

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

**Tuesday, February 28, 2006**

**1. FLAG CEREMONY:** Presentation of the Colors by Boy Scout Troop 174.

Boy Scout Troop 174 presented the Colors and led the Pledge of Allegiance.

**2. ROLL CALL and AGENDA UPDATE**

Mayor Thalhofer called the meeting to order at 9:30pm.

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

**ABSENT:** Councilor Gorsek (excused).

**STAFF:** John Anderson, City Administrator; Kathy Leader, Finance Director; Jim Galloway, Public Works Director; Marnie Allen, City Attorney; Debbie Stickney, City Recorder; Jack Hanna, Code Enforcement Officer; and Eric Underwood, Economic Development Specialist.

**GUESTS:** See Attached.

**3. PROCLAMATION:** Scout Month – February 2006

Mayor Thalhofer read the Proclamation (a copy is included in the packet).

**4. STATE OF THE CITY MESSAGE**

Mayor Thalhofer read the State of the City Message (a copy is included in the packet).

**5. CONSENT AGENDA:**

**5.1 ACCEPT MINUTES:** October 11, 2005 Work Session, November 1, 2005 Work Session and November 8, 2005 Regular Meeting.

**5.2 RESOLUTION:** A resolution supporting the Troutdale Marine Drive/Backage Road project in the 2008-2011 Statewide Transportation Improvement Program.

**5.3 MOTION:** A motion authorizing the Mayor and City Administrator to enter into an Intergovernmental Agreement with the City of Gresham for Fire and Emergency Services.

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

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

None.

Mayor Thalhoffer stated with Council's permission I would like to change the order of the agenda and hear Item #8 before Item #7. Council agreed.

**8. REPORT: A report on AMR's Annual River Safety Program.**

Randy Lauer and Julie Ryan of AMR briefed the Council on the 2005 River Safety Program and showed a PowerPoint presentation. (A copy of the presentation is included in the packet.)

Randy Lauer stated this was our seventh year with no loss of life.

Julie Ryan stated that Glenn Otto Park had 29,168 visitors in 2005 during the months the program was operating. In 2005 we had 4 rescues (when a River Rescue Tech must physically make contact with a subject and remove them from the water or a dangerous area because the subject is unable to do so themselves) and 38 assists (when a River Rescue Tech must help a subject, either verbally or with a device, to the shore or out of a dangerous area) in 2005. We had to make 45 requests to the Troutdale Police Department for assistance. We requested an ambulance 3 times and had 3 requests for the team to respond to water rescues in areas outside of Glenn Otto Park. Some of the other ways that we helped out include: removal of river debris, provide tourism information, and held safety talks with school groups, church groups and camps.

Councilor Canfield asked what are some of the reasons you would be requesting police assistance?

Julie Ryan replied alcohol in the park, illicit activity that seems out of the norm, assaults and there is some gang activity. Alcohol in the park is the largest percentage of the reason for calling for police assistance.

Council expressed their appreciation for this outstanding program and thanked AMR for providing this service.

**7. PRESENTATION:** A presentation of the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2005.

Kathy Leader, Finance Director stated the City of Troutdale had a very positive year in 2005. We saw a fund balance increase in all funds except for three that had significant capital projects. The main fund that we talked about more recently is the General Fund where we saw an increase in the ending fund balance of about \$1.2 million. The increase was due to: 1) the sale of the RMAC property; 2) unanticipated increase in revenues; 3) building fees that we received for development within the city; 4) the reduction of expenditures due to effective cost control by management resulted in reduced spending in the departments. The audit provided an unqualified opinion for the City of Troutdale and the auditor had no management comments or recommendations for us.

Roy Rogers of Pauly, Rogers and Co., provided the Council with an Executive Summary of the audit process (copy included in the packet). Under the Oregon Statutes you are required to have an annual audit. We actually do a couple of audits. One of them is to tell you whether or not your staff is following the generally accepted accounting principles. You also have to follow the Oregon Municipal Audit Law, which deals with internal control, whether or not you followed the local budget law, whether or not you have applied good purchasing practices and a number of other items. As Kathy mentioned you had an unqualified opinion which means good. That is exactly the clean opinion that you want. In regards to the state minimum standards for audits of other kinds of requirements, we didn't find any exception or issues requiring comments. There was no management comment. That is good; we issue a lot of management letters and I think that is a tribute to your staff. We found that the City books and records were maintained in a very professional manner throughout the year and the budget was professionally managed as well. One of the standards that we have to apply is SAS No. 99 which has to do with fraud considerations. As you know we do a financial audit not a fraud audit, but the objective of this standard is to make certain that there aren't any glaring issues or holes in your system that you need to know about that are potential risks. I can tell you that we did not find any. We want to make certain that you are not taking any unreasonable risks and we want to make sure that there aren't any control issues that don't safeguard your assets. I am assuming that as an elected body you want to make certain that you are protecting the assets of the public. I can tell you that you are doing that and your staff has been very diligent. There were no disagreements with management, difficulties encountered in performing the audit, significant audit adjustments or disagreements about accounting policies or accounting estimates.

