

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

**Tuesday, October 25, 2005**

**1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE**

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

**PRESENT:** Mayor Thalhoffer, Councilor Gorsek, Councilor Thomas, Councilor Canfield, Councilor Kyle, Councilor Daoust, Councilor Ripma (7:05pm)

**ABSENT:** None.

**STAFF:** John Anderson, City Administrator; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Dave Nelson, Chief of Police; Marnie Allen, City Attorney; Debbie Stickney, City Recorder; Amy Pepper, Environmental Specialist.

**GUESTS:** See Attached.

**2. CONSENT AGENDA**

- 2.1 ACCEPT MINUTES:** June 14, 2005 Regular meeting and August 23, 2005 Regular meeting.
- 2.2 RESOLUTION:** A Resolution providing for budget transfers and making appropriation changes for Fiscal Year 2005-06. (Confluence Project)

**MOTION:** Councilor Kyle moved to accept the Consent Agenda. Seconded by Councilor Daoust and Councilor Gorsek. Motion Passed Unanimously.

**3. PUBLIC COMMENT**

None.

**4. INTRODUCTION:** Introduction of the Troutdale Hawkeye Football Team.

The Troutdale Hawkeye Football Team players, coaches and team mom introduced themselves to the City Council.

**5. RESOLUTION:** A Resolution adopting the National Incident Management System (NIMS).

Mayor Thalhoffer read the resolution title.

Chief Nelson stated this is a resolution to officially adopt the National Incident Management System (NIMS). After September 11<sup>th</sup> the President signed a Bill creating NIMS as part of the Incident Command System (ICS). The Federal Government is strong in their convictions about all public safety agencies across the Country being a part of NIMS and so they have tied it to any federal funding. They have required a few things from public safety agencies to secure any future Homeland Security Grants. One is that each jurisdiction needs to adopt a resolution that they are going to partake in NIMS which is outlined in Attachment A. The second piece of it is that they train all public safety staff in the NIMS System. We have completed the training for our department which was a 3-hour NIMS on-line course for all first responders. Earlier this year the Troutdale Police Department participated in applying for a Multnomah County Homeland Security Grant and we were able to secure some overtime funding to get our officers through the NIMS training and to get certified in NIMS. The second step for us is to have Council pass a resolution adopting the National Incident Management System (NIMS) which we would then use for any incident that we would have in Troutdale whether it is an ice and snow storm or any kind of natural disaster or a manmade disaster.

Councilor Ripma asked are we receiving any money yet?

Chief Nelson replied in April we received \$21,500 from the State Homeland Security Grant. About \$5,000 of that was for overtime. The balance of that was used to update our MDT's and radios in our vehicles.

**MOTION:** Councilor Thomas moved to adopt the resolution adopting the National Incident Management System (NIMS). Seconded by Councilor Daoust.

**Councilor Daoust stated working for the Forest Service I am familiar with incident command systems. I think during the last two hurricanes in the south, Katrina and Rita, the Forest Service sent around 250 people to implement NIMS and incident command systems. It is a well established good system to use in emergencies and natural disasters. It is good that we are implementing NIMS.**

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

**Motion Passed Unanimously**

**6. PUBLIC HEARING / ORDINANCE (Introduced 10/11/05):** An Ordinance amending Troutdale Municipal Code Chapter 15.12, Fire Code and Fire Life and Safety Regulations.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:14pm.

Rich Faith, Community Development Director stated this ordinance would amend Chapter 15.12 of the Troutdale Municipal Code which regulates fire life and safety. This would adopt, as the City of Troutdale Fire Code, the Oregon Fire Code 2004 Edition as it has been amended and is administered by Gresham Fire and Emergency Services. This is a housekeeping amendment to bring our Code up to date and it would make our fire life and safety regulations consistent with the City of Gresham which would provide for more effective fire service and delivery of that service. The recommendation would be to adopt the amendments.

Council had no questions of staff.

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 7:16pm.

**MOTION: Councilor Daoust moved to adopt the ordinance amending TMC Chapter 15.12, Fire Code and Fire Life and Safety Regulations. Seconded by Councilor Gorsek.**

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

**Motion Passed Unanimously.**

**7. PUBLIC HEARING / ORDINANCE (Introduced 10/11/05):** An Ordinance amending Troutdale Municipal Code Chapter 8.28, Nuisances, reducing the abatement period for some nuisances from ten days to three days and making other changes and amending Troutdale Municipal Code Section 10.12.100 relating to vehicle storage on streets.

Mayor Thalhofer read the ordinance title and opened the public hearing at 7:17pm.

Rich Faith, Community Development Director stated at the October 11<sup>th</sup> meeting I suggested several wording changes to the amendments as they were written. Those changes primarily dealt with notice procedures. The intent was to add language that would recognize a new mail delivery feature known as signature confirmation among the options that the city could use to ensure that mailed violations had been received. Those changes to Section 8.28.060 proposed at the October 11<sup>th</sup> meeting have been incorporated into the current version of the ordinance before you this evening. At the last meeting Council also had some concerns about the definition of personal property that appeared in the proposed amendments. The concern was that perhaps the definition was too broadly worded and that specific nuisances involving parking or storage of personal property on a public sidewalk might include trash containers that are set out for pick up. At the Council's request staff did take a look at that

definition and we have modified it and it now specifically excludes trash or recycling containers that are placed in the public right-of-way for pick up. Those changes appear in Section 8.28.020 on page 2. Council also questioned whether or not there should be a definition for the term right-of-way since we do speak about uses and prohibitions in the public right-of-way and therefore this version of amendments does contain a definition for right-of-way, and more particularly, for public right-of-way. Outside of those changes there are no further changes to the amendments that I presented at the October 11<sup>th</sup> meeting.

Councilor Kyle asked on page 2 of the staff report, line 5, is the word similar to broad?

Rich Faith replied we really need to look at what is in the code language not the language in the staff report. On page 6 of Exhibit A under Section 8.28.090(b) is where this particular reference is and what it says is, "only one notice for a particular type of nuisance will be provided to the same owner within a 12-month period". It doesn't even use the term similar or same it actually reads particular type of nuisance.

Mayor Thalhoffer asked could you give us an example.

Rich Faith replied if you are given a notice for an abandoned vehicle, lets say you have a vehicle that the license plates have expired, and you are notified that constitutes an abandoned vehicle and it needs to be made roadworthy to not be considered an abandoned vehicle. If you take care of that particular vehicle and three months later you have another vehicle parked that is not properly licensed or has expired plates then the idea with this language is the city would not have to send you another notice of an abandoned vehicle because you have been duly notified that this type of occurrence is a violation and constitutes an abandoned vehicle and you should know better. It wouldn't pertain to an entirely different kind of nuisance such as tall grass and weeds. However if you did get a notice of tall grass and weeds in April and you correct that then two or three months later you again have tall grass and weeds, we don't need to keep sending you a notice that this is a violation.

Councilor Thomas stated on page 4 number 9, you can have a hole of more than twelve inches wide without reasonable safeguards, I would like to recommend that we change that to six inches. The reason is I think the hole that Jessica fell into is was less than twelve inches. I don't want to see something like that happen in Troutdale. A four foot hole twelve inches wide is big enough to trap a baby or a small animal easily.

Mayor Thalhoffer asked the newspaper dispensers, could you explain that change?

Rich Faith replied we are proposing to add an new category of a specific nuisance in Section 8.28.070(A)(24) which would be placement in the public right-of-way or on a public sidewalk of a newsstand, dispensing machine or any similar device intended for dispensing materials, including, but not limited to, newspapers, magazines, and advertising publications. The important thing to remember about this is that we are not prohibiting these in the city, they can still be placed on private property or within any of the commercial shopping centers or grocery stores, but where they can not be placed is on the public sidewalk in the public right-of-way.

Councilor Canfield asked newsstands are currently allowed in the right-of-way?

Rich Faith replied yes. We really don't have an effective way to deal with these currently.

Councilor Canfield asked Jack, can you give us an example of the problems you have seen with the newsstands in the right-of-way?

