

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

**Tuesday, March 28, 2006**

**1. ROLL CALL and AGENDA UPDATE**

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

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

**ABSENT:** None.

**STAFF:** John Anderson, City Administrator; Rich Faith, Community Development Director; Marnie Allen, City Attorney; and Debbie Stickney, City Recorder.

**GUESTS:** See Attached.

Mayor Thalhofer asked is there an agenda update?

John Anderson stated yes, we would like to add the swearing-in of two new Reserve Officers to the agenda prior to the consent agenda.

Mayor Thalhofer administered the Oath of Office to Reserve Officers Jeffrey Potter and Shane Steffanson.

**2. CONSENT AGENDA:**

**2.1 ACCEPT MINUTES:** January 24, 2006 Regular Meeting.

**2.2 MOTION:** A motion to adopt the 2006-07 Council Goals.

**2.3 RESOLUTION:** A resolution authorizing the Mayor to sign an agreement with the Oregon Department of Transportation for Commercial Vehicle, Driver and Cargo Inspection.

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

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

None.

**4. PUBLIC HEARING / ORDINANCE (Introduced 3/14/06):** An ordinance adopting a new Chapter 5.06 of the Troutdale Municipal Code regulating payday lending and declaring an emergency.

Mayor Thalhofer read the ordinance title and opened the public hearing at 7:10pm.

Councilor Thomas stated in the last few years I am sure many of you have noticed the growth of the payday lenders in the Metropolitan area. It has been hard to miss. On nearly every corner in our working class neighborhoods a payday loan shop offers quick cash advances. Payday loans are virtually unregulated by state law. Payday lenders face few regulations and no interest rate caps, in contrast to many other states. Because of the lack of regulation, the State of Oregon has the highest concentration of payday lenders on the entire West Coast. City of Portland alone has sixty-nine payday lenders. There are fourteen in Gresham, one in Wood Village and one in Troutdale. Unfortunately since the state legislature has not provided meaningful statewide regulation, it has fallen upon local government, like the City of Troutdale, to act to protect our working families, seniors and single parents. Payday loans charge exorbitant fees and interest for loans of just a few short days at rates which commonly exceed 500% annual interest. The reality is that most borrowers are unable to pay the loan back and resort to paying another round of outrageous fees and interest to extend the loan or rollover the loan. Thus, borrowers soon find themselves in a never-ending cycle of debt, forced to choose between paying their loan fees, buying food or paying for basic necessities for their families. Obviously there is a market and a need for these lenders. Equally as obvious, there is a grave need to level the playing field between the borrowers and the lenders. Some sense of fairness needs to be instilled in payday lending. This proposed ordinance before us gives the borrowers a chance to end the cycle of debt which often occurs in the payday loans. The ordinance helps prevent borrowers from becoming further impoverished because of the practices of many payday lenders. This regulation requires payday lenders operating in the City of Troutdale to pay an additional fee, which is being proposed at \$1,500. The fee is being proposed at a rate to allow the City to enforce provisions of this ordinance and to work with individual lenders to resolve consumer complaints. In addition it will require payment of a portion of the loan principal before renewing the loan. It will give the borrowers the ability to rescind the payday loan within 24-hours. It will give the borrowers the ability to convert a payday loan into a payment plan. Although state law prohibits the city from adopting interest rate caps, these are essential changes in payday lending practices that will protect many working families. While this ordinance is a necessary first step to providing regulation of the payday loan industry, the state legislature must proceed with more stringent statewide regulations. This ordinance lets our state legislature, in no uncertain terms, know that the City of Troutdale would cap interest rates if they could and calls upon the legislature to take such action in the future. I believe it is imperative that the City of Troutdale adopt this ordinance along side both the City of Portland and Gresham.

Councilor Daoust stated the ordinance refers to the administrator to administer the permit fee and I notice that we may work with the City of Portland through an IGA to administer the ordinance. Would this be a situation where we would have to split the \$1,500 fee between Troutdale and Portland to cover their costs if we enter into that IGA?

John Anderson, City Administrator stated that is correct. We have not discussed what that split will be.

Councilor Ripma stated the payday lenders, according to the press, are intending to file suit against Portland for exceeding their authority. Do you have any information about that? Did they sue Gresham and are they likely to sue us?

John Anderson stated what I just read in the paper was that they perhaps did not include Gresham in the suit because of their implementation timeline of the ordinance. They thought the ruling on the injunction may happen before Gresham's ordinance became effective. Gresham did not adopt the ordinance with an emergency clause so it will have 60 days before the payday lenders would have to take out a permit.

Councilor Ripma asked if they seek an injunction against enforcement of the ordinance, would that affect Troutdale?

Marnie Allen replied not if we are not a party to the lawsuit. It might affect your decision about whether or not you want to go forward depending on the outcome of the injunction and how our ordinance might apply in the same way, but it doesn't have a legal binding effect on Troutdale.

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

Paul Warr-King, Gresham Councilor and Vice-Chair of SnowCap, stated I am here to add support for the passage of your proposed ordinance to provide a series of responsible regulations to control the activities of the payday lenders within our cities. Our hope is that with the implementation of your ordinance, which will mirror both the Gresham and Portland ordinances, we will be able to encourage other jurisdictions to follow and avoid a patchwork of different regulations. Our motives are to convince the state legislature to react early in the special session with a bill that will cap the interest rate or annual percentage rate (APR). We hope to give strong support to a ballot initiative in November and we hope to force the state, through the State Consumers Affairs Office, to enforce the rules in the existing Oregon Statutes regarding payday loans that jurisdictions are now being accused of preempting. We also want to generate public and political awareness to convince the financial services industries that they should be offering a competing service.

