conservative effort at a later date as we move along this process that we are moving along currently. So to circumvent this process and stop it I think would be ill-advised.

Councilor Ripma stated this regional study that we are doing, if it is superseded by the regional mobility initiative that is going on, which has already identified the 242nd connector, it will be ignored like the last county study. The last county study said 242nd wasn't justified.

This regional effort that excludes Troutdale is actually putting 242nd right on the map. Forgive me if I see a stacked deck here.

Travis Stovall stated we do have the County's support for the MOU from all of the County Commissioners.

Councilor Ripma asked are they going to sign this MOU?

Travis Stovall stated they have signed a letter of support for the MOU.

Councilor Ripma asked with this current wording?

Travis Stovall replied they supported the MOU and as we understand it right now there is no feeling that the information that has been presented here changes the MOU materially where they have a concern.

Councilor Thomas stated I know that Damascus wanted to sign onto this.

Travis Stovall stated Damascus has also signed a letter of support.

Mayor Thalhoffer stated in the spirit of cooperation among the jurisdictions of E. Multnomah County, I support this amended MOU. The Multnomah County study that you heard referred to said that 242nd wasn't justified at this time and they suspended the balance of the study to wait and see what happens. Well what happened is Damascus and Springwater and so now Multnomah County is supporting the study. What Councilor Ripma is referring to is at the EMTC meeting last night they were telling us that they were putting 242nd on the map as a placeholder for the Corridor Study essentially. I am supporting the Corridor Study, although I am personally opposed to the 242nd connector.

Councilor Canfield asked what particular reason is behind amendment #2 stipulating that it be restricted to having the 242nd route below grade?

Travis Stovall replied some of the previous designs have called for a viaduct or berm to be built to actually raise the road surface to the level of the hill. That is what is being proposed by some of the jurisdictions and the business community. The business community supports the concept of not having a raised viaduct or a big berm especially with the east wind. With the east winds, combined with the gorge temperatures, we can certainly see it as a treacherous route to take. Truckers have said the same thing in regards to hauling freight going up that hill during the winter months.

Councilor Canfield stated that is a matter of method or style of construction of the road if it is ever built. I am not sure how that would affect the traffic study. You say that the amendments were supported by the business community, who would that be?

Travis Stovall replied EMEA. There are 30 businesses that make up EMEA.

Councilor Canfield stated so when you say business community it is the members of EMEA.

Travis Stovall replied correct. They also represent both chambers, West Columbia Gorge Chamber of Commerce (WCGCC) and Gresham Area Chamber of Commerce (GACC).

Councilor Canfield asked so are you suggesting that those groups, which are not elected, represent the points of view of all businesses in East County?

Travis Stovall replied I would say a majority.

Councilor Canfield stated 30 businesses.

Travis Stovall stated 30 businesses make up the membership but both the GACC and WCGCC are also part of EMEA and so many of the issues we discuss at EMEA go through the chambers through their boards and their membership. The MOU and the information that we have presented here have also been presented to each of those chambers and those individuals have had an opportunity to go back to their business community members and ask them what their thoughts and concerns are. Will we ever have the opportunity to poll every business in the community, I think not. But do we have a good sense of what the business community is saying, I think so.

Councilor Canfield stated at least the business community that are members of the chamber of commerce or of EMEA, which is actually a minority of business in East County. I am not sure what kind of support we actually have for this. I am against this study.

Councilor Kyle asked do you have any idea when Metro is going to determine whether they are going to grant us this study?

Travis Stovall replied we do not.

Councilor Kyle stated I did support the corridor study and I will support this amendment. I have attended several EMEA meetings and I do feel that we have broad representation of the business community.

Councilor Daoust stated I supported the MOU last time and this is not materially different than what we talked about last time. The \$1 million price tag is a bit much given the fact that this would have to be followed up by a NEPA document, which is a whole separate process which basically will cover a lot of the same items but goes into the environmental analysis a lot more. I would think at that time whether 242nd is put below grade or above grade will be addressed at length.

Councilor Kight stated with the conditions outlined by Wood Village in their Resolution 6-2007 which reads, "...reaffirming our Council's unanimous opposition and lack of support for a connector to be built on the 242nd route, unless the connector is constructed below grade from north of Halsey to a minimum of ¼ mile south of Glisan", they are saying in affect that 242nd should be taken out of the process altogether. They condition that again by saying, "Wood Village desires to support the other jurisdictions where possible, when it does not negatively affect the quality of life and environment in Wood Village".

Travis Stovall stated that resolution is not part of the MOU.

Councilor Kight asked so they have eliminated that altogether?

Travis Stovall replied yes.

Councilor Kight stated the language in the MOU Item 2 talks about going north of Halsey Street to ¼ mile south of Glisan. Below grade to me means a tunnel. How do you go from being at below grade in a tunnel all the way to south of Halsey below grade? That doesn't sound logical to me.

Travis Stovall stated it doesn't have to be a tunnel. You could cut through the hillside and you could have two walls on the sides, the road would be below grade then you could come up the hill without creating a tunnel.

Councilor Kight stated it sounds like Wood Village is saying that we are going to set conditions so that you really couldn't build anything on 242nd, we want to keep it the way it is. That leaves the other three corridors.

Travis Stovall stated I can't tell you whether or not this effectively takes 242nd off the rolls of being able to be looked at and presented as a viable option because I don't know what the cost would be to build 242nd below grade.

MOTION: Councilor Thomas moved to adopt the Memorandum of Understanding, Exhibit C in our packet. Seconded by Councilor Daoust.