**MOTION: Councilor Daoust moved to receive the Comprehensive Annual Financial Report for the fiscal year ended June 30, 2005 and the Independent Auditor's Report. Seconded by Councilor Canfield.**

**VOTE: Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes, and Mayor Thalhofer – Yes.**

**Motion Passed Unanimously.**

**9. PRESENTATION:** A presentation of the new Troutdale Economic Development Program tools.

Eric Underwood, Economic Development Specialist stated I have been under contract with the City since July and I have been working on small business issues, mostly in collaboration with the Chamber. I have been keeping in touch with property owners, specifically the ones that have vacant property. I have been working on land inventory of commercial and industrial property in the City. I have also been working on developing economic development marketing tools including a web page, slide show, business information guide and a mission statement.

Eric Underwood showed the Council the new economic development web page reviewing the content on each of the pages.

Eric Underwood stated the slide show will be part of the web page as well as part of the recruitment packet that has been developed. Eric showed the slide show to the Council (a copy is included in the packet).

Eric Underwood provided the Council with a copy of the Business Information Guide (a copy is included in the packet).

Eric Underwood provided the Council with a copy of the proposed Mission Statement which reads, "It is the City of Troutdale's mission to promote growth and create jobs in a manner that meets the needs of the community while strengthening the City's economic viability. Troutdale will accomplish this task through strategic recruitment practices, continuous assessment of community needs, establishment of crucial partnerships and routine analysis of current economic trends that impact our region. Our goal is to make Troutdale a city of choice for business with an incomparable quality of life for its citizens."

**MOTION: Councilor Canfield moved that the City Council approve the Economic Development Web Page, Slide Show, Business Information Guide and Mission Statement as presented. Seconded by Councilor Thomas.**

**Councilor Canfield stated all of the material presented is very good.**

**Councilor Thomas stated this is excellent material.**

**Councilor Daoust stated I appreciate the focused energy of having one person working on economic development. I think that will help a lot.**

**Councilor Ripma stated it looks good.**

**Mayor Thalsofer stated I think it is great.**

**VOTE: Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes, and Mayor Thalsofer – Yes.**

**Motion Passed Unanimously.**

**10. RESOLUTION:** A resolution establishing solid waste collection fees related to service using recycle roll carts and amending Resolution #1682.

Mayor Thalhofer read the resolution title.

Jack Hanna, Code Enforcement Officer stated this resolution has been in the works for a little over a year now. Council directed staff to look for a system to reduce or eliminate wind blown debris within the neighborhoods in the City. At the January 10<sup>th</sup> Council work session, you were presented information that had been reviewed by the Citizens Advisory Committee (CAC). The CAC's recommendation was to implement a roll cart recycling program for the neighborhoods on a voluntary basis. At the January 10<sup>th</sup> meeting there was only one cart size being discussed and Council asked staff to inquire about different sized carts. We did find out that there are three cart sizes available, a 32-gallon, 64-gallon and 96-gallon. These carts would have an additional fee of \$1.40 per month for the 32-gallon cart, \$1.55 per month for the 64-gallon cart and \$1.75 per month for the 96-gallon cart. The other item for your consideration is basically a housekeeping issue. Waste Management has had a request to add a service for once a month garbage pickup. The current fee schedule does not have a fee for this service. Waste Management has determined that the fee for once a month garbage pickup would be \$13.35. We have included that new fee as part of our proposal for Council's adoption. Notices were published for the CAC meeting and all of the Council meetings noting that this would be a topic for discussion on the agendas. I have not received any telephone or written comments on this topic. The options for Council to consider tonight are to adopt the resolution as presented or adopt a resolution with modifications. The proposed resolution does not address the issue of whether or not the recycling roll carts should be on a voluntary basis or mandatory, that will need to be decided by Council if you want to adopt this resolution. Another option would be not to adopt the resolution and the recycling service would continue with the Curbys. The final option would be to remove the roll cart proposal from the resolution entirely and just adopt the new once a month 35-gallon collection fee.

Councilor Canfield asked regarding the proposed once a month fee, did you check to see what other cities are charging for that type of service?

Jack Hanna replied no. I did talk with a couple of other folks involved in solid waste collection and it is not something that has been adopted. It has just been in the last six to eight months that it has come up here.

Councilor Canfield asked so no one else in the Metro area offers the once a month collection?

Jack Hanna replied none that we are aware of.

Councilor Ripma asked the way the resolution is worded does it mean that the recycle roll cart is optional?

Jack Hanna replied the resolution does not address whether it would be a mandatory or voluntary program. The resolution is to adopt the program that makes the roll carts with lids available to customers for recycling, presently that is not an option. The option is whether or not to adopt the program and it would be up to Council as to whether or not it would be mandatory or voluntary.

Councilor Ripma asked if we adopt the program and it isn't mandatory but we don't take some sort of action to make it mandatory, wouldn't it then be voluntary?

Jack Hanna replied I would think so. It doesn't specifically say that it is a mandatory program but that it would be available to the customers.

Councilor Daoust stated at the top of Attachment "A" it reads, "Standard service includes recycling bins on a weekly pickup basis, residents may upgrade recycle service to a 35, 65 or 96 gallon roll cart provided by the hauler".

Councilor Thomas asked if we were to go with the roll carts and the automated devices for picking up the carts, can you use those same devices to pick up the curbs?

Jack Hanna replied no.

Mayor Thalhoffer stated it is not clear to me that this is either mandatory or optional.

Jack Hanna replied if you adopt the resolution as it is, it is not designated as a mandatory service. If you wanted to make it mandatory you would need to amend the resolution to make it mandatory.