Ann Richards, Chair of Board for SnowCap, stated we are an emergency service agency providing assistance to the people of East Multnomah County. We help over 1,400 families each month with food, clothing, prescriptions and utilities. More and more of those people coming to us are citing that payday loans are the reason they need our help to provide the basic necessities for their families. We are being called upon to subsidize the profit of the payday loan industry who takes advantage of people when they are down. We urge you to pass this ordinance which will provide people with reasonable payment plans as well as an opportunity to change their mind in the first 24 hours.

Mayor Thalhoffer closed the public hearing at 7:27pm.

**MOTION:** Councilor Thomas moved to adopt the ordinance adopting a new Chapter 5.06 of the Troutdale Municipal Code regulating payday lending and declaring an emergency. Seconded by Councilor Daoust.

Councilor Thomas stated it is imperative that we step up to the plate and offer some consumer protection for those folks who have no other options for obtaining money to meet their short-term needs. The existence or non-existence of a lawsuit shouldn't stop us from pursuing the right thing to do. If we based everything on whether or not we were going to be challenged at a later date, I'm not sure we would accomplish anything.

Councilor Daoust stated I think it is good that we are mirroring both Gresham's and Portland's ordinances to have a unified front. It is good that we are taking the initiative at the city level to send a stronger message to the State Legislature. It is not a problem for this Council, I don't think, to take risks of being named as part of a lawsuit. We are just trying to regulate a strong temptation for those families in need. That is why I am supporting this ordinance.

Councilor Gorsek stated I can understand the concern about us being named in a lawsuit. Certainly that is not something we have a lot of money for. On the other hand being inline with Portland and Gresham makes sense on this. I am sure that there are some people who use these services and don't encounter the problems that we have heard described in the last two meetings, but there are other people who are facing some substantial hardships because of this. I don't think that these regulations are too much of a hardship for those businesses. We need to look out for those people who have gotten themselves into some serious problems. I support the motion. I also don't see anything wrong with cities enacting whatever they can to try to get the state to take notice of something that we consider is important.

Councilor Ripma stated I agree that this is a good opportunity to nudge the state. I think it is relevant that we might be involved in a lawsuit, but in this case I am not worried about it. I am going to support the motion.

Mayor Thalhoffer stated I am sorry that the state didn't take action when they had the opportunity. I hope that they will take the appropriate action in a special session or in the next session. I am in support of the motion.

Councilor Canfield stated I am no fan of payday loans at all. The interest rates are outrageous. However, this makes no sense to me. The state legislature is most likely going to have a special session where this issue will be addressed on a statewide level and that is where it belongs and failing that there is an excellent chance that an initiative for payday loan regulations will be on the November ballot. I hate to see the City of Troutdale be at risk of incurring legal costs. I think it would be wise and

prudent for us to delay implementation of this so we can see how the lawsuit in Portland turns out. I will be voting no on this motion.

Councilor Kyle stated in many ways I agree with Councilor Canfield. Sometimes I think we get into places where we don't belong. I attended a governmental affairs convention in Salem for the East Metro Association of Realtors. While I was in Salem I decided to do some research on this issue and I found out that it took nine hearings and changes to get it passed at the senate and when it arrived at the house near the end of session there wasn't time to hear it. Speaker Minnis did appoint a bipartisan task force for this issue in hopes of putting together a bill that will get bipartisan support. One of the sponsors at the convention was Bill Gerard, co-sponsor of this bill. He said they are going to try to get this into special session at the end of May but because of the heavy discussion regarding the budget, that may not happen. I am thinking that I am not going to support this.

**VOTE: Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Canfield – No; Councilor Kyle – No.**

**Motion Passed 5 – 2.**

Marnie Allen, City Attorney stated the ordinance has been adopted but will not take effect immediately because there was not unanimous support. It will take effect in 30 days.

**5. RESOLUTION:** A resolution amending the Fees and Charges Schedule. (Adding a permit fee for Payday Lenders)

Mayor Thalhofer read the resolution title.

Councilor Thomas stated I think it is necessary to collect enough fees to handle the process to regulate the payday lending businesses.

John Anderson, City Administrator stated the payday lending fee, as proposed in this resolution, would be \$1,500 as discussed. It would be an annual permit fee due in January each year. There would be a 60-day grace period for implementation. In response to Councilor Daoust's earlier question, Troutdale will incur some costs and those costs would be our contract with Portland if we choose to have them assist us in the enforcement. We will also have some administrative costs for receiving and reviewing the application and permit forms.

Councilor Daoust stated I agree that finding #4 does not need to be reworded, if we have an IGA there will still be a cost. Would the \$1,500 fee be prorated depending on what time of year they apply?

John Anderson replied we don't normally pro-rate business fees.

Councilor Daoust asked if they applied on December 31<sup>st</sup> they would still have to pay \$1,500 for the previous year?

Debbie Stickney replied I would anticipate handling this in the same manner that we handle the business license program which is if they apply anytime after December 1<sup>st</sup> we apply that to the following years license fee.

Councilor Gorsek asked where did the \$1,500 figure come from?

John Anderson replied Portland and Gresham agreed to have the same fee.

Councilor Ripma asked if we contract with Portland to administer and enforce this would we turn that fee over to Portland?

John Anderson replied it has not been determined what portion of the fee would be turned over.

Councilor Ripma asked this agreement to have the fee set at \$1,500 was just a discussion and everyone agreed?

John Anderson replied yes, and so we are just proposing it.

Councilor Thomas stated I don't know that there was a discussion between all three cities. Portland set that fee and we have just followed.

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

No testimony received.