Councilor Thomas stated I think it is absolutely necessary that we take transportation and put it in the forefront if we expect to grow economically in the region and be able to handle the future population along with the business. I think it is a necessity that we start the process. What I recall from the previous hearing is that we need these studies in order to even get funds to do the existing projects that we need today.

Councilor Daoust stated we have discussed this before and it is not materially different, it is just an understanding between all of the cities that we will look at all of the alternatives.

Councilor Ripma stated Mr. Mayor, you brought up the fact that the previous study, that was done just a couple of years ago said, at this time we conclude that the 242nd connector is not justified. That argument cuts both ways. That study was supposed to try to decide something. Any study has to say subject to changed conditions. Some people didn't like the conclusion of that study and that is why this study is now being proposed, that is my opinion. The purpose of this study is to spend \$1 million to override the decision of the last study. That is the only justification of this study and that is why it is a waste of \$1 million. If the previous study had concluded otherwise, the same parties opposing that study and favoring this one would be on the other side. These studies don't decide anything. It is just a study and it is a colossal waste. The \$1 million could be far better used on important projects. I also point out that Metro has just initiated this mobility workshop and as our JPACT representative I hope you are planning to protest the fact that Troutdale, Wood Village and Fairview don't have

any representation. It is there that staff sat at the table on April 30th and came up with a list and a map that includes the 242nd connector. I am counting on our JPACT representative to represent us on this. This is a challenge because Gresham is totally represented. This study is a colossal waste and I can not support the motion.

Mayor Thalhoffer stated the County study was suspended until later. They stopped it, they didn't make any decisions. They said it wasn't justified at the time and that has been quite a few years ago. Now Damascus and Springwater have been added, so things have changed since that study was suspended. I support the amended MOU.

Councilor Canfield stated I do not support the amended MOU, just like I did not support the original version. Councilor Ripma is correct that this is a waste of time because studies don't decide things. Councilor Ripma happens to be against the 242nd connector, I happen to be in favor of the 242nd connector. We had this discussion at a 5-Cities meeting a month or so ago and there was a tremendous split even on every city council regarding this study. We can spend this \$1 million and we will be right back here discussing this same thing. Everyone will take the study and use it to advocate their position; it doesn't matter what the results of the study are. In two to five years we will be right back here having the same discussion and \$1 million will have been wasted.

Councilor Kyle stated I am supporting the motion.

Councilor Daoust stated I don't really think that it is a total waste of money because it is a precursor to additional analysis that will come later. I assume that a \$1 million study will have a lot of analysis included in it that can be used later. One could argue the number of years a study like this is worth having around, but I would assume it will be around for more than five years. I don't think it is a waste of money because I think there will be a lot of analysis being done here that we will all benefit from.

Councilor Kight stated Councilor Daoust is right, we will have a lot of analysis. But at the end of the day once that analysis is done, Wood Village has already put everyone on notice that you can do all of the studying you want but we are going to set conditions that will make it impossible to do a 242nd connector. We can all sit around and talk about doing a 242nd connector, but when the affected jurisdiction doesn't want it, it is not going to happen. I will give Wood Village credit because they are looking after the people in their community by saying we don't want anything to affect our quality of life, we don't want anything to affect the environment of our community. They are really protecting their own community. What I am concerned about is if they are going to have this kind of mentality, as it references to 242nd, then the corridor is going to shift over to 257th and I am hoping that this Council will take the same position as Wood Village and then all of a sudden the study will just fall apart because everybody will be protecting their own jurisdiction for which they are elected. That is why I am not supporting this MOU.

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

Motion Passed 4 - 3.

7. PUBLIC HEARING / ORDINANCE (Introduction / Adoption): An ordinance vacating a 12' wide public access easement in Lot 2 of Partition Plat No. 2002-79.

Mayor Thalhofer read the ordinance title and opened the public hearing at 9:46pm.

Rich Faith, Community Development Director stated this ordinance to vacate a public access easement in Lot 2 of Partition Plat 2002-79 is a follow-up action to discussions that took place during the deliberations on the development agreement with D.A. Grey for the 9-lot subdivision to be called Tyson's Place. There was quite a bit of discussion during the review of that proposed subdivision regarding the southern access easement that was created back in 2002 when the property was partitioned that ultimately created the property that Tyson's Place is being developed on. The City Council discussed the merits of decreasing the width of that easement or eliminating it altogether and ultimately reached agreement with the developer that a better design could probably be had if that easement were vacated and therefore the Council asked that we initiate that proceeding. The matter was taken through the Type IV procedure, which we are required to do under our Development Code. We held a hearing before the Planning Commission on April 18th. Notice was given as required both by our Development Code and state law with respect to vacations meaning we not only gave notice to surrounding property owners, but we posted notice on the property and we had to run two ads in the paper regarding the hearing. We also went beyond the normal notice requirements and provided notice to all of the property owners in the Sedona Park subdivision. No one attended the hearing to speak for or against this vacation and we did not receive any written comments from anyone concerning the vacation. The Planning Commission did consider the merits of this and principally what was at issue here was whether or not the vacation of this access easement would negatively impact the public interest. The easement was originally created in order to provide for pedestrian/bicycle access between 257th and the Sedona Park subdivision and also to connect to another easement along the western side of the Tyson's Place property. It also affords connection to the County owned property in which we have identified in our Parks Plan and our Transportation Plan as a desired connection for a trail along the top of the County property. The easement actually accomplished that connection. The road that is going to be constructed with the Tyson's Place subdivision will be a public road off of 10th Street with sidewalks on both sides, and even though that street will not connect/intersect with 257th the sidewalks will be connected to 257th, so we will still have a pedestrian connection that will be going through this property that will provide access between 257th and Sedona Park as well as to the future trail. The vacation of this easement does not take away that connection and really will no longer be necessary once that street is constructed in the Tyson's Place subdivision. The Planning Commission found that the criteria for the vacation had been met and there was no opposition to the vacation, and for those reasons they have forwarded a recommendation to you to vacate that easement. The ordinance has been written to allow for adoption at this hearing but we have not included an emergency clause causing the ordinance to take affect immediately; it will take affect in the normal 30 period. We are trying to expedite this simply because the developers, DA Grey, are eager to get started with construction during the summer. They are working diligently to submit their engineering

plans for the road and all of the infrastructure and obviously the vacation is critical to the exact alignment of the road because if this vacation is approved then the subdivision can be shifted down to take in that area and the 9 lots would shift as a result. I have drafted the ordinance to allow you to adopt it at one meeting, but it will not take affect for 30 days.