**MOTION: Councilor Ripma moved to adopt the resolution establishing solid waste collection fees related to service using recycle roll carts and amending Resolution #1682.**

**Councilor Thomas asked do you want to include language stating that it is optional?**

**Councilor Ripma replied I read the resolution as being optional, I think that it is clear that it is not mandatory.**

**Motion seconded by Councilor Daoust.**

**Councilor Ripma stated I think making the roll carts available is a very good idea. If it proves popular it would solve some of the wind-blown debris problem that we all know about in Troutdale. I also think that it is good to try it as a service that is available at a modest price and not make it mandatory yet. One of my concerns with making it mandatory is that if you have a roll cart for recyclables and other roll carts for garbage and yard debris it takes up a lot of room. I also think that adding the**

**option for the monthly garbage service is a good addition; it may encourage folks that don't have any service to subscribe.**

**Councilor Daoust stated I agree with everything that Councilor Ripma said.**

**Councilor Canfield stated I also agree. This is a good idea, let's give it a try.**

**VOTE: Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes, and Mayor Thalhoffer – Yes.**

**Motion Passed Unanimously.**

Mayor Thalhoffer called for a break at 8:30pm and reconvened at 8:40pm.

**11. PUBLIC HEARING/ORDINANCE (Introduction):** An ordinance administering rights-of-way, amending Title 12 of the Troutdale Municipal Code, and repealing Chapter 5.20 of the Troutdale Municipal Code.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 8:40pm.

Jim Galloway, Public Works Director stated this is being brought before Council as a staff initiative. At the current time we do not have an ordinance that addresses the management of our rights-of-way. Generally that has been held as a part of the various franchise agreements between the City and utility companies. We have a two-fold purpose in bringing a right-of-way ordinance before you. One is to have some uniformity in the administration of the rights-of-way so that we don't have different rules for different utilities. Secondly, to try to avoid having to renegotiate all the various terms and conditions that are currently proposed in this ordinance each time a franchise comes up for renewal. The ordinance, as proposed, touches on a variety of topics such as permitting, construction, relocation, undergrounding, financial assurances, hours of work, damages to the right-of-way and the requirement for commercial firms who would like to utilize our right-of-way to have a franchise agreement with the City. We started out about six months ago putting together the draft ordinance. We then shared that with the four utility companies that are primarily the entities that we deal with, NW Natural, PGE, Comcast and Verizon. We received a few comments from NW Natural, a number of comments from Verizon and nothing from PGE or Comcast. Over the last several months we have been working to try and address issues and concerns that those companies had. It involved two full-blown revisions that we shared with those companies and included a meeting with all four companies and a second meeting with Verizon only when we were down to addressing just the issues that Verizon had raised. We believe that we have addressed all of the issues and differences with one exception, which has to do with the undergrounding provision. We have had a policy in the city for the undergrounding of new utility lines. That terminology of new utility lines or utility lines for new development has not been precisely spelled out anywhere that I can find in the official documents. In this draft ordinance I try to do that in Section 12.12.050 C. It appeared to me that there were probably at least four scenarios where there could be a question as to whether or not a utility line was a new line. The first scenario is if there is no overhead line right now and a utility company wants to put a

line in, that is new and has to go underground. The second scenario that I looked at was if there is currently an overhead line and the utility company wants to put in an additional line, that is a new line and that new line has to go underground. The third scenario is if there is an existing overhead line and the utility company would like to replace that line with a bigger line, a larger diameter, I reasoned that was a new line that would have to go underground. The fourth scenario was the replacement of an existing overhead line with a like line, one of the same size or smaller, and I reasoned that was basically normal maintenance and would not be considered a new line and it would not have to go underground, it could remain above ground. That may or may not be the way that you see the previous Council's intent as far as undergrounding goes. There are representatives from Verizon here tonight that will speak to you about the new program that they hope to introduce in Troutdale called Fiber-to-the-Premise where they bring fiber-optic cable to all of the residential areas of the city and the idea of undergrounding all of that is not in accordance with their business plan. I believe that is the only remaining difference of opinion; I believe that we have resolved the rest of the issues. There is one other item that I would like to address. Verizon has asked to have a few clarifying words inserted, which we have no problem with. Unless Council objects, when we bring this back for the second hearing we would incorporate the following clarifying words: On page 5 of 9, at the top of the page titled Relocation, the first word in the fifth line is "cost", Verizon has asked us to insert the words "for relocation of user's equipment" after the word cost to clarify that the costs that they have to pay are not the total project costs, just the costs for relocating their equipment. A similar change would be made on page 3 of 9 in paragraph C where that same language is used.

Councilor Canfield stated in your report you indicated that according to Verizon's estimates approximately 35% of their lines are aerial. Do you have an idea for the other utility companies what percent of their lines are aerial versus underground?

Jim Galloway replied I don't have an exact percentage; my guess is that PGE would have a higher percentage of aerial. I don't have a good sense for Comcast.

Councilor Canfield asked you are proposing to require the new lines to be underground, is that correct?

Jim Galloway replied that is correct. The issue would be how we define new.

Councilor Daoust asked is the diameter of these fiber-optic lines smaller or larger than the line that they have up now?

Jim Galloway replied I think that would be a better question for Verizon. However, it is my understanding that those lines would be in addition to the lines that are there now. Under the way that I have drafted the ordinance it would be considered a new line.

