

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

Tuesday, March 22, 2005

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Thalhofer called the meeting to order at 7:01pm.

PRESENT: Mayor Thalhofer, Councilor Ripma, Councilor Thomas, Councilor Canfield
Councilor Kyle.

ABSENT: Councilor Gorsek (excused) and Councilor Daoust (excused).

STAFF: John Anderson, City Administrator; Jim Galloway, Public Works Director; Rich
Faith, Community Development Director; Kathy Leader, Finance Director;
Marnie Allen, City Attorney; and Debbie Stickney, City Recorder.

GUESTS: See Attached.

Mayor Thalhofer stated the work session that was scheduled for tonight has been canceled.

Mayor Thalhofer asked is there an agenda update this evening?

John Anderson replied there are none.

2. CONSENT AGENDA

- 2.1 RESOLUTION:** A Resolution supporting submittal of an Oregon State Parks
Local Government Grant application for certain improvements within Glenn Otto
Park.
- 2.2 RESOLUTION:** A Resolution providing for budget transfers and making
appropriation changes for Fiscal Year 2004-05.
- 2.3 MOTION:** A motion to accept the annual evaluation of City Attorney Marnie Allen
as completed by Jerry Calavan and reviewed by the City Council and Marnie
Allen on February 22, 2005.
- 2.4 RESOLUTION:** A Resolution approving the collective bargaining agreement with
employees represented by Troutdale Police Officers' Association.

Mayor Thalhofer read the consent agenda.

**MOTION: Councilor Thomas moved to adopt the consent agenda. Seconded by
Councilor Kyle. Motion passed unanimously.**

3. PUBLIC COMMENT

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

None.

4. PUBLIC HEARING/ORDINANCE (Introduction and Adoption): An Ordinance clarifying the extraterritorial extension of public works services, amending Section 12.01.110 of the Troutdale Municipal Code, and declaring an emergency. (Allows for the provision of city water service for the limited purpose of providing water for fire hydrants and sprinkler systems to schools and 501(c)(3) non-profit corporations with the understanding that any entity that receives water for fire service shall pay all costs and fees associated with said service.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:05pm.

Jim Galloway, Public Works Director stated as you may recall at the last council meeting you entertained a request from Open Door Baptist Church for water service for fire sprinkler protection at their site, which lies outside of the city limits and outside the UGB. It was the determination of the Council that you would like to be able to provide such service in the very limited situations involving fire protection for schools and non-profit organizations. Since that appeared to be in violation of our current Municipal Code you directed staff to provide an ordinance amending the Municipal Code that would allow the extension of services in those fairly narrow situations. We have drafted an ordinance for your consideration, which would allow the extension of water service outside of the city limits and outside of the UGB in those particular circumstances where the recipient is a school or a non-profit organization and when the purpose is fire protection, either a fire hydrant or a fire sprinkler system.

Councilor Thomas stated my only concern is that of providing the water service without any kind of compensation for that availability of water.

Jim Galloway stated I think it would be our intent to charge a system development charge depending on the meter size that would be used to provide that water. That is typically how we would cover our cost for that slice of the infrastructure that is needed to provide that service.

Councilor Thomas asked would we be receiving any monthly fees in addition?

Jim Galloway replied there is a small monthly fee, which is based on the meter size, for the standby fire service.

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

No testimony received.

Mayor Thalsofer closed the public hearing at 7:10pm.

MOTION: Councilor Thomas moved to adopt the ordinance clarifying the extraterritorial extension of public works services, amending Section 12.01.110 of the Troutdale Municipal Code and declaring an emergency. Seconded by Councilor Kyle.

Councilor Thomas stated in the interest of public safety it makes sense to adopt this ordinance.

Councilor Kyle stated I would agree.

Councilor Ripma stated I am in favor of it. It is very limited and specific to an unusual situation. As I said at the last meeting they can provide the sprinkler service without this but we are encouraging them to annex into the city and I hope they do.

Councilor Canfield stated I am in favor of this, it is the right thing to do.

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

Motion Passed 5 - 0.