Councilor Ripma asked are you sure that the Sedona Park residents were notified?

Rich Faith replied I have copies of the mailing labels and all of the residents of Sedona Park are on the list.

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 9:58pm.

MOTION: Councilor Canfield moved to adopt an ordinance vacating a 12' wide public access easement in Lot 2 of Partition Plat 2002-79. Seconded by Councilor Kyle.

Councilor Kyle stated the reason I support this is because leaving it here creates an unsafe tunnel in a development. Also by moving the whole development to the south it eliminates some concerns I have about building on the slope.

Councilor Daoust stated the Council initiated the easement vacation and the Planning Commission agreed, and I also agree.

Councilor Kight stated I also agree and the fact that we have not received any negative comments from the folks most affected, Sedona Park, is one of the reasons I am supporting this. I actually received an email from one of the active residents and he also supports this.

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

Motion Passed Unanimously.

8. PUBLIC HEARING / ORDINANCE (Introduction): An ordinance relating to specific prohibited discharges to the City's treatment plant and amending Chapter 12.07 of the Troutdale Municipal Code.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 10:00pm.

Amy Pepper, Environmental Specialist, stated I am bringing forward this ordinance to amend Chapter 12.07 of the Troutdale Municipal Code that relates to specific prohibited discharges to the City's treatment plant to implement the City's Thermal Load Policy. If you recall, last

year we adopted language in the Municipal Code to regulate discharges restricting the temperature discharged to our wastewater treatment plant. That was based on our permit limit for our wastewater treatment plant for discharges to the Sandy River. Since that time we have studied the future permit limits that DEQ will impose on the City, which will be less restrictive on the wastewater treatment plant and we want to bring this ordinance forward to track those allowances. Our plan is to monitor and have industries report their temperature to the City so we can get a better handle on what the impacts of industrial waste do to the treatment plant. The changes that are proposed went through a 35 day public comment period as required by DEQ. No comments were received during that time.

Councilor Daoust asked you said the DEQ permit will be less restrictive?

Amy Pepper replied correct. When our original permit was reissued with the new treatment plant in 2002 the waste load allocation for our new thermal load that was in our permit was based on a theoretical world. In 2005 DEQ finalized the Total Maximum Daily Load for the Sandy River for temperature looking at specific criteria in the Sandy River and it showed that we could actually discharge more heat than DEQ originally thought.

Councilor Kight asked when you talk about raising the heat in the Sandy River, how might that affect the fish in the river, if at all?

Amy Pepper replied it affects their breeding times during the summer months.

Councilor Kight asked by lowering the standards does that materially affect the fish in the breeding process?

Amy Pepper replied we really don't know.

Councilor Kight stated the Sandy River is glacier fed. Give us an idea of what the temperature range would be in the summer as opposed to the winter. The discharge temperature is 76.5°F, is that the maximum?

Amy Pepper replied that is the maximum that we have had.

Councilor Kight asked what do you usually have it at?

Amy Pepper replied it ranges. We don't actually measure the effluent temperature we only measure the influent temperature and that averages about 70°F during the summer months. Across the treatment plant in the summer months the temperature can raise 1° to 2°.

Councilor Kight asked why don't you measure the temperature on the effluent?

Amy Pepper replied it is not a requirement by DEQ.

Councilor Kight stated so even though it could materially affect the fish in the area we don't have a clue what the temperature of the water is and apparently DEQ doesn't care.

Amy Pepper replied I think DEQ thinks we have enough information, based on typical data for a treatment plant, on how much the temperature will increase over the treatment ways. We do monitor the temperature in the river upstream from our outfall.

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 10:06pm and stated we will have a second public hearing on this ordinance at our May 22nd meeting.

9. RESOLUTION: A resolution adopting local limitations for industrial wastewater discharged to the City's treatment plant.

Amy Pepper, Environmental Specialist, stated this resolution will finalize the development of our Industrial Pretreatment Program. Last year Council adopted the changes in the Municipal Code giving us the legal authority to implement the Industrial Pretreatment Program. Following two years of sampling data we, through our contract with CH2M Hill, developed local limits for industrial users to regulate the discharge of metals, suspended solids, biochemical oxygen as well as pH to our treatment plant. These limits are mandated by DEQ and conditionally approved by DEQ. These limits will apply to all industrial users. The only industrial user that will be under a permit and under a discharge agreement is Tube Specialties. We have compared these local limits to their current discharge for the two years of studying and found that they will be able to meet all of the limits proposed. These local limits went through a 35-day public comment period, no comments were received.

Councilor Ripma asked Tube Specialties will be able to comply?

Amy Pepper replied the data we have shows that they would be able to comply.

Councilor Daoust asked will the City be paying for part of Tube Specialties pretreatment costs?

Amy Pepper replied for the implementation of the program the City has agreed to a 50/50 share up to \$20,000. That covers staff time to run the program.