Councilor Daoust asked irregardless of the size?

Jim Galloway replied yes.



Councilor Ripma stated the definition in 12.12.050 C is new. Is that your attempt to define when undergrounding is required?

Jim Galloway stated that is correct. That is my effort to do what I think has been the intent of the Council over the years.

Councilor Ripma stated at first pass it seems logical. I did wonder about the diameter issue. If existing conduit was replaced by something equal or smaller in diameter that had ten times the capacity, it seems like that wouldn't be a justification for exempting it. I wondered if you had thought about that. The diameter of the conduit may not have anything to do with its size.

Jim Galloway replied certainly that issue was something of discussion in our office as we were working on the language. The thought behind that was that I believe that the City's policy over the years, or the reason for undergrounding, was two-fold, the reliability of getting things out of the east wind and putting them underground and the aesthetic piece. It was more the aesthetic piece that we are trying to address. Our thought was that if there is already a cable up of a particular size and they were simply replacing it with like cable you really haven't changed the horizon much, but if you replace a cable of particular size with one larger, it may have some affect on the aesthetic piece.

Councilor Ripma stated actually that sounds logical. One thing about diameter is it is easy to measure.

Councilor Thomas stated if I understand this correctly, using the diameter may not be a good choice because generally speaking fiber-optic cables are smaller in diameter. Based on my conversation with you this afternoon, are you really saying is if they replace the wire with anything other than an exact replacement of what is there you would want it to be underground.

Jim Galloway replied if I gave that impression this afternoon in our conversation I apologize. The thought is that if whatever is there now is of a particular diameter and they replace it with something else that is the same or smaller in diameter, in the draft language that would not be considered new, that could remain as an aerial. But if they replaced it with a larger cable it would be considered as a new line and would have to be undergrounded. If the line didn't exist and they wanted to put one in that would go underground.

Councilor Ripma asked when the utilities do their undergrounding do they each have their own conduit?

Jim Galloway replied in the situations that I am aware of they do have their own. They may sometimes share a trench.

Councilor Daoust asked if we require undergrounding in the public right-of-way does that automatically influence how the line is attached to a private house? If we go this far and require undergrounding for all new lines that come into a house, I am having a hard time

visualizing this. If they already have a telephone line coming in from a pole and they want to hook up to fiber-optics and we require it to be underground, does that mean the private land owner has to have a trench dug to their house also?

Jim Galloway replied yes.

Mayor Thalhoffer asked the representative from Verizon to come forward.

Bob Wyatt, External Affairs Manager for Verizon in Oregon, reviewed the document entitled "Broadband Deployment Plan" which summarized the benefits of the fiber-to-the-premise project for Troutdale residents (a copy of the document is included in the packet). Verizon would like to bring fiber-to-the-premise to East Multnomah County. One of the benefits of the fiber cable is its capacity. Once we have it in place we do not foresee the need to go into the streets again for fifteen to twenty years. This service is optional to the customers. We will be bringing fiber to the property line and if the customer wants the fiber service then we come out and install the fiber from the property line to the house. If they don't want that service then they keep what they have now at the same exact cost that they have been paying. The benefits of fiber-to-the-premise include: The most advanced telecom infrastructure that provides faster connectivity and delivery of services and positions the city for future products and services; economic development that will attract residents and businesses; increased economic activity; and provides competition for better services and prices that will enhance business growth in an e-commerce world. We have two types of deployments of the fiber-to-the-premise. One is to overlay our existing copper network in those areas where we have it already. To do that we bring in fiber right along the side of the copper that is already there. The second is greenfields, which are new developments that don't have any telecom cable right now. In that case we just go in and put fiber. Our commitment to the City is to: 1) meet the City's permit requirements; 2) focus on quality, safety, and reliability; 3) minimize disruption to citizens and facilities; 4) restore the right-of-way and public utility easement areas; 5) be available and responsive to staff and citizens; 6) make Troutdale one of Oregon's first fiber-optic cities.

David Mielke, National Municipal Affairs Manager for Verizon, thanked John Anderson, Marnie Allen and Jim Galloway for their professionalism that has been provided throughout our discussions regarding the right-of-way ordinance. Verizon, City Staff and other utilities have worked together to develop a right-of-way ordinance that fulfills the safety and needs of Troutdale and its citizens without significant impact on the financial and operational requirements of the utilities, for this I applaud John and his staff. As outlined in the staff report the broad underground requirements of Section 12.12.050 will impose a significant financial burden on Verizon and is likely to serve as a barrier to Verizon's construction of its Fiber-to-the-premise network. Verizon recommends that the Council define "new" as a line installed in the area where no lines currently exist. First and foremost, as part of this national fiber-to-the-premise program Verizon is utilizing existing aerial facilities for the placement of the fiber-optic cables. Placement of the fiber-optics on existing aerial facilities is done by a process called overlashing in which Verizon will be wrapping the fiber-optics around the existing aerial cable lines. The picture I provided to you (copy included in the packet) shows the overlashing. The bottom line shown in the picture is actually overlashed and the next line