**MOTION: Councilor Gorsek moved to accept the resolution amending the Fees and Charges Schedule and setting the \$1,500 fee per year for payday lending organizations. Seconded by Councilor Thomas.**

**Councilor Gorsek stated this will keep us inline with our two partners, Gresham and Portland. It seems to be an acceptable level of fee for this particular endeavor.**

**VOTE: Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Canfield – No; Councilor Kyle – No.**

**Motion Passed 5 – 2.**

**6. PUBLIC HEARING / ORDINANCE (Introduction and Adoption):** An ordinance amending the maximum building height standard for the Central Business District (CBD)

exception area in reconsideration of Text Amendment No. 36 adopted January 24, 2006 (Ordinance No. 770) and declaring an emergency.

Mayor Thalhofer read the ordinance title and opened the public hearing at 7:44pm.

Rich Faith, Community Development Director stated on January 24, 2006 you enacted a set of amendments to the Troutdale Development Code. The amendments covered a wide variety of topics one of which was the standards within the Central Business District (CBD) which also affected some of the other zoning districts within our Town Center. Among those changes that you adopted, specific to the CBD amendments, was the maximum building height, specifically as it pertains to the "exception area". The amendment that you adopted was to establish a 45' maximum building height standard within the exception area rather than the previous 35'. The exception area is a six block long area between Columbia River Highway and 2<sup>nd</sup> Street and extends from 257<sup>th</sup> Avenue on the west and the SE Sandy Street right-of-way on the east. Subsequent to the adoption the Council approved a motion for reconsideration on February 14, 2006. You took public testimony on the issue of reconsidering the height as well as another matter which is not before you this evening. On the basis of the testimony that you received at your March 14<sup>th</sup> hearing the Council settled on a compromise position with respect to the maximum building height. What you had agreed to was that we would maintain the 45' maximum building height but would also establish a 35' maximum building ceiling or building plane and that no building within the exception area could project above that 35' ceiling that is measured from the mid block point on 2<sup>nd</sup> Street. At the conclusion of that agreement Council directed staff to come back to this meeting tonight with an ordinance to formalize that decision. The ordinance that you will be considering tonight deals with the maximum building height in the CBD.

Rich Faith showed the Council a PowerPoint presentation (a copy of the presentation is included in the packet). Slide #2 shows the boundaries of the CBD and the Exception Area. (Slide #3) The standard as it now exists, as it was adopted on January 24<sup>th</sup>, is a 35' maximum building height within the CBD but with a 45' maximum building height within the six block exception area. The language that is in the proposed ordinance for your consideration tonight basically establishes these points: The maximum building height for the entire CBD is set at 35', however within the exception area in the CBD the maximum height shall be 45' provided the structure does not exceed a 35' maximum building ceiling or building plane as measured from 2<sup>nd</sup> Street. The 35' maximum building ceiling is established for each square block area by measuring at the mid block point on 2<sup>nd</sup> Street. The buildings may not exceed the 45' building height standard nor project above the 35' ceiling for that block. Within the CBD exception area the height of the building fronting on 2<sup>nd</sup> Street is measured from the grade of 2<sup>nd</sup> Street adjacent to the lot. (Slide #4 and #5) The current definition of building height within the Troutdale Development Code is: The building height is the vertical distance from the average grade to the highest point of the roof of the building. This accounts for a building that would be built on a hillside or a sloped area. (Slide 6, 7 and 8) We do have another provision in our Building Code that deals with building height and that is specific or unique to the CBD. Appendix A was adopted in 1996 and establishes design standards within the CBD. The language that is contained in Appendix A relative to building height is: The maximum height of the structure fronting on Historic Columbia River Highway shall be measured above the grade of Historic Columbia River Highway as it occurs adjacent to that

lot. (Slide 9) Going back to the maximum building ceiling within the CBD exception area, as proposed in this ordinance, the language says that the maximum building height ceiling shall be 35' as measured from the grade of SE 2<sup>nd</sup> Street at the mid-block point (between the abutting side streets) of SE 2<sup>nd</sup> Street. (Slide 10 illustrates the maximum building ceiling). (Slide 11) We also looked at the language that relates to the building height and how you measure that. Currently the language says that the building fronting on Historic Columbia River Highway shall be measured above the grade of the Highway as it occurs adjacent to the lot. Similar to that when I drafted language for this exception area I built off of that same concept. The language being proposed in this ordinance is similar and reads: The buildings fronting on SE 2<sup>nd</sup> Street shall be measured from the grade of SE 2<sup>nd</sup> Street as it occurs adjacent to the lot. That has some ramifications that I think are worth pointing out. As you know if you go the entire length of the six block exception area you will notice that there is a significant drop off from the grade of the street itself to the properties immediately to the north of that. As an example, the building immediately behind City Hall (Slide 12) you can see there is a significant slope there and if a building were to be built there and be oriented to Kibling, we would be measuring from the average grade on Kibling. But if the building were to be oriented or front on 2<sup>nd</sup> Street, then we will be measuring from the grade of 2<sup>nd</sup> Street. That difference continues all the way along 2<sup>nd</sup> Street as you go to the east. (Slides 13 through 19 show additional properties.)

Rich Faith stated based on the direction that you provided at the last meeting, we have proposed an ordinance with language exactly as it was discussed and reviewed at the last meeting. The options would be to adopt the language as it is now proposed, make modifications to the proposed language or do not adopt the language and stay with the language that was adopted on January 24<sup>th</sup>. The proposed ordinance includes a finding that allows the ordinance to be adopted at one meeting rather than holding a second hearing and could go into effect immediately upon adoption.

Councilor Ripma stated it sounds like the ordinance before us does less for preventing tall structures facing south of 2<sup>nd</sup> Street than first it might appear. The buildings that could be built under this wording could be taller by at least the drop off amount and perhaps considerably more than that if we had the original wording of 35'.

