

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

**Tuesday, August 22, 2006, 2006**

**1. PLEDGE OF ALLEGIANCE, ROLL CALL, 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; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Kathy Leader, Finance Director; Marnie Allen, City Attorney; Debbie Stickney, City Recorder; Sergeant Shrake; Beth McCallum, Senior Planner and Olaf Sweetman, Civil Engineer.

**GUESTS:** See Attached.

**2. CONSENT AGENDA:**

**2.1 ACCEPT MINUTES:** May 9, 2006 Regular Meeting; May 23, 2006 Regular Meeting and June 6, 2006 Work Session.

**2.2 RESOLUTION:** A resolution approving an Intergovernmental Agreement with Multnomah County for the Water Line Improvement Project on the Historic Columbia River Highway at the Beaver Creek Bridge.

**MOTION:** Councilor Ripma moved to accept 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. MOTION:** A Motion to adopt the Findings of Fact and Final Order for Appeal of the Planning Commission's approval of a 19-unit condominium project.

Beth McCallum, Senior Planner stated this evening you are considering the Findings of Fact and Final Order in the matter of the 19-unit condominium development that came to you on appeal know as Sedona East or also Tyson's Place. At the August 15<sup>th</sup> meeting the Council

rendered a decision on the appeal and directed staff to prepare the Findings of Fact and Final Order to implement the Council's decision. The findings have been drafted to address topics discussed at the appeal hearing of July 25<sup>th</sup>, August 15<sup>th</sup> and August 22<sup>nd</sup> as then implemented in the Council's decision to approve the 19-unit condominium development subject to compliance with conditions of approval that include the requirement to: 1) construct the project in accordance with the alternative design, Option 2 that was filed and discussed at the August 22<sup>nd</sup> hearing; and 2) obtain access from a location other than SW Edgefield Avenue and limit access from SW Edgefield Avenue to emergency vehicles only. At this time the City Attorney will go over the Findings of Fact and Final Order that have been prepared.

Marnie Allen, City Attorney stated I will summarize a few portions of the Findings of Fact document that explain the Council's rationale for imposing two new conditions of approval. The rationale or explanation for those conditions begins on page four of the document. The findings explain that the Council concluded that allowing access from SW Edgefield will result in safety risks to the neighborhood and travelers along SW 257<sup>th</sup> that, on balance, are too significant. The findings explain what those safety risks are. Second, the Council finds that while the prior lot line adjustment and partition plat approved sufficient access on SW Edgefield for access to be taken it didn't create a legal right or mandatory obligation to allow that access at that point if there are safety concerns, as the Council found here, then access can be denied and it can be required to be taken in another location. The findings also explain that the evidence in the record reflects an error on the County's part in concluding that access couldn't be taken from SW 257<sup>th</sup> because there was access from SW Edgefield. This decision concludes that it is not safe to take access from SW Edgefield so therefore access from 257<sup>th</sup> should be pursued and that the no access easement that the City obtained would be vacated to facilitate that. In addition, allowing access from SW Edgefield increases the out of direction travel and does not make the most efficient use of the transportation system. It will reduce the quality of life and neighborhood livability of residents of Sedona Park beyond an acceptable level. It also may be inconsistent with the Sedona Park CC&Rs although the Council recognizes it is not a part to those CC&Rs, it is not enforcing them and doesn't feel like it should adopt a decision that could violate their CC&Rs. Those are the general rationale for the findings in support of a condition that doesn't allow access from SW Edgefield. The second condition was requiring construction of the condominium buildings in accordance with Option B, the alternative layout plan. The reason for requiring construction in accordance with that alternative plan is because it minimizes the detrimental affects associated with where the buildings were initially proposed, close to Lot 18 in Sedona Park. It also was an option that was presented by the applicant and the applicant indicated they could construct the buildings that way. The specific findings are based on approval criteria in the Troutdale Development Code, specifically the Development Code provisions that address the purpose and intent for development in a town center. These condominiums are located in the Troutdale Town Center and it is more consistent with the purpose of the town center to encourage traffic trips, density in a town center and not overflow into adjacent single-family neighborhoods. Number two, the provision in the Troutdale Development Code, 7.180A regarding the character of land and needing to develop in a way that looks at the character of the adjacent property and addressing features that are harmful to the safety, health and general welfare. The evidence in the record from the appellants showed that having access from 257<sup>th</sup> instead of SW Edgefield would better implement and comply with that approval

criteria. Finally the approval criteria in Troutdale Development Code Section 8.040H, Site and Design Review authorizing the Council to impose and modify design features, such as where access is taken and where buildings are located, when a design feature is inappropriate in accordance with the surrounding area or in some other way is detrimental to the aesthetics, property values and general stability or welfare for the area or the city as a whole. Those are the approval criteria that the Council's findings are based on and the rationale for the findings. The final order in the document basically upholds the Planning Commission's decision, approves construction of the condominium development subject to the two conditions; one, that it be built in accordance with Option B and two, that access be taken from some other location other than SW Edgefield and that the City initiate vacation proceedings for the no-access strip along 257<sup>th</sup> so that access can be taken from SW 257<sup>th</sup>. The access from SW Edgefield will be barricaded and only used for emergency vehicle access.