5. DISCUSSION: A discussion on suggested Measure 37 Ordinance amendments.

Councilor Canfield stated looking at the League of Oregon Cities' web site they have different cities ordinances on how to process Measure 37 claims. I ran across Albany's and what I liked about their process is they have an informal alternative claim procedure that allows claimants to negotiate with the city before a formal process is put in place. What I like about that is city staff, with final approval from Council, could take the minimum waiver necessary to satisfy the claim without having an all or nothing battle for solving the claim. The essential elements of the process are: 1) City staff could determine the minimum waiver necessary for the claimant to allow the development sought by the claimant. 2) Then the city staff could work with the claimant to that end while keeping as much of the rest of Troutdale's Code in effect as possible. 3) Then recommendations for the waiver would come before the City Council for approval. If the Council does not approve the waivers than negotiations would end and the claimant could still proceed with Troutdale's formal claims process. If we did decide to do something like this I would like to see us charge a minimal fee or no fee to use the alternative procedure which gives claimants incentive to negotiate with city staff. The stick that goes along with this is that I think if the formal claim is determined to be invalid we should charge the claimants the city's full cost incurred in processing the request including staff time, attorney fees, and appraisal fees. This could reduce or eliminate the city's burden of cost to process an invalid claim but also the risk could be avoided for claimants by using the alternative procedure. I have some questions for staff to look into regarding the claim process. I am wondering if our formal process is a little too complex and expensive. Maybe staff could look into whether this creates any financial risk to the city. Measure 37 does not

specify what a written demand for compensation is. A claimant could provide a minimal written demand for a claim, refuse to pay the fee and follow the procedure and then 180 days later, regardless of what the city decided, they could file a lawsuit in court and the city would be on the hook for the claimant's costs and attorney fees. The other concern I have that I would like staff to look at is Chapter 2.70.040(A) of the Troutdale Municipal Code which says that the Community Development Director could deny a formal claim based on incompleteness. However, according to the information on the League of Oregon Cities web site, the only claims that should be denied without merit are ineligible claimant or a claim that does not concern a land use regulation or is exempt from the measure.

Councilor Ripma stated I think you are bringing up an important point. Do you read Albany's ordinance as a way of establishing the extent of the waiver that the applicant seeks. To me it looks like it was focused on the waiver rather than the amount of money that they would seek in order for the city to compensate them. I wonder if it was one way or another that you read the Albany ordinance.

Councilor Canfield replied the reality of it is I do not think that in the event that Troutdale does get a claim that it would be in our financial means to pay compensation, although that would be an option. My intent is to get an alternative informal process to get the claimant to the table with the city staff to negotiate a minimal waiver.

Councilor Ripma asked does Albany's alternative process do a good job of assessing the merits of the claim? It sort of assumes that there is a valid claim is the way it reads to me anyway or at least it assumes that you are entitled to enter into negotiations for a waiver and then ultimately the council decides. Did you see some sort of provision in Albany's ordinance for assessing the merits of the claim? How did you settle on Albany as a good example?

Councilor Canfield replied the alternative claims process jumped out at me as I was reading through the various ordinances. I thought this was something that Troutdale could use to its advantage. Instead of an adversarial process for claims it would be great to have the claimant sit down with staff and figure out exactly what the minimum requirements are that they would need for a waiver if that is what they are asking for as opposed to compensation.

Councilor Thomas stated I personally think we should discuss this at a work session so that staff has a chance to do an evaluation and answer the questions that you have asked.

Mayor Thalhoffer stated I agree this should be analyzed by staff and have it put on the next available work session agenda.

Councilor Kyle stated I agree. We need to take a look at this because we implemented it quickly not knowing how Measure 37 was going to affect us. I would also like to take a look at the rulings that have been made and then take a look at our whole ordinance and perhaps we may need to adjust it accordingly.

Mayor Thalhoffer asked does the staff have adequate direction?

John Anderson stated to review Councilor Canfield has provided in his material the following two questions that he would like staff to look into: 1) Does Troutdale's complex and expensive formal claims process create a financial risk to the City? 2) Is there a risk to the City if the Director of Community Development denies a claim based on incompleteness? Then in a handout there is a section in Albany's ordinance regarding an alternative claims resolution. We could call the City of Albany and find out a little bit about what their thinking was and find out if they have actually utilized the process as some background information. Councilor Kyle suggested that we look at any rulings that have been made.

Councilor Kyle added and to see if there is anything in the rulings that would red flag a change in our ordinance.

John Anderson asked do you just want us to look at any claims filed with cities?

Councilor Kyle replied yes.

John Anderson stated maybe we could just get a sample, that could be a big piece of study work to do.

Marnie Allen, City Attorney stated Washington County has had the largest number of claims filed, so maybe we could just check with them. I have not heard a lot from other cities that have received claims.

John Anderson stated a number of counties have been receiving claims.

Councilor Kyle stated I am just concerned about cities.

Rich Faith asked for clarification, did we decide to limit the rulings or decisions to cities only? I am not sure that any cities have made any decisions, they may have but I am not aware of any, but a number of counties have made some decisions.

Councilor Kyle stated which I feel would be different than a city.

Rich Faith stated to my knowledge the rulings that have been made on county claims generally have to do with additional residences, additional subdivision of properties and restrictions to that.