Rich Faith replied from a side profile that would be correct, the exact same measurement or provision that we built into the CBD with respect to buildings on the north side of Columbia River Highway. We recognized that there was a significant drop between the street level and the property below that because of past excavation and rather than try to determine what that slope might be, in 1996 we built into the definition that we would just measure it from Columbia River Highway.

Councilor Ripma stated and that limit is 35'.

Rich Faith replied yes.



Councilor Ripma stated you are saying that on 2<sup>nd</sup> Street it would be similar if, for instance, storefronts were built facing 2<sup>nd</sup> they could be as tall measured from 2<sup>nd</sup> as the storefronts built on Historic Columbia River Highway are facing Columbia River Highway.

Rich Faith replied that is correct.

Councilor Ripma asked are storefronts permitted to face 2<sup>nd</sup> Street?

Rich Faith replied yes.

Councilor Ripma stated if residential was built they could be built considerably taller than the old rules if they were measured from the middle.

Rich Faith replied that is correct. If you apply the definition in the Code and looked at average grade, they would actually be higher than 35' assuming that they are 35' as measured from 2<sup>nd</sup> Street.

Councilor Ripma stated that could be applied to residential or storefronts.

Rich Faith replied it doesn't matter what the use is, it is the building itself.

Councilor Thomas asked when you have property that has been excavated, it sounded like what you were saying is you go based on what the original slope was when you determine the height?

Rich Faith replied no. A person could excavate out and use retaining walls and create a new ground level from what was there before and we would look at the building height from the new grade that has been created. If the building itself is going to front on the street then obviously we are not going to allow them to carve out the sidewalk and the street right-of-way, so if they are fronting on the public right-of-way they are going to be subject to the same grade as the street. If they were to recess the building back 20' and were to excavate it out we would be looking at the new grade they created as a result of the excavation.

Councilor Thomas asked if they have zero setback and they are building right at the sidewalk level, regardless of what is on the other side we would measure based on the slope of the sidewalk?

Rich Faith replied on which street?

Councilor Thomas answered facing 2<sup>nd</sup> Street with the building running north/south. Under the old provisions we probably would have gone half way down the building and measured up 35'.

Rich Faith replied that is correct.

Councilor Thomas stated by setting the building height off of 2<sup>nd</sup> Street we will probably have a building that is 5' taller than it would have been under the old code.

Rich Faith replied that is very likely.

Councilor Kyle asked on slide 16 on the left side of the picture is the north side of the street. If we were to build a house on the south side of the street orienting it to face north, are we using average grade?

Rich Faith replied on the south side of the street, yes. You would be using the definition of building height that uses average grade.

Councilor Kyle stated so we have created an inconsistency.

Rich Faith replied there would be an inconsistency from one side of 2<sup>nd</sup> Street to the other, but not with respect to measurement of the building on 2<sup>nd</sup> Street versus measurement on Columbia River Highway.

Councilor Daoust stated part of why I was considering a 45' height was to allow a third story on a building but on the north side of Columbia River Highway we have buildings that have three floors and they are still within the 35' height limit because they have a bottom floor that is below the street level. Can we get a three-story building and still maintain the 35' height limit measured from street level on Columbia River Highway?

Rich Faith replied for a three-story residential unit it is possible. If you are talking commercial, or at least one level being commercial, from the testimony we have heard it is not likely that you could build three stories and maintain the 35' limit.

Councilor Daoust asked could you tell me what the costs are for the different levels of variances?

Rich Faith replied a Type 1 variance, which is up to 10% of the dimensional standard is \$125. A Type 2 variance is \$250 which allows you to go up to 30% of the dimensional standard. Anything over 30% is a Type 3 variance and costs \$600.

Councilor Daoust asked if we stuck with the old building codes and didn't allow 45' heights, all it would cost to build a 45' or 55' building would be \$250? I know that all variances are not approved but the cost would only be \$250?

Rich Faith replied if we had a 35' building height requirement then you could go up to 10.5' above that or 45.5' at \$250. If you go beyond that it would be a Type 3 variance. A Type 3 requires a public hearing before the Planning Commission. A Type 2 does not go to the Planning Commission but it does require notification to all properties within 250' and they are given an opportunity to submit comment however there is not a public hearing and the decision is at the staff level.

Councilor Daoust stated we could still have 45' tall buildings and all the developer would have to do is apply for a Type 2 variance and pay \$250.

Rich Faith stated and meet the criteria.

Councilor Gorsek asked if we go back to measuring from the grade and if you wanted to build 35' on the highway, what would be the height of the building on 2<sup>nd</sup> Street?

Rich Faith asked do you mean if you built a building that fronted on Columbia River Highway that was 35' high and you extended that same building all the way to 2<sup>nd</sup> Street?

Councilor Gorsek replied yes.

Rich Faith stated we already established that on this block there is about a 20' difference in elevation between Columbia River Highway and 2<sup>nd</sup> Street, so if the building ran all the way to the sidewalk on 2<sup>nd</sup> Street it would be about 15' tall off of 2<sup>nd</sup> Street.

Councilor Ripma stated the old rules don't work that way. Unless we adopt this we don't have a requirement that you build flat, you could stair step. If we were to return to the 35' height everywhere, if a developer needed 45' and didn't want to go for a variance, could we at that point change the rule for them?

Rich Faith replied the one way that could probably be done is through a planned development.

Councilor Thomas stated if you want to build a 35' high building that expanded the entire block from north to south and you measured it at the center point because of the 20' drop you would actually have 35' in the middle which would put you at 25' at 2<sup>nd</sup> Street and 45' at Columbia River Highway. You would have to get a variance for the additional height because of the 35' maximum ceiling, but it is feasible.

Rich Faith replied that is correct.

Councilor Daoust stated the current language measures height along Columbia River Highway from street level.