Councilor Daoust asked is that \$20,000 built into the budget because I don't remember seeing it?

Amy Pepper replied yes.

Councilor Kight asked you have quite a list of metals, are you raising or lowering the standard? Are these metals going into the Sandy River and what are we doing in regards to this? Is this all taken care of in the pretreatment process?

Amy Pepper replied currently we do not have limits for these metals.

Councilor Kight asked so there is no limitation on the amount of mercury that an industrial user can discharge into the treatment plant?

Amy Pepper replied currently there is not.

Councilor Kight asked does DEQ address this at all?

Amy Pepper asked for mercury discharged to the plant?

Councilor Kight replied yes.

Amy Pepper replied they do not. The Federal standards have set certain discharge limits for specific industries. So specific industries, such as Tube Specialties, would have to meet the Federal standards regardless of the local limits. DEQ does monitor and take samples of the Sandy River and that is where the total daily maximum load for the temperature came from.

Councilor Kight asked at the treatment plant do we monitor the kind of metals that are coming through our plant?

Amy Pepper replied in the past we have monitored at permit renewal and now we will be monitoring twice a year.

Councilor Kight stated I find it astounding that we are not monitoring or making industrial users accountable for the kind of metal that they are dumping into the treatment plant. How do other plants handle this kind of issue?

Amy Pepper replied typically local limits are part of the pretreatment program and most municipalities do not have a pretreatment program unless it is mandated by the state.

Councilor Kight asked could we adopt a higher standard?

Amy Pepper replied we could. These limits are technically based so this is probably as high as we could go unless we had more data to support having higher limits.

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

No testimony received.

MOTION: Councilor Daoust moved to adopt the resolution adopting local limitations for industrial wastewater discharged to the City's treatment plant. Seconded by Councilor Thomas.

Councilor Daoust stated DEQ has conditionally approved the local limits study and I think it is prudent that we approve the local limitations.

Councilor Thomas stated I think staff has put a lot of work into this and we need to get it on the books.

Councilor Ripma stated I think it is good that we are adopting some limits.

Councilor Kight stated I support the motion with the following caveat that it is my hope that the City of Troutdale, since we are the stewards of the Sandy River, would maybe take a look at setting some higher standards particularly as it relates to these heavy metals.

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

Motion Passed Unanimously.

10. RESOLUTION: A resolution adjusting water user fees and rescinding Resolution No. 1140.

Jim Galloway, Public Works Director, stated this follows up on some action that you saw previously during the budget committee deliberations. As mentioned at that time our current water rates have been in effect since January 1995. Since that time there have been increases in most everything that we spend those funds on (labor, material, and equipment costs). We are looking at drilling two new wells and the construction of two new well houses and a large part of that cost comes from the water fund. We are recommending an increase in our commodity charge, which is currently \$2.15/1,000 gallons, to \$2.35/1,000 gallons. The impact for a typical single-family user that uses 8,000 gallons of water a month, which is probably a little on the high side, would be \$1.60 per month. We are also recommending a minor change in one of the other items on the fee sheet and that is the hydrant meter rental change. The current rental rate is \$25.00 per month plus the water usage. We have had some situations where someone has used a hydrant meter for a very short time, like a day or two. In those cases you take the \$25 per month divided by 30 days to get a daily rate and charge a small amount for water. We are spending an hour of staff time issuing out the meter, finance doing all of the billing arrangements, taking the meter back in and making sure that it is in good repair for the next use and perhaps bringing in only \$1 or \$2 dollars in rental fees. Our recommendation would be to change that initial \$25 fee from a monthly fee to a minimum fee and if someone uses it beyond the \$25 days then it continues on at \$1 per day.

Council had no questions.

MOTION: Councilor Daoust moved to adopt the resolution adjusting water user fees and rescinding Resolution No. 1140. Seconded by Councilor Ripma.

Councilor Daoust stated I agree with the additional need for the money.

Councilor Canfield stated I hate raising the fee but this is really necessary. We need the new wells and this is the fund that has to pay for them.

Councilor Kight stated we are all affected by the water rates but Mr. Galloway made a compelling argument. With the advent of the new wells and the increase in costs, it makes sense.

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

Motion Passed Unanimously.

11. RESOLUTION: A resolution approving the amended Employee Handbook and rescinding Resolution No.1850.

Chief Nelson stated back in December of 2006 you adopted a resolution revising the employee handbook. After that revision there were a couple areas that the Council asked for updates and corrections on. In addition we have noted a couple of errors in that revision process as well. The first issue that I would like to speak to is like time, which was not included in the initial handbook that you saw in December. There was not language included for department managers or supervisors who do not receive overtime but instead accrue like time. The handbook also did not include language that addresses vacation time for a department head. Past practice has been that department heads receive three weeks of vacation when they are hired, instead of the standard two weeks of vacation. The proposed changes for these two items are shown in Exhibit A. There were several typographical and formatting errors that we are proposing to be corrected. While we were making these revisions we decided to delete some language in our travel policy. Currently in the handbook it lists specific amounts for meal reimbursements. If we were to decide to change those amounts we would need to bring an amendment to the handbook back before council and we didn't think that would be a good use of your time or our time. We proposed some language that would allow the meal reimbursement to be changed in our Standard Operating Procedure which is approved by the City Administrator. The main reason that this was not brought back to you in March was because of an oversight in Section VIII, General Conduct, Discipline, Termination and Appeal, that essentially allowed employees (non-law enforcement) who have a concealed weapons permit to carry that weapon while on duty for the City of Troutdale. It was our intent to not have that language in the handbook and that was an oversight on our part. Prior to bringing this back to Council we wanted to have an opportunity to talk with Jack Hanna who is the president of the AFSCME Union and he is also a concealed weapons permit holder. Terry Pinnell our HR Manager and myself met with Mr. Hanna. Mr. Hanna referred us to ORS 166.170 to 166.176. We have obtained legal opinions from Marnie Allen and Paul Elsner who both believe that the City has the authority to include regulations in our employee handbook that would restrict employees from carrying a concealed weapon while on duty at the City. The AFSCME representation and the City have reached a point where we have to agree to disagree that the City has the authority to regulate employees who have a concealed weapons permit from carrying a concealed weapon during work hours.