Mayor Thalhoffer stated I understand you have received some information from one of the parties.

Marnie Allen replied yes, I did receive tonight written materials that the applicant's attorney prepared. They are objections to the draft Final Order. I have reviewed this written material. I believe there is primarily legal argument in the two page objection to the draft final order, but some reference to new evidence in some documents attached to the final order that represent information that was generated after the public hearing closed last week. The applicants representative would like an opportunity to make final arguments to the Council objecting to the findings and conditions that I just summarized. The Council has three options in responding to that request from the applicant. The first option is the public hearing was closed and you have rendered your decision and you have the findings, so you could simply deliberate and adopt a decision with what is before you. The second option is you can reopen the public hearing and give them an opportunity to make arguments and give the appellants from Sedona Park an opportunity to respond to those arguments and finally give the applicant final rebuttal and then render your decision. The third option is you can re-open the public hearing and allow the submission of arguments and new evidence. If you re-open the record and allow new evidence then you are likely to run into problems with the 120-day time period. My advice would be to not re-open the record and receive any new evidence unless the applicant makes that request and indicates a willingness to waive the 120 days.

Mayor Thalhoffer stated with consent of the Council I would like to re-open the public hearing to hear arguments only, no new evidence.

No objections from Council.

Mayor Thalhoffer re-opened the public hearing at 7:10pm.

Ed Sullivan stated if I understand your ruling Mr. Mayor the attachments to my memorandum will be disregarded, so I am limiting myself to a page and a half. I am only appealing the issue of the conditions. The main reason I did that is because if I am going challenge a condition I need to have raised that objection before Council. This condition was imposed

after the closing of the hearing and that is why I want to make sure that I have got on the record my objection. The first paragraph of my memorandum just says that I am filing the objections for the record. The objections are raised solely to deal with the conditions of no access on Edgefield. First, the City Code requires specific grounds to be raised on the appeal; access was not one of the specific grounds. Second, by the denial of access to a public road and the statement of go find it some other place and good luck, you have made the property valueless. You have a regulatory taking under the Fifth and Fourteenth Amendments to the Federal Constitution and Article I, Section 18 of the Oregon Constitution. The third argument is the "rough proportionality" standard of *Dolan v. City of Tigard*, which relates to conditions, is not met because the impacts of the uses have to be the grounds for any proportionate conditions. The burden is on the City to show that, that has not been done. The fourth item is a reference to some statutes that I raised in my memorandum to the Council previously. ORS 197.307(3)(b) and (6) say that for needed housing, and it is our view that this is needed housing under the statute, all development criteria must be clear and objective. By calling out livability, by calling out safety and going beyond the objective provisions of the City's Code, the City Council will error if it adopts this order. The last thing I have raised is the findings do not justify the adoption of the conditions. You had your own staff, you had Multnomah County Transportation staff, you had the experts on the side of the applicant all tell you that your Code provisions, which are designed to deal with safety and capacity, were met. As a lawyer and a city attorney, this is in my view clear error. You may or may not like the development that is proposed, but if you folks set up the criteria, we met the criteria and you can't pull out standards that aren't there to defeat the proposal. Councilor Daoust, I don't know whether you are going to sit in on this having not attended the previous meeting, if you have read the record then I think you are certainly qualified.

Mayor Thalhoffer called for a 10-minute recess at 7:16pm to give the appellants time to review and discuss this and prepare a response to the objections raised by Mr. Sullivan.

Mayor Thalhoffer reconvened the meeting at 7:25pm and asked the appellant if they would like to respond to the applicant's argument, and if so you should limit your argument to the issue of access.

Stan Strickland, resident of Sedona Park stated in our discussion during the break we felt that there is potentially one omission from the Final Order, may I bring that issue up at this time?

Marnie Allen stated if you are going to open it up to allow them an opportunity to submit something new, you need to let the applicant respond to that. I don't know if it is new evidence or a new request. You can have him tell you what it is and then the Council can decide.

Stan Strickland stated at one point the development was contingent on Multnomah County's approval of the design and installation of a guardrail but we don't see that in the Final Order.

Marnie Allen replied that specific condition regarding the guardrail is in the Planning Commission's conditions and all you are adopting is a new condition one and replacing the existing condition for number two. I think the guardrail condition is later in the Planning

Commission's conditions and you haven't changed that. So what was required by the Planning Commission in terms of the guardrail is still in the conditions of approval.