Rich Faith replied that is true.

Councilor Gorsek asked don't you think that 2<sup>nd</sup> Street should be the defining characteristic? What we are hearing from the people is that the 2<sup>nd</sup> Street side affects everything up the hill so rather than having Columbia River Highway as the determining factor we might want to have 2<sup>nd</sup> Street as the determining factor.

Rich Faith replied I believe that is what we have tried to do with this language that is being proposed by establishing the maximum ceiling height as measured off of 2<sup>nd</sup> Street.

Councilor Gorsek asked Marnie Allen, is it possible to drop it to 35' on Columbia River Highway and 25' on 2<sup>nd</sup> Street?

Marnie Allen, City Attorney replied yes, we need to change the text in the proposed ordinance.

Councilor Kyle stated I don't think we would want to drop 2<sup>nd</sup> Street. What we would want to do is have an average grade.

Rich Faith stated if you strike #3 in the Ordinance under Section 1 which reads, the height of a building fronting on SE 2<sup>nd</sup> Street shall be measured from the grade of SE 2<sup>nd</sup> Street as it occurs adjacent to the lot. If you strike that then we revert back to the definition in the Code which says you are going to be looking at the average grade.

Councilor Gorsek stated no matter how you look at it, the issue is how tall the building on SE 2<sup>nd</sup> Street is. It seems to me that you still care about the 2<sup>nd</sup> Street grade.

Councilor Kyle stated by leaving that out it is going to match what goes on across the street because if a house on the south side of 2<sup>nd</sup> Street were developed it would be developed at average grade. If it is at average grade and the north side is at average grade then it seems like we are keeping a flow.

Nick Diamond stated we came in to support the proposed ordinance. The Code right now is at 45'. After listening to the debate by the Council and concerned citizens the last couple of months, we feel that the compromise of 35' high off of 2<sup>nd</sup> Street preserves the views. With the 35' average above 2<sup>nd</sup>, with the slope that the City of Troutdale has, the views will still be there and it will still be terraced whether it is 35' from grade on our property or not because of the slope. We think the Code as proposed by staff is well thought out and we think it provides enough flexibility for us to build a nice project and for future development in Troutdale. I am asking, on behalf of George Diamond, Mike Diamond and myself, for the City Council to unanimously support the proposed ordinance to provide some certainty to future developers in the City of Troutdale.

Mike Miller stated we urge you to support the current proposal. We believe that it is a compromise from the 45' that is currently approved. The cost of the variance is not just the fee that is paid to the City, there are additional costs in paying consultants and our time. There is some uncertainty when what you want to build is based on a variance from the start. We feel that the 35' off of 2<sup>nd</sup> is what we need in order to achieve urban densities and will ultimately create more value downtown without compromising views.

Councilor Daoust stated I assume that since you are supporting a 45' height that you are thinking of building a three story structure on Columbia River Highway.

Nick Diamond replied it allows that option. We feel that for the Columbia River Highway side the best use is mixed use with commercial on the first floor and two stories of residential or office over the top. In order to do that we would need 45' and even that may not be enough.

Councilor Daoust stated so 15' for the first floor and 10' for each of the residential stories, that is 35'. Why would you need 10' for the roof?

Nick Diamond stated you may not need 10' but it allows flexibility, for example you could do two levels of office space.

Mike Miller stated there might be some varied heights. There might be some two stories over the commercial and there may be some with three stories.

Councilor Gorsek asked Rich Faith, what we are talking about in this ordinance is still using 2<sup>nd</sup> Street, we aren't talking about the grade option, that was the old way right?

Rich Faith replied that is correct. You would measure buildings that front on Columbia River Highway from Columbia River Highway and those that front 2<sup>nd</sup> Street off of 2<sup>nd</sup> Street. If you have something that fronts the side streets we look at the average grade.

Councilor Gorsek asked if we were to consider going back to grade, how would that impact your plan?

Mike Miller replied if we went back to the 35' average grade on Harlow and Dora?

Councilor Gorsek replied yes.

Mike Miller replied right now you are at 45' for the whole block and the compromise was 35' that would lower it 5' to 10' more so you would have 25' to 30' structures on 2<sup>nd</sup> Street.

Councilor Canfield asked is your intent to build something on the entire block, Columbia River Highway to 2<sup>nd</sup> between Dora and Harlow? Do you intend to purchase the entire block?

Nick Diamond replied there is one building that is not for sale in that block.

Councilor Canfield asked have you purchased the Marino property yet?

Nick Diamond replied no, we are under contract.

Councilor Kyle asked if we do decide to have 2<sup>nd</sup> Street at average, could you tell me again how that is going to impact your project versus at grade?

Nick Diamond replied it depends on the grade change throughout the block.

Mike Miller stated the project will be alley loaded and there is some inefficiency in doing that but we feel it is a nicer look. In order to compensate for that we need more height in order to get the density that makes sense for this urban setting.

Charlie King stated I own the townhouse on 2<sup>nd</sup> on the south side. He is correct when he said it is 23' high. If you go down to the street level you will add about 5' or 6' which makes that come in somewhere between 28' and 29'. On the north side if you go up 35' you will be above my property by at least 6'. I strongly recommend going back to the old height of 35' frontage on the Columbia River Highway that way it will probably still end up somewhere between 20' and 25' on 2<sup>nd</sup>.