up is not overlashed. There is virtually no visual difference. Using the existing aerial facilities allows Verizon to develop the network within the constructs of its business plan. Without using the existing aerial facilities Verizon would not have an economically viable plan to construct the fiber-to-the-premise network. In fact the financial burden of not being able to use the existing aerial facilities is so significant that the proposed undergrounding requirement has made it necessary for Verizon to cease engineering the fiber-to-the-premise network build in Troutdale. As a result, Verizon's plan to bring the benefits of fiber-to-the-premise to the citizens of Troutdale has also been put on hold. However, we look forward to resuming the fiber-to-the-premise program after Verizon has been provided assurance that we can use the existing aerial facilities for the placement of the fiber-optic cables. Verizon is very excited to commence this project in the City of Troutdale. If the ordinance is passed, as proposed by staff, Verizon will not be obligated to remove any existing telephone poles regardless of whether or not Verizon constructs fiber-to-the-premise network because Verizon is required to continue, maintain and operate the existing aerial copper facilities by federal and state regulations. We do not take those down as a result of implementing the fiber-to-the-premise network, they will have to stay up. In determining "new" to mean a line installed in an area where no lines currently exist is consistent with the undergrounding requirements of Troutdale Municipal Code Section 12.11, which has been applicable for at least ten years. Finally, the proposed requirement as drafted usurps the authority of the Oregon Public Utility Commission and the forced undergrounding requirements under Oregon law. For these reasons Verizon asks the City Council to define new as a line installed in an area where no lines currently exist.

Councilor Kyle stated I moved to Troutdale over eleven years ago and left fiber-optic service on the coast and I haven't had good phone service since. The existing copper will stay up and the new fiber-optic is wrapped around the old line is that what you are saying?

David Mielke replied that is correct.

Councilor Kyle asked so customers will keep the copper service unless they choose to upgrade to the fiber, is that correct?

David Mielke replied that is correct. The one exception is greenfields which will be installed with fiber.

Councilor Kyle asked how large is the cable?

Male stated the largest cable that we use is an inch in diameter.

Councilor Daoust stated I don't think any of us would argue the merits of fiber-optics. It is just a question of how much we want you to underground. Have you run into this requirement to underground a portion with other cities, or are we the first?

David Mielke stated we have always been able to work out deals to utilize the existing facilities in all of the areas that I am aware of to date.

Councilor Daoust stated according to the one statement in the staff report, 65% of the city is already underground. So you would install the fiber-optics underground in 65% of Troutdale if you went forward with this project.

David Mielke replied that is correct.

Councilor Daoust stated so what you are saying is that to underground the other 35% makes the project become not economically feasible. Is that not economically feasible for the 35% of Troutdale or would you still have plans to proceed with the 65% of Troutdale and just not do the rest of the city? What does not economically feasible mean?

David Valtez, Regional Vice President for the Northwest for Verizon, replied we have a business plan that is national in scope. Our strategy is to roll out fiber across the United States. The scope of the project for each particular jurisdiction, or for each particular state, is to get a certain number of households. So what that means is that it wouldn't be economically feasible for us to only do a part of Troutdale and not the entire city. When you have a national plan it is really difficult to make exceptions for one city or for one particular section. We have a set number of homes to pass in Oregon for 2006 and we are looking at where the central offices are where we can reach these numbers and we do that by looking at the various cities. Each city has to be part of the big picture number and if it is not then we have to say we can't make our numbers in that city so where else can we go to get those numbers. Part of the reason is that we have an expectation and a commitment to Wall Street to meet our numbers in terms of what this deployment means on a national level and therefore I can not partial out a city if for example part of it is not economically feasible and part of it is.

Councilor Daoust stated I understand. If we labeled this as all new and you had to underground that, basically what you are saying is the entire City of Troutdale would not be a candidate.

David Valtez replied it would make it difficult because we couldn't do a large-scale planning. Engineers would have to develop a special plan for Troutdale. First of all, this is a very expensive proposition. Secondly, there are some analysts that think it is very risky. So what we have to do is minimize our costs and by minimizing our costs, to answer your question, it would be difficult to say that we are only going to do part of Troutdale when the fact is that we have other cities that we could build the full cities to make sure that we make our numbers.

Councilor Daoust asked do you consider the fact that we are unique as far as weather goes? The maintenance of these lines will be higher in Troutdale than in any other city in the Portland/Metro area. Does that influence undergrounding the cables versus aerial?

David Valtez replied one of the beauties about fiber is that it is a much better medium for communications than copper. It doesn't degrade in the same way as copper and it is not vulnerable to lightening. It is a much sturdier technology.

Don Durden, Engineering Manager for the Oregon and Washington Project, stated it is much more robust than copper. It is also all sealed so you don't have some of the issues that you have with water intrusion. Even if the water does get in there it doesn't affect it because it is glass, there is actually no electrical properties to it.

Councilor Daoust stated I am thinking about wind and ice.

Don Durden stated Troutdale is the heaviest wind blowing section as far as the aerial build goes, so it is built to those specifications.

Councilor Daoust stated you raised a good point that the old lines have to stay up anyways.

Councilor Ripma stated that is a good point however, if we allow more utilities to be strung overhead it increases the ultimate cost that we are going to have to pay when we do undergrounding. You made a comment that this is illegal under the PUC or something. If you are saying that what we are doing is illegal and you are planning on challenging it, what are we talking about? Tell us that you are going to sue us and we will take it from there.