Jack Hanna replied we have had a number of complaints on the public sidewalks in particular. The only ordinance that we have right now to enforce them is the storage on public property. Prior to changing this ordinance the storage ordinance was in Chapter 10 and the only way to enforce that part of the ordinance was to ticket the offending vehicle three times wait for ten days and tow the vehicle from the public right-of-way after three unpaid parking tickets. I found it very difficult to put a parking ticket on the dispensing machines, so these fell through the crack because we couldn't ticket them but they violated the storage on the public right-of-way. I was fielding complaints from people who live in the neighborhoods who would have to pick these publications up out of their yard because they blew over on the sidewalk. The argument I received in the Central Business District was we can't put a sign on the sidewalk but its okay for a newspaper dispenser on the sidewalk. They felt that was a double standard.

Councilor Canfield stated I was looking at the definition of nuisance in this ordinance and it says it is any unsafe, annoying, unpleasant or obnoxious condition or practice causing or capable of causing an unreasonable threat to the public health, safety and welfare in the circumstances, but does not include noise. This ordinance also says that we can pretty much pick what we decide is a nuisance but with the general definition, how is it a nuisance having a newsstand on a public sidewalk that is not tipped over?

Jack Hanna replied you may be forced to step off of the curb onto the street into the traffic to walk around the machine on the left side, if you walk around it on the right side then you have to step off of the sidewalk into the grass area and if there is a building there you are obstructed.

Councilor Canfield asked have you had any complaints from people regarding what you just said?

Jack Hanna replied yes. Most of the complaints were that they had to walk around them by stepping into the street or step off of the curb to go around them.

Councilor Canfield asked can you give us an idea of when you received these complaints, how long ago and how often?

Jack Hanna replied I received a number of them in a short period of time until we got the offenders to move them. The Oregonian and the Outlook moved their machines voluntarily after they were notified. There was a newsstand in front of the Italian restaurant and they set it back off of the public right-of-way onto the private property. So those were dealt with. The only one that I haven't been able to get cooperation from is the apartment rental boxes that are set next to the streetlight pole at 257<sup>th</sup> and Stark.

Councilor Canfield asked the complaints that you received from the downtown area, did they come from the merchants?

Jack Hanna replied a couple of them were from merchants and some were from pedestrians downtown.

Councilor Canfield asked do you keep record of all of these complaints that people make about these sorts of things?

Jack Hanna replied the complaints that I respond to I do.

Councilor Canfield stated I was looking at the minutes from the Citizens Advisory Committee meeting, and Rich you mention in the notes that the City received a few complaints by downtown merchants that they don't want to see newsstands next to the curb and you also said the reason why they don't want them is that they wondered why the Oregonian could conduct business on the sidewalk but the merchants couldn't put signs or tables there. Jack, is that the kind of complaints that you received about the machines downtown?

Jack Hanna replied yes. The merchants questioned why newsstands could be put out there but they couldn't put a portable sign on the sidewalk.

Councilor Canfield stated later in the notes it says that only people who complained about the stands themselves have been the downtown merchants. Is that correct? Are the notes from the Citizens Advisory Committee meeting correct or is that incorrect?

Jack Hanna replied I have received complaints from people walking on the sidewalk and they complain about these machines obstructing the sidewalk. Those kinds of complaints usually come to me and I deal with them. The merchants have a tendency to complain to Rich.

Councilor Kyle stated Councilor Thomas brought up the issue of the decrease in the size of the hole, and he mentioned for small children and animals. Do we need to include specific language that would include animals?

Mayor Thalhoffer stated if someone wants to include that in the motion they can.

Councilor Thomas stated I was using that as an example. A six inch hole is a six inch hole.

Councilor Kyle stated I saw a Chihuahua last night that would fit into a twelve inch hole.

Councilor Thomas stated it would be easy to trip in it and break something also.

Councilor Kyle stated my point was, lets say somebody did lose a Chihuahua in the hole but it doesn't say an animal in this ordinance, is that an issue if they complained to the city?

Marnie Allen, City Attorney replied if we just change it to six inches or more, then the code goes on to say without reasonable safeguards or barriers to prevent them from being

accessible to children. You could put up a barrier that made it not accessible to children but accessible to small domestic animals. I would recommend that if you want to add animals that you clarify and say small domestic animals, so the barrier keeps them out.

John Anderson, City Administrator asked is there any standardization in the trenches or holes that are dug such that if we reduce it to six inches we will get a lot of complaints from contractors because the standard width may be twelve inches? I don't know if there is a standard, I am just asking the question before we possibly make this change.

Jack Hanna replied there is no standard. It depends on the type of the hole they are digging for. If it is a water line it is a narrow trench. If they are digging to put in a catch basin or an overflow trap you have a big square hole. The standard is what triggers the point where they have to protect it. If they have a hole that is twelve inches deep they are going to have to put something around it while it is open.

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

No testimony received.

Mayor Thalhofer closed the public hearing at 7:49pm.

**MOTION: Councilor Ripma moved to adopt the ordinance. Seconded by Councilor Gorsek.**

**FRIENDLY AMENDMENT: Councilor Thomas asked if Councilor Ripma would accept a Friendly Amendment making a change to Section 8.28.070(9) from twelve inches or more to six inches or more and adding to the end of the sentence, and small domestic animals or domestic animals.**

**Councilor Ripma stated I would like to debate the question about the animals. I don't mind reducing it to six inches. Safeguards or barriers to prevent a pit or hole from being accessible to domestic animals I think it is going to far. Dogs can dig and cats can dig.**

**Councilor Thomas stated you are also talking about a hole that is more than four feet deep.**

**Councilor Ripma stated I realize that.**

**Councilor Thomas stated they would have a better chance of digging out of it.**

**Councilor Ripma stated yes we might end up losing a small domestic animal but I doubt it. Does anyone else have any concern about the animals? I will accept it if that is the general consensus. I know Councilor Thomas and Councilor Kyle want it; does anyone else want that added?**

Mayor Thalhofer stated I think it is right on.

Councilor Gorsek stated it is fine with me.

Councilor Ripma and Councilor Gorsek accepted the Friendly Amendment.

Mayor Thalhofer asked Councilor Ripma to restate the motion with the friendly amendment.

**MOTION:** Councilor Ripma moved to adopt the ordinance with a change in 8.28.070(9), the enumerated nuisances, as follows: 1) reduce the top width from twelve inches or more to six inches or more; 2) in addition to it saying “safeguards or barriers to prevent them from being accessible to children”, it would read, “safeguards or barriers to prevent them from being accessible to children and domestic animals. Seconded by Councilor Gorsek.

Councilor Ripma stated I think staff has justified the changes to the nuisance ordinance that will make it more effective.

Councilor Gorsek stated I favor it for the same reasons.

Councilor Canfield stated I am going to vote against this primarily because of the change to add the newsstands as a nuisance. I don't think the evidence is there that the average everyday vanilla newsstand on the sidewalk is going to be an unreasonable threat to public health, safety and welfare. It is telling that the complaints have been driven by the downtown merchants who are more concerned about why do they get to do business on the sidewalk when they don't get to have their signs there.

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

**Motion Passed 6 – 1.**

**8. PUBLIC HEARING / ORDINANCE (Introduction):** An Ordinance modifying public contract and purchasing procedures and amending Chapter 2.24 of the Troutdale Municipal Code.

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

Jim Galloway, Public Works Director stated we bring this proposed change to the public contract and purchasing procedures ordinance to you primarily to take advantage of a change made by 2005 session of the state legislature. During that session the legislature enacted SB 477 which amended the state code and increased the threshold value of a public



works project for which the prevailing rate of wage must be paid from \$25,000 to \$50,000. When we put together our purchasing and contracting ordinance for the city, for the sake of ease of administration and consistency for those who do business with us, we try to use the same benchmarks for several things. In this particular case we use the \$25,000 benchmark as the demarcation between an intermediate procurement and a formal procurement, when you go from non-competitive to competitive on personal service contracts, and when a bid security or performance and payment bonds would be required. We are recommending that we make the same adjustment to those items in the city code as the state did to the prevailing wage in state law. In addition we are proposing a couple of other changes. First of all for clarity purposes we want to state that the thresholds that are listed in the code for small, intermediate and formal procurement apply to construction, public improvement, and public works projects as well as to the procurement of goods and services. We have always treated it that way but there is a little bit of doubt as to whether the definition of goods and services in the state law covers those and we just wanted to clarify that. We want to correct an item that we had misapplied in the last version of the code. State law allows the substitution of a cashier's check or certified check in lieu of a bond for performance bonds but not for payment bonds. My quick reading of that some time ago thought that the language applied to both. We propose to correct that in the language in our code. We also recommend inserting a section that clarifies that we would use the definitions in our code that are in the ORS. We also have come up with a definition for "compatible" which is not in the state statute that we are proposing to add to the city code. Two additional items have come to my attention since I have prepared the staff report that I would like to offer for your consideration. The first would be in Attachment A on page 3 in Section 2.24.100, in paragraph B the first line reads, "The City Council reaffirms that the following are exempt from the requirement of subsection A of this section", that should read, "from the requirements of this Chapter 2.24". The second proposed change that is not in the documents that you have in front of you that we would recommend would be a clarification section simply saying that if we haven't specifically addressed an item in our code we would follow state law. We have always understood it to be that way but think that it is a good idea to spell it out.

Councilor Daoust stated your fiscal impacts talk about bonding, but the state legislature talks about prevailing rates. Would the city end up paying more for contracts?

Jim Galloway replied it is the other way. The change in the state law has to do with the prevailing rate of wage. It increases the threshold from \$25,000 to \$50,000. Under current law, any project for a public work where the price of the contract is \$25,000 or more had to pay the prevailing rate of wage which oftentimes is higher than the standard. That limit as of January 1<sup>st</sup> would increase to \$50,000 so there would be fewer jobs required to pay what might be perceived as the higher rate.

Councilor Gorsek asked so is this supposed to be a cost saving measure?

Jim Galloway replied that is not the reason we are proposing it. There could be some very minor cost savings but that is not the reason for introducing this change. The reason is to try to align as many things as we can with the same cutoffs that are in the ORS. It makes it

easier and less likely for us to make a mistake in implementing it and I think it makes it a little clearer to those that we deal with like contractors, developers and engineers.

Councilor Gorsek stated I guess I am a little leery of going away from a bid process. It seems to me that perhaps the state's motivation may be different than ours. The whole idea of increasing the thresholds it seems like on one hand it makes sense for us to want to be in line with the ORS but I am just concerned that this is a way to dodge around formal competitive solicitation, not on your part but in general. I don't understand why the state did this.

Jim Galloway stated the items that we are proposing to change the state didn't ask for a change. The one thing they changed isn't covered in our code because we refer to the ORS for that. In some of the areas that we are proposing a change, for instance in the threshold from intermediate to a formal procurement, under state law for goods and services the threshold is \$150,000 for construction services other than for bridges, highways and other transportation projects which the threshold is \$100,000. We are going to stay under the max allowed under the law, but you are correct implementing these changes would increase the level at which we would have to go to formal bids as opposed to just getting three quotes.

Councilor Ripma asked do formal bids cost the city something?

Jim Galloway replied yes. They require a formal advertising and we typically run ads in both the Gresham Outlook and the Daily Journal. Standard bids in the two publications that we typically run about three times probably costs about \$1,000. There is a time factor built in as well and you have to take into account the publishing dates and you have to publish so many days before you can open the bids, so generally it lengthens the process.

Councilor Ripma asked the change to the cashiers check in lieu of bonds, I didn't follow that change. What was wrong with what we had?

Jim Galloway replied the current language in our code indicates that when you are required to submit a performance bond or payment bond you may submit a cashiers check or certified check in lieu of either bond. An issue came up a few weeks ago where some questions were raised about that issue and it caused us to go back and reread the state statute and in doing so we realized that the ability under the state law to substitute the cashiers check or certified check did not apply to both kinds of bonds, it only applied to the performance bond but not to the payment bond. So I am modifying the language in our code in Section 2.24.240B to reflect that it only applied to one not both.

Councilor Thomas asked in regards to the difference between the \$25,000 and the \$50,000, do you know about how many contracts that would affect in a given year?

Jim Galloway replied within in my department we probably have about six to twelve procurements that fall within that range. I am not sure citywide what that number is but my guess would be that we probably have the majority of them.

Councilor Thomas asked the statement that the city may negotiate with the lowest bidder, sometimes the lowest bidder is not necessarily the right person. Do we have any options there if the lowest bidder really isn't qualified to do the job?

Jim Galloway replied yes. If it is competitive bidding you are required by law to award to the responsive, responsible, low bidder. Those criteria are defined in state law. There are situations where someone might be the apparent low bidder but if they don't meet those requirements they could be disqualified. Secondly, if you have competitive proposals generally speaking, price is not your most important factor. You advise prospective bidders on what you are going to evaluate on and the weight you are going to give, generally price is either not a consideration or if it is a consideration it is only one of several, so you look at the entire package.

Mayor Thalhoffer stated if it is under a certain threshold then you get three quotes. Could you explain that?

Jim Galloway replied there is what is termed a small procurement and that is where the value of the item if it is a good or service or the value of the project is under \$5,000. Under both state law and our code you can, but you don't have to, go out to a particular person or firm that can do that work and hire them. I think that recognized the fact that you could spend a lot of money on a small project if you went through a full scale competitive process. The second step is referred to as an intermediate procurement and generally speaking those levels currently are between \$5,000 and \$25,000. The proposal would be to change it so that the lower limit is \$5,000 and the upper limit it \$50,000. In that situation the requirement is to go to firms or contractors and receive at least three quotes from firms, evaluate those quotes and if you are looking for just plain quotes you would take the lowest quote and award the bid. We have done that different ways depending on how complicated the work is and how critical it is to get moving on it right a way. Generally speaking we would draw up a very rough scope of work and send it out to several firms and give them a week or so to respond and then evaluate the responses we receive. If it is a very simple or if time is of the essence we sometimes pick up the phone and describe the work over the phone and give them a few hours to put together a quote and respond to us. Either way we do it we document it. The objective is to get at least three quotes. There is a provision that if you can't find three folks that want to respond to it, you can accept less but you have to document your efforts.

Mayor Thalhoffer stated the danger in this is favoritism. You could send the information only to those folks that you want to send it to. How do you answer that kind of an argument?

Jim Galloway replied first of all in the time that I have been here I don't know that we have ever had a contractor complain and say how about me. Frankly it has been more of the other side, because we generally do some pretty small jobs that aren't really worth it to most contractors, we have a lot more difficulty trying to get anyone to bid sometimes. An example would be some work that we are having done at the shop right now we went out to bid four times and didn't get anyone to respond to the process. We have set up a process where we have asked contractors who like to do small projects to get on a small projects list that we maintain so that we have a list of interested folks to contact. Even with that it is not unusual to call around to several of those firms and find out that they are too busy or the job is too

small. I can certainly recognize that theory Mayor where someone may feel that it is an impediment to competition, but quite frankly I don't think it has proven to be that in practice.

Councilor Thomas asked you mentioned maintaining a list, when you normally send out the scope of work, do you just pick three or do you send more than that and just evaluate what comes in?

Jim Galloway replied we have tried to identify on the list the general areas of work so if we have something in a particular area we try to send it to all of the firms that have indicated an interest in that particular kind of work.

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

Mr. Weyhrich, owner of Tube Specialties in Troutdale stated we are a competitive bid company throughout the United States and internationally. I think it is a gross injustice to not go out for competitive bid. I think what I heard is they are just trying to make it easy. You can see this in Multnomah County and the City of Portland where they have the same thing and they never go out to bid on anything. Look at Stark Street that has been closed for four months. If we had a competitive bid on that they would have been in and out of there and they would have been done and we would be driving up and down that street. I think, in my 43 years in business, that you have to stay with competitive bids on all sizes of projects.

Mayor Thalhoffer closed the public hearing at 8:04pm and stated that there will be a second public hearing on this issue at our next meeting.

**9. REPORT: Consideration of a Citizens Advisory Committee recommendation for funding sidewalk repairs.**

Rich Faith stated in February of this year Council held a work session on a suggested tree canopy ordinance that was being proposed to replace our current street tree program. This particular ordinance was jointly developed by the Citizens Advisory Committee (CAC) and the Parks Advisory Committee (PAC). They worked on this over quite a number of months. The ordinance that they proposed was partially intended to address citizen complaints that the Council had heard about having to repair sidewalks that have been damaged by street trees. The idea is that this would be an alternative approach to our current street tree program and that it would not impose a requirement necessarily for planting street trees but would still maintain a minimum amount of tree canopy within the city. In addition, as part of this ordinance, the advisory committees also proposed a funding mechanism that would assist eligible residential property owners in repairing their damaged sidewalks, particularly those that are damaged because of adjacent street trees. In evaluating the recommendation of the advisory committees the Council decided not to go forward with the tree canopy ordinance. However, you did express a desire to continue to look at the issue of assisting residential property owners in the cost for repairing sidewalks damaged by street trees. The Council asked the CAC to look at that question again and to come back with a recommendation for a funding mechanism that could be used to pay for sidewalk repair in those cases where a sidewalk has been damaged by a street tree planted by the city. The CAC took this question up in April and June of this year. They discussed a number of possible funding mechanisms

that could possibly pay for sidewalk repair. There were in fact nine different kinds of funding mechanisms that they looked at that are listed in my staff report. After reviewing the different funding alternatives they decided what they would like to recommend is that the city budget \$15,000 each year. The money would be used to assist property owners in repairing sidewalks that had been damaged by city planted street trees. The primary source of the funding for this program would come from the bike paths and trails fund and if that particular fund did not have sufficient money to meet the \$15,000 appropriated then the shortfall would be made up out of the city's street fund. These are two existing funds that the city has, the bike paths and trails fund is a special revenue fund that takes 1% of the state gas tax that is distributed to local jurisdictions that is dedicated to bicycle paths and pedestrian trails. In the current fiscal year this fund is expected to have about \$8,800. \$2,000 of that is a carryover from last year and we are expecting about \$6,800 this year from the gas tax revenue from the state. The street tree fund is principally used for the operation, maintenance and repair of the city's street system. This fund is almost entirely dependent on the state gas tax revenues. In this current fiscal year the fund is expected to have nearly \$1.4 million, however, that doesn't tell the whole story. Approximately half of that money is budgeted for expenditures towards street maintenance and repair. The CAC, in discussing this matter, fully recognizes that \$15,000 is probably not going to fix all of the damaged sidewalks. They purposely selected an amount of money that is not going to do that. I think the understanding is that the city is offering assistance but is not going to be able to pay for all damaged sidewalks. This would just be a limited amount of money that would be made available to assist basically on a first come first serve basis each year.

Councilor Kyle asked do you have any idea of how many problems the city has identified with street trees currently and notified the adjacent property owners that they need to be repaired.

Rich Faith replied in terms of the magnitude of the problem, the best information that I can go on is the inventory that the parks department conducted a couple years ago and it was determined that there were over 1,100 sidewalks that had an uplift problem. We can't be certain that the uplift problem was caused by a street tree; it could have been from a tree on the private side of the property that caused it. In terms of the number of adjacent property owners that we have notified that is really only done on a complaint driven basis so there are very few property owners that are actually notified each year about needing to repair their sidewalk. I think customarily, from what I have heard from the public works department who actually is responsible for overseeing the sidewalks, they generally get four or five complaints a year and follow that up with notices to the property owners.

Councilor Kyle asked can you give me an estimate of what it costs to repair the sidewalk and the tree?

Rich Faith replied that can vary quite a bit depending upon the length of the sidewalk segment that we are talking about and how big the tree is. I think it is reasonable to assume a minimum cost of probably \$800 to \$1,000 and it could easily double in difficult situations.

Councilor Daoust asked my questions revolve around having some criteria for funding multiple requests once the word gets out that we have funding available for sidewalks. Under

Option B, would criteria for funding be part of what you are thinking about as policy and procedure, or what do you mean by policy and procedure?

Rich Faith replied what I mean by that, assuming that we have \$15,000 available and as you say the general public finds out that there is money available to assist in this I guess some of the questions are: Is this going to be full ride assistance? A citizen who has been notified of sidewalk damage and is required to make the repairs, is the city talking about paying the full amount, or are we talking about assistance at a certain level, or is it dependent upon income, or is it available to anyone and everyone regardless of income level. Once the money is used up does that mean that anyone else that has a serious sidewalk damage problem is basically exempt or the requirement for them to fix that has been waived and that they are put on a waiting list for next year. There are a lot of questions that come to mind in terms of how we are going to carry this out.

Councilor Daoust stated you are building a list of criteria as you speak and there is probably more. I am wondering did the CAC consider the city determining which sidewalks need to be repaired and the city designating \$15,000 worth of repair on ten projects?

Rich Faith replied that was not discussed.

Councilor Daoust stated you mentioned first come first serve and I can see where that would not fit some criteria. I assume when you said that, that is not going to be the only criteria?

Rich Faith replied to be honest we haven't had much of a discussion internally on how it would be administered.

Councilor Gorsek asked is there any other city around here that does this, in terms of paying people to fix their sidewalks?

Rich Faith replied I haven't done an extensive survey but I am not aware of any local jurisdictions but I have read some articles of communities around the nation that have allocated some money towards sidewalk repairs but it is usually on a limited basis.

Councilor Gorsek asked so this would be unusual?

Rich Faith replied that is a fair statement.

Councilor Gorsek asked in terms of the funding mechanism, they suggest using the bike paths and trails fund and the backup to be the street fund, what was the theory there? Was it just that bike paths and trails are kind of related to this?

Rich Faith replied right. The feeling was that money is already earmarked for pedestrian related improvements so it seemed to be logical to use it. As far as the street fund the idea is that the street fund technically can be used for any kind of transportation, I say that cautiously, with the understanding that it can be used within the public right-of-way for transportation related improvements and I assume maintenance.

Councilor Gorsek asked is there any possibility of just using the street fund and leaving the bike paths and trails?

Rich Faith replied no, I think most of the focus was on the bike paths and trails and the street fund being secondary.

Councilor Gorsek stated you point out that basically we wouldn't have money for new sidewalks and bike and pedestrian paths if we were to do this?

Rich Faith replied that is correct.

Councilor Gorsek stated so basically we would be trading one for the other.

Rich Faith stated we would be using it for repair and not for new construction.

Councilor Gorsek asked and we still have a need for some new sidewalks, is that correct?

Rich Faith replied there are still some gaps.

Councilor Gorsek asked how did they arrive at the figure of \$15,000?

Rich Faith replied I don't have a good answer to that. I think it was just a figure that was thrown out and they latched onto it. I don't recall that there was any rationale for that particular number.

Councilor Gorsek asked was there any discussions with the CAC about the policies and procedures?

Rich Faith replied no. They did not feel that was their charge. They responded very specifically to the task that was given to them which was to come up with a recommendation for a funding mechanism, don't design the program.

Councilor Gorsek asked we had talked last time about the alternative concepts like greenstreets; did that come up in the CAC's discussions?

Rich Faith replied yes, I do recall one member in particular talked about maybe needing to start steering away from hard surface sidewalks and go to more soft surface sidewalks like trails. I think without specifically mentioning greenstreets, this individual was familiar with some things coming out of Metro dealing with reduced runoff and so forth. There was some discussion about that but it didn't really materialize into any thing specific.

Councilor Ripma stated you said that sidewalk repair is generally the responsibility of the adjacent property owners in most jurisdictions. Do you know why?

Rich Faith replied I guess the general notion is that the sidewalk out in front of a piece of property should be maintained by the property owner adjacent to it perhaps just as a civic responsibility. I am just taking a stab at that. I don't know the history of it.

Councilor Ripma stated it is so universal that there must be a rationale. It is never popular.

Rich Faith stated another possible explanation I can offer is customarily sidewalks are not built by the city but are built by the developer. For example in a residential subdivision at the time the home is built is when they pour the sidewalk in front of it. I think the notion could be that it goes hand in hand with the home construction.

Councilor Ripma asked how far would \$15,000 go in a program of repairing sidewalks from street tree damage with staff time to administer the program?

Rich Faith replied I hadn't even thought about whether some of that money would be used for the administrative cost.

Councilor Ripma stated there would be administrative costs involved.

Rich Faith replied certainly. I just didn't think about those costs being taken out of that source of funding. That is all up for discussion. I was just assuming that money would be used strictly for the sidewalk repair or tree removal.

Councilor Ripma stated it stands to reason that there would be staff time needed to administer this program. People would come in and apply and someone would have to go out and evaluate it. In the absence of reimbursement from the funds appropriated, the staff would either do this or they would do the jobs they currently do or we would have to hire more people. It clearly would be more work for the staff.

Rich Faith stated I think it is fair to say that by establishing a new program there are costs related to that program aside from the amount of money you are going to make available for the repairs.

Councilor Ripma asked if the city were to adopt something like Councilor Daoust was talking about where the city just identifies which sidewalks are going to be repaired, for the rest of the repairs that didn't get done that year would the idea be that the adjacent property owner would be responsible for the repair? Did the CAC discuss this? How would the rest of them ever get repaired?

Rich Faith replied as I said, I think they choose not to venture there. They stuck strictly to the assignment that was given to them.

Councilor Ripma asked how do you determine that it was a city required street tree that did the damage to the sidewalk? Is there anyway to do that?

Rich Faith replied there is probably no absolute way. When the city has done the planting of the street trees we have used a list of selected street trees. I guess if the culprit tree is one that is off of a list that the city has used and it is the same as all of the other trees in the development, then it would probably be fair to say that it is a tree that the city planted. There are probably going to be cases where we could probably get into a disagreement with the



property owner as to whether or not the city planted the tree, the developer planted the tree, or the current or previous property owner planted it. There is no full proof way of knowing.

Councilor Ripma asked if we go forward with this, I wonder if it would be possible to research the rationale behind requiring property owners to be responsible for the sidewalks, is that possible?

Rich Faith replied I can attempt to find that out.

Councilor Thomas asked in regards to the impacts on the street repairs as far as taking the \$15,000 out of either the street or trail fund, what impact would that have on future of street repairs? I'm sure that we have things that need to be done in terms of street repairs that probably exceed what we have coming in overall.

Jim Galloway, Public Works Director replied I don't have an absolute answer for you. The best way to put it is that the street fund, through the gas tax money, brings in approximately \$700,000 a year. Personnel costs, overhead costs, administration costs, materials, vehicles, the shop, utilities and all of those things total about \$600,000 a year. So the street fund has about \$100,000 a year to spend on projects. To do a decent overlay program probably would cost something in excess of \$150,000 per year once our streets come of age so that we will need to do this on a periodic basis. The bottom line is that we are probably going to start experiencing a shortfall in the street fund of about \$50,000 a year assuming there is no major street reconstruction project that has to be done. We currently have a balance of about \$600,000 to \$700,000. So the answer to your question is that we if spend \$15,000 a year out of the street fund for sidewalk repairs, it becomes a shorter period of time before we run out of money in the street fund.

Councilor Thomas asked since these fall under a nuisance complaint which means we send them a notice and they have so many days to repair it, how would we get around that?

Rich Faith replied we don't treat these as a nuisance. These are handled by the public works department as part of the public right-of-way.

Jim Galloway stated the procedure is somewhat similar. It is complaint driven. We only respond if we have had a complaint. We go out and take a look and verify that there is a problem and we send them a notice giving them so many days to make the correction.

Councilor Thomas asked regarding the bike and path fund, what portion of that is encumbered for future projects? I am sure that you have a list of things that you want to do that you are waiting for enough funds to do the projects.

Jim Galloway replied we could spend all of that and a lot more. As Rich explained that fund gets 1% of the gas tax money which is \$6,000 to \$7,000 a year. You can't do very much in the way of new sidewalks at that amount. What we have done is generally do little or nothing with that money for several years until it accumulates enough money to do a significant project. There are certainly plenty of areas in the city where there are not sidewalks and I think it would certainly be a benefit to pedestrian traffic to have sidewalks.

Mayor Thalhoffer stated the last time we talked about this I recall that we had a street tree opt out plan where folks who didn't want street trees could then contribute money into a fund that would provide money to fix some of these sidewalks. Do you recall that?

Rich Faith replied my recollection isn't exactly the same as yours. It is correct that we have modified our street tree program so that a property owner in a newly built home is not required to take a street tree. The developer is required to pay into the street tree fund, which means a tree has been secured for that piece of property. Once the home is built and someone is living in it then they are contacted and informed that there has been a street tree purchased for that lot and they are asked if they have a preference for where they would like to have it put. If they simply do not want a tree put in the landscape strip then they are given the option of putting it in their yard. If they don't want that then the city has the option of planting that tree in a nearby public openspace. The statement you made that if they didn't want the tree that the money would be used for sidewalk repair. That is a segment of the tree canopy ordinance that was brought to the Council back in February. Under the proposed tree canopy ordinance every developed piece of property was going to be required to either retain or attain a 30% tree canopy. The options available would be if you already have that then you develop a site so that you maintain or retain at least that many trees, or you plant additional trees, or the third option is you pay for trees that would get you up to the 30% and that money that you would be paying in would go into a tree fund and the recommendation of the advisory committees is that a certain portion of that money would be set aside and earmarked for sidewalk repair. That was all part of the tree canopy ordinance which the Council opted not to go with.

Mayor Thalhoffer asked how difficult is it to determine whether or not a tree is a city street tree or if it was planted by the homeowner? It wouldn't be that hard would it?

Rich Faith replied it wouldn't be that hard for the newer subdivisions. If they were built within the last ten years it is a pretty fair bet that the city planted the tree. It becomes more difficult for those areas developed prior to 1994 because some of those trees may have been planted by the city. Even if the city had planted the tree, many times the property owner has since removed that tree and planted a different tree.

Mayor Thalhoffer asked wouldn't it be a good idea for us to refer this back to the staff to develop some criteria?

Rich Faith replied that is precisely why I would recommend that if you want to go forward with this recommendation of the CAC using these funding sources to implement this program, that we wait until next fiscal year to give us ample time to try and work on the policies and procedures that we would be using to administer this program.

Councilor Canfield asked what kinds of things might limit staff if the staff is spending time administering such a program, what other things could they be doing with that time?

Rich Faith replied everything they do now.

Councilor Canfield asked it could be a significant amount of time to administer this program?

Rich Faith replied I believe so.

Councilor Canfield asked lets say we start this program and we start funding street tree repairs, what happens when someone breaks a leg on a damaged sidewalk that could have been repaired but they didn't get on the list? Who is liable?

Marnie Allen, City Attorney replied it depends. There is a defense to tort liability for the city when the city has to make decisions about how it is going to spend a limited amount of money and in making that decision decides to forego a project that results in an injury. Assuming that there are no more funds available to repair the project and the Council has decided that is all they are going to spend we would have a defense available. That doesn't mean that the city wouldn't be named in a lawsuit and it doesn't mean that the city's insurance wouldn't settle. There are all kinds of factors.

Councilor Canfield asked what if we pay for a sidewalk repair and that repair for whatever reason was defective or there is subsequent damage by the tree, would that make the city any more or less liable?

Marnie Allen replied it really depends on the role we play in that repair and whether or not we had knowledge of the defective design that we knew about or should have known about and there is some kind of legal duty then on our part to have done it differently.

Councilor Kyle stated before I would want to consider using funds from this source I would want to have an inventory of the areas currently needing sidewalks that we would be taking away from. I would want to know if those sidewalks are in areas that would not be covered by future property development. I have a lot of thoughts on criteria and I have some personal knowledge of somebody that was caught in a difficult situation that had just been laid off and was given notice to repair her sidewalk in a short period of time. That was a definite hardship on her. In a case like that something should be written into the criteria. I think it has to be based on need. I am not sure that this is our answer. I would not support this tonight without a lot more information.

Councilor Daoust stated because it is a public right-of-way we want to deal with it and there is some unfairness issues here that we want to deal with. There are two ways we can deal with it. Option 1 would be sort of a competition. You have people apply and you have a set of criteria and you go out and evaluate the projects and you prioritize the project and you fund the highest priority projects with the \$15,000. That is one way we could go. We would have to develop the criteria; we would have to spend a lot of staff time deciding how we are going to fund \$15,000 worth of sidewalk repair. The second option is you take the same \$15,000, you could use complaints if you want, but just have the city determine which sidewalks need repair. If the city just determined which sidewalks needed repair you don't have to spend a lot of staff time holding a competition. The city would just determine which were the worst sidewalks, and it could be based on complaints, but just go out and fix the four to five per year. That is a simpler process. The way I am thinking, if we want to really do something and deviate from this universal law that Councilor Ripma is so concerned about, and actually

pay for some sidewalk repair, we could just decide to have the city pay the total bill on a small number of projects every year determined by the city and not worry about cost share or who is going to pay how much or how worthy they are or how low their income is. Personally I like this option if we are going to get into the sidewalk repair business.

Councilor Gorsek stated I like that option as well although I don't like the idea of taking the money from the bike path and trail fund. As usual we are constrained in terms of money so we are trying to dig some up from somewhere. I would not encourage gutting one program to fund another. While I like what Councilor Daoust said I don't agree with using that money for that option. We are looking at four to five complaints per year and we have approximately 1,100 problem sidewalks, in terms of the actual number of people complaining is pretty small so I don't know that there is a justification since we go on a complaint driver standard to take that \$15,000 for those few complaints. It is not to say that it isn't a problem and certainly we don't want people falling down on the sidewalks, we do need to think about this more to think about some of the issues that have been discussed in terms of street tree funds and supplementing the funding by not putting in a tree. As it stands now, I think we still need to look at this in more detail I wouldn't go forward with this as it is.

Councilor Ripma stated I also wouldn't go forward. This is always an unpopular problem. Everywhere people have to repair their sidewalk it is very unpopular. It is expensive and it seems unfair. The reason I think it is done the way that it has been done everywhere and forever virtually, is that property owners traditionally are required to maintain rights-of-way in a safe manner. The sidewalks are privately built and the questions about whose tree it was and whether it was the roots of the street tree or the old oak tree that caused it is just endless and no one is ever going to be happy unless the city pays for it for them. By going down this road we are saying lets just take on the liability. I think the reason that cities don't do it is because it is expensive. A problem with trying to pick out the top projects, what do you do about the others. What you end up with is the council hearing from people who come here with a case and are we ever going to say no to somebody after we have said yes to the previous five? You are just not thinking this through if you are going to go down that road. I think if we wanted to do it, the only way would be to establish a funding source that is real, not just taking it away from another fund that is already being used for meritorious city purposes. The streets need the money and building sidewalks and trails is part of our obligation as a city to keep doing those. Unless you find a funding source we are just staring down a mine field of problems. I favor the traditional rule, I think it is the one we have always had and it is done by cities for good and sufficient reasons. I do not favor spending staff time or money on this anymore.

Councilor Thomas stated I like what Councilor Daoust had to say to some extent. For me it is really either or. We either pay for the sidewalks or we don't. What I am afraid of though is if we pay for the sidewalks we will end up with a multi-year backlog. Secondarily is coming up with long-term funds. If we try to use the street tree fund, once the city reaches buildout it goes away. We don't have a reoccurring fund. The only thing that we have that is kind of reoccurring is gas tax and I am not real comfortable using the gas tax, which pays for taking care of the roads and future needs and pays for sidewalks. What I believe will happen is not only will we have to deal with the sidewalk but we will also have to deal with the tree removal. You really can't repair the sidewalk unless you take care of the problem that is underneath it

or you will be right back in the same boat. So, unless we can address the tree removal part of it in addition to the sidewalk repair, I am not sure this is worth pursuing.

Mayor Thalhoffer stated I think we can address both the sidewalk and the tree removal because for the most part, not always, but in most cases a tree that has uplifted the sidewalk is probably a tree that is going to have to be removed. I think we can determine whether it is a city tree or a property owner tree that was planted. We can determine that for the most part. I don't think that will take a rocket scientist to figure that out especially in the last ten years with the newer subdivisions. If the City of Troutdale planted the tree and it caused damage to the adjacent property owner, I think the City of Troutdale needs to be held accountable and needs to take some ownership of the problem because they planted the species of tree that caused the sidewalk to be uplifted. Some trees, like the trees across from my house, these are street trees and they are huge. They are 35' to 40' high. I imagine that their roots are pretty big and at some point they will uplift the sidewalk and then who should be responsible for that sidewalk uplift, maybe the RV Park should be responsible but I don't think so. I think the City of Troutdale, the planters of those trees, who maybe planted the wrong species of trees should be responsible. I think what that does is it makes us smarter and we plant trees that are going to do less damage than other species of trees. I think we need to have that warning to our staff that if you plant certain species of trees and they uplift the sidewalk we are going to have to pay for them. But if it is clear that the property owner planted the tree they should have to pay for it. That is what I would consider to be some criteria. There has been talk of a needs test, that might be possible. You could probably set up a needs test that could be administered fairly simply, but it would still take administrative time. You could set up a percentage of the repair system where you pay 25% or 50%, although if it is a city street tree that caused the damage the City should have to pay for it, not the property owner who had nothing to do with the species that was planted. I think with a little creativity we can develop a fund that would be fair and equitable in this situation. We were almost on to it when we talked about this before; at least I thought we were. I think we were thinking about adding something to a fund that could be tied into trees and the environment. I think there could be a funding source for this that would make sense to the people of the city but what doesn't make sense to them is that they have a city street tree that uproots their sidewalk and they have to pay for the repair to the sidewalk and for a new tree to be planted. You could have a first come first serve, you could have a lottery. Certainly a criteria could be established, which would take staff time to do and I understand that, but maybe we ought to get on with the task and just quit talking about it. Have staff come up with some criteria and funding sources.

Councilor Canfield stated we have documented 1,100 known problems and we are talking about \$15,000 a year that could repair six to maybe ten sidewalks a year. That is like a drop in the bucket. The last time we talked about this I agreed with the Mayor, however, the more we talk about this and the more negative consequences, such as potential of robbing the bike and trails fund to fund sidewalk repairs or doing away with new sidewalks to fund this or even new funding sources. I don't know about the other councilors but what I saw a little bit of pain from increasing the sewer rate, they didn't like that and that wasn't that much, I think it was only \$1. It caused a lot of heat. So if we are talking about funding sources for four or five complaints or fixing six to eight sidewalks, when I was in sales there was something called the Benjamin Franklin close. You would take a piece of paper and you would put the

positives on one side and the negatives on the other and if the positives were significantly more than the negatives then you want to go ahead with it. Well in this I see a couple of positives and about a dozen negatives. This is just not worth the trouble. I do have a problem with the City not being able to address the issue that we planted a street tree and the street tree caused the damage and the property owner has to pay to make the repair. That is not fair, however, if we were to implement something for such a small amount of money it is just throwing people false hopes and it wouldn't be accomplishing anything, it would just be a token effort. We have discussed this a couple of times and I know that the CAC and the PAC have spent a lot of time on this and I don't think that they wasted any time discussing this; it is something that needed to be discussed. However, now that we have hashed it out and considered it and reconsidered it, I think it is just time to put this to bed and say we are sorry it is just not possible right now.

Councilor Ripma stated I heard the majority of us wanting to not do anything further.

Mayor Thalhoffer asked is it the consensus of the Council to do nothing further, which is Option D?

Several Councilors agreed.

Mayor Thalhoffer stated I am a minority of one.

Councilor Daoust stated I am with you Mayor.

Council consensus was to go with Option D in the Staff Report which was to do nothing.

**10. RESOLUTION:** A Resolution providing for budget transfers and making appropriation changes for Fiscal Year 2005-06. (Consulting services for redevelopment of old Sewage Treatment Plant site.)

John Anderson, City Administrator stated this item is being brought before Council to provide additional consulting expertise in our negotiations with the Chelsea Corporation and the Yoshida Group. Normally, when the City gets involved in a redevelopment project that is dependent on funding from urban renewal you have a two step process. We are fortunate to have an alternate funding source. We own a large piece of property which we expect to have proceeds from the sale of that land. In addition to that we already have one of the property owners involved having indicated in writing that they want to expand and they want to participate. So, we are trying to run both processes parallel. We had not, in our budget preparations, included sufficient money to handle the additional expertise we need for the negotiations and to do that simultaneously. We have been having talks/negotiations with Chelsea Corporation every other Monday and as we have gotten in to those our consultant Jeff Tashman has indicated we should bring in some additional expertise into the process in developing the developer agreements. He has recommended that we subcontract with Nancy Guitteau and Jeannette Launer for some additional services. We have also reviewed that with the City Attorney to determine what role she might play in working on the developer agreements. Finally, we have been discussing this with Chelsea Corporation and they will be

hiring an architect to provide some design plans. We will need the architect we used initially for the Concept Plan to provide some additional evaluation of that. Because of these additional financial needs staff is bringing this before Council to consider a resolution transferring \$45,000 from the General Fund Contingency to the Executive Department so that we can enter into contracts for these services. The key thing here, noted in Option A, is that the proposed expenditures would be reimbursed either by the proceeds from the land sale or by the redevelopment district tax increment. Most cities handle that by paying the debt with the tax increment. Again, if that doesn't go forward, we would be selling the land and then we would reimburse the general fund through that process.

Councilor Kyle asked we included \$25,000 in our budget and this is an additional \$45,000?

John Anderson replied correct.

Councilor Daoust asked so we don't have the skills needed is the bottom line, right? Tashman can't provide these skills or...

John Anderson interrupted and stated he will be providing some of the skills in the additional \$45,000. It is additional time involved also so he will be working on the redevelopment district and in this case he is working with us in the negotiations as well.

Councilor Daoust asked how long would it take to reimburse that?

John Anderson replied we are estimating eighteen to twenty-four months depending upon how the land sale goes and/or the redevelopment district.

Councilor Daoust asked do we keep track of those kinds of things in the budget process if it goes over two years?

John Anderson replied yes, we can track those.

Councilor Daoust stated if we can track it I am okay.

Councilor Gorsek asked so for Fiscal Year 2005-06 in the budget we have already expended the \$25,000?

John Anderson replied we haven't expended the full \$25,000. That is for Jeff Tashman's skills for the redevelopment district. That is what we were focusing on when we built the budget, not step two which is the negotiations with the potential developer, in this case the Chelsea Group.

Councilor Gorsek stated I understand that. The question I have is that is quite a jump, \$25,000 proposed and now we are saying the Mr. Tashman and his subcontractors need \$45,000 more.

John Anderson stated that is also including the architects time and I haven't received a proposal from him yet and that is why I have estimated that amount.

Councilor Gorsek stated I understand all of that. My question is how can we be that far off on our estimates?

John Anderson replied again I basically used the estimates that were provided by Mr. Tashman based on the amount of interaction we are having with Chelsea Group with the negotiations. I certainly hope that it would be less than that.

Councilor Gorsek asked what is the position of our Finance Director, Kathy Leader? What is her opinion on this transfer or does she have one?

John Anderson replied we discussed it and we talked about whether or not there was a need for any formal action to represent the fact that it is going to be a loan that will be reimbursed and we felt that was not necessary.

Councilor Gorsek stated it just seems odd to me, Kathy is here a lot of nights and is not called upon to talk to us. I would really prefer to have our Finance Director here so that we could talk some more about the cost for instance, which to me I am still uncomfortable with. Certainly, as the City Administrator you are more than equipped but it seems like we should have our department specialist here if we are going to talk about something that I think is a fair amount of money.

John Anderson stated I think that is a fair request. She is either on vacation or is at a conference; otherwise she probably would have been here.

Councilor Gorsek stated basically what you have indicated here is for us to go forward in a positive direction with Chelsea and to stay on time basically, that we need to do this. Is that right?

John Anderson replied that is correct.

Councilor Ripma asked when this came up during the budget meetings, there was discussion about the \$25,000 wasn't there?

John Anderson replied correct.

Councilor Ripma stated we had just expended last year \$35,000 or something for the plant.

John Anderson stated that was for the two studies that we had done, the appraisal and the marketing analysis.

Councilor Ripma asked didn't you say that the \$25,000 was going to be the amount we need to expend this year? As I recall you did.

John Anderson replied it could well have been.



Councilor Ripma asked what has changed? We knew that we had to negotiate with Chelsea and we knew that we had to get an agreement with the other property owners; we have the plan, what has changed to require going to \$70,000?

John Anderson replied basically as we are having frequent interaction with Chelsea Group. Working on the budget and recommending \$25,000 for the current fiscal year we focused primarily on the urban renewal process. Again, I was working with the consultant Jeff Tashman and staff and we did not anticipate significant additional cost in negotiating a contract with Chelsea.

Councilor Ripma asked isn't the \$45,000 for this fiscal year?

John Anderson replied that is correct.

Councilor Ripma stated I guess I am wondering what was the \$25,000 for? We knew we would have to negotiate with Chelsea. Tashman is the same guy we are retaining. This is exactly the plan that was put forward at budget and I guess I am welcoming and inviting an answer to my question about why it is so much more.

John Anderson replied the best answer I can give you is in preparing the budget and working with Jeff Tashman to prepare what it would take to do the urban renewal district, I based the budget request of \$25,000 on that. At that time neither he nor I talked extensively about negotiating a development agreement with Chelsea. It is a two step package. One is an urban renewal district, which is a legal process which the council went through once before. This time we are also negotiating with the developer and so that is the piece we missed when we put the budget together. When you did the redevelopment district several years ago you weren't negotiating with Chelsea Group, it hadn't been included in that package. I was relying on Jeff Tashman and we put the budget together based on doing another redevelopment district and neither one of us spent any time focusing on the fact that we were speeding up the timeline for negotiating with the Chelsea Group.

Councilor Ripma stated couldn't one conclude that we were talking about an urban renewal district when we funded this at budget committee. And, couldn't one conclude that we were told about some of this but not the rest because now we are being asked to fund the rest of it that is clearly part of what I at least assumed was included.

John Anderson replied I think that is a fair interpretation. I am not comfortable coming back to Council saying we missed a major piece of the project because it is happening sooner than we anticipated.

Councilor Daoust stated unless we are just speeding up the timeline and paying for something now that we would pay for next fiscal year...

Councilor Ripma interrupted and stated this is exactly what we were planning to do Councilor Daoust. There is nothing different about it.

Councilor Daoust stated it is less objectionable to me if all we are doing is speeding up the timeline and paying for something now that we would have to pay for next year, if that is the case I don't know.

Councilor Ripma stated I am worried that we were told \$25,000 and now we are being asked for \$70,000 and it is exactly the same thing that I thought we were buying for \$25,000. That is what I am thinking, nothing about speeding up the timeline.

Councilor Daoust stated no it is not the same thing.

Councilor Thomas stated you keep talking about coming out ahead last year with more than expected as far as the ending fund balance. So far if you add the \$45,000 we have expended about \$75,000 to \$80,000, where are we at now? We took \$5,000 for the Confluence Project, \$25,000 for a police vehicle and this \$45,000, that is \$80,000.

John Anderson stated that is what we have used.

Councilor Thomas stated correct, how much did we have left over from last budget? Your statement in your staff report says that we had additional funds that we didn't expect from last year as kind of a justification for this.

John Anderson replied I am not saying it is a justification, I am saying that is making this possible or available to do this. Basically we estimated the General Fund to end last fiscal year at approximately \$1.7 million, it ended at about \$2.3 million. Part of that is dedicated. All I am saying is we ended the year much stronger than we thought.

Councilor Gorsek asked Councilor Thomas did that answer your question? I am curious about how much we went from to what we have it down to in terms of the ending fund balance; I don't think that question was answered.

John Anderson asked Councilor Thomas to restate the question.

Councilor Thomas stated you said the ending fund balance was \$2.3 million. Granted we can't necessarily spend it but if you have been using that as a justification for some of these contingency fund expenditures, and you said a portion of that is dedicated and we can't use that, so what is left?

John Anderson stated I have that my information in my office and I could go get that and bring it back to you. The Finance Director and I have done projections on what the budget would look like.

Councilor Thomas asked why do we need an architect?

John Anderson stated in working with the Chelsea Group when they bring forward plans we believe that we will be reviewing those plans to discuss things like setbacks, find out exactly what they need for parking. We used the architect before in making estimates on the

parking, in other words the parking formula that a private developer uses is based on square footage of stores that they build.

Councilor Thomas asked since we are really pursuing two different paths here, we have the path that basically gets us the right-of-way which doesn't necessarily involve urban renewal because urban renewal is for the extra stuff that we want to do, at least that is my understanding.

John Anderson replied correct.

Councilor Thomas asked why is urban renewal important in this particular case?

John Anderson replied urban renewal is there if we are pursuing the full vision plan which included the potential for a parking ramp, more highly developed waterfront plaza, the pedestrian connection between Columbia River Highway and the proposed redevelopment project.

Councilor Thomas stated to my understanding that piece was what the urban renewal would pay for and everything underneath that was essentially supposed to come from the sale of the property. Basically the difference between the \$4 million and the \$10 million, the \$6 million was essentially the urban renewal.

John Anderson replied that is correct.

Councilor Thomas stated Chelsea seems to be dragging this out.

John Anderson stated that is a possibility. They could be doing that. They have had a false start or two in getting an appraiser to compare with our appraisal. Again, it is a negotiation process and we can't make them go any faster than they are going to. At some point we will probably have to determine that they are either on a different schedule for a good reason or a bad reason. If we don't care for their reasons then we would have to go back and approach the project with the city acquiring the right-of-way, which has implications for condemnation. Council was interested in having us negotiate to try and resolve that through the negotiations, which is what we are involved in right now.

Councilor Thomas stated that would be my preference.

Mayor Thalhoffer stated I am listening to all of the comments and I feel that we don't have enough information right now to make a decision tonight. I would like to see us come back with this proposal and have Jeff Tashman here to tell us exactly what these two other folks are going to do that we can't do ourselves, in other words justify the expenditure of this money. I would also like to have our Finance Director here and hear a stronger case than what we have heard so far.

Councilor Gorsek asked in terms of how we selected Tashman, did he have to bid?

John Anderson replied that I can't answer. All I know is that he was the original consultant for the first urban renewal district so when I got here we just continued with him.

Councilor Gorsek asked and do we know about other consultants in terms of the various costs? In other words are we getting a reasonable cost in terms of what he is requesting?

John Anderson replied in my opinion, yes. He worked successfully with Gresham. Our expenses for this project I think have been reasonable to this point.

**Council consensus was to set this item over to a future meeting when our Consultant Jeff Tashman and our Finance Director Kathy Leader are able to attend.**

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

Pat Smith stated we went through this five years ago. We spent a lot of money and they did all of these studies about putting a road straight through Chelsea. We paid the consultants and if you remember all the hassle with urban renewal and it didn't pass, and yet we spent the money and now you are not even sure if it (urban renewal) is going to go through. I feel that you are putting good money after bad. If you decide to put the road through Chelsea that means they are going to want property of ours that we are going to have to donate to put a street through. The only person that is really going to profit from this will be Yoshida. What is left of our property will probably end up being a park. You are ruining your downtown businesses even further. You can't afford to have two downtowns. With as many buildings as we have empty now, the amount of money we have put into thinking we are doing things right, I feel with this \$45,000, now \$70,000 you are paying consultants is exorbitant until you are sure you have urban renewal. Use what you had before. Basically it is going to be the same, straight through the middle. You have all of those plans, and what will you do, they are worth nothing? To spend money time after time for the same thing and not getting any results. Chelsea the last time was dragging their feet. They said they want this and that but when it came down to the money it didn't work out. Under the circumstances I feel that the Outlet Mall the way they are is doing pretty good. It all has to do with how the city sees itself in the long run. If you want the downtown then you are not going say you want all these fancy shops down there because you are defeating your purposes for what we had done already. For consultants, and being that it is the same people, they have something to fall back on and I feel like we are paying twice for the same thing that up until now we haven't got any good out of.

Marty McMahon stated this, for those who don't remember the history, was proposed to the taxpayers about seven or eight years ago when it was put up for a bond. What we were told was we will do a continuation of the downtown theme and we will do a European flavor with shops and so on. We will take the money from the sale of the land and what we will use it for is to offset the cost for building the new sewage treatment plant. Does anyone remember any of this? Does that sound accurate? So here we are seven/eight years later. I believe there was a grant a number of years ago, at least five years, for I think \$100,000 for someone to do some mock-ups of designs and sketches and things they could do with the land, I know I participated in a meeting here. I believe that all ended up getting discarded. Now we have a new concept plan. How much money did we spend on that?

We adopted that two years ago and now they are coming back and saying we need another architect. I work for the government. I do some contracting for the government. I am really disturbed to hear that as a government body no RFP's have gone out in all this time, no request for competitive bids have gone out in all of this time, no going to anybody and asking them to list the property or put the property up for auction. There is nothing. What we have done is we have said we will deal with a single entity on a multi-million dollar project. How did they get the sole discretion that everything lives and dies with them? I don't get that. Now, because they want to be difficult through the negotiations, first of all you have a city administrator who we are paying \$85,000 to \$90,000 a year, now we are saying that person can't do the negotiations on this property sale so we have to hire consultants, which is really a full-time staff salary when you start adding up the numbers mentioned tonight. What is going on? This is our money. The grant that we spent was taxpayer's money. The fact that that land sits there vacant, not developed, not drawing taxes seven years after the fact, that is money being thrown out the window because we are not getting any tax revenue off of that. Then they come back to me, the taxpayer, and they say to me, first of all the initial promise was they we were going to pay \$.75/\$1,000 we are paying \$.085/\$1,000, then you are telling me initially the cost for the sale of the property was to go towards building the new sewage treatment plant and defray the cost of that. Now I am hearing that they are going to take the money from the sale of the property and they are going to use it to defer the cost for paying consultants. I do have a collective memory, I've lived in this community a number of years and so I have been able to follow the storyline over the years. Unfortunately, for people that are picking it up in bits and pieces that may not have that collective memory they don't get the full picture. I think somewhere somebody needs to start tracking the money, not from this fiscal year, we need to back up to the time when this whole project started. What did we tell the voters we were going to do when we floated it out there to them and said go along with us and do this? Are we living up to that? What are we doing with the money that we told the voters we were going to do when they cast their yes vote? Let me tell you, as a taxpayer, if you float another thing and say that you want another dime from me, I will not only shoot it down cold with my personal vote, but I will go and I will seek every vote I can get to tell you no. When I came here I wasn't quite as frustrated, I was a little bit frustrated that this has dragged on for so many years and that was my point in coming here this evening. After sitting here and listening to this about how much we are going to be spending on consultants, which could go on if we are just going to deal with this one player. What do they care, they can drag this out year after year. Why aren't they in competition with anyone else? You put an RFP out there and you tell them you go get your own architect. You go and you design and develop something and you come back to me with a plan and a dollar amount and then all of you folks out there that want to use that property you come back and you give your own plan and give your own dollar amount and bring it back and put your position out there and the best one wins. We can condemn the property and put a road right through the middle of it, we will compensate them for it but we are moving on. We are not going to keep going on like this year after year. The leadership on this project from the city council and from the city staff has been abysmal. As a taxpayer, I am pretty irritated about it.

## **11. STAFF COMMUNICATIONS**

John Anderson reviewed the memo he provided to Council on October 20<sup>th</sup> regarding a recommended process for the Judge's evaluation this year and asked Council if they agreed with the recommended process. Council agreed with the recommended process.

John Anderson stated we have been trying to schedule a work session that the Mayor asked for on the land use hearing process. We tentatively scheduled it for November 8<sup>th</sup> following the regular meeting, however, that agenda is becoming fairly long. Council agreed not to hold the work session on the land use hearing process on November 8<sup>th</sup> and directed staff to reschedule it for a future date.

John Anderson updated the Council on activities that he has been working on regarding the redevelopment of the STP site. 1) We have been meeting with John Trumbull, the representative from Union Pacific. He has accepted the report we provided on the extension of the road underneath the Sandy River Bridge. He has forwarded that report to Union Pacific's main office in Nebraska. An optimistic estimate would be a 30-day turnaround to get Union Pacific to approve our building a connecting road underneath the bridge. 2) We've been having conversations/negotiations with Chelsea Group just about every other Monday. In those conversations Chelsea asked what the status was on the two parcels, the City's STP site and the Yoshida site, as far as whether or not there had been any environmental assessments done. They have not been done. I have talked to Jeff Brooks with Colliers International, who helped us sell the RMAC property, to determine whether or not the buyer or the seller normally does the environmental assessment. Jeff responded that the seller normally does that. We will be getting the environmental assessment done for approximately \$2,000 which will be split proportionally with Yoshida based on the acreage involved. 3) At next Tuesday's work session we have scheduled the review of the list of nominees for the Ad Hoc Downtown Redevelopment Committee. 4) A meeting has been scheduled for November 2<sup>nd</sup> with Oregon Economic and Community Development Department to talk about whether or not there are some other financial tools we can bring into play. The Mayor will be attending that meeting.

Marnie Allen recommended that the Council follow the same process for her evaluation as they will be using for the Judge's evaluation. Council agreed.

## **12. COUNCIL COMMUNICATIONS**

Councilor Thomas asked about the status of the 10-minute parking spaces in front of the former West Columbia Gorge Chamber of Commerce office space.

Jim Galloway replied based on the direction from the Council we sent a letter to the County. I have seen an internal correspondence within the County where the Deputy Director of the department has authorized that the signs be removed.

Councilor Thomas stated in looking at these contingency funds one of the things we have lacked on is using some of those funds to reinstate the Champion to six issues per year. Councilor Thomas requested to have that put on an agenda in the real near future.

Council consensus was to address this during the next budget cycle.

Councilor Canfield asked whether or not it had been confirmed that we will be hearing a report from the Chamber on the Troutdale TMA feasibility study at our November 8<sup>th</sup> Council meeting.

John Anderson replied that has not been confirmed.

**13. ADJOURNMENT:**

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

Meeting adjourned at 9:57pm.

**Paul Thalhofer, Mayor**

**Approved February 14, 2006**

**ATTEST:**

**Debbie Stickney, City Recorder**