Frank Windust stated to build 35' high along 2<sup>nd</sup> Street would be devastating to all of the properties on the south side of 2<sup>nd</sup> Street. You have about \$6 million to \$7 million worth of new townhouse construction that has been done in the last three or four years. We know we can't keep all of those views, but to build 35' blocks everything off. There will be a great loss of value to everyone who owns property on the south side. If this is approved tonight I am sure there will be a lot of ramifications on this and I think you all know that. I invited all of the Councilors up to my townhouses to stand on the third floor to look out at the view. I contacted Travis, the City Engineer, to find out how high the streetlights are; they are 25' high. These units would be 10' above the streetlights and if you are standing in the third story of my units and looking up you could visualize a wall the full length across the town. This is terrible. I have seen some bad development in this town as you have Mayor. If anyone comes to town and starts waiving money around here everybody jumps. This is the wrong way to develop this hillside. If you can work a deal to cap it at 25' above the sidewalk then we have some protection but 35' is devastating and this would not be the end of it. I am asking that you cap it at 25' on 2<sup>nd</sup> Street, if you want the 45' out on the front that isn't going to hurt us but it is on 2<sup>nd</sup> Street.

Mayor Thalhoffer asked why haven't you spoken up at the previous hearings on this very issue?

Frank Windust stated I have.

Mayor Thalhoffer stated on the 25'?

Frank Windust stated well I wasn't really understanding this, I was primarily speaking on the 16' wide units.

Councilor Canfield asked just for your property, what kind of property value loss are you talking about if the view is blocked?

Frank Windust replied I don't know. I would have to ask some experts what we would lose in value.

Councilor Canfield asked can you tell me what the parking situation is like on 2<sup>nd</sup> Street during the day?

Frank Windust replied it is terrible. Part of the problem is City Hall has a lot of employees and there really isn't adequate parking for them so they park across the street. The twelve

units right above us have no off-street parking at all. There are probably two cars per unit so they are parking along these streets here.

Councilor Canfield asked with these proposed townhouses do you think there would be adequate parking even with the parking that would be included with the development?

Frank Windust replied the city would have to build a parking lot and double the parking down here for that.

Councilor Thomas stated I need to declare that I visited Frank's place just before the meeting tonight. One of the things you were concerned about was going back to the slope measurement. What if we were to do that and take off the 35' from 2<sup>nd</sup> Street?

Frank Windust stated in the old ordinance the maximum height of the building is 35' and I count that from the basement floor to the tip of the roof; that is 35'.

Pat Smith stated I oppose the 45' on Columbia River Highway. We have people coming before Council that have no previous track record. They don't want to go through the Planning Commission which is the standard process to build in Troutdale. They don't own the property and they don't have any plans. They come before the Council and say they want 10' more and you approve the 10' more. I don't think you are thinking, unless it is about the dollar signs rather than what Troutdale wants for a downtown area. If they could show you plans that would make our town look nice, then I am all for it. Why not keep it the way we have it and if we see something that you really like they can go through the variance process or you could change the code but to arbitrarily say it sounds good is not taking responsibility, as Councilors, for our town. It makes me wonder what you are thinking. You are not thinking of the people that live here.

Glenn White stated I came here to represent the rest of the town center. It doesn't end at the Marino property; it continues down to the Troutdale bridge. If you were talking about a 45' height past City Hall nobody would care because there is a cliff that is approximately 200' up. My suggestion to solve this problem might be to make that area east of city hall the 45' height limit. I am sure the Diamond Bros. could get a better deal on property down there. I feel for the people who are going to lose their view, but you also have to look at whether they are going to lose their view at 35' and if they are then maybe it makes sense to open up that exception area.

Councilor Thomas stated the current exception area ends just east of City Hall. Are you proposing that we extend it all the way to the bridge?

Glenn White replied it is in the Town Center Overlay and it isn't going to block any ones view. I think it makes sense.

Mari Hunt stated I agree with Frank Windust. This 45' just came up recently and I think it is a bad idea for Troutdale. I think Councilor Daoust picked up on what the developers are talking about with the commercial office space on the first floor and maybe two or three levels of

residential, which would make the buildings four stories. I like the idea of 25' on 2<sup>nd</sup> Street. The Marino block is not the cure all for these businesses. If the developers didn't need that 45' it would be okay to leave it at 35' because they can get a variance. They have to have it at 45', why? Because they have to justify the price they are paying to Marino so they have to squeeze in a lot of units and go as high as they can. They have to have the 45'. You don't have to do this, you can reverse this. I urge you to please reconsider. It is good for the developers but it is bad for Troutdale.

Neil Handy stated I have a question on the grade issue for Rich Faith. Can you explain to me exactly what grade you are talking about?

Rich Faith replied in terms of average grade how I would apply it is you have two points and you draw a line between the two points and the average grade is the slope or grade between the low point and the high point in terms of the soil level next to the building, then you measure from the average grade.

Neil Handy asked how do you determine how high the building should be before it is built?

Rich Faith replied the building plans is what we would have to work off of. We would expect that the finished plans will show us the finished grade.

Neil Handy stated the reason I am asking is because you could have a grade at the midpoint of the building that was the same level as the sidewalk on 2<sup>nd</sup> Street and then taper it down. How would you measure it?

Mayor Thalhoffer called for a recess at 9:13pm and asked Rich Faith and Neil Handy to discuss this issue during the recess.

Mayor Thalhoffer reconvened the meeting at 9:25pm.

Neil Handy stated Rich Faith and I were discussing the slope and the matter in which you measure a building on a slope. My suggestion would be to return to the Code on slope measurement that is on the south side of 2<sup>nd</sup> Street. If you look at the slope on the south side of 2<sup>nd</sup> Street, you could build a building that is close to 40' tall from the street under the existing code. If you limit the building on the north side to the same standard then you should lower it on the north side by the same amount that you would be raising it on the south assuming the slope is the same. That should give you the differentials so that everyone would be happy with their view. The 45' height, this Council voted to recognize the Metro 2040 high density urban plan so I am assuming that is what we want for our downtown. To achieve that you would need a different Code for downtown. I would make a recommendation that the 45' be allowed without a variance so you know that the tallest building would be 45'.