Stan Strickland stated the second item was the access from SW Edgefield for emergency access. We certainly feel that is appropriate and necessary but we ask that it not be the access of choice. Lets look at the alternative access that they come up with; if that is inappropriate then emergency access onto Edgefield would certainly be welcome by the Sedona Park residents.

Marnie Allen replied I believe that in order for the fire marshal to approve this and in order for the development to meet the Development Code there has to be not just one point going into the development, which is why the initial layout had emergency access on 257<sup>th</sup> and primary access on Edgefield. I am not sure that this development would meet the approval criteria if you preclude emergency access on SW Edgefield.

Beth McCallum, Senior Planner stated the fire department requires either a full turn-around on the property so that they don't have to back out more than 150'. Option B is laid out in such a way that there is no opportunity for on-site turn-around that would meet the fire department needs, so the emergency ingress or egress from Edgefield Avenue is crucial to go with Option B.

Stan Strickland asked would it be proper to make it contingent on fire access meeting whatever regulations and requirements are set forth by Troutdale and if that ends up being Edgefield then so be it, or does it have to be specifically identified?

Beth McCallum stated I can not speak for Gresham Fire except that based upon what they have reviewed from the applicant and because the private street configuration through this site has not changed from what the fire department has reviewed, I would have to say this is your only logical option.

Stan Strickland replied we can support that.

Councilor Daoust stated Mr. Sullivan mentioned that I was not in attendance at the last meeting, but since the last meeting I have been able to read all of the material before the meeting tonight, so I feel I am able to vote tonight.

Ed Sullivan stated there is not much to say in rebuttal. The only issue that I want to make you comfortable with is that you have this series of objections because I received the Final Order this morning. I had to scramble to put this together.

Mayor Thalsofer closed the public hearing at 7:35pm.

Marnie Allen stated there is a typographical error on Page 5, the fourth line down reads, "ha" it should read "has". Also on Page 1, second paragraph, third line down, it should say, "the opportunity to do a traffic study", the word "do" is missing.

Councilor Daoust stated on Page 7, last paragraph, eleventh line reads, "to SW 257<sup>th</sup> if there was no an alternative access", we need to change the word "no" to "not".

**MOTION:** Councilor Ripma moved to adopt the findings as given to us by our City Attorney with the scriveners changes that were just noted. Seconded by Councilor Kyle. (The changes were as follows: 1) Page 1, Section II, second paragraph, third line – add the word "do" after "the opportunity to". 2) Page 5, first paragraph, fourth line – change "ha" to "has". 3) Page 7, last paragraph, the 11<sup>th</sup> line reads "to SW 257<sup>th</sup> if there was no..." change "no" to "not".)

Councilor Ripma stated this hasn't been an easy process and it hasn't been an easy decision. I thought long and hard about this and how the findings should look and I think our City Attorney expresses my desired findings exactly the way I would. I appreciate that Mr. Sullivan had to raise issues that he might appeal and I also appreciate that there is some risk in adopting the findings, but I did want to respond to a couple of things that were mentioned. I acknowledge that if we were denying access to this site it would be a taking, but we are not in these findings, in my mind, denying access to the site. We are providing access through a safer access point. On balance that is the way that I decided that the risk associated with the access through Sedona Park, I am not talking about the capacity of the road and that sort of thing, but just the fact that Sedona Park was built without access to higher density housing in mind and just the way it is laid out and so on that the safety risks and other things on balance is higher going on Edgefield than on 257<sup>th</sup>, which the applicant wanted or at least at one time sought access on 257<sup>th</sup>. The County has chosen to deny that access but I fully intend and would support the City working with the County in every possible way to gain that access. It seems to me like one of the things that the County needs to hear is that it doesn't have an alternative, because the County grants access to arterials all of the time and they have done it right on the same stretch. We are not denying access to the project and we are not trying to kill the project by denying access. We are simply providing alternative access that can be done, should be done and will be done. We just need to get the County's attention like sometimes we have to do. We are actually approving this project, we are just providing another access and I think that is very defensible but I understand the need for the applicant to object. The rest of the arguments, proportionality, this isn't a taking and I must say I didn't really understand the other arguments about needed housing being trumped by our argument about livability or something. The findings that we set out set out good and sufficient reasons for us to support this proposed development with the conditions we have imposed. For that reason I am urging a yes vote on the motion.

Councilor Kyle stated I agree with everything that Councilor Ripma said. The only other thing that bothered me with this was the fact that the County wasn't presented with any options and I believe we have options and that is why I am going to support this. I know that we will do whatever we can to try and come up with those options.