David Valtez stated we are here trying to develop a partnership with the city. We want a win for the consumer, we want a win for the city and we want a win for Verizon. What we are proposing here is to find a way to bring you a world class technology and we are asking the city to work with us. We understand the concerns that the city has raised. We have been working with your staff and we understand the obligations of the city and we don't in any way want to go around those. All we are saying is that Verizon is stepping up by bringing a world class technology that we think you will be better off with and we are just trying to find a way to make this possible. I wouldn't say that I want to get to a point of litigation. I would say how can we get a win here. How can we both walk away from the table with the city meeting its needs and allowing us to bring this service to our customers in Troutdale?

Councilor Ripma stated you said we didn't have the authority, that this should be regulated by the PUC. Are you taking the position that we don't have the authority to enact this ordinance? We fought them on our previous undergrounding ordinance. Troutdale is a leader in that and we are proud of that. If you don't think that we have the authority lets resolve it and bring the issue back once someone has decided whether you are right or not.

David Valtez replied I would say that I am not prepared to go down that path. What I am here for is to find a way to have a partnership with the city. I have no interest in challenging the city's authority; that is not why we are here. We are here because we have a product that we want to bring to the residents of Troutdale and we want to find a way to get there. I have no interest in engaging in any kind of litigation because frankly that is a losing situation for both parties. I am not prepared to challenge your authority. We have raised an issue with respect to the overlashing; we think that is a fairly good result. At this point I am asking you if our request is reasonable.

Councilor Ripma asked are you conceding that we do have the authority?

David Valtez replied I am saying that I am more concerned about trying to address the issue with respect to the overloading.

Councilor Ripma asked how many poles does Verizon own and operate?

Don Durden replied I don't know the answer to that. I know that there is about 125,000 feet of aerial cable existing in Troutdale now.

Councilor Ripma asked do you use PGE's poles?

Don Durden replied we use a combination of PGE's poles and our own.

Councilor Ripma asked does PGE use your poles?

Don Durden replied yes.

Councilor Ripma stated you mentioned that you are investing billions of dollars and you want a 20-year duration for your investment. I heard all of that but why not underground in an area where you have high winds and build something that is really going to last. 65% of the city is underground, why not do it?

David Valtez replied first of all we are the only company in the United States that is making this investment. There is no other company that is building fiber from the central office to the home. We believe that this is the future. We developed a plan based on our experience on what is the most efficient and economical way to bring the technology forward and for the City of Troutdale, much like other cities, we can not underground that 35% of the city. We have deployed this in other cities in Washington County, other cities within Oregon and we have been able to arrive at partnerships that make sense. We have looked at the numbers and we have looked at the model and we can not do a special carve-out for the City of Troutdale.

Councilor Ripma asked did you do all of Washington County, Beaverton and Hillsboro?

David Valtez replied no. We are doing this in phases so we have a number of houses that we pass every year.

Councilor Ripma stated you are going to do Troutdale in phases then and frankly we will be undergrounding it in phases because we are trying to underground everywhere eventually. It is just a question of are you going to put them underground now or are you going to wait until you make the taxpayers of Troutdale underground them later. I can understand the economics of you wanting to have us pay for it instead of you but as long as you are interested in doing it in Troutdale you are going to have to underground 65% of the city, I don't understand why you won't make the modest additional investment. I have heard everything you have said and you have not demonstrated why you can't do undergrounding in Troutdale. What you are saying is that you are going to pull out of Troutdale completely if we don't cave on this point and I resent that. Is that the way you normally approach a city?

David Valdez replied no. The way I would frame it is that we would like to see this as a partnership. There is a lot of risk involved, there is a lot of expense, and there is a reason why there is no other company that is making this investment. We can not do this without having a partnership with the city so I wouldn't characterize it as an ultimatum, I would characterize it as we are asking the city to work with us and try to arrive at a win-win solution.

Councilor Ripma asked are you going to underground in the 65% of the city that already is underground?

Don Durden replied where it is currently underground we will go underground. We are not asking to put up anything new.

Councilor Thomas asked do you know what the cost difference would be to underground versus aerial?

Don replied it is about \$1.4 million additional cost.

Councilor Thomas stated I think that fiber-to-the-premise is a great idea. I have looked at your plan and your numbers and from what I've seen, and my involvement in the Cable Commission, it is nice salesman talk. I do know that with a true fiber network you can offer 100mb to the house. Wouldn't it make more sense to replace all of the copper at the same time and just build the fiber system?

Don Durden stated one of the considerations is that we are the carrier of last resort. This is an opt-in service. We have a variety of customers and some of them are going to want fiber and some are not. Some will want plain telephone service and we have to provide that service.

Councilor Thomas stated it concerns me that you want to leave all of the copper wire up and in the city code if you stop using the wire you have to take it down and we would have no way of knowing when you stop using it.

Don Durden stated there is no foreseeable date in the future when we are going to take that copper down.

Councilor Thomas asked when you deploy the system, are you going to pass every home in Troutdale?

Don replied yes.

Councilor Thomas asked how long will that take?

Don Durden replied I believe the entire city is on the 2006 build, at the latest mid 2007.

Mayor Thalhofer asked do you have any examples of compromises that you have done with other cities?

David Mielke replied a couple of cities in Washington that had an aerial requirement the city gave us an exception.

Don Durden stated one of the cities let us use the smallest existing copper cable and overlash the fiber to that cable, so if the other cables go away then there is only one left and that cable will stay.

Councilor Ripma asked forever?

Don Durden replied until everything was undergrounded.