Mayor Thalhoffer asked can we not allow for variances?



Marnie Allen replied not in this ordinance. I would recommend that we take a look at the variance criteria section in the Development Code and we could possibly add language that a variance shall not be granted in the exception area.

Rich Faith stated I think if we were to do that we would want to call that out in the variance chapter, 6.210. In that chapter we have regulations which may not be varied, we could add this maximum height in the CBD exception area to that language.

Councilor Kyle stated currently we have it set at 45' and if it goes up 10% by variance we are at 50' and if it goes up 30% we are even taller. I agree with capping it. We either need to bring it down to where it will get to 45' or we need to cap it at 45' without a variance.

Neil Handy stated in consideration of all the comments I have heard, maybe that would be a solution.

Mayor Thalhofer asked what about 2<sup>nd</sup> Street.

Neil Handy stated I would suggest that the building height standard as measured by grade be the same on both sides of the street. That will allow a building on the south side to be higher than 35' from the sidewalk and a building that is build on the north side of 2<sup>nd</sup> Street will be lower than 35'.

Councilor Thomas stated the advantage to what Mr. Handy is saying is that the people on the south side of 2<sup>nd</sup> Street could have built at 35' and they choose not to. What it doesn't do is penalize someone on the north side of 2<sup>nd</sup> Street for building to the same height that could have built before all of these changes.

Charlie King stated if you are thinking about capping the building height on Columbia River Highway at 45', can't you cap it on 2<sup>nd</sup> Street at 25'?

Councilor Thomas stated if we cap it at 25' we are penalizing the builder on the north side of 2<sup>nd</sup> Street saying they can't build what could have been built prior to the rules being changed.

Charlie King stated if you go to 35' you are penalizing all of the residents on the south side.

Councilor Thomas stated they could have been built at 35' high.

Councilor Gorsek stated if this Council is so interested in compromise then we should compromise with the people that are already there and cap it at 25' and go back to the original 35' on Columbia River Highway.

Erin Janssens stated the disproportionate height relative to the north side of the structures if we continue forward with a standard 45' height allowance on Columbia River Highway, I am concerned that may be an issue for the city and the businesses. There is potential loss of appeal. There is an impact of lost sunlight and shading on the north side businesses four months out of the year. There is a loss of terraced hillside and a potential walled effect with

45' high buildings. There is a potential increase of wind. There is a loss of views of existing property owners. With all of those things and all of the testimony tonight, I propose that we return back to the 35' height allowance and work with the builders to allow variances where needed. We need to get rid of the exception area.

Mike Miller stated in the spirit of compromise, I think 30' on 2<sup>nd</sup> Street is probably adequate to get a reasonable townhouse. It is just a question of how you measure it. If you go with the average height for the townhome portion of it and then stick with the 45' along Columbia River Highway I think you will maintain the views that you currently enjoy on the south side of 2<sup>nd</sup>. I think if you went with what Mr. Handy proposed for 2<sup>nd</sup> Street that would work for us.

Councilor Daoust asked 30' measured from where?

Mike Miller replied from the street level. If you go with the average grade that seems more complicated then the proposal that Rich Faith talked about. What we are saying is that instead of the ceiling height being 35' lets just lower it to 30', it ends up being about the same thing. Our concern is not so much 2<sup>nd</sup> Street, it is the side streets. On 2<sup>nd</sup> we will be dug in and probably have the garages below 2<sup>nd</sup> and have two stories but on the side streets we really need to have three stories, so the ceiling height is probably the better solution.

Frank Windust stated if they are going to put a garage below the grade of the sidewalk, they don't need 30' for two stories. My units which are three stories are only 31' and that includes a garage. 30' blocks our views, at 25' we can see a little bit.

Mayor Thalsofer closed the public hearing at 9:45pm.

**MOTION: Councilor Daoust moved that on the 2<sup>nd</sup> Street side we have a 35' maximum height as measured from the middle of the grade, not from the street level, which is the old standard. On the Historic Columbia River Highway side I am proposing a 40' maximum height limit allowing variances. Seconded by Councilor Kyle.**

Mayor Thalsofer asked what you are saying is essentially 25' on 2<sup>nd</sup> Street?

Councilor Daoust stated you could end up with 25' from street level depending on the grade. What I am saying is that the old code on 2<sup>nd</sup> Street is 35' high measured down the slope, the old building code right?

Rich Faith stated that is the current definition in the Development Code.

Councilor Daoust stated yes, so that would be for everything but units fronting Columbia River Highway. That would allow them to build in the middle of the blocks the way we think they might want to build but it would be lower than 35' from the 2<sup>nd</sup> Street side depending on the grade that is finished. We could get a 25' high building from street level because the grade drops down so much. It is a compromise; I know it doesn't please everybody. I recognize protecting the views. I am trying to consider

the entire exception area. That is why I am not proposing a 25' height limit off of 2<sup>nd</sup> Street and allowing the flexibility in the entire exception area based on the old Development Code.

Councilor Kyle stated I agree with going back to the old code on 2<sup>nd</sup> Street. I was concerned about the 45' on Columbia River Highway once we start adding variances, so 40' works for me because with a variance it puts it at 45'. I feel like this is a good compromise.

Councilor Gorsek stated with a 40' height restriction what would be the maximum height with a variance?

Rich Faith replied there is no maximum. A person can request a variance that is 100% more than the standard. The difference is the level of review that it goes through. If you set a 40' maximum someone could apply for an 80' building. Obviously it becomes more difficult to meet the criteria, but you have the right to apply for it and if you can justify it and meet the criteria technically you could build it.