Councilor Ripma asked is the three weeks of vacation a change?

Chief Nelson replied no. That has been the practice of the City, it was just not included in the handbook.

Councilor Ripma asked is that also true for the like time?

Chief Nelson replied yes.

Councilor Ripma asked what we are adopting tonight does not in itself prohibit an employee who has a concealed weapons permit from carrying it?

Chief Nelson replied it would restrict them from carrying a concealed weapon during the hours they were working at the City. The exception of course is law enforcement personnel.

Councilor Thomas stated my concern is what do we have in here that protects the employee from an unwanted search and seizure?

Chief Nelson replied my initial response would be our union contract, however some employees are not covered under the union contract. There are state laws and we can't just bring someone in and start searching their property without just cause, probable cause or a warrant.

Councilor Canfield stated I don't have a copy of the Attorney's opinion. Mr. Elsner, could you give us a brief synopsis of ORS 166.170 and how that affects the City's decision and staff's recommendation.

Paul Elsner, Interim City Attorney, stated in April I was asked by the Chief to take a look at Marnie Allen's prior opinion in which she addressed the issue of whether or not the City could prohibit employees who have a concealed weapons permit from carrying a weapon while they were on duty. I reviewed Marnie's opinion, I reviewed a recent case from the Court of Appeals and I looked at the statutes in question in that Court of Appeals opinion. The court held that the prohibition against municipal regulation that was found in the provisions that are talked about in ORS 166.170, 171, 172, and 173, are ones that are aimed at the city's regulatory powers as opposed to the city's powers when it acts as an employer or what they sometimes call a proprietary capacity, as opposed to police powers where they are regulating everything within their jurisdiction to where they are acting as an owner or employer. The Court held specifically, these are the courts words, "the limits that the pertinent statutes place on the city's authority are limits on the authority to enact ordinances that regulate fire arms". So, after reading the court interpretation of these statutes and when I looked at the statutes again, it seems clear to me that is exactly what these statutes are meant to do. So I think that it is within the City's powers as an employer to restrict that ability.

Councilor Kight asked can they have the concealed weapon in their personal car?

Paul Elsner stated until they get out of their car, I would say that they are not acting in their capacity as a city employee.

Councilor Kight asked what if they use their own personal car to do city business?

Paul Elsner replied I would opine that if the City elected to discipline someone for that, potentially they could. I would assume for the purposes of my answer, that they do have the ability to transfer the weapon out of their car. If they are using their own car while performing their duties as a city employee, you could require that they not have a concealed weapon in their car.

Jack Hanna, AFCME President, stated I was asked as the President of the Union to sit down with the Chief, who was given the assignment to revise the handbook, and Human Resources to review the revisions to the handbook. We met and discussed all of the revisions being proposed and the question came up about the weapons. This issue came up back when we had the cougar scare and an employee asked if he could bring his weapon to work when he goes out to maintain that park in case the cougar showed up, and that discussion has carried on since. I had a conversation with the Chief and the Human Resources Director and I brought this subject up and I provided them with a copy of the statute. I am the one who suggested that the language be added to the handbook that you passed back in December that if an employee did bring a firearm to work that it would be properly licensed, that the license be valid and that this information not only be registered with the Chief but also with their supervisor to show that they do have the state authority to carry that weapon. Secondly, I don't think that there should be an employee carrying a handgun on duty and have someone be surprised by it. The police and supervisor should know that we have it. It shouldn't be carried secretly if you are going to carry it legally. That was my addition to that section of the handbook. The three of us discussed this issue and the language to include. Why they are surprised that this language is in the handbook or why it stayed in the handbook is beyond me when there were three of us who were at the table that crafted the language and put it in there. The copy of the handbook came back to me for inspection to make sure that it was written the way we agreed upon, and then it was sent to the Council to vote on it. Since that time someone has decided that you made a mistake in passing that handbook and they want it changed. As President of this Union it is my job to say to the City Administrator, Chief of Police, or Council that we have concern and we would like to have it addressed. This matter was addressed and it was approved.

Debra Kidney, Field Representative for AFSCME, stated with all due respect to the City Attorney, I have taken the same statutes and cases that he has cited and shown them to our legal counsel and he disagrees. He does not see that this is a clear, straight forward rule that says the City as an employer can prohibit someone with a concealed weapon permit from bringing the weapon on city property or carrying it. One of the things that I appreciated was the fact that Jack was willing to work with the City to find a middle ground that acknowledged that you don't want your employees to be carrying a whole bunch of weapons, but that it is a protected state right and a right that the employee has if they have a concealed weapon permit. It was a shock to us that it was coming back to Council for reexamination and that it is being characterized in this resolution as an error; there was no error. This was a joint labor and management effort that seemed to resolve the issue. We would like to see that employees in the City maintain their state rights to carry a weapon if they have the proper permit. We want to make sure that we don't get into a legal battle, which can be expensive for everybody, over something that doesn't need to be in the legal court when it can be dealt with here with the original language in the handbook that was approved back in December.

Councilor Ripma asked is AFSCME opposed to the change being proposed tonight to the handbook?

Jack Hanna replied yes.