**Councilor Thomas had nothing to add.**

**Mayor Thalsofer stated I am very satisfied with the Finding of Fact and the Order. To me it has been an issue of livability. As Councilor Ripma indicated, we are not denying access, there is other access to this site. We are not saying anything about not wanting condominiums or additional housing units. I think most of us think that we have sufficient housing units in the City of Troutdale at this time but we are still not denying this type of housing at all. I think the City and the County can work together to help in this situation at least by way of consultation and be good neighbors with one another.**

**Councilor Canfield stated I believe that our City Attorney did do a good job in writing up the Findings of Fact, unfortunately I disagree with them. I am going to vote no. This is a quasi-judicial proceeding and the Council's scope of what to do is very narrow. Our only authority here is to determine if the applicant has met all of the conditions of the City's Codes. We can't make a decision just because we believe it is not the right thing to do or because we believe personally it is unfair. Instead we are required to decide if a proposal is an allowed use. We can't modify laws on the fly; we have to go on what the rules were when the applicant made application. Planning is a process where we try to get the community involved. We have hearings, we have outreach and lots of meetings. At some point we have to carry out the decisions that were made, we don't have to like it. I am looking at what the City's Code says and what the applicant is applying for. We have to provide some predictability for anybody who does anything in the City. If we, on every single land use decision, change our minds on the use, no one would be able to get a loan to build here. We would end up with chaos. The whole idea behind land use planning in general is to have a community agree on what types of land uses are allowed. Once we have adopted them we can't open it up every time someone applies for a land use. In this case, even if we don't like the result, we have to put our personal feelings aside and vote no. It is clear to me that we are basically cutting this applicant off at the knees. It is on the record that Multnomah County has said no to the access there. Our own City Code and our City staff says no access. The findings are clear to me but I know the majority of the Council disagrees. If this is appealed to LUBA I wish the City luck.**

**Councilor Kyle had nothing to add.**

**Councilor Daoust stated I do respect Councilor Canfield and the thought that he puts into the process we go through. But I am tending to think that we have more than an adequate argument here that we can defend. We did take into account a lot of things other than transportation planning and ingress/egress. We took into account slope stability and drainage. We took into account a lot of things according to our own rules and regulations. We are taking into account safety by not wanting to go through the neighborhoods. I wouldn't agree with Councilor Canfield that we are ignoring our rules or making just a political statement here, I think we are looking at our rules and being as flexible as we can for safety reasons and coming to the**

conclusion that is in the findings. In my mind, the findings are adequate and defensible.

Councilor Gorsek stated a lot of people have been talking about livability. I think livability is extremely important as does the rest of the council. I think there have also been some criticisms of staff about things like notice. Many of us have been on the council for a long time and if we thought that was a problem we should have dealt with it a long time ago. Be careful in thinking that people are your friends up here; they may be just as culpable as the people you don't like. That includes myself. I have been on the council for three and a half years. If we go before a judge we don't think that the judge should do anything but interpret the law, right. So if I had a judge that was going to hear a case about drunk driving I was involved in, I wouldn't want the judge to say I know there is no law about this but I just don't like this particular behavior. I can't charge you with drunk driving so I will make up a charge. Would we want that? I don't think so. Unfortunately, if we choose to go up for reelection it is hard to be judges and politicians at the same time, but that is what we are asked to do here. In this case we are not supposed to be politicians; we are supposed to be judges. It is a quasi-judicial land use hearing which means we don't get to make the law up like we want. It means that we have to look at the law and see if it was followed, that is it. I love livability and I love this city and I love the arguments that you have made. But, look at the accident history on 257<sup>th</sup>. Even your own group has said that people come crashing into your backyards all the time. That says to me that 257<sup>th</sup> is a hazard. It seems to me that it is safer to go out on Edgefield, not desirable but safer. When we are sitting here and we have a situation where experts tell us this option is safer than this option, there is not much room for us to declare those findings inadequate. I fear that if we go forward with this we are going to end up being overturned. Councilor Ripma, I admire your passion for this. I think you worry very much about livability and I think that is admirable, but you said something that I don't know that you can justify. You said 257<sup>th</sup> will be fixed, it will be done. I don't think we can ever say that, especially when we don't control that. So to state that the County likes to say no but they are going to say yes, we can't say that for certain, and that is a future thing anyway. Again, the issue here is what is the law today and what are the rulings today, not next week, not next year but right now. Finally, what about our responsibility to the rest of the citizens of this city? If we are wrong and we get sued citizens are the ones who pay this. I pay this, you pay this, and taxpayers' pay this. If we are wrong, and I think we are, we are doing a disservice to the rest of the citizens and I think we are just trying to politically play it safe.

Councilor Ripma stated I think it is being blown out of proportion and I just want to say that we are approving this subdivision with what I think are modest conditions...

Councilor Gorsek called for the question.

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



**Motion Passed 5 – 2.**

**5. RESOLUTION:** A resolution authorizing the Mayor to enter into an Intergovernmental Agreement with Metro to collect and remit the Metro Construction Excise Tax

Councilor Thomas stated at a previous meeting in July we voted to reconsider this resolution and IGA to collect the Metro Construction Excise Tax.