Councilor Gorsek stated if we have a 40' height with a Type 2 variance you could go up to 52'. We have a lot of buildings that are at 30' and 25'. It is still setting up the dichotomy that we have been talking about which is that it is disjointed between the two sides of the street, which I worry about. I like what Councilor Daoust is saying but I still worry about the folks on the other side of 2<sup>nd</sup> Street. I would prefer capping it at 25' on 2<sup>nd</sup> Street. With the Marino block we may be trying to make these standards fit and in essence, in an unwitting way, we are helping to subsidize Marino to get a much larger paycheck.

Councilor Ripma stated I am delighted with the change on 2<sup>nd</sup> Street. I share Councilor Gorsek's concerns on Columbia River Highway. I wish it was 35' there like the old code, but it is a compromise and I think I can support it. It is so much better than what it is now. I hope this motion passes.

Councilor Thomas stated I have struggled with the 45' since we adopted it. I think going down to 40' gives the developers some certainty that they can do what they would like to do. With the changes proposed to 2<sup>nd</sup> Street it doesn't take anything away from the existing owners from what they could have done in the past. Protecting their property rights was a concern for me.

Mayor Thalsofer stated the thing that I have wanted from the start is to remove that problem in the Marino block. For the sake of moving this forward, I would be willing to go with 40' downtown and the 2<sup>nd</sup> Street adjustment but I would cap the 40' and not allow variances. Either that or make it 45' with no variances. There is no certainty with variances. Is there any support for that?

Councilor Ripma stated we can take that up at a different time.

**Mayor Thalhofer stated we are talking about the 40' right now.**

**Councilor Daoust stated 40' allowing variances.**

**Mayor Thalhofer stated I think we should cap it at 40' with no variances.**

**Councilor Canfield stated my concern is the views that we are protecting for the existing folks all the way up the hill. I am not even sure that the old code protects the views all the way up the hill. I have a problem with higher buildings on Columbia River Highway. I even have a problem with 40'. I could live with 40' if there were no variances. Without that limitation I can't support this. To make all of these changes for one developer who doesn't own the property yet is putting the cart before the horse. I would feel more comfortable if the Diamonds owned the property. I am going to vote against this.**

**Councilor Ripma asked can we limit the availability of variances tonight?**

**Marnie Allen replied no, that would require a change to a separate chapter in the Development Code that hasn't been noticed or gone through the process.**

**Councilor Ripma asked what if we went to 35' still allowing for variances. Mayor and Councilor Canfield would you be interested in that? That is what we have now, that is what is on the north side and that is what I have been advocating for the whole time.**

**Councilor Canfield stated that would be consistent with what we have and would be the fair thing to do.**

**Mayor Thalhofer stated it doesn't give the developers certainty. These are the only developers that have come forward in four years to present a quality development for that lot. Variances don't give anybody certainty.**

**Councilor Ripma stated but they could go 40' with a variance.**

**Mayor Thalhofer stated if they got the variance. They are not automatic. I guess I could go along with it if it is the best we can do.**

**Councilor Daoust asked Mayor if you are willing to support a 35' height with a variance why won't you support a 40' height with a variance? I am confused.**

**Mayor Thalhofer replied 40' with no variances.**

**Councilor Daoust stated I count four votes in support of my motion.**

**Councilor Ripma stated I am counting four votes with the change. I have always wanted the 35'. It is fair, it is what we have always had. It isn't that different from what you are proposing.**

**Councilor Gorsek stated I still have a problem with 2<sup>nd</sup> Street.**

**Councilor Daoust stated what you are proposing is to go back to the old code?**

**Councilor Ripma replied yes.**

**Councilor Daoust stated and eliminate the exception area.**

**Councilor Ripma stated that is not the issue.**

**Councilor Daoust stated I would like to ask Councilor Thomas and Councilor Kyle what they think since they supported my motion.**

**Councilor Thomas stated I have no problem with the 40'.**

**Councilor Kyle stated your motion still works for me.**

**Councilor Daoust stated Councilor Ripma you are the one changing your mind.**

**Councilor Ripma stated I have always liked the 35'. I commend you for your motion and if we can't pass anything else I will support your motion. Councilor Gorsek, are you in favor of the motion?**

**Councilor Gorsek stated I have no problem with Columbia River Highway, it is just 2<sup>nd</sup> Street for me.**

**MOTION TO WITHDRAW: Councilor Daoust withdrew his motion.**

**MOTION: Councilor Daoust moved to go back to the original Building Code of 35'.  
Seconded by Councilor Ripma.**

**Councilor Daoust stated there is not that much difference between my original motion and this one. They can request a variance with either one.**

**Councilor Gorsek stated so it is a 35' height with a variance?**

**Councilor Daoust replied yes. The point of measurement on Columbia River Highway is still street side.**

**Councilor Ripma stated that is the old code.**

**VOTE: Councilor Daoust – Yes; Councilor Gorsek – No; Councilor Ripma – Yes;  
Councilor Thomas – Yes; Mayor Thalsofer – Yes; Councilor Canfield – Yes;  
Councilor Kyle – Yes.**

**Motion Passed 6 – 1.**

Marnie Allen, City Attorney stated the motion was to adopt language in the Development Code, Section 3.134 – Dimensional Standards, Subsection E that would read, “Height Limitation. The maximum height of a structure shall be 35 feet”. The definition of how you apply that measurement is already in the Code. Because one Councilor voted no, you can not adopt this ordinance tonight, it will have to come back in two weeks for a second public hearing and adoption.

**7. STAFF COMMUNICATIONS**

None.

**8. COUNCIL COMMUNICATIONS**

None.

**9. ADJOURNMENT:**

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

Meeting adjourned at 10:15pm.

**Paul Thalhofer, Mayor**

**Approved June 27, 2006**

**ATTEST:**

**Debbie Stickney, City Recorder**