Mayor Thalhoffer asked does the staff have adequate direction?

John Anderson replied yes.

6. RESOLUTION:

- 6-A** A Resolution requesting that the City of Portland delay consideration of any reorganization of the Office of Cable Communications and Franchise Management (OCCFMO) until the City of Troutdale has had an opportunity to

analyze the potential effect of such a change and opposing the reorganization until Troutdale has completed its analysis.

6-B A Resolution opposing the reorganization of the Office of Cable Communications and Franchise Management (OCCFM).

Mayor Thalhoffer read the resolution titles.

Councilor Thomas stated I am Troutdale's representative on the Mt. Hood Cable Regulatory Commission (MHCRC). I brought this issue to you at our work session last Tuesday and a lot of things have happened since then. We have attended one public hearing that involved two of the City of Portland Commissioners, Erik Sten and Sam Adams, and expressed the views of the MHCRC. The Mayors of the four cities have had a chance to talk about this and they have signed a letter similar to this. The study has been put in place, primarily by the Bureau of Revenue, to take the staff that the MHCRC pays for through the OCCFM in the City of Portland. Currently that particular office is on direct line with the City Council just as I am as a representative to the MHCRC in that I report directly to the Mayor; all the other Commissioners for the individual cities report directly to their Mayors. The challenge we have is when you are dealing with franchise negotiations, we are dealing with the largest cable company in the world, I believe they have roughly one-hundred million customers. They are a company that negotiates hard and we have what you would call a premier system with our cable access, access providers, MCTV, Portland Community Media and we have been able to do that because all of the six jurisdictions in Portland all ban together under one banner called the MHCRC. Some of the things we have accomplished since that happened is we are probably the only ones that have ever negotiated what is called a blended franchise where we brought cable, telephone, and cable modem/broadband internet all under one franchise. At this point what we call open access allows other providers to sell service on the cable modem, is ready to go to the Supreme Court. That all started here as a result of what the Cable Commission has done. We could not have done that without the staff that we have. We run on a \$360,000 budget. Out of that the City of Portland takes two-thirds and the rest of East County takes the remainder. One of the concerns is if it got split up and we weren't as effective by having that office change, what they want to do is move it down three or four levels of bureaucracy, which means they would no longer have a direct one to one relationship with their city council. In a large company where positions matter, titles matter and we need that authority to be able to go up against them. We are talking anywhere from \$90 to \$100 million in revenue that comes into the cable system per year which equates to roughly \$4 million in franchise fees. In addition to the franchise fees we collect some additional fees that really no one else in the Country collects and that helps fund our I-Net, which is connected to all of the libraries, schools, and most of the county offices which allows them to save a lot of money. So those are the things that we have been able to leverage as a result of having the staff that we have. People nationwide look to us for our direction. They use our franchises for models and they wonder how we did what we did. What we don't want to do is lose those things and that is the reason that I would like to see us ask the City of Portland to take more time and consideration of this before they go forward with the reorganization.

Councilor Ripma stated I am convinced. Option B is to just oppose it rather than delay it until we consider it. It sounds like it has been considered and there is good reason to oppose this

particular reorganization. Between Resolution A and B in our packet, which one do you favor?

Councilor Thomas replied I actually favor Resolution A. The reason being is right now this is just the results of the consultants study; it hasn't gone to the City Council for final approval. I wouldn't feel comfortable coming back as a city council from another city saying we disagree with what you are about to do, don't do it. I wanted us to come back with more of a lets work together and find out how we can preserve what we have.

Councilor Ripma asked has Gresham, Wood Village or Fairview adopted a resolution yet?

Councilor Thomas replied the two cable access channels have adopted something similar to Option B. In talking with the staff at MHCRC, they would prefer Option A. The letter that all of the Mayors have signed was similar to Option A. The consultants never bothered to talk to any of the outside people that the MHCRC represents. They talked only within the City of Portland. I would feel more comfortable saying that we disagree and that we need to work together to work out what is best, although I believe what is best is to keep it the way that it is.

Councilor Ripma asked is there any reason why they couldn't just leave things status quo, is that a realistic option? Should we favor status quo?

Councilor Thomas replied that is what we are pushing for as the Cable Commission. We believe that the process of collecting revenue is a lot different than the process of managing the franchises. When you start managing franchises you are talking about managing customer service, service quality standards, and making sure they comply with the rules of the franchise. If you move that to managers that aren't necessarily as interested in the management of the franchise as they are in how much revenue they can generate, the chances of those getting back to the City Council are much slimmer.

Councilor Ripma asked if that is the case it would seem that opposing this proposal is still the cleanest. I will defer to your knowledge, but asking for a delay to have an opportunity to analyze it is just making more work for the City of Troutdale when perhaps the answer is to just say no.