**MOTION:** Councilor Thomas moved to adopt the IGA as defined by Metro with the following changes: 1) Change the language in Paragraph 3 to read: Collection; Start date. Jurisdiction agrees to collect the Construction Excise Tax on behalf of Metro. Jurisdiction shall begin collecting the CET on September 1, 2006, and shall continue collection until the earlier of expiration of the CET or termination of this CET Collection IGA as set forth below. 2) Change the language in Paragraph 10 to read: Sunset and Termination. Jurisdiction shall cease collection of the Construction Excise Tax pursuant to this CET Collection IGA on the last day of the month in which Metro certifies to Jurisdiction that a total of \$6.3 million has been collected by the Metro-area local jurisdictions and has been remitted to and received by Metro. CET already collected by Jurisdiction in the CET reporting period in which it receives Metro's written certification notice shall be remitted to Metro, and shall remain a part of the CET program and shall be distributed by Metro to local jurisdictions in accordance with the CET grant program. Notwithstanding the foregoing, however, the City of Troutdale may terminate this Agreement by providing Metro with written notice of termination at least thirty (30) days prior to the last date that Troutdale will collect the CET. In the case of such early termination, the City of Troutdale shall remit to Metro all CET collected by the City prior to the effective date of the termination, net of the administrative fee as set forth above. Seconded by Councilor Gorsek.

Councilor Thomas stated I know when we originally considered this my major concern was the fact that the city had no way to opt out of the contract in the event that it was not cost effective. I don't think it is prudent for the city or any agency to engage in a contract that has no way to get out of the contract. With this change it satisfies two issues. One is the customer service. The builder or developer can pay all fees in one place. We are going to have to provide the reports to Metro and with the IGA we get a 5% fee to offset the administrative costs. It is my hope that the 5% fee covers the cost to administer this and it doesn't cost us any money. My major concern prior to that was without an opt out if it did cost us more money to administer than the 5% we didn't have a way to get out of the IGA.

Councilor Gorsek stated I think Councilor Thomas has summarized this very well. We benefit in that we won't hopefully lose any money. We receive 5% for administration. We will be joining with other Metro cities. We will therefore, be in line with them and

make it easier for the developer who can simply come here and do it rather than having to go to Metro. I know that it is important to have some way to plan for these areas that are going to come in. This is what Metro came up with. The thing to remember is we know that we haven't yet benefited in recent past in terms of UGB changes, but that doesn't mean we won't benefit in the future. One of the things that we frequently complain about is we aren't treated as a full partner. Hopefully if we continue to support these things and act as a full partner, things will work more in our favor in the future. Logically it makes sense to do this.

Councilor Ripma stated the only good thing about this is it allows us to get out. If only we could get out of everything else we have committed to Metro to do, all of the density and all the requirements that Metro constantly imposes on us. I speak as the representative of Troutdale, Fairview and Wood Village for many years on the Metro Policy Advisory Committee, I am still the alternate, at which I spoke against this excise tax. This is exactly how we start losing our right to plan our own city one little piece at a time. All of the other jurisdictions go along, why don't we. Folks this got noticed. The fact that Troutdale did not support this tax and it got noticed that we refused to collect it. This tax deserves to get noticed. This tax is a gift to Hillsboro, Gresham and other jurisdictions that stand to benefit millions. Gresham is going to get \$1.2 million right off of the bat. At the same time it will make our industrial property less valuable and less likely to develop for many years to come. Our tax base will suffer and our property owners will suffer all for some possible future benefit I suppose. This tax doesn't need to be part of Metro. This tax deserves to be objected to. The City can still issue the building permits at the counter just like before and Metro can invoice the developer for the excise tax. There are no trips down to Metro and no great inconvenience but a little bit of notice that they are paying an excise tax that Troutdale objects to. We already voted not to adopt this and I fundamentally object to us taking another vote. I am sorry that Councilor Thomas changed his mind. I totally object to us collecting the tax and I am going to vote no.

Mayor Thalhoffer stated I don't like the tax either however it is on the books and to me it is a matter of customer service to let the people pay the tax at one location. I am going to vote in favor of this.

Councilor Canfield stated to say that Troutdale or any city under the jurisdiction of Metro is a partner is like saying Rocky Balboa, the loan collector, is in partnership with organized crime. It is not a partnership. We are basically held hostage by Metro and let there be no doubt that this tax was passed by Metro and it is in effect. As Councilor Ripma pointed out, everything about this tax is against our best interest and it is a free ride for Hillsboro and Gresham who have a lot of incentive to get a free ride. They have a lot of vacant land. Those very industrial and commercial lands are going to be in direct competition with what we already have. This makes no sense for us to agree to collect the tax with our city staff in order to play fair with Metro. We are basically participating in cutting our own throats. This gives us a symbolic gesture saying no, we are not going to participate in the dictatorship of Metro. I am going to vote no. We did already decide this.