Councilor Ripma asked because of the handgun issue?

Debra Kidney replied that is correct. We do not have any opposition to the other changes being proposed tonight.

Mayor Thalhofler asked do you favor employees being allowed to carry concealed weapons while on duty?

Jack Hanna replied yes, under the conditions that we have included in the handbook so that it is not unknown to their supervisor or the city. We can't find anything that says that it can be prohibited at this level. We are not here to advocate that everyone in the city carry a weapon.

Mayor Thalhofler stated I understand your argument but as far as I am concerned I don't think a city employee, unless they are in law enforcement, should be carrying a handgun while on duty for the City of Troutdale even if they have a concealed weapons permit. I don't see any need for that.

Councilor Canfield stated if I understand you correctly, you felt that you bargained in good faith with the City to add this language to the employee handbook, is that correct?

Jack Hanna replied not only do I feel that I bargained in good faith, I had a chance to look at it after it was written to make sure that the language was what we had all agreed on at the meeting.

Councilor Canfield asked, Ms. Kidney, you mentioned that you prefer to deal with this here and not in another venue, could you elaborate on what AFSCME would be looking at if this language is removed from the handbook?

Debra Kidney replied we will definitely continue looking at the statutes and the extent that it covers this. I want to make sure that there is consistency. I had a brief discussion with our legal counsel and we could end up having more extensive discussions either with the city or internally to try and figure out where the difference of opinion is. I don't think we need to spend a lot of time and effort on something that was mutually agreed upon over four months ago.

Councilor Canfield stated I agree. Seems to me this issue should have been settled. I have no problem with this exception. Not everyone has a concealed weapons permit. I agree with your position.

Councilor Kyle stated I wonder if a poll was taken of the other city employees to see how they felt based on the language of this Violence Free Workplace Standard Operating Procedure. Just because someone has the right to carry a concealed weapon doesn't mean that they are safe with that concealed weapon. I could go get a concealed weapons permit and I might be

a murderer, which I am not, but I am just wondering how the majority of the employees feel about this. I know that it is a right to carry a concealed weapon but do the other employees also feel that it is there right to feel safe while at their job and do they knowing that another employee might be carrying a concealed weapon.

Debra Kidney replied this is a small city and a tight workforce and I think they are all fairly aware of the details about each other. I am sure that no one would be surprised to know that Jack happens to be a concealed weapons permit holder. We have not done a formal poll, but I don't think it is something that people worry about in the city. We are not advocating that people bring guns to work, that is not at all our position. My concern is just to make sure that peoples' rights are protected.

Councilor Kyle stated I am also interested in employees' rights to feel safe at work. Not everybody who has a concealed weapon's permit is a safe person. What about everyone else's rights.

Debra Kidney replied I agree with you entirely that people have a right to feel safe at work. I haven't heard any expression from anyone that they felt unsafe at work for any reason.

Councilor Daoust stated I don't remember talking about concealed weapons back on December 12th.

Jack Hanna replied you didn't. The version of the handbook you passed in December had the language included that gave employees the right to carry a concealed weapon.

Councilor Kyle asked do we have a copy of that?

John Anderson, City Administrator, replied if you look at Exhibit B, Paragraph M, the city has had a prohibition for some time. The City became aware of the fact that some employees might utilize their right to carry a concealed weapon. That is when we had some dialog about if you are going to carry a concealed weapon we need some language for an exception and that is when Jack became involved in crafting some language which eventually was put into the handbook. If you look at Paragraph M, the City had a prohibition and that corresponds to the Standard Operating Procedure (SOP) 1044, Violence Free Workplace. What we found out was that we hadn't been enforcing that for people with permits to carry a concealed weapon and we wanted to deal with that, so we started talking about that and had drafted some language. That language, as Jack said, was placed into the employee handbook. Subsequent to that the Management Team reviewed this and it was our consensus that we did not want that exception, we wanted the original intent, which was to not have employees have the ability to carry concealed weapons so we are bringing this back to you. The previous handbook and SOP 1044 are both written with that intent. We got involved in crafting an exception and we are saying that it was our error to include that language because it did not represent past practice or where we wanted to be.

Councilor Daoust stated that clarifies this for me. So the resolution that we have in front of us tonight maintains that the City has that right to prohibit employees from carrying concealed weapons. I agree that the City has that right.

Councilor Kight stated so we have a historical practice where the City did not allow the employees to carry concealed weapons, is that accurate?

John Anderson replied we had the language in Paragraph M, and it was an oversight that employees may have a concealed weapons permit so we weren't involved in asking whether they had that and enforcing it. When we became aware of it we looked at crafting an exception, which Jack participated in. The language that is now being proposed to be deleted has only been enforced since December 2006.

Councilor Kight asked so the original language does not specifically state or identify concealed weapons?

John Anderson replied correct.

Councilor Kight asked who crafted this language for the document that was adopted in December?

Chief Nelson replied when I said that I was surprised that this language was still in the handbook, I was truly surprised. As Jack indicated we did meet and have some dialog between the HR Manager, Jack and myself and we did discuss this and the language was crafted. I don't specifically remember who wrote that language, whether it was me, Jack or Terry Pinnell. After it was in the draft handbook, Jack did review it and it then came back to the Management Team and there was some discussion by the Management Team that this language (Exhibit B, second paragraph of Section 1m) should not be included in the handbook. Where the breakdown occurred is that there was supposed to be a follow-up discussion with Jack before it came to Council in December. That did not happen. It was staff's responsibility to make that correction to the handbook before it came to you for adoption in December and that wasn't done. After it was adopted we realized the error. We were scheduled to bring this back to you in March to make some other corrections to the handbook, which is when I noticed this error. I had thought that this had already been taken care of and it hadn't been so we pulled it from the Council agenda in March and we met with Jack and discussed the issue with him. At that time we had then also obtained a legal opinion from Marnie, which Paul Elsner has also reviewed.