Councilor Thomas stated I guess what I don't want to do is just oppose this and put people on the defensive because that makes it much harder to come to a mutual agreement. We could still oppose it later.

Mayor Thalhoffer stated I don't have any questions because I attended the hearing Friday morning and stated our position that we need to keep the MHCRC as is. They were getting ready to take a position at the end of the month. Their consultant was making their report to the City of Portland but not to anybody else and we are all in this together. We all signed an Intergovernmental Agreement (IGA), the City of Portland, the four cities and Multnomah County. So, I said that is not the way you do business so they agreed that they needed to take us into consideration because we are partners in the IGA. I think we should follow what

Councilor Thomas is recommending, Option 6A. As soon as we can analyze the report we can take a position, and I think our position will probably be to oppose the reorganization of the OCCFM. We have received excellent service from the MHCRC and Councilor Thomas and others have done an outstanding job on the Commission over the years. As you may recall the Wall Street Journal called the MHCRC the mouse that roared. We need to keep this group alive and well. Councilor Thomas you need to make sure that we know when the appropriate time is for us to take the appropriate action.

Councilor Thomas stated I will keep you informed Mayor.

MOTION: Councilor Ripma moved to adopt Resolution 6-A as set forth in Agenda Item #6. Seconded by Councilor Canfield.

Councilor Ripma stated Councilor Thomas and the Mayor have both been alert as to what is going on here and they see a danger for the City and also for a very good program. I think it is time to slow this train down before it leaves the station. We at least need a chance to study it and Resolution 6-A accomplishes that and we can take a position on it at a later date.

Councilor Canfield stated I favor the motion because there is an IGA and we all should be on the same page and hopefully this resolution will open some ears.

Councilor Thomas stated I think this is a valuable protection not only for us but the subscribers as well.

Mayor Thalsofer stated I agree.

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

Motion Passed 5 - 0.

Councilor Thomas stated as a member of the MHCRC we thank you for your support.

7. STAFF COMMUNICATIONS

Jim Galloway, Public Works Director stated in this year's budget we appropriated money to do two undergrounding projects. Undergrounding on Hensley associated with Morgan Meadows Planned Development and through a contract with PGE undergrounding on 257th from Cherry Park Road to Stark Street. We have had some costs in excess of the budgeted amount associated with the Hensley Road project. A few days ago PGE opened bids to do the undergrounding on 257th and those construction costs bids, plus the PGE management fee, plus the cost for the remaining life value of some of the poles they will be removing considerably exceeds the amount that we had budgeted for the 257th project. Unless we can get some fairly dramatic reductions in the costs, and that doesn't appear to likely at this point, we may not be able to execute the 257th undergrounding project this fiscal year.

Mayor Thalhofer asked is this the way it is going to be every year, the cost goes up and every year we don't have enough money because the cost keeps going up? Are we ever going to be able to catch up to the cost or are we just fighting a losing game?

Jim Galloway replied I would like to be able to say that we are not fighting a losing game and eventually we will get there. This is the first year where we went out for bid. The magnitude of the difference is pretty substantial; it is in excess of a \$150,000 shortfall on the 257th project. I doubt that even another years worth of revenue would bring us to a point where we could afford it. I think we are talking at least a couple years of delay.

Mayor Thalhofer asked is there any possibility of renegotiating our agreement with PGE?

Jim Galloway replied I have made that inquiry, especially as far as the fee that they are charging to design and administer that contract. The initial response that I received late today is it doesn't appear that is an option.

Mayor Thalhofer stated I am very disappointed that PGE is not working better with us.

Jim Galloway stated I certainly don't want to put a lot of blame on them. They do have some costs that they have incurred and will continue to incur if they follow through on the project. As you recall the contract we entered into with PGE called for them to receive 10% of the construction cost, so that is a fairly hefty fee.

Mayor Thalhofer asked we have to pay for the remaining life of the poles?

Jim Galloway replied yes.

Mayor Thalhofer asked can't they use those poles someplace else?

Jim Galloway replied that is certainly something that we can discuss with them and perhaps if they do that then maybe there will be some savings there. I don't know if that will get us where we need to be.

Mayor Thalhofer asked don't you think they could use those poles elsewhere?

Jim Galloway replied yes I do.

Mayor Thalhofer stated I think that is something we could negotiate.

Jim Galloway replied we will certainly try to explore that and some other avenues.

8. COUNCIL COMMUNICATIONS

None.

9. ADJOURNMENT:

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

Meeting adjourned at 7:55pm.

Paul Thalhofer, Mayor

Approved April 26, 2005

ATTEST:

Debbie Stickney, City Recorder