Councilor Kyle stated I also object to this coming up again because we did vote it down. I do agree that it would be good customer service. I am thinking that for the many other things that we heard earlier tonight, Metro has complicated our lives out here so I am going to vote no on this.

Councilor Daoust stated I am going to vote yes. We asked our city staff at the last meeting if this was going to be a big impact and the answer was no. It is not going to be a big impact on the city. Last time if I would have allowed some kind of an opt out as a friendly amendment we were almost to the point of approving this including Councilor Ripma if I remember correctly...

Councilor Ripma stated no.

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

**Motion Passed 4 – 3.**

**6. PUBLIC HEARING / ORDINANCE (Introduction):** An Ordinance amending Chapters 9 and 10 of the Troutdale Development Code (Text Amendment No. 37) relating to events of citywide interest, temporary parking and temporary signage associated with these events.

Mayor Thalhofer read the ordinance title and opened the public hearing at 8:10pm.

Rich Faith, Community Development Director stated as you all know we have a number of regulations both in our Development Code and in our Municipal Code that relate to community events and special events. The definitions for community event and special event are in Chapter 10 of the Development Code, which is our sign chapter. Those definitions are critical in determining whether or not an event qualifies as a community event or special event and becomes particularly important when we are dealing with signage to advertise these types of events because the code allows for signs related to these activities. The determination is most particularly important for those events or organizations that are sponsoring events that would like to be able to promote those by putting signage on the railing at the intersection of Historic Columbia River Highway and 257<sup>th</sup>. It is not uncommon to have organizations make a request that they be allowed to hang a banner or sign there. A second area in the code that relates to special or community events is the parking chapter. The parking chapter does require that parking lots be paved, but it does make an exception to that when we are talking about temporary overflow parking in conjunction with community events, special events or sporting events. Under the Municipal Code we have provisions in Chapter 13.20 dealing with our parks that pertain to vendor sales, specifically prohibiting vendor sales in our parks unless they are in conjunction with a community event. From past history we now that we have such vendor sales with SummerFest and Harvest Faire held at Glenn Otto Park. The Development Code puts the responsibility on the Community

Development Director to make a judgment call as to whether or not an event meets these definitions and therefore qualifies for these special privileges. Over the years it has been somewhat difficult to administer these provisions of the code. As you know there have been instances where I have determined that a particular event did not meet the definition in my opinion. The sponsors of those events disagreed and brought their case to the Council and you have overruled that decision and felt that it should qualify as a community event and therefore be allowed to have either vendor sales or signage. I have provided an exhibit to my staff report that lists the various events that have already been recognized as community and special events either through my interpretation of the code or through the Council's ruling on that matter. Because of the difficulties that we have had over the years applying these provisions of the Code we have had a number of work sessions on this topic to try and come up with a way to more broadly apply these definitions or some other means to address those events which don't technically meet the definition but we would like them to. At a work session last year Council directed me to work on some amendments for your consideration. I did that at a work session held in March of this year. You reviewed those changes and expressed your general satisfaction and then instructed me to take those amendments to the Planning Commission since they are amendments to the Development Code. At the conclusion of the Planning Commission's review we would concurrently look at the amendments to the Municipal Code which do not have to go through the Planning Commission. This ordinance deals with the amendments to the Development Code and the next item on your agenda is an ordinance that deals with the amendments to the Municipal Code. I would like to quickly summarize the amendments. In Chapter 10, the sign chapter, I am proposing the introduction of a new or third category of events called events of citywide interest. The definition of this would be incorporated into the definition section of Chapter 10 and there would also be a provision in the Code to allow temporary signage for these events of citywide interest. The definition that is being proposed is essentially a catchall that would capture those events that do not qualify as either a community event or special event as it is now defined. The Council would make the determination whether or not the event does qualify as an event of citywide interest and it would meet that test if it does these two things: attendance for this event is open to the citizens of Troutdale and it provides a public benefit. It is a very broad and subjective criteria but it gives you the latitude that you may desire to have in order to rule on these particular requests that might come before you. Another related change that is being proposed is in terms of the duration in which these temporary event signs can be displayed. Currently the timeframe for displaying of these signs is twenty-one days prior to the event and they need to be taken down within seven days after the event. We are proposing to change that to fourteen days prior to the event and removed within three days after the event. The parking chapter (Chapter 9) does require parking to be paved but does allow for non-paved parking when it is temporary overflow parking in conjunction with a community event, special event or sporting event. The proposed change would add the third category of events of citywide interest to those events in which temporary overflow parking can be on non-paved surfaces. In order to make it clear what the definitions are for the events, we specifically reference those definitions in the sign chapter. One other change we are proposing is that in allowing for the temporary overflow parking on non-paved surfaces we want to be clear that we would not allow that to occur within protected areas, meaning our vegetation corridor. The last change is to add a definition for sporting events to provide some clarity and take out some of the subjective decision making that goes with

these events. I have addressed the approval criteria in my written staff report that are outlined in the Development Code for this type of legislative change and have shown that those criteria are met. The Planning Commission held a public hearing on June 28<sup>th</sup> and they have forwarded these to you with their recommendation for adoption.