Councilor Kight asked what is your personal opinion about an employee carrying a concealed weapon?

Chief Nelson replied in the big picture, I have concerns about it. Liability to the City is a concern by having people carrying weapons that are not fully trained. Who is going to train them is another concern. Individually, do I have problems with individuals carrying a weapon? If it was Jack I wouldn't specifically have a problem because he is just as trained to carry a gun as I am, but in the big picture I have a concern.

Councilor Kight asked if you don't have a problem with Mr. Hanna carrying a handgun, given the kind of work that he does and the fact that some of the folks that he deals with can become confrontational, is there a way to make some provision so that Mr. Hanna can carry a handgun?

Councilor Kyle asked Jack, do you carry a handgun at work?

Jack Hanna replied I don't because I am pretty sure how this is going to go. There have been times when I would have felt a little safer. I just attended a Code Enforcement Association conference and there are a lot of them who are starting to carry Tazers because they are in an enforcement situation. This is not the issue here. The issue that I am bringing forward on behalf of the Union, is the prohibition of something that appears to be allowed by state statute.

Mayor Thalhofer stated if this is going to go on much longer, I think we need to set this over to another meeting.

Councilor Ripma stated I am ready to make a motion.

Councilor Thomas stated I think we should set this over and let the union and the staff work out something that everyone is comfortable with.

Councilor Canfield stated I agree.

Councilor Kight stated that is why they are before the Council, they are at an impasse; is that correct Mr. Elsner?

Paul Elsner replied that is my understanding. I am looking at another provision in the same statute, 166.263 Authority of Parole and Probation Officers to carry fire arms, and in that statute they say, "when authorized by the officers employer a parole and probation officer may carry a firearm". So if the statute here says that someone can carry a firearm, then why do they need another statute to talk about parole and probation officers. All the statute is basically saying is that a public employer is no different than a private employer. Every private employer can prohibit all employees from carrying weapons and you are in no different position. The mere fact that you are a public employer doesn't all of a sudden grant a public employee the right to carry a gun. It is a simple, straight forward matter. If that statute meant to allow public employees to in fact carry a weapon, I think the legislature knows how to write a statute and I also don't think that they would have to write a separate statute that would allow parole and probation officers to carry weapons if authorized by their employer. I have greater confidence now in that Marie Allen's opinion was correct, and that my opinion is correct then I did when I wrote it.

MOTION: Councilor Ripma moved to approve a resolution approving the amended Employee Handbook and rescinding Resolution No. 1850. Seconded by Councilor Daoust.

Councilor Ripma stated I think the discussion and presentation, while it was a little disjointed, has brought forth all of the issues that are before us on the issue of concealed weapons. I personally remember seeing the language that we approved in December and didn't think anything of it and it wasn't called to our attention so I assumed it was old language or it didn't represent a significant change. I don't think it was a mistake that we adopted it but on reflection and on hearing all of the arguments, pro and con, I think it would be better to not have that exception included in the handbook and to return to the old language. For the record, I think the legal issue is

content. People can debate the issue but to me it is obviously clear that our City Attorney has analyzed it in a way that allows us to make this a rule in our employee handbook and prohibit this and not to have an exception. I am satisfied that this has been fully considered.

Councilor Daoust stated I agree with Councilor Ripma. We have had this rule before, it is not new. I am satisfied that our attorneys have said that it is very clear that we have the right to do this. In my mind it is a fairly simple thing to say that the city has the right to regulate this.

Councilor Thomas stated we clearly have the right to do it and I know that in the private world they do. I think in this case we should take a little more time to give the employees a chance to look at this instead of trying to put this through tonight.

Mayor Thalhoffer stated I felt that way too at one point, but now I think we ought to dispose of this tonight. I am going to vote yes on the motion. Maybe this slipped by me when we considered this issue in December, but I really feel strongly that non-law enforcement employees should not carry a concealed weapon at work. I think that is bad public policy. The question would be is Jack Hanna, our Code Enforcement Officer, a law enforcement officer? Maybe he is and maybe he should be allowed to carry a handgun. I don't know. That is a conversation for another time.

Councilor Canfield stated I know the position that the City Attorney took and I have heard what Mr. Hanna and the AFSCME Representative have said, and I understand the concerns of employee safety at work. However, I have no problem with the exception, especially as it is written requiring notification to the supervisor and the Chief. I don't think this would be a problem so I have no problem with that exception being included in the handbook.

Councilor Kyle stated I am going to support the motion because I don't like the way the exception is written. I could support it if it were an exception for some specific purpose and with the employers' permission if they had the concealed weapons permit.

Councilor Kight stated apparently the City has a history of not allowing employees to carry handguns. That being said, I agree with the Mayor. I think Mr. Hanna's position, as the Code Enforcement Officer, ought to be looked at and maybe there should be an exception for that position because he could encounter confrontational situations.

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

Motion Passed 5 – 2.