John Anderson, City Administrator stated this right-of-way ordinance is half of the equation. The other half is the franchise ordinance. What you are hearing is a policy choice. Does Troutdale continue to pursue its undergrounding desires or do we find a compromise? There are a couple of other issues. For example the franchise ordinance expired several years ago and we are in the process of negotiating a franchise with Verizon. One of the issues is under the franchise because they pay a franchise fee they don't pay a fee for a permit to do construction. We will have to have our staff available to do the inspections so there may be some costs there. Another possibility is if current payers of the franchise fee through the copper wire and the exchange system migrate to the fiber they may not be required to pay the franchise fee and that may cost us a small portion of the franchise fee over time. The question is do we want to add this new service, which a lot of cities are very interested in and if so, what are some of the tradeoffs.

Councilor Ripma asked does this proposal represent a migration to a non-franchise service provider?

Marnie Allen, City Attorney replied no. In the past with franchise agreements they pay a franchise fee based on gross revenue from access exchange services, which is a limited category of the revenue that Verizon receives from the services they provide. As I understand it access exchange service is a dial tone. What I am not clear about, and maybe Verizon can answer for you, is once there is fiber-optic and customers choose to get their telephone service through the fiber-optic cable, are they no longer using access exchange services in which case the revenue that Verizon receives from that customer will not be subject to the franchise fee. That may affect the compensation that the City receives under the franchise that we are negotiating with Verizon. This issue is separate from the right-of-way ordinance. The right-of-way ordinance requires a franchise from any utility company and the franchise says you have to comply with and get permits as required in this ordinance.

Mayor Thalhoffer asked would adopting this ordinance have any affect on the rates in the franchise agreements if we have to make a compromise that is detrimental to us?

John Anderson replied I don't know that it would affect the rates because they are pretty well governed, but they may affect other conditions in the franchise agreement.



Marnie Allen stated there will be some options for the Council to consider in terms of revenue. You are capped by state law in terms of only being able to charge 7% on gross revenue from access exchange from the telecommunication carrier and you can't include permit fees, which is why we don't charge a separate permit fee for the work in our right-of-way on top of that 7%. There are other options separate from the fee for use of the right-of-way, such as charging a 2% registration fee.

David Mielke stated Marnie Allen makes an interesting point that I have not given any thought to but I think it is a valid concern that we would look into to. My anticipation on the franchise side is there wouldn't be any impact on the definition of access line with respect to the current revenues that the City is receiving. Marnie's analysis definitely gives us something to look into.

Councilor Ripma asked the transition to fiber-optic as a way of providing service, is it true that could result in a loss of revenue?

Marnie Allen replied I don't know. I think that is something we still need to look into.

Councilor Ripma asked is that something you could bring to us at the next meeting?

Marnie Allen replied we can try. We need to look at the definition of access exchange service but it is going to be dependent on Verizon giving us information about their technology.

Councilor Daoust asked aren't we going to deal with this issue when we discuss the franchise agreement and not when we are talking about undergrounding? Isn't that a separate agenda item?

Councilor Ripma stated it is relevant because they are asking us to give them an exception to the long-standing policy of undergrounding in the City. They are asking us to grant that because we are going to reap benefits. They have already outlined the benefits but we could be jumping in without knowing the consequences for Troutdale. If we are not planning on giving them an exception it is not relevant, but if we are I think it is relevant.

Councilor Thomas stated I think it is two separate issues.

Councilor Canfield agreed it is two separate issues.

Councilor Daoust stated I would like us to focus on the undergrounding issue tonight. When I think of requiring Verizon to underground 100% of Troutdale I have to think that if they put their one line underground that there would still be the remaining four to five lines in the air. Our underground schedule goes on much longer than the couple years that it would take Verizon to install their fiber-optics schedule, wouldn't it?

Jim Galloway replied yes.

Councilor Daoust asked if we allow them to have their fiber-optic overhead, when we go to contract out the job of undergrounding would it cost us more to do the undergrounding if we have that extra fiber-optic line along with the other four to five lines?

Jim Galloway replied I would assume there would be some additional cost, I don't know what that number would be.

Councilor Ripma stated if we adopt that definition the other utilities would be allowed to put more overhead lines up also and we would end up with a bigger job of undergrounding and it would take us longer to do it.

Councilor Daoust stated I can't imagine that it would be that much more difficult.

Councilor Ripma stated as they keep adding more lines it increases the cost of undergrounding. If it costs us more to underground it will take us longer to underground the entire city.

Councilor Thomas stated for me if I knew that you were replacing the existing copper with the new fiber-optic, especially on the aerial poles, it would be a whole lot less of a problem for me then it is to say that you are adding another set of infrastructure to an existing one.

David Valtez replied we can't afford to do that.

Councilor Canfield stated the graveyards of the internet world are lined with grave markers of companies who overbuilt their fiber. It would be unreasonable to require them to replace all of their copper with fiber just for this one project.

Councilor Thomas stated that is true with the exception of the cable companies who were required to do that by franchise.

Councilor Kyle asked if you were to go and put up a new copper phone line right now, how large is that?

Don Durden replied the smallest one is about 1" in diameter. The smallest copper line that we would use is the same size as the largest fiber we would use.

Mayor Thalhoffer asked is there a compromise that we can arrive at?