Councilor Ripma asked will this make the code easier for you to administer?

Rich Faith replied yes.

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

No testimony received.

Mayor Thalhofler closed the public hearing at 8:25pm and stated this is the first hearing on this ordinance. A second public hearing will be held on September 12, 2006.

**7. PUBLIC HEARING / ORDINANCE (Introduction):** An Ordinance amending Troutdale Municipal Code Section 13.20.115 relating to vendors in city parks and Section 13.20.190 relating to alcohol consumption in city parks.

Mayor Thalhofler read the ordinance title and opened the public hearing at 8:26pm.

Rich Faith, Community Development Director stated this is the companion amendments to those in the previous ordinance. These amendments pertain specifically to the Troutdale Municipal Code 13.20, which is the parks and recreation chapter. In this chapter we have a couple of provisions that relate to community events. The first deals with vendor sales in city parks. Our code prohibits vendor sales unless it is conducted in conjunction with a community event. The code also prohibits alcohol use in the city parks unless it is specifically permitted in conjunction with a community event. Section 13.20.115 deals with vendor sales, we are proposing to expand the events by which vendor sales would be allowed. Currently it is restricted to community events only. However, we do have other types of events, special events and the new category, events of citywide interest. We felt that for consistency they should be included in the list of events in which vendor sales would be allowed. We are proposing that vendor sales would be allowed to occur in conjunction with a community event, special event or an event of citywide interest as defined in the Troutdale Development Code under Chapter 10. The other provision in this chapter is 13.20.190 dealing with alcohol consumption. This section of the code specifically prohibits alcohol consumption in Troutdale parks but it does grant an exception for consumption of beer and wine in conjunction with a community event that is being held in the park subject to approval by the city. Again, to be consistent with all of the other changes we are going to expand upon the events in which beer and wine can be consumed to also include special events and events of citywide interest. Once again we will refer to those definitions in the Development Code under Chapter 10. I want to point out that this provision dealing with alcohol consumption in the city parks is not the section that deals with alcohol consumption as part of renting a city facility, such as the Sam Cox Building. That comes under a separate section of the Municipal Code and is not affected by this change at all.

Councilor Thomas stated I like the changes being proposed to 13.20.115, however I would strike the changes in 13.20.190 because the definitions for special event and events of citywide interest are so broad that it really opens up the consumption of alcohol beverages a lot and I don't think it is necessary in today's environment to allow for the consumption of alcohol, other than the current allowed use.

Councilor Canfield stated I agree with Councilor Thomas. I think adding special events and events of citywide interest for use of alcohol is overly broad.

Councilor Kyle stated I don't know if we need alcohol at special events at the park.

Councilor Daoust stated I am having a hard time following your reasoning. Why we would allow alcohol for an already approved event but not for another event that comes up in the future that we approve. Why would that be any different?

Councilor Thomas stated if you look at the way that other cities run their events, most cities are not allowing alcohol at all at any type of event.

Councilor Canfield asked since we will probably be discussing whether to expand or keep alcoholic beverage consumption at the next meeting, perhaps staff can provide us with information on the impact and problems that have resulted from alcohol at these types of events.

Rich Faith asked in conjunction with the community events?

Councilor Canfield replied yes.

Councilor Gorsek asked how hard is it to substantiate the claim from Councilor Thomas that no other cities or few other cities are allowing alcohol?

Rich Faith replied we can check into that.

Councilor Canfield stated if any of these other jurisdictions do allow alcohol can you also ask if they require any fees, deposits, policing, and/or insurance.

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

Pat Smith asked Mayors Square is a park that is downtown, would that qualify also?

Rich Faith replied it could. It makes no distinction as to which park. It would be any city park.

Pat Smith asked how about Imagination Station?

Rich Faith stated Columbia Park is a city park. We are not required to approve the request. It simply says that the only time in which the city can grant permission to consume alcohol is if it is in conjunction with one of these events.

Mayor Thalhofer closed the public hearing at 8:40pm and stated this is the first hearing on this ordinance, a second public hearing will be held on September 12, 2006.

**8. PUBLIC HEARING/ORDINANCE (Introduction):** An ordinance amending Chapter 13.20 of the Troutdale Municipal Code regarding the exclusion of individuals from parks.