12. RESOLUTION: A resolution adopting the Public Works Department Capital Improvement Plan.

Jim Galloway, Public Works Director, stated this is the annual update to the Public Works Capital Improvement Plan (CIP). We have updated the cost estimates, as we do each year, using the Construction Cost Index from the Engineering News Record magazine. We have deleted some projects that have been accomplished. We have deferred the project involving the extension of SW 2nd Street due to the lack of the property owner indicating an interest in pursuing that project. The added projects are the newly approved North Troutdale Storm Drainage Master Plan; that also included deleting some other projects. We deleted the storm sewer project, Stark Street Flood Plain Creation, after we had a consultant take a look at that and told us that it was of marginal value. We also adjusted the construction year for two projects where the need was not imminent. Two things that are a little different this year from previous years – typically I have brought the construction capital improvement plan to you at the same time that we discuss system development charges (SDC). I thought that it made more sense to bring this plan first and then if there are any changes I can incorporate those changes when we calculate the system development charge rates. I will plan to bring those to you at the next meeting, assuming that we have approval of the CIP in its current or amended form tonight. Secondly, I have added a second section to the CIP. Typically we have only looked at the capacity enhancing capital improvements which we need a CIP to justify the SDC rates. I thought it would be helpful, perhaps to the Council but also to some developers and contractors, to also put in a section showing major maintenance projects.

Councilor Ripma asked does the fact that something appears on the plan mean that it will happen?

Jim Galloway replied per the state law we do show the description of the project, estimated cost and an estimated year of execution. That is not a guarantee; it is still a requirement of the budget process to actually determine whether or not we will execute a project.

Councilor Thomas stated for the slurry seal project you show \$85,000 for 2006-07, \$80,000 for 2007-08 and then it goes up to \$200,000 for 2008-09, 2009-10 and 2010-11. I am wondering if for the long-term those numbers aren't a little low.

Jim Galloway replied I think the figure we give for the out years of \$200,000, is probably a fairly good estimate at this point. There are not enough gas tax dollars coming to the city to sustain a program of just doing asphalt overlays whenever a street pavement starts to deteriorate, so we have looked at a number of other options. A couple of years ago we tried a thinner asphalt overlay and that didn't pan out too well. We have gone through the past year with the slurry seal and we think that is promising and the direction to go. I think that a \$200,000 per year investment in slurry seal probably meets our need, the fact is that we don't have sufficient revenues to sustain that, but if we have the dollars applying them in that fashion would keep our pavement sufficient.

Councilor Thomas stated if the numbers in this plan are intended to reflect what the future needs should be, whether or not we can do it is important so that when we go back we can say this is what we have and this is what we need and how do we resolve this, then you have

the numbers to back it up. By the time we get to the year 2010 a big portion of the city's roads will be 20 years old or better and I think these numbers may be a little low.

Jim Galloway stated I think that is a good point and I think it would be our intent to have a dialog with the Council and/or the Budget Committee on that, perhaps the fall budget work session may be an appropriate time to do that. I think you are correct, regardless of whether that is the right number or there is a slight modification to it, I think anything that we layout will show that the current revenue stream is not going to keep up with the future needs and we probably need to start the dialog about what we want to do about that.

Mayor Thalhafer asked have you thought about using concrete even though it is more expensive? Wouldn't it last longer?

Jim Galloway replied I don't think we have done a comprehensive analysis on that because the difference in cost would tend to make us think that it is not practical. But given the increases in petroleum costs, which reflect in the asphalt cost, it probably wouldn't be a bad idea for us to take a look at that.

Councilor Canfield stated Project #5 on page 12, extend SW 2nd Street to 257th Drive, the property owner communicated that they were not interested in this. Could you refresh my memory, did Multnomah County ever give us any input on whether they would agree with this extension?

Jim Galloway replied initially a year or so ago the property owner came in and made a pretty strong plea to the Council that they wanted to get this project done soon, so we kind of advanced it. We then went back to the property owner to get the title to some property for the right-of-way that would be needed, and at that time he verbally told a member of my staff that he wasn't to sure that is what he wanted to do. That raised some red flags in our mind. We made an effort to contact him and have him tell us for sure what he wanted to do and he was not responsive to that. We brought that information to the Council and I believe that the consensus from the Council was try a little harder to get an answer from the property owner. At that time we sent a formal letter and gave him 45 days to respond and we did not receive a response. So I can not say that he said no, he basically has been non-responsive. The County's answer was that they would consider it, but basically they would require a study to be done and would allow it only if the results of that study indicated that it could be done safely and in compliance with the standards. I think one of the main concerns that they have was the potential impact of queuing for traffic north bound on 257th and the fact that if 2nd Street was extended to 257th it would intersect 257th relatively close to Columbia and the traffic stopped at the light might back up and create a problem there.

Councilor Canfield stated I wonder if this should still be a project to look at.

Jim Galloway replied with the potential that it would not be approved by the County, and with the reluctance of the property owner, unless the Council was interested in paying for the right-of-way, it doesn't appear to be a very viable project.

Councilor Daoust asked on page 29, the Sandy Heights Drainage, when the Dorrroughs' were in here and we were discussing the drainage problems they were having on their property, I

don't recall the City saying that we had to install a drainage system across their property. Where did this come from?

Jim Galloway replied this was one of the terms of the settlement agreement that the City did enter into with the Dorroughs to end the litigation.

MOTION: Councilor Ripma moved to adopt the Public Works Department Capital Improvement Plan. Seconded by Councilor Kight.

No discussion on the motion.

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

Motion Passed Unanimously.

13. STAFF COMMUNICATIONS

None.

14. COUNCIL COMMUNICATIONS

Councilor Thomas thanked the City for putting together the Cleanup Day.

Mayor Thalsofer asked has anything been done to abate the mess on the David Bennett property at 13th and Kibling?

Paul Elsner, Interim City Attorney, replied that a complaint was filed with Multnomah County Circuit Court and it was sent to a process server this morning for service against him.

15. ADJOURNMENT:

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

Meeting adjourned at 11:33pm.

Paul Thalsofer, Mayor

Dated: Approved October 23, 2007

ATTEST:

Debbie Stickney, City Recorder