David Mielke replied I think there are some other types of limitations we can put on it. For example limit it to a 1" overlash which would probably preclude any other copper. We could go back and see what the largest fiber is that we would need in Troutdale and have that as the limitation and maybe that with the limitation of no additional attachments may limit the number of other companies that would want to come in and do this in the future.

Councilor Thomas asked who pays for the fiber to the house?

Don Durden replied we do.

Mayor Thalhoffer stated I am interested in a compromise. What other ideas do you have?

David Mielke replied the one compromise we mentioned where we utilized the smallest existing copper cable and overlashed that with the fiber, that was the extent of the compromise. I would ask Don if that is feasible to do here.

Don stated that kind of compromise is certainly something that we are open to.

Councilor Thomas asked Marnie Allen, you eluded to the forced undergrounding, by enforcing this ordinance would we be in compliance with the state law?

Marnie Allen replied I believe that we would be but let me clarify that we have the same discussion with every utility when we talk about the franchise terms and undergrounding. Basically there are two issues. One, if the utility files a tariff with the PUC and in that tariff a lot of the time they address how they are going to handle undergrounding and pass on those costs and who is going to pay and the PUC then approves it and may not contemplate that they have to comply if we tell them they have to underground and that they have to pay those costs. The second is there is a statute in the PUC provisions for utilities that talks about undergrounding. It is discretionary. The language in that statute says the city may require all utilities to be placed underground and may create the equivalent of a reimbursement district where the cost for the undergrounding is assessed to all of the properties that benefit from it. The unresolved question is the scope of the PUC's authority when it comes to a city and our Home Rule Authority to regulate the use of our right-of-way. Cities routinely take the position that we have the authority to set the terms that apply to the use of our right-of-way. If we require equipment in our right-of-way to be underground that is within our authority. Utilities regularly take the position that no, that conflicts with what is in our tariff and with the general concept of the PUC and their authority. That issue has not been litigated or addressed by the court. Our position has been, and I feel comfortable that we can get support from other cities in the position, that we have the authority to require undergrounding and to require the utility who wants to use the right-of-way to pay those costs.

Councilor Ripma asked when you underground in an area where the utilities are underground, do you build your own trench?

Don Durden replied yes. If we have existing conduit that is ours in the ground we will use that, if there none existing then we build a new path.

Marnie Allen stated in response to the Mayor's question regarding a potential compromise, one of the issues is the cost to convert in the future to underground if this fiber-optic cable is put above ground. There are a couple of costs. One is the cost to putting a main line underground and the other cost is putting the fiber that is now underground to the consumer's house. Currently as I understand it, the property owner pays the cost if we convert to underground. We pay the cost to convert the main line using the privilege tax that we collect and the customer pays the cost to run that line from the street to the house. One thing that

would be helpful to clarify and an area to compromise on is if Verizon is going to put a line above ground and then it is converted to underground in the future, would they be willing to pay the cost to run that fiber underground to the customers house, the same that they would be doing if they put it underground in the first place.

David Valtez replied that was proposed by one of the other cities and where we ended up is it was resolved that we would overlash on our smallest aerial cable.

Councilor Ripma asked did you agree to pay the cost of the undergrounding to the customer's house?

David Valtez replied no.

Councilor Ripma asked have you ever agreed to underground in a city?

David Valtez replied we haven't been asked to do it.

Councilor Ripma asked have you ever analyzed the benefits of putting the fiber underground in a place like Troutdale where the facilities get knocked down all the time?

David Valtez replied my orders are to reach a certain number of homes passed in Oregon for 2006 and we have a plan and budget to do that. In the final analysis we can't afford to underground that 35%.

Councilor Daoust stated in my perspective it is whether we want to add this new service to Troutdale versus a big affect on our undergrounding program, those are the two sides. The additional cost of undergrounding when we are going to underground all of the lines that are above ground, like we are doing on 257<sup>th</sup>, in my mind I have to ask the question whether this is going to slow down that process or affect it at all and I don't get a clear answer to that. The other side is if there is not that much affect on our underground program, do we want this kind of service in Troutdale. I understand Councilor Ripma's concern. They say they want a win-win situation but they are not willing to compromise, that bothers all of us. From what I am hearing there is no compromise to the undergrounding question. But still you have to back up and ask do we still want this service in our city.

Councilor Ripma stated do we know that they wouldn't just phase it in anyway. You are saying it is all or nothing.

Don Durden stated why don't I work with your staff and look at your undergrounding program, where you are, where you are heading and what the schedule is and let me talk with our funding folks and see if we can reach a compromise before the next hearing on this ordinance.

Council accepted Verizon's offer to work on a compromise on the language proposed in Section 12.12.050, Paragraph C, Undergrounding Required.

David Valtez stated we will contact your staff to set up a meeting this week to work on this.

Council asked staff to bring back the ordinance with the two changes that Mr. Galloway mentioned.

Mayor Thalhofer closed the public hearing at 10:56pm.

## **12. STAFF COMMUNICATIONS**

None.

## **13. COUNCIL COMMUNICATIONS**

Councilor Kyle stated the Council received notice that Chris Bell resigned from the City's Budget Committee. Councilor Kyle expressed her appreciation for his service to the City.

## **14. ADJOURNMENT:**

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

Meeting adjourned at 10:58pm.

**Paul Thalhofer, Mayor**

**Approved June 13, 2006**

**ATTEST:**

**Debbie Stickney, City Recorder**