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

Sergeant Shrake stated this is an ordinance amending Section 13.20 regarding the police departments ability to exclude people from the city parks. Right now the code talks about our ability to exclude someone from the park for a one day period. The problem with that is they come back the next day or several days later and continue to commit the same violations time and time again. The proposed changes are in Section 13.20.380 and would give us the authority to exclude someone for a period of 30 days if they are found to be in violation of any city ordinance or state law, regardless of the fact of whether we issue them a citation for those violations or not, we would give them a written exclusion that bans them from city parks for that 30-day period. If they come back after that 30-day period and commit that same infraction or a similar infraction it allows us to exclude them for up to one year. The other change to the code sets up a hearing process which allows the person who is excluded from the park to appeal that to the Troutdale Municipal Judge.

Councilor Ripma asked do the other cities have this type of ordinance?

Sergeant Shrake replied yes.

Councilor Ripma asked and have they been upheld by courts as far as you know?

Sergeant Shrake replied so far they have.

Councilor Thomas asked if you were to currently exclude someone from the park are there any financial measures that you can apply like a fine?

Sergeant Shrake replied if we exclude them we can also charge them with the violation or infraction and issue them a citation to appear in Municipal Court. That can be done in addition to the exclusion. There is no financial impact on the exclusion itself.

Councilor Thomas asked do you have a method to track the people that have been issued the exclusion?

Sergeant Shrake replied yes. There will be a report and there will be a case file.

Councilor Canfield asked at Glenn Otto did we have a problem this year?

Sergeant Shrake replied this year we have been short on staff. We find a lot of the problems in the south beach area which is outside of the area that the AMR folks are located.

Councilor Kyle asked can you give me an idea of the type of problem that you see repeated?

Sergeant Shrake replied the biggest problem is alcohol.

Marnie Allen stated one other problem area that this ordinance will address is teenagers smoking in the parks and being cited for tobacco violation and told to leave the park. Because they are under 18 our court doesn't have jurisdiction and it goes to the Juvenile Department and nothing happens. This will give our officers additional tools such as a trespass charge if they are ejected for 30 days and come back.

Councilor Gorsek asked how long have we had the one day exclusion?

Sergeant Shrake replied at least for the 15 years that I have been with the City.

Councilor Gorsek asked how will an officer know if an individual has been excluded from our parks?

Sergeant Shrake replied it will be in our records management system. The officer can search the system from his MDT terminal in his vehicle.

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

No testimony received.

Mayor Thalhofer closed the public hearing at 8:52pm and stated this is the first hearing on this ordinance. A second public hearing will be held on September 12, 2006.

## **9. STAFF COMMUNICATIONS**

Sergeant Shrake stated that Officer Mike Kellogg will be returning to work on September 11<sup>th</sup>.

## **10. COUNCIL COMMUNICATIONS**

Councilor Kyle provided the Council with a four-page handout (copy included in the packet).

Councilor Kyle asked if the Council would agree to schedule a work session on density and requested that a representative from Metro attend.

Council agreed but decided to have two work sessions, the first one with just the Council and the second work session with a representative from Metro.

John Anderson stated that staff has tentatively scheduled the first work session for October 3<sup>rd</sup>.



Councilor Kyle stated in our Transportation System Plan we have the following wording, "Allow the designation of residential parking districts to protect areas from spillover parking generated by adjacent commercial, employment or mixed-use areas, or other uses that generate a high demand for parking." Councilor Kyle asked have we incorporated language like this in our Development Code?

Rich Faith replied no.

Councilor Kyle stated at our Council Goal Setting meeting I recommended that we put an email form on-line to submit questions or comments to the Council. The Mayor tabled that discussion for a future meeting. That was an adopted Council Goal. Have we scheduled a date to discuss this?

John Anderson we could schedule that for the October 3<sup>rd</sup> work session.

Councilor Kyle asked have we started working on the Council Goal to investigate a process for maintaining a centralized list of citizen requests and complaints to enable the city to begin evaluating its response to requests and complaints?

John Anderson replied we are collecting the citizens questions, complaints, etc. that come through in writing and we have a system for reporting those as was outlined by the HR Manager at a recent Council meeting on customer service.

Councilor Gorsek stated we had a discussion about your evaluation process for next year, what is the status on that?

John Anderson replied the HR Manager and I have been collecting some samples.

Councilor Gorsek stated we have had several discussions with Tri-Met and they said they were going to report back to our Council and they have not yet done that. September is the month when they make their adjustments and changes. Councilor Gorsek asked staff to contact our representative at Tri-Met.

Councilor Thomas asked have we scheduled a work session to discuss what we are going to do with the City Conference Building property?

John Anderson replied not yet, we can provide Council with a suggested timeline.

## **11. ADJOURNMENT:**

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

Meeting adjourned at 9:02pm.

**Paul Thalhofer, Mayor**

**Approved September 26, 2006**

**ATTEST:**

**Debbie Stickney, City Recorder**