

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

**March 11, 2003**

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

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

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

**ABSENT:** None

**STAFF:** Jim Galloway, Public Works Director; Tim Sercombe, City Attorney; Debbie Stickney, City Recorder.

**GUESTS:** See Attached List.

Mayor Thalhofer asked are there any agenda updates?

Galloway replied we have no updates this evening.

**2. CONSENT AGENDA:**

- 2.1 **Accept Minutes: January 28, 2003 Regular Meeting.**
- 2.2 **Resolution: A Resolution approving an Intergovernmental Agreement between the City of Troutdale and Metro for the City of Troutdale 2003 Commercial Technical Assistance Program (CTAP).**
- 2.3 **Resolution: A Resolution amending the Fees and Charges Schedule adopted by Resolution #1637.**
- 2.4 **Resolution: A Resolution authorizing the League of Oregon Cities to coordinate the filing of an appeal of the rate increase received from PERS.**

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

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

None.

**4. STAFF REPORT: A staff report and recommendation concerning a citizen request to remove stop signs on SE Evans Avenue at SE 23<sup>rd</sup> Street.**

Jim Galloway, Public Works Director stated at your February 11<sup>th</sup> meeting a citizen came before you and asked the council to take action to remove stop signs on SE Evans Avenue at 23<sup>rd</sup> Street or if you declined to do that to at least trim the vegetation so that one of the stop signs that was being obstructed would be more visible. You referred that action to staff. We normally don't bring issues of sign placement before the council but in this particular case the original decision to place those stop signs at that location was made by council in response to some citizen concerns about speeding in the neighborhood about ten years ago. We have tried to provide you with some background information to enable you to make your decision. We sent a letter to approximately 250 homes in the area that we thought reflected the residents that would typically be traveling through the intersection in question. In my staff report I have summarized the results that we received from that letter, which asked the residents to give us their opinion of what they would like to see done. We received forty-eight responses. Of those, thirty-four indicated that they would prefer removal of the stop signs on Evans, both north and south bound and most of those indicated that they would like to see the stop sign remain on 23<sup>rd</sup> Street and Evans. We sent a second letter out to the same 250 residents summarizing the responses we received and informed them of the meeting tonight. Because the responses ran about 3 to 1 in favor of removing the stop signs as the resident initially requested and because stop signs are not an appropriate speed control device to begin with, staff is recommending that you do authorize us to remove the stop signs north and southbound on Evans at 23<sup>rd</sup> and leave the stop sign westbound on 23<sup>rd</sup> at Evans.

Councilor Kight asked do we have any statistics on the accidents in that area?

Galloway replied that question was asked of the police chief and my recollection is that they do not have any data indicating that there had been accidents at that intersection.

Councilor Kight asked is there a speeding problem now?

Galloway replied I don't know the answer to that but some of the folks that responded to the survey felt there was a speeding issue.

Councilor Kight asked if there is a speeding issue now and we remove the stop signs, won't there be a speeding issue for sure?

Galloway replied not necessarily. You are assuming that people always stop at the stop signs and that is not always the case.

Councilor Kight stated so speeding isn't a problem. We corrected that problem which was the initial reason for installing the stop sign, right?

Galloway replied I don't know that you can make a final statement that there is no speeding problem there. My response was that I am not sure the stop sign does anything regarding the speeding problem. I think the speed humps that were installed probably do more to control speeding than that stop sign.

Councilor Kight voiced concerns that the residents in that neighborhood have already established a traffic pattern with the stop sign there and asked what would happen when the stop signs are removed?

Galloway replied I don't think that would be a major issue. Whenever we make a traffic control change we typically put out warning signs letting folks know there is going to be a change, then we put up signs indicating that there is a change. I think those measures would alleviate concerns folks would have about abrupt changes.

Councilor Daoust asked would the stop sign on 23<sup>rd</sup> going west would remain?

Galloway replied that is our recommendation and what the majority of the folks that responded indicated they would want.

Councilor Gorsek asked did the speed humps get installed after the stop signs?

Galloway replied yes.

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

No testimony received.

**MOTION: Councilor Ripma moved to accept the staff recommendation and remove the stop signs on Evans at 23<sup>rd</sup>. Seconded by Councilor Gorsek.**

**Councilor Ripma stated I think the citizens who responded to the survey want the signs removed. I wouldn't ordinarily be persuaded by that, but only because I think the people that are close to it might have been the most impacted and wanted it the most. I have to say that in the absence of anyone feeling strongly enough to come and testify tonight and the fact that staff's recommendation follows what the majority of the people wanted that responded to the survey persuaded me.**

**Councilor Gorsek stated it sounds like the speed humps are the best option for speed control. I have confidence in our staff that they are making a wise decision.**

**Councilor Thomas stated it makes sense to me. The speed humps take care of the speeding issue.**

Mayor Thalsofer stated this is about the clearest cut case I have ever seen for favorable action on this motion. I think the speed humps, which were installed after the stop signs, do the job for speed control. This makes perfect sense to me.

Councilor Kight stated it is not as clear-cut for myself. I am concerned about removing any type of traffic calming devices. I hope we don't have to revisit this a year from now with people asking for the stop signs to be reinstalled. My fear is that there has already been a habit established by the people in the community and they expect to see those stop signs. I guess we will have to wait and see what happens. It has been my experience that some people slow down at speed humps and others do not. It might have been wiser to remove the visible barriers so that people could see the signs.

Councilor Kyle stated I have traveled on Evans a lot and I don't think that either one of these signs are particularly visible. Going to the north there is usually a commercial vehicle parked which blocks your vision of that stop sign. Coming south in the summer there are trees with a lot of foliage. I am also hesitant to remove the stop signs because it is a pattern that has been established.

Councilor Daoust stated I have voted these stop signs as the most unnecessary stop signs in the city. I am glad we are using some common sense and removing them. I think it will be better for two reasons. I think people will now know, once they are removed, that those cars are not going to stop. They won't have to guess if they are going to stop or not. Secondly, I think it will be a little better noise wise. I have been behind cars that stop at that stop sign and then they peel out.

**VOTE: Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalsofer – Yes; Councilor Kight – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes.**

**Motion approved 7-0.**

**5. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance regarding responsibility and liability for sidewalks, curbs and driveway approaches, and parking/landscaping strips and amending Section 12.05.080 of the Troutdale Municipal Code.**

Mayor Thalsofer read the ordinance title and opened the public hearing at 7:24pm.

Jim Galloway, Public Works Director reviewed the staff report contained in the packet.

Councilor Ripma asked do the property owners own the sidewalk?

Galloway replied no. In almost all cases the sidewalk is within the public right-of-way.

Councilor Ripma asked is this a typical city ordinance provision where the city can make the abutting property owners responsible and liable?

Tim Sercombe, City Attorney replied yes it is a common provision. Portland and a number of other cities in the metro area have this type of provision that shifts the liability and responsibility.

Councilor Ripma asked there is a provision for a fine but I assume that money wouldn't go towards the repair of the sidewalk? It would be the actual request for the reimbursement that would repair the sidewalk and the court could require them to reimburse the city rather than the way we do it now by liens.

Galloway replied yes that is correct. There would be the option to impose a fine, which would be strictly a penalty. There is also the option, which I would view as the least desirable situation, where we would have city crews go out and do the work or hire a contractor to do the work then the court could require reimbursement for expenses.

Councilor Thomas asked what I have never really understood is since in most cases the sidewalk is within the right-of-way, why doesn't the city take responsibility for it?

Galloway replied in research that I have done, for instance looking at the League of Oregon Cities web site and looking at about half a dozen samples they have, similar language appears in all of them. I think it is a fairly widespread practice. The exact reason why I am not sure, but a couple of things come to mind. In making the adjacent property owner responsible, as opposed to the general public via the city, one might be that the property owner probably benefits the most from having a well-maintained sidewalk adjacent to their property both in property value and access for them or their guests. Secondly, if there is damage to the sidewalk, quite likely the most likely culprit of the damage might be the adjacent property owner who has driven heavy equipment over it or done something to cause the damage.

Sercombe stated I know that some jurisdictions have older provisions in their code that allows for single lot assessments for some sort of condition on the street or sidewalk to be assessed through an LID process. That has fallen into disfavor and I think that most cities use this technique pretty much for the reasons that Jim has mentioned.

Councilor Thomas asked in the event that street trees cause the damage, which are planted at the request of the city, does that still fall upon the property owner?

Galloway replied it does.

Mayor Thalsofer asked is the court fine of \$1,000 reasonable?

Galloway replied I don't recall looking at other cities ordinances to see if they had a particular amount for their fine. I think the idea here is that we want to give the Judge something to work with. If you cite someone into court the Judge can order someone to comply but if there

is no penalty for not doing it we haven't given him much of a tool. It is not something that we expect to be used a lot.

Councilor Kight asked I also think the fine is high. If a person appears before the Judge and says he has no intention of repairing the sidewalk because it is the responsibility of the city and the Judge fines him \$200.00 and he pays that fine, what is the next step?

Galloway replies I don't want to speculate on what the Judge would do but certainly if that were to occur and the problem is not resolved we would issue another citation.

Councilor Kight asked could you give me a ballpark figure of what it would cost to replace a sidewalk that is 70' long?

Galloway replied typically the entire sidewalk would not need to be repaired; it is usually only one section. An estimate for one section would be around \$160.00.

Councilor Kight stated I think \$1,000 fine is a little steep. How much time does a homeowner have to repair the sidewalk?

Galloway replied the current code provides 30 days. However, the way we have been implementing it has been if someone comes to us with a reasonable request for additional time we grant it. Very few get done in the initial 30 days, however, we have not had a situation where someone has defied the city and never made the repair. Eventually they comply without ever having to bring them to court. I think we have been quite lenient in granting additional time. Our intent is to get the sidewalk fixed so that no one gets hurt. Our desire is not to fine anyone or bring them to court if we don't have to.

Councilor Kight stated I would like to voice my opinion in reducing the amount of the fine to around \$250.00.

Councilor Kyle asked if a property owner needs to repair their sidewalk because of the damage from a street tree and it is possible that the street tree will cause additional damage in the future, can they remove the street tree?

Galloway replied yes.

Councilor Daoust asked we are focusing on the sidewalk but we also mention the landscape strips where we have can have gravel, trees and shrubs in those strips that can become overgrown. Overgrown shrubs or trees are addressed in another section of the code but should it also be addressed in this section?

Galloway replied it is addressed in another section of the code where there is the requirement to trim trees to a certain height and weed control. I believe those are both in the nuisance chapter.

Councilor Daoust asked so someone that wanted to know how to maintain their landscape strip would have to go to the nuisance section to find out what the requirements are?

Galloway replied for the tree trimming you may need to refer to the section that addresses street trees. I wouldn't necessarily look to the municipal code to be the "how to" guide. I see it more as your policy.

Councilor Kight stated I have a question for the city attorney. The property owner does not own the sidewalk but yet is responsible for the repair. If someone is injured on the property, does that necessarily eliminate any liability for the city just because we say we have no liability? Is there anything that precludes the injured party from suing the city?

Sercombe replied it shifts the liability to the property owner and makes them liable but it doesn't exculpate the city necessarily.

Councilor Kight asked could we end up with the same end result that we just had with a recent case?

Sercombe replied the intent here is to shift the liability to the property owner as an incentive to the property owner to make the repairs and also to make the property owner primarily liable and accountable for it even if the city has some residual liability.

Councilor Kight stated the property owner doesn't own the property. You are asking someone to take responsibility for a piece of real estate that he doesn't own.

Sercombe replied that is right. It is common in municipal practice to try to put onto the adjacent property owners the cost of improvements that benefit their property.

Councilor Kight stated that is a financial obligation you are asking the property owner to assume. You are taking it to another level and you are not only asking for a financial responsibility by having to make the repair to the sidewalk but in addition they have to take on the liability issue and could end up being sued. You are trying to say, if I understand correctly, that the city is at this point hands off and we have no obligation or liability.

Sercombe stated the liability of the city would depend upon a number of factors. Whether or not the city was negligent and whether or not it had a defense to that negligence. In some ways the city, by making a policy choice here to have this be a complaint driven process and to have that be the policy that you use for maintaining and improving sidewalk, that policy choice would create immunity from tort liability and from liability for failure to repair unless there was a complaint filed and the city ignored the complaint. There are ways for the city to shed itself from this type of liability because you don't have the resources to maintain all of the sidewalks and ensure that they are in good condition. If you choose to pass this ordinance you are saying we are going to address this on a complaint driven process and that creates the tort immunity. This ordinance creates a remedy for someone if they are injured.

Councilor Kight asked but this does not eliminate the liability altogether for the city?

Sercombe replied no but there is a discretionary function immunity in the tort claim act that says that if you make a choice to not do something because of a policy decision made by the council, the city will be immune from the consequence for that choice, which is what you are doing with this ordinance.

Councilor Kight stated it is interesting that the government can shift total responsibility for a piece of property they own to someone else who doesn't own it.

Mayor Thalhoffer stated it has been going on for years.

Councilor Kyle asked how would the property owner shed themselves from the liability until they can get the sidewalk fixed? Do they have the right to block the public from using the sidewalk in front of their property until it is fixed?

Sercombe replied I would assume that if the sidewalk is defective and dangerous that there could be warnings posted.

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

Dave Munson stated this is an interesting concept. In Sweetbriar there is not only a sidewalk but there is also a small parking pad. There is very little parking on the street in this neighborhood. What happens is the neighbor with a lot of vehicles is parking his vehicles on the adjacent homeowners pad because there is no room on the street or in his own driveway or garage. So do we assume that the property owner that is not using his own parking pad is liable for the maintenance and repair of that pad but he is not the one using it.

Galloway stated I am not saying it is right or which way a court would rule if it ended up in court but the way our current code is written and the proposed amendment reads is we would say the responsibility is with the adjacent property owner. We are not making any changes to that language.

Sercombe stated the complex part is whether or not the neighbor would also be accountable for having caused the damage.

Mayor Thalhoffer closed the public hearing at 7:59pm and stated that there will be a second hearing on this ordinance on March 25<sup>th</sup>.

## **6. COUNCIL CONCERNS AND INITIATIVES:**

Councilor Ripma stated the Troutdale Historical Society has been presenting a series of Lewis and Clark programs with living history re-creators. On Sunday, March 16<sup>th</sup> at 2pm at City Hall, Historian Ron Craig will be doing "York" who was the only black member of the Lewis and Clark expedition.



Mayor Thalhofer stated that the Parks Advisory Committee will be holding a meeting on Tuesday, March 18<sup>th</sup> at the City Conference Building to discuss the location of a skate park in Troutdale.

Councilor Daoust stated that the Troutdale Lions have awarded the Humanitarian of the Year award to Mayor Thalhofer. There will be a banquet held to honor the Mayor on March 29<sup>th</sup> at 6pm at the Glenn Otto Park in the Sam Cox Building.

Councilor Gorsek stated I have a couple of concerns. One of them is the current state of the Multnomah County Court House and the court system. I am very concerned about the question of due process and about the problems related to closing the courts because of the lack of money and the problems related to not having money for indigent defense. I think this is an extremely important problem and one that I hope Multnomah County Commission takes seriously. At the same time we also have the issue about Reynolds School District and I would hope as the City of Portland and the County deals with apportioning money to the Portland Public Schools that they also fairly deal with East County Schools, especially the Troutdale system.

**7. ADJOURNMENT:**

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

Meeting adjourned at 8:03pm.

**Paul Thalhofer, Mayor**

**Approved April 8, 2003**

**ATTEST:**

**Debbie Stickney, City